THEOLOGIA MORALIS SANCTI ALPHONSI

Reduced into a Compendium, and Adapted to the Use of the Venerable American Clergy

by Anthony Konings, C.SS.R.

VOLUME I

New York: Benziger Brothers, fifth edition, 1885 · The Latin is in the public domain.
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Theologia Moralis of St. Alphonsus, Volume I

Complete English Translation

MORAL THEOLOGY

OF ST. ALPHONSUS

REDUCED INTO A COMPENDIUM

MORAL THEOLOGY

OF THE MOST RECENT DOCTOR OF THE CHURCH

ST. ALPHONSUS,

REDUCED INTO A COMPENDIUM, AND ADAPTED TO THE USE OF THE VENERABLE AMERICAN CLERGY,

BY THE AUTHOR A. KONINGS, C.SS.R.

FIFTH EDITION,

ENLARGED AND POLISHED WITH NEW CARES.

PRINTED AGAIN FROM TYPE.

VOL. I.

"St. Alphonsus, amid the opinions of theologians, whether laxer or stricter, marked out a safe way." - Pius IX. Leo XIII.

NEW YORK, CINCINNATI, ST. LOUIS, EINSIEDELN,

BENZIGER BROTHERS,

Printers to the Supreme Pontiff.

LONDON: Burns & Oates - TOURNAI: Widow H. Casterman.

1885.

> Editorial note: The printed Addenda and Corrigenda for Tom. I have been inserted at their intended places in the body text and notes, as the book directs. The translated Addenda and Corrigenda section is also retained at the end as printed matter belonging to the book.

Copyright, 1882.

By Very Rev. E. F. Schauer, Provincial C.SS.R.

APPROBATION.

The book whose title is: *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium and adapted to the use of the Venerable American Clergy*, by the author A. Konings, C.SS.R., 5th

edition, enlarged and polished with new cares, having been examined and approved by two theologians of our Congregation, to whom we committed the examination of the same, by the power granted to us by the Most Reverend Father N. Mauron, Rector Major and Superior General of the same Congregation, we permit to be published into the public light.

In witness whereof we have given these letters, subscribed by our hand and fortified with the seal of our office.

[l. s.]

E. F. SCHAUER, C.SS.R., Provincial Superior.

Baltimore,

On the Feast of St. Alphonsus, 1882.

APPROBATION.

OF THE MOST EMINENT AND MOST REVEREND ORDINARY.

IMPRIMATUR.

JOHN CARDINAL McCLOSKEY,

Archbishop of New York.

New York,

On the Feast of the Assumption of the Blessed Virgin Mary, 1882.

The Latest Approbations

San Francisco, September 13, 1876.

Rev. Father,

After it was given me to be present at the canonization of St. Alphonsus, and for about forty years to admire the doctrine and writings of so great a Doctor, I rejoice that it is also given me to commend your compendium of the Moral Theology of the same Doctor, as consonant with his doctrine and very useful to the students of our colleges, and indeed to the Venerable Clergy.

- JOSEPH S. ALEMANY, O.P., Archbishop of San Francisco.

Rev. Fr. A. Konings, C.SS.R., etc.

Natchez, Miss., March 9, 1877.

Rev. A. Konings, C.SS.R.:

Rev. Dear Sir: Since I have had an opportunity of looking through your Moral Theology, I cordially agree with what has been said in its commendation by so many better judges. Its special value for this country is its treating of so many matters particularly belonging to us - making a good use of the judicious opinions of the venerated Archbp. Kenrick; and yet not hesitating to give authorities and reasons opposed to them, where such exist. Another special value is in the various recent documents of the Holy See that you give; together with suitable remarks: making your Theology a practical manual for reference; - for the Syllabus, for various answers and instructions of the Holy See, for the Faculties of Bishops, etc. With regard to the general merits of your work, - I have not studied it enough to form a definitive judgment, but as far as I have seen it, I think you manifest a very practical judgment; what we call solid good sense; that you are clear and positive in your opinions, when the matter admits of it, and yet very modest and deferential to others, in your expression of them. Of all the Moral Theologies that I know, yours is the one which I would most wish every priest of my diocese to have and to use.

Your faithful servant in Christ,

- WILLIAM HENRY ELDER, Bishop of Natchez.

St. Paul, March 18, 1877.

Rev. Dear Sir:

Allow me to express to you the great satisfaction I have found in examining your Compendium of Moral Theology. I have recommended it earnestly to all of my priests.

- THOMAS L. GRACE, Bishop of St. Paul.

Rev. A. Konings, C.SS.R.

Harrisburg, Pa., September 24, 1876.

Very Rev. Dear Sir:

It gives me pleasure to add my feeble word of commendation to the many high testimonials you have received for your truly valuable work on Moral Theology.

I am, very respectfully,

Yours in Christ,

J. F. SHANAHAN, Bishop of Harrisburg.

Very Rev. A. Konings, C.SS.R.

Ottawa, September 20, 1876.

Very Reverend Father:

Your work, whose title is: *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium*, clearly sets forth the genuine doctrine of the Holy Doctor, and is most excellently adapted also to the condition of this Canadian region.

For this reason it is very pleasing to me to commend it,

- J. THOMAS, Bishop of Ottawa.

St. Cloud, Minn., November 10, 1876.

Rev. and Dear Father:

It gives me great pleasure to add my weak voice of approbation to that of so many learned and distinguished prelates. I consider your *Compendium Theologiae Moralis* a most useful, I might say necessary, book for every priest, and chiefly for students of Theology. May God bless you for your labors.

Yours very sincerely,

- RUPERT SEIDENBUSH, O.S.B., Vic. Apos. North Minn.

St. Hyacinthe, September 17, 1876.

Very Reverend Father:

I have been able to go through only in part the excellent work, *Moral Theology of St. Liguori*, which you have published, and of which you kindly sent me a copy. I thank you very much for your kind attention, and I make it a happiness to join my approbation to those, already numerous and of such great weight, which you have received from the venerable Bishops of the United States and elsewhere. I do not hesitate to declare that your work is precious to religion, and that it will be extremely useful to the clergy of the United States and of Canada, who find themselves in nearly the same position, and facing similar needs.

In making very sincere wishes for a wide and prompt diffusion of your work, I remain, very respectfully, my Reverend Father,

Your wholly devoted servant in Our Lord,

- L. Z., Bishop of St. Hyacinthe.

Very Reverend Father Konings, C.SS.R.

Seton Hall College, South Orange, N.J.,

September 11, 1876.

The Rev. A. Konings, C.SS.R., Ilchester, Howard Co., Md.

Rev. and Dear Sir: ..... Your Moral Theology is held in high favor by the professors of our seminary; with myself it is a specially favorite book; I have been reading a portion of it every day for months back. I am happy also to state that it is to be the text-book in the class of Moral Theology.

Very truly yours,

James H. Corrigan, Vice President.

St. Meinrad's Abbey, September 18, 1876.

Rev. and Dear Father:

I find your Moral Theology a most excellent book, and wish to see it introduced into all the ecclesiastical seminaries of this country, as it treats so practically the questions peculiar to America, but also in the other questions it is clear and accurate. Let the fact of having adopted your work as text-book in our seminary be a proof of the high esteem we have for it.

Yours truly in Christ,

Fr. Fintan, O.S.B., Prior.

American Catholic Quarterly Review - April, 1877.

"When we say that Father Konings, in the work before us, has laid down well and faithfully the moral doctrine of St. Alphonsus, we consider it no ordinary praise. But he has done more. He has written for no general, abstract purpose, but for the special benefit of the American Clergy. Accordingly, he has sought out and carefully brought together whatever there is in our civil laws or social customs that has a moral character, and has examined it by the doctrine of St. Alphonsus. The peculiar condition of the Church in this country, from our legislation and society - especially since the wide-spreading of New England ideas, which have pervaded the willing West and sought to force themselves upon the reluctant South - often brings about difficulties and complications that never existed in Europe, certainly not in the days of St. Alphonsus. These Father Konings has scrutinized keenly and decided by the unerring principles of Catholic doctrine. As an instance, we may quote the vexed question of mixed education, which he treats, as far as we can judge, with wise discretion and sound theology. Elegance of style is not expected and would be out of place in a book of the kind. Father Konings has taken the proper course. He writes with clearness and in a way to make himself intelligible to every reader."

Nouvelle Revue Theologique de Tournai - 9th Year, No. 6.

We recommend to our readers the work of Rev. Father Konings, which seems to us to be the best manual of Moral Theology that we possess up to this day. Published for the first time in 1874, it has already reached its third edition.

Fort Wayne, Ind., July 10, 1877.

Rev. A. Konings, C.SS.R.

Rev. Dear Sir: In writing a Moral Theology, wherein due regard is paid to our laws and customs, especially the "common law" of England and this country, you have supplied one of our greatest theological wants, and admirably have you done so; following the safest of guides, St. Alphonsus de Liguori.

- JOSEPH DWENGER, Bishop of Fort Wayne.

Cleveland, January 5, 1878.

I fully approve "Koning's Moral Theology."

- R. GILMOUR, Bishop of Cleveland.

Apologetic Preface of the Fourth Edition

[The benevolent reader is earnestly asked not to omit reading through this preface.]

It was not in my mind to preface this fourth edition of my work by even a little word; for what would have had to be said about it would have been sufficiently declared by these five words placed on the front of the book: *Fourth edition, enlarged and more corrected*. But while I was engaged in writing down the things which I had determined to correct in the third edition and to add to the same, I came upon a writing inserted in a certain French periodical,1 which, if it be read without hearing the other side, can easily preoccupy incautious minds against my work. This was the reason why not a few of those who wish well to my book advised me that, without any delay, I should set forth to the public light in some periodical the false things which are affirmed in that writing, and the true things which are passed over in silence in it. I judged it better not to listen to these advisers, although they were most friendly to me, especially for this reason, that the things which I would write in some periodical, since they would also be read by laymen, would increase and confirm the scandal already given. But it was fixed and certain with me to write a defense both of my own cause and of the cause of the Congregation of the Most Holy Redeemer, of which I am a son and which also is assailed in that writing; this defense, however, lest I be an offense to laymen, I present to the benevolent reader in this fourth edition of my work, and in this very preface.

I. Of the things which are carped at in my Compendium, one is that I transcribed very many annotations from those which the distinguished Anthony Ballerini, S.J., added to the Compendium of Father Gury, without naming the author of these. In this matter indeed, benevolent reader, you have me confessing the charge; but not so guilty that there is no place for excuse. Namely, if faith is to be had to the Censor, I suppress Ballerini craftily while I copy him out; and this is worthy of so much the graver rebuke, because I do not omit to name others from whom I take something. - I reply that one who acts craftily scarcely, or not even scarcely, foresees, or even suspects, that the fraud committed by him will someday be detected. But I certainly would have been foolish if I had not foreseen, or at least had not even suspected, that very many of those things which I copied from Ballerini's annotations would be discovered. Or was Father Dumas, S.J., also crafty, who himself turned to his own use about twenty-five of the same annotations which I copied out, without naming their author and with only the words of the same changed? Whether the same Father Dumas took from Ballerini other annotations, that is, ones different from those which I transcribed, I did not judge worth the trouble of investigating; for more and less do not change the species.

And so, to profess what is true, I judged it sufficient to have said in the Notice prefixed to my work that I copied out in very many things the Compendium of Father Gury. For since I was writing after the year 1869, and since everyone is to be judged to have used the latest edition of the work which he uses,

1 And now also for sale separately, and even rendered into English and sent gratis to very many of the clergy of this region.

it ought to have been sufficiently clear that I used that very edition which the distinguished Ballerini had enlarged with his annotations. And this also was the reason why, while I cite others, I do not

name Ballerini. But indeed I ought in no way to have confused Gury with Ballerini. Wherefore, in this fourth edition of my book, in the Notice that must necessarily be read, in place of Gury I have written: Gury-Ballerini. - I pass on to other matters.

II. I acted the part of a compiler rather than of an author, the Censor argues, and this, he continues, although I most openly state it in these same words in the Notice prefixed to my work, is nevertheless to be blamed. - Why, you will ask, is it to be blamed? Behold, kind reader, the most acute reason for this matter brought forward by the censor!

In the year 1873, he says, in the periodical *L'Univers*, someone raised the expectation of a work to be published by the Congregation of the Most Holy Redeemer, in which the whole body of Alphonsian doctrine was to be handed down. But that SOMEONE is believed, rightly or wrongly, to be a son of the Congregation of the Most Holy Redeemer, or certainly brought forward the expectation which he raised in the name of that same Congregation; for the same Congregation did not neglect to defend and protect him, and by this very fact ratified what he promised in its name. But Father Konings, a member of the same Congregation, did not make good the pledge of this promise. Therefore he is to be blamed.

To this splendid reasoning let this very simple response be made. It is plainly false that the Congregation of the Most Holy Redeemer ratified that writing which was inserted in the periodical *L'Univers*, as is evidently proved by the things which are read on page XI in the Apologetic Preface prefixed to the second edition of the *Vindiciae Alphonsianae*, in these words:

"On the 8th day of May of last year (1873), entirely without our knowledge, a certain review appeared in the French periodical *L'Univers*, by the anonymous author E. P. We cannot be silent that the same review (although it contains certain things excellently said, and was certainly written in good faith) affected us with no light sorrow; for, besides the fact that some opinions set forth by us are there not accurately presented, both the immoderate praises attributed to the *Vindiciae* and the accusations brought forward in the public sheets against Father Ballerini displeased us not a little." By what reasoning, therefore, the adversary, who surely is not ignorant of that second edition of the *Vindiciae*, could affirm that the things which were written in the aforesaid periodical had been ratified by the Congregation of the Most Holy Redeemer, is plainly not understood. Nor is it understood any more why he did not rather go to the *Vindiciae* themselves, in which on p. 900 (second edition, T. II, p. 556) the promise or proposal about which the question is raised is set forth in clear words.

But indeed the Authors of the *Vindiciae* promised another work than that which I brought to light. Therefore I am to be carped at. Truly he must be of a very sharp mind who perceives the force of this argument. Ought not the adversary, before he concluded from that premise that I was to be carped at, to have proved that my work was that very work which - or at least one of those which - the said Authors promised? But he does not prove this; rather, without any proof whatever, in two periods, of which one immediately follows the other, he states it first without any doubt,1 and then indeed by way of opinion.2 Then at length the adversary would have reasoned rightly if he had set up this argument and no other: Father Konings's work is not that of which the Defenders gave a promise. Therefore another is to be expected.

But the adversary's conclusion violates not only the laws of Logic, but also stands entirely apart from the matter itself and from truth. Receive this in a few words, reader. My Compendium, for the greater

part already, was prepared for the press before the *Vindiciae Alphonsianae* were published, as several both of my confreres and of the secular clergy, whose counsel I used in composing it, can testify; - of the *Vindiciae* themselves, whether to be written or already written, before they were published, nothing whatever had become known to me, as I myself solemnly testify; - I was neither ordered by my Superiors, nor in any way impelled, to compose my work; but, with their permission, I yielded to the requests of students and of other members who desired to have at hand the sincere doctrine of their Holy Father written according to the Gury method, and adapted to the condition of these Federated States.

1 "It is no doubt to do honor to these engagements that Rev. Father Konings, in the name of his confreres, has had printed the *Theologia Moralis... Sancti Alphonsi in compendium redacta...*"

2 "This is, we believe, the first of the works promised by the school of Saint Alphonsus, in order to give us the whole scientific work of the Doctor of our Age."

Wherefore I also did not write the entire body of Alphonsian doctrine, and I intentionally omitted the things which the Holy Doctor hands down, for example, concerning the obligations of Beneficiaries, Canons, and other things which do not pertain to practice in these our ecclesiastical provinces.

III. I now come to that rebuke by which the mark of literary plagiarism is branded upon me: namely, that I followed completely the method of Father Gury's Compendium, and that the things which I copied out from it fill seven hundred fifty-four columns of my book.

Literary plagiarism, in Vitruvius, even goes by the name of theft. And rightly indeed; for, like theft, it is the occult taking away of another's thing, the owner being reasonably unwilling. Let us see whether this notion of theft fits that which I am accused of having done.

And first indeed, was the taking away in this case occult? I indeed believe that it was not so occult that one who demands it to be more open would seem to demand something which exceeds even the supreme right itself. Namely, it was enough, even for preserving the laws of social propriety, to have warned the reader of my Compendium concerning the matter in these words: "In very many things I have almost copied out the Compendium of Moral Theology of Father Gury, whose most excellent method is approved by almost all both Professors and students of moral theology, and which I have followed, endeavoring before other things that I should bring it as completely as possible into conformity with Alphonsian doctrine." Therefore the reprover demands something excessive, when he demands that, according to the example of my Holy Father, who distinguished the text of Busembaum from his own by marks of quotation,1 in a new edition of my work I should distinguish by the same marks the things which I copied out from Gury. Surely Father Dumas, of the Society of Jesus, when in the year 1875 he published the Gury Compendium, did not believe that he was doing injury to the illustrious name of Father Gury, if, with additions and corrections inserted in the Gury context itself, and these not few, and with no sign distinguishing them, he published the work of that most excellent man.

But, someone perhaps will object, Father Dumas did not lack the right to act in that way; for this had been granted to him by those to whom, by the laws, the faculty of committing the Gury Compendium again to type now uniquely pertains. Therefore he did not usurp another's thing while the owners were reasonably unwilling; wherefore his condition is far different from mine.

Let us see whether this objection has any force, as in appearance, so also in reality and in truth. - The things which I borrowed from Gury can be another's by only a twofold right, namely positive and natural. Concerning positive right there can be no doubt here, since between France and the Federated States of America there exists no literary pact, as they call it. Therefore the question remains only concerning natural right. But Gury and Dumas decide this in my favor. For to the former it seems more probable, and to the latter probable, that a book already published in type by that very fact becomes of common right.2

But even granted, though not conceded, that I usurped another's thing, the question would remain to be discussed whether I usurped it while the owners were reasonably unwilling. Let us go to Ballerini. After he has said that the opinion which seems more probable to Father Gury and probable to Father Dumas must be rejected, in the note to the cited n. 568, q. 4, he has these words: "Nevertheless, since the publication of books in very distant regions less hinders an author from receiving the fruit fitting to his own industry, that principle set forth beforehand" (that is, the principle concerning the natural right of a man to the fruit of his own industry and ingenuity) "seems to press less with regard to these." There is no one who does not see that this is perfectly accommodated to my work.

Let the reader notice besides that in the resolution given by Fathers Gury and Dumas the question concerns the book of some author published in its entirety, or almost in its entirety, by another, or at least not notably enlarged or changed by him. Wherefore the things which the praised authors resolve hold *a fortiori* concerning my Compendium. For my Compendium, including the XCV pages prefixed to the work, which equal 190 columns, has 2071 columns. And so, even supposing that the number of columns which I copied from Gury was correctly computed, there will remain 1318 columns (or, excluding those 190 prefixed to the work, 1128), which have nothing in common with the Gury Compendium.

1 The example of the Holy Doctor does not make to the matter; since, when he was writing commentaries on Busembaum, he necessarily had to distinguish his own text from this latter's text.

2 See Gury, Tom. I, n. 568, q. 3, and Gury-Dumas, in the same place.

But if the Censor's computation does not comprehend those things which I took from Ballerini's Annotations, the number of columns will indeed be diminished; but even then it will be true that by far the greater part of my work was not borrowed from the Compendium of Gury-Ballerini.

Add that very many of those things which I copied from Gury were changed by me; for "before other things I endeavored" that I should bring Gury's Compendium "as completely as possible into conformity with Alphonsian doctrine." Therefore the title which the Censor prefixed to his Writing labors under the fault of equivocation and wanders in great part from the truth: "The Theology of Gury-Ballerini commended by a disciple of St. Alphonsus." The things said hold by a stronger right concerning this fourth edition of my book, in which not a few things have both been added and changed.

IV. But indeed, the Censor observes, I changed some things taken from the Gury Compendium which there was no need to change, or perhaps3 even changed wrongly; sometimes in such a way that where Gury gives St. Alphonsus entire, I adulterate the text of the latter.4

I would affect the reader with weariness if I touched even lightly on the individual trifles which the industry of an accuser worthy of graver matters has gathered together as if in the place of an argument. Therefore I pass over the noun *petasos* (which, although by strictness it would have had to be used, today is nevertheless less understood by most), changed into *pileos*; *pluries*, which is simpler, said in place of *centies*; the omitted adverb *bene*, which there was no necessity of placing. On the other things which are of some importance I am pleased to dwell for a little while.

In n. 1551, 1, of my Compendium I substituted the adjective VERY GRAVE (of a cause) for the adjective GRAVE used by Gury, and even for the adjective JUST used by St. Alphonsus. The Censor asks whether the adjective JUST, which St. Alphonsus used, is more correctly changed into VERY GRAVE than into GRAVE? I reply that the words "for a just cause" are very often used among Theologians in place of a genus, which contains under itself the species of a lighter, graver, and gravest cause; in other words, if, as in the case of which there is question in the cited place, some dispensation is at issue, in order that the cause be just, it must be proportionate to the gravity of the law. Hence, in order that dispensation be given in a law of very grave moment (such as is that of which there is question in the cited place, namely the law of the firmness of a ratified but not consummated Marriage), a very grave cause is required. Wherefore also St. Alphonsus, speaking of the present matter, L. VI. n. 959, does not simply (as someone could infer from the Censor's context) say that a just cause suffices for dispensing in a ratified but not consummated Marriage; rather, using a more restricted expression, he writes these things: "But a just cause (as the aforesaid Authors say) would be either supervening impotence, or imminent scandal, or newly discovered sterility, when it would be necessary for the public good that offspring be generated." There is no one who doubts that each of these three causes is rightly called very grave. The mind of the Holy Doctor is set forth even more clearly by these words, which immediately follow the preceding: "They also add, if there are disparity of condition, contagious disease, foreseen dissensions, mutual consent of the spouses; but these four causes Conc. p. 247, n. 20, does not admit, and deservedly." Surely of these four causes one or another is grave; and nevertheless the Holy Doctor admits none of them as just. Why? Because they do not seem proportionate to the gravity of the law itself. Hence also in *Homo Apostolicus*, Tr. XXIII, n. 90, he teaches that that dispensation can be granted, "yet with a great cause urging," as he adds. And these things indeed are clearer than light. Therefore both Gury and Dumas rightly abstained from bringing forward the Holy Doctor in defense of their opinion, namely that a grave cause suffices.

No less inept is what the Censor added in confirmation of his rebuke concerning the conflict of the cited n. 1551, 1, with the following 1553, q. 4. - Father Konings, he says, in n. 1553, q. 4, substituted the adjective GRAVE (cause) for the adjective JUST (cause), which Gury uses, and the Censor asks why a JUST cause is in this place called GRAVE, when in n. 1551, 1, it hears the name VERY GRAVE?5 - I am ashamed to teach the one asking; for the same response holds as above.

3 "Modifications to the Gury-Ballerini text of doubtful value."

4 "Corrections to the Gury-Ballerini text which go so far as to reach the text of St. Alphonsus."

5 "Why would JUST first have the value of very grave, and a few lines lower only that of grave?"

Namely, because of the different character of the cases about which there is question in those two numbers, in order that the cause be just, in the case proposed in n. 1551, 1, it is required that it be

very grave, while in the case of which n. 1553, q. 4 treats,1 it is required and suffices that it be grave. Or will the Censor judge that a lighter cause suffices in order that a spouse, by private authority, be separated from the bed from an unwilling consort? For here the question is about one unwilling, not one consenting; for of this latter the matter had already been treated in n. 1552, III. 1. Therefore there is no conflict between n. 1551, 1, and n. 1553, q. 4.

But behold, for proof of the same thing, other places brought forward by the Censor, namely numbers 1374 and 1376 of my Compendium, and two ETCETERAS. For an argument from ETCETERAS seems to be among the Censor's delights; but to the reader, who does not swear by the words of the master, it will be able to bring neither any pleasantness nor light. Therefore, passing over the argument drawn from the two ETCETERAS, I come to those numbers 1374 and 1376. But even in these I stick fast; for where the crime is in these numbers, the Censor does not indicate by even a little word. Did I perhaps sin because at n. 1374 I dared to add to the words of Gury from St. Alphonsus (L. VI, n. 471 under 8): "and it can also be forbidden to the scrupulous"? Or because at n. 1376 in the Response to q. 1 I advanced to that degree of rashness that I omitted the adverb *more probably*, which Gury uses but which is not found in St. Alphonsus (Book VI, n. 502); indeed also because I was unwilling to copy out from Gury (Tom. II, n. 572, Resp. ad 2) some opinion of Suarez not to be admitted from the principles of St. Alphonsus (cited place, Dub. 2 and Dub. 3)? I pass over the rest in silence. For to one comparing Gury's Compendium with mine at the cited n. 1376 and consulting St. Alphonsus, it will be clear almost at first glance that the things which I changed in this number in the Gury Compendium had necessarily to be changed, if, as was firmly proposed to me, I held it a matter of religion not to recede even the breadth of a fingernail from the doctrine of St. Alphonsus.

But nevertheless, the censor carps, sometimes I adulterated the text of the Saint where Gury gives it entire. For in n. 330, Principle I, I omitted the adverb *more probably*, which is read in Gury, and in n. 331, q. 1, for the word *precept*, which likewise is found in Gury, I substituted the word *necessity*. But the words *more probably* and *precept* are found in St. Alphonsus. - I reply. It would not have been difficult for the Censor to detect the reason why I omitted that *more probably*. Namely, in the cited place (n. 330) the discourse is about prayer. But in Book IV, at the beginning, St. Alphonsus really writes: "It is more probable that prayer is necessary for us by necessity of means." But what in this place he hands down as more probable, he hands down as certain in his work: *The Great Means of Prayer*, c. 1. Wherefore I brought forward both places in citation 4 at the bottom of p. 151, col. 1, and, because of the distinction between these two works of the Holy Doctor, I omitted the adjective *more probable*. And this also was the reason why at n. 331, q. 1, I substituted for the word *precept* the word *necessity*, under which both the necessity of precept and of means can be understood.

After this first unfortunate argument, the Censor heaps up in a mass, for proof of his accusation, numbers 1536, 1557, 1403, 345, 346, 1094, q. 4, of my Compendium, with the usual addition: etc., etc. - There is no leisure to go through each one. But from one, benevolent reader, and indeed from the first, learn all. Tom. II, n. 737, Gury has these things: "If the contracting parties have recently fixed a domicile in the present parish, the banns must be published also in the parish where they formerly lived: but a sufficient time is six months, says St. Lig. n. 991." For the words which are printed in italic letters, substitute others; and so also does the distinguished Dumas substitute

others. Why so? Because St. Alphonsus in the cited place has absolutely nothing about those six months. Which one erred? Gury or I?

V. It remains that I clear myself of that most grave!! crime, that sometimes I copied the very errors of Father Gury in citing St. Alphonsus; with so great, namely, and so blind a confidence I used the Gury Compendium!! In place of an argument the Censor brings forward altogether two Gury errors copied by me. Namely, n. 548, q. 1, at the bottom of the page under 3, after the example of Gury I cited St. Alphonsus in this way: Book VI, 432-666; but I ought to have cited: L. VI, 422, 666. Besides, in n. 1394, q. 8, when bringing forward the words of the Holy Doctor, in place of *his*, which is read in St. Alphonsus, with Gury I wrote *hisce*. - Let the benevolent reader pardon me if I even briefly touch upon trifles of this kind. Tom. II, n. 96,

1 There the question is about separation from the bed by private authority.

q. 4, Gury (and with him Dumas) cites St. Alphonsus in italic letters, and yet not entire. With the same words as Gury, I cite the Saint; but neither in italic letters nor with marks of quotation. Surely this one thing could have been an argument for the Censor that I did not copy Gury with blind confidence. Another argument of this matter is furnished by n. 1414 of my Compendium, where I bring forward the text of St. Alphonsus entire, while Gury and Dumas omit some word of the same, although, with marks of quotation used, they copy out his text. Therefore did Dumas also copy Gury with a certain blind confidence? He must be foolish who would infer this from it. Therefore, etc.

But now I have tried the reader's patience enough. What I have done, I have done unwillingly, and, unless an inescapable necessity compels me, it is fixed and deliberate with me that, if perhaps the Censor repeats the battle, I shall answer nothing at all. For by those things which I have written, I trust that I have at least obtained this: that those things which he perhaps is going to write again will be read cautiously, and will not be admitted with blind confidence.

A. KONINGS, C.SS.R.

After these things had been printed, by a friendly hand I received another writing of the Censor, in which certain other things also are charged as faults both against me and against the *Vindiciae Alphonsianae*. To these I reply only this one thing: From my rather long silence toward his former writing, I seemed to the Censor to have given him my conquered hands: "he who is silent," he says, "seems to consent." But from those things which I have written, anyone will easily conclude that this Rule of Law was applied too hastily by the Censor; wherefore I also advise him in a friendly way that, if perhaps a response is made more slowly, or even never, to that second writing, he should not infer from this that the things he wrote are irrefragable.

Notice Necessarily to Be Read

The universal and distinguished esteem which the moral doctrine of St. Alphonsus always had has greatly increased among all from the time when the Saint was numbered among the Doctors of the Church. From this very esteem there arose the desire that, since it is lawful safely to put his genuine doctrine into practice, this doctrine should be written not only compendiously, but also in that method which would be more suitable for public lectures. For a long time it has been, moreover, among the wishes of our venerable clergy that in a compendious and methodical exposition of this kind of Alphonsian doctrine account be taken of the condition which is proper to our ecclesiastical Provinces and to these regions. I have endeavored, according to my powers, to fulfill the expectation of this desire by this little work of whatever kind. In this matter indeed I frankly confess that I have played the part of compiler rather than of author. For the doctrine which I hand down, and from which I have endeavored not to recede even the breadth of a fingernail, is the doctrine of St. Alphonsus; the things which pertain to our affairs I have taken for the greatest part from the Acts and Decrees of the Second Plenary Council of Baltimore and from the Moral Theology which Kenrick, of good and clear memory, wrote, with his rather difficult and at times more obscure style somewhat changed. But most especially I turned to my own use the Compendium of Father Gury, whose method and order I have followed, and several of the notes which Ballerini, Cretoni, and the Ratisbon editor added to the same; yet with very many things added and changed, as will be plain to those who read through this fifth edition of my work, and striving before other things that I should bring it as completely as possible into conformity with Alphonsian doctrine. The things which I wrote about Probabilism I owe for the greater part to a friendly confrere; the things concerning the specific and numerical distinction of sins, and likewise very many things concerning scandal and cooperation in the sins of others, and concerning certain contracts, I have from the Notes of the distinguished Van Egeren. To the work whose title is *Vindiciae Alphonsianae*, I frequently refer the reader who desires more concerning certain questions.

The things which I have written from my opinion alone, or from that of others than St. Alphonsus, concerning certain points which are not touched by the Holy Doctor, I have labored, as much as I could, to hand down according to his mind. The things which I have taken from our civil laws, often in the vernacular idiom, I submitted to the judgment of a most illustrious jurist of our country, to whom I render due thanks in this place.

Lest the text of the compendium be unpleasantly interrupted, and in order that I might have regard for brevity, those Decrees, Declarations, and Instructions of the Supreme Pontiffs and of the Sacred Congregations which pertain to the moral matter, and which are longer and are not exhibited in the acts of our Plenary Council of Baltimore, and likewise the faculties which are customarily granted by the Holy See to our Bishops, I have placed before the work, referring the reader to them in their own places.

I judged also that I would do something pleasing to a disciple of St. Alphonsus, if I prefixed to the Compendium certain excerpts from the *Vindiciae Alphonsianae* concerning the excellence and authority of the moral doctrine of St. Alphonsus, and also a Key of his moral works, or Rules for discerning the genuine opinions of the Saint.

It remains that I declare certain abbreviations which I have used in this Compendium.

Abbreviation	Signifies
L. I. 27.	Moral Theology of St. Alphonsus, Book I, n. 27. Mechlin edition, 1845.1
H. A. Tr. X. 90.	*Homo Apostolicus*, Treatise X, n. 90.
Vind.	*Vindiciae Alphonsianae*.
Kenr.	Kenrick, *Theologia Moralis*, Mechlin edition, 1860.
Scav.	Scavini, *Theologia Moralis*, edition XII.
Heiss	Heiss, *De Matrimonio*.
Feije	Feije, *De impedimentis et dispens. matrim.*, edition 1874.
Acta	*Acta* excerpted from those things which are conducted at the Holy See.
Kent	Kent, *Commentaries*, edition 1867.
Walker	Walker, *Introduction to American Law*, edition 1869.
Wells	Wells' *Every Man his own Lawyer*, edition 1871.
Smith	Smith, *Manual of Common Law*, American edition, 1871.
V. Eg.	Van Egeren.
V. d. B.	Van de Burgt.
B. 14. S. D.	Benedict XIV, *De Synodo dioecesana*.
" " C.	The same, *Constitutiones*.
" " Jus.	The same, *Justitia*.
Cap.	Capellmann, *Medicina Pastoralis*.
Bouq.	Bouquillon.
Mar.	Marres, *De Jure et Justitia*.
Collect.	*Collectanea constitutionum*, etc., for the use of the Society of Missions to Foreigners.

1 For the sake of those who use earlier editions here, or the second edition of Father Haringer, I note: What in this edition is inscribed Book II is, in the earlier editions, Book V; what is Book III here is Book II there; what is Book IV here is Book III there; what is Book V here is Book IV there.

Decrees, Declarations, and Instructions Pertaining to Moral Matters

DECREES, DECLARATIONS, AND INSTRUCTIONS OF THE SUPREME PONTIFFS, COUNCILS, AND SACRED CONGREGATIONS, PERTAINING TO THE MORAL MATTER.

I. Chronological Series of Condemned Propositions

I. CHRONOLOGICAL SERIES OF PROPOSITIONS CONDEMNED IN THE MATTER OF MORALS, FROM THE YEAR 1418 AGAINST JOHN WICLEF, TO THE YEAR 1864 AGAINST THE MORE RECENT ERRORS.

A. Articles of John Wiclef, condemned in the Council of Constance, Session 45, in the year 1418

7. If a man has been duly contrite, every exterior Confession is superfluous and useless for him.

10. It is against sacred Scripture that ecclesiastical men should have possessions.

14. It is lawful for any deacon or priest to preach the word of God without the authority of the Apostolic See or of a Catholic Bishop.

16. Temporal lords can, at their own judgment, take temporal goods away from the Church, when those possessing them are habitually delinquent, that is, delinquent by habit, not only actually delinquent.

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

18. Tithes are purely alms, and parishioners, on account of the sins of their prelates, can take them away at their own pleasure.

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

43. Oaths are illicit which are made for strengthening human contracts and civil commerce.

B. Articles of John Hus, condemned as above

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

C. Propositions of Master Peter of Osma, condemned in the Congregation of Complutum, and afterward by Sixtus IV, in the year 1479

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

2. Confession concerning sins in species was useful to the Church from some statute, not by divine right.

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

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

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

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

Condemned as scandalous and heretical.

D. Errors of Martin Luther, condemned by Leo X, by the bull Exurge Domine, etc., May 16, 1520

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

5. That there are three parts of Penance, contrition, confession, and satisfaction, is not founded in sacred Scripture, nor in the ancient holy Christian doctors.

6. Contrition, which is prepared by discussion, comparison, and detestation of sins, by which one thinks over his years in the bitterness of his soul, pondering the gravity of sins, their multitude, the loss of eternal beatitude, and the acquisition of eternal damnation, this contrition makes a hypocrite, indeed more a sinner.

7. The proverb is most true, and more excellent than every doctrine concerning contritions given up to this point: henceforth not to do it is the highest penance; the best penance is a new life.

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

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

10. Sins are not remitted to anyone unless, when the priest remits, he believes that they are remitted to him; indeed the sin would remain unless he believed it remitted; for the remission of sin and the gift of grace do not suffice, but it is also necessary to believe that it has been remitted.

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

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

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

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

23. Excommunications are only external punishments, and do not deprive a man of the common spiritual prayers of the Church.

E. Propositions of Michael Baius, condemned by St. Pius V, by the bull Ex omnibus afflictionibus, etc., October 1, 1567; also by Gregory XIII, by the bull Provisionis nostrae, etc., January 29, 1579; and by Urban VIII, by the bull In eminenti, etc., March 6, 1641

16. It is not true obedience to the law which is done without charity.

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

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

31. Perfect and sincere charity, which is from a pure heart and a good conscience and faith not feigned, can be in catechumens as well as in penitents without the remission of sins.

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

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

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

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

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

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

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

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

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

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

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

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

57. Hence in the sacrament of Baptism or in the absolution of the priest, properly only the guilt of sin is removed, and the ministry of priests only frees from guilt.

58. The penitent sinner is not vivified by the ministry of the absolving priest, but by God alone, who, suggesting and inspiring penitence, vivifies and raises him up; but by the ministry of the priest only the guilt is removed.

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

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

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

63. But also that distinction of a twofold justice, one which is made through the indwelling spirit of charity, the other which is made indeed from the inspiration of the Holy Spirit exciting the heart to penance, but not yet indwelling the heart and diffusing charity in it, by which the justification of the divine law is fulfilled, is likewise rejected.

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

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

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

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

68. Infidelity purely negative, in those to whom Christ has not been preached, is sin.

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

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

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

75. The depraved motions of concupiscence are, for the state of vitiated man, prohibited by the precept: *You shall not covet*; whence a man feeling them, and not consenting, transgresses the precept: *You shall not covet*; although the transgression is not imputed as sin.

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

77. The laborious satisfactions of justified persons are not able to expiate *de condigno* the temporal punishment remaining after guilt has been condoned.

F. Five propositions of Cornelius Jansen, excerpted from his book whose title is Augustinus, condemned by Innocent X, by the constitution Cum occasione, etc., May 31, 1653; also by Alexander VII, by the constitution Ad sanctam B. Petri Sedem, etc., October 16, 1665, then by the constitution Regiminis apostolici, etc., February 15, 1664, in which he issued the formulary; finally by Clement XI, by the constitution Vineam Domini sabaoth, etc., July 16, 1705

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

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

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

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

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

Formulary of Alexander VII.

"I, N., submit myself to the apostolic constitution of Innocent X, given on May 31, 1653, and to the constitution of Alexander VII, given on October 16, 1656, the Supreme Pontiffs; and the five propositions excerpted from the book of Cornelius Jansen whose name is *Augustinus*, and in the sense intended by the same author, just as the Apostolic See condemned them through the said constitutions, I reject and condemn with a sincere mind, and so I swear. So may God help me, and these holy Gospels of God."

G. Forty-five propositions condemned by Alexander VII, by the decrees of the General Congregation of the Holy Roman and Universal Inquisition, Sanctissimus Dominus noster, etc., September 24, 1665, and March 18, 1666

Thursday, September 24, in the year 1665.

Our Most Holy Lord heard, not without great grief of his soul, that several opinions relaxing Christian discipline and bringing destruction to souls, partly antiquated ones raised up again, partly newly coming forth, and that supreme license of wanton minds, were growing more from day to day; by which, in matters pertaining to conscience, there had crept in a mode of opining altogether alien from evangelical simplicity and the doctrine of the Holy Fathers, and if the faithful were to follow it in practice as a right rule, an immense corruption of Christian life would creep in. Wherefore, lest at any time the way of salvation, which the supreme truth God (whose words remain unto eternity) has defined to be narrow, should happen to be widened, or rather perverted, unto the destruction of souls, the same Most Holy Lord, that he might call back the sheep entrusted to him from such a spacious and broad way (by which one goes to perdition), according to his pastoral solicitude, into the right path, the examination of those same opinions, etc.

1. A man is never bound at any time of his life to elicit an act of Faith, Hope, and Charity by force of the divine precepts pertaining to those virtues.

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

3. The opinion asserting that the Bull *Cæna* prohibits only the absolution of heresy and other crimes when they are public, and that this does not derogate from the faculty of Trent, in which there is speech concerning occult crimes, was seen and tolerated in the year 1629, July 18, in the consistory of the Sacred Congregation of the Most Eminent Cardinals.

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

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

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

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

8. A priest can licitly receive a doubled stipend for the same Mass, by applying to the one asking even the most special part of the fruit corresponding to the celebrant himself; and this after the decree of Urban VIII.

9. After the decree of Urban, a priest to whom Masses to be celebrated are handed over can satisfy through another, a smaller stipend having been conferred on him, while another part of the stipend is retained for himself.

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

11. Sins omitted or forgotten in Confession on account of an instant danger of life or on account of another cause, we are not bound to express in a following Confession.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. When litigants have for themselves equally probable opinions, the judge can receive money for giving sentence in favor of one rather than another.

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

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

Thursday, March 18, in the year 1666.

Prop. 29. On a fast day, one who several times eats some little thing does not break the fast.

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

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

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

33. Restitution of fruits on account of the omission of the Hours can be supplied by any alms whatsoever which the beneficiary previously gave from the fruits of his benefice.

34. One reciting the paschal Office on Palm Sunday satisfies the precept.

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

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

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

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

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

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

41. A concubinary is not to be obliged to cast out a concubine, if she would be too useful for the enjoyment of the concubinary, commonly *regalo*, while, if she were lacking, he would live life too painfully, and other dishes would affect the concubinary with great weariness, and another maidservant would be too difficult to find.

42. It is lawful for one lending to exact something beyond the principal, if he binds himself not to seek back the principal until a certain time.

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

44. With regard to the forum of conscience, when the guilty party has been corrected and his contumacy has ceased, the censures cease.

45. Books prohibited until they are expurgated can be retained until they are corrected after diligence has been applied.

All condemned and prohibited at least as scandalous.

H. Sixty-five propositions condemned by Innocent XI, by the Decree of the General Congregation of the Holy Roman and Universal Inquisition, Sanctissimus Dominus noster, etc., March 2, 1679

Thursday, March 2, 1679.

1. 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 the 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.

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

3. Generally, when relying on probability, whether intrinsic or extrinsic, however slight, provided one does not go beyond the bounds of probability, we do something, we always act prudently.

4. An unbeliever will be excused from infidelity if he does not believe, led by a less probable opinion.

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

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

7. Then only does it oblige, when we are bound to be justified, and we do not have another way by which we can be justified.

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

9. The work of marriage exercised for pleasure alone is altogether lacking in all fault and venial defect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. To call God as witness of a slight lie is not so great an irreverence on account of which he would wish or be able to damn a man.

25. With a cause it is lawful to swear without the mind of swearing, whether the matter is slight or grave.

26. If someone, either alone or before others, whether questioned or of his own accord, whether for the sake of recreation or for any other end, swears that he did not do something which in reality he did, understanding within himself something else which he did not do, or another way than that in which he did it, or any other true addition whatever, in reality he neither lies nor is perjured.

27. A just cause of using these amphibologies exists whenever this is necessary or useful for preserving bodily safety, honor, family property, or for any other act of virtue, so that the concealment of truth is then judged expedient and diligent.

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

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

30. It is right for an honorable man to kill an attacker who strives to inflict calumny, if otherwise this disgrace cannot be avoided; the same also must be said if someone strikes a slap or strikes with a stick and, after the slap has been struck or the blow of the stick, flees.

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

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

33. It is lawful for both an heir and a legatee to defend himself in such a way against one unjustly preventing either the inheritance from being entered upon or the legacies from being paid; just as also for one having a right to a chair or prebend against one unjustly preventing possession of them.

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

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

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

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

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

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

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

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

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

43. What if it is only venial to destroy, by a false crime, the great authority of one detracting, which is harmful to oneself?

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

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

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

more than the spiritual thing.

47. When the Council of Trent said that those communicating in the sins of others sin mortally, namely those who promote to churches any except those whom they themselves judge worthier and more useful to the church, the Council seems either, first, by this "worthier" to wish to signify nothing other than the worthiness of those to be chosen, taking the comparative for the positive; or, secondly, by a less proper expression it puts "worthier" so as to exclude the unworthy, not the worthy; or, finally, it speaks, thirdly, when there is a competition.

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

49. Effeminacy is not prohibited by the law of nature. Hence, if God had not forbidden it, it would often be good, and sometimes obligatory under mortal sin.

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

51. A servant who, with shoulders placed under, knowingly helps his master climb through windows to violate a virgin, and many times serves him in the same matter by carrying a ladder, opening the door, or cooperating in something similar, does not sin mortally if he does this from fear of notable harm, for example lest he be badly treated by his master, lest he be looked upon with angry eyes, lest he be cast out of the house.

52. The precept of observing feasts does not oblige under mortal sin, scandal set aside, if contempt is absent.

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

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

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

56. Frequent Confession and Communion, even in those who live in a worldly manner, is a mark of predestination.

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

58. We are not bound to confess to the Confessor asking us the habit of some sin.

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

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

61. He can sometimes be absolved who is in a proximate occasion of sinning, which he can and does not wish to omit, indeed which he directly and intentionally seeks, or into which he thrusts himself.

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

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

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

65. It suffices to have believed those mysteries once.

All condemned and prohibited, as they stand, at least as scandalous and pernicious in practice.

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

Proposition which the Holy Office in the year 1682 forbade to be put into practice, taught, or defended.

It is lawful to use knowledge acquired from confession, provided it is done without direct or indirect revelation and without burden to the penitent, unless something else much graver would follow from not using it, in comparison with which the former is deservedly contemned. See Viva, in the condemned propositions, T. 3, App. § VI-IX.

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

Let both Superiors existing for the time and confessors who afterward have been promoted to the rank of Superior take the most diligent care not to use, for exterior government, that knowledge which they had concerning the sins of others in confession.

Concerning the sacrament of Penance, under Clement VIII, July 19, 1602, the following proposition was proscribed.

Proposition.

It is lawful sacramentally to confess sins by letters or an intermediary to an absent Confessor, and to obtain absolution from the same while absent.

I. Sixty-eight propositions of Michael de Molinos condemned by Innocent XI, in the Constitution Caelestis Pastor, etc., November 20, 1687

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

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

3. Vows concerning doing something are impeditive of perfection.

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

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

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

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

8. It ought not to wish to know whether it walks with the will of God, or whether it remains resigned with the same will or not; nor is it necessary that it wish to know its state, nor its own nothingness, but it ought to remain as a lifeless body.

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

10. If by its own defects it scandalizes others, it is not necessary to reflect, provided the will to scandalize is not present; and not to be able to reflect upon its own defects is the grace of God.

11. It is not necessary to reflect upon the doubts which occur, whether one proceeds rightly or not.

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

13. Once free will has been resigned to God, thought and care concerning every matter of ours must be left to the same God, and one must leave him to do in us, without us, his divine will.

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

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

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

17. Once free will has been handed over to God, and the care and thought of our soul left to him, no account of temptations is any longer to be had; nor ought any resistance to be made to them except negative, with no industry applied; and if nature is moved, it is necessary to allow it to be moved, because it is nature.

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

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

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

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

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

23. The Mystics, with St. Bernard, on the ladder of cloistered persons distinguish four grades: reading, meditation, prayer, and infused contemplation. He who always stops at the first never passes over to the second. He who always persists in the second never comes to the third, which is our acquired contemplation, in which one must persist through the whole life,

provided God does not draw the soul (without its expecting this) to infused contemplation; and when this ceases, the soul ought to go back to the third grade and remain in it, without ever returning again to the second or the first.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. The Blessed Virgin never performed any exterior work, and nevertheless was holier than all the Saints. Therefore holiness can be attained without exterior work.

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

42. There can be a case in which violences of this kind toward carnal acts occur at the same time on the part of two persons, namely a male and a female, and on the part of each an act follows.

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

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

45. St. Paul suffered violences of this kind from a demon in his body; whence he wrote: *The good which I will, I do not do; but the evil which I will not, that I do*.

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

47. When violences of this kind occur, it is necessary to allow Satan to operate, applying no industry and no effort of one's own, but the man ought to remain in his nothingness; and even if pollutions and obscene acts follow by his own hands, and even worse things, it is not necessary to trouble oneself, but scruples, doubts, and fears must be cast out; because the soul

becomes more illuminated, more strengthened, and more candid, and holy liberty is acquired. And before all things it is not necessary to confess these things, and it is done most holily by not confessing, because in this way the devil is overcome, and the treasure of peace is acquired.

48. Satan, who inflicts violences of this kind, afterward persuades that they are grave crimes, so that the soul may trouble itself, lest it progress further in the internal way; hence, to weaken his forces, it is better not to confess them, because they are not sins, not even venial.

49. Job, from the violence of a demon, polluted himself with his own hands at the same time when he had pure prayers to God (thus interpreting the place from chapter XVI of Job).

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

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

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

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

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

55. By this internal way one comes, although with much suffering, to purging and extinguishing all passions, so that nothing further is felt, nothing, nothing; nor is any disquiet felt, like a dead body, nor does the soul any longer permit itself to be moved.

56. The two laws and two cupidities (one of the soul and the other of self-love) endure as long as self-love endures; whence when this has been purged and is dead, as happens through the

internal way, those two laws and two cupidities are no longer present, nor is any further fall incurred, nor is anything felt any longer, not even venial sin.

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

58. One comes to a state of this kind by no longer reflecting upon one's own operations, because defects arise from reflection.

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

60. For advanced souls, which begin to die to reflections and come even to this, that they are dead, God sometimes makes Confession impossible and himself supplies with such preserving grace as they would receive in the sacrament; and therefore for souls of this kind in such a case it is not good to approach the Sacrament of Penance, because this is impossible in them.

61. When the soul comes to mystical death, it can no longer will anything other than what God wills, because it no longer has a will, and God has taken it away from it.

62. Through the internal way one comes to a continuous immobile state in imperturbable peace.

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

64. The theologian has a lesser disposition than an unlearned man for the state of a contemplative: first, because he does not have Faith so pure; secondly, because he is not so humble; thirdly, because he does not care so much for his own salvation; fourthly, because he has his head filled with phantasms, species, opinions, and speculations, and the true light cannot enter into it.

65. Superiors must be obeyed in the exterior, and the breadth of the vow of obedience of religious extends only to the exterior. But in the interior the matter is otherwise, where God alone and the director enter.

66. A certain new doctrine in the Church of God is worthy of laughter, namely that the soul as to the internal ought to be governed by the Bishop, and that if the Bishop is not capable, the soul should go to him with its director. I call it a new doctrine, because neither sacred Scripture, nor Councils, nor Canons, nor Bulls, nor the Saints, nor Authors ever handed it down, nor can they hand it down, because the Church does not judge concerning hidden things, and the soul has the right of choosing whomever seems good to it.

67. To say that the internal must be manifested to the exterior tribunal of superiors, and that it is a sin not to do this, is a manifest deception; because the Church does not judge concerning hidden things, and by these deceptions and simulations they prejudice their own souls.

68. In the world there is no faculty nor jurisdiction for commanding that the letters of the director concerning the internal of the soul be manifested; and therefore it is necessary to notice that this is an insult of Satan, etc.

Condemned respectively as heretical, suspect, erroneous, scandalous, blasphemous, offensive to pious ears, rash, relaxing and overturning Christian discipline, and seditious.

J. Two propositions condemned by Alexander VII, by the Decree Sanctissimus Dominus noster, etc., August 24, 1690

1. Objective goodness consists in the agreement of the object with rational nature; but formal goodness in the conformity of the act with the rule of morals. For this it suffices that the moral act tend to the ultimate end interpretatively: HENCE MAN IS NOT BOUND TO LOVE EITHER AT THE BEGINNING OR IN THE COURSE OF HIS MORTAL LIFE.

Declared and condemned as heretical.

2. Philosophical or moral sin is a human act disagreeing with rational nature and right reason; but theological and mortal sin is a free transgression of the divine law. Philosophical sin, however grave, in one who either is ignorant of God, or does not actually think of God, is a grave sin, but is not an offense against God nor a mortal sin dissolving the friendship of God, nor worthy of eternal punishment.

Declared and condemned as scandalous, rash, offensive to pious ears, and erroneous. Arnald had fashioned that proposition according to his own pleasure and, in his customary calumnious manner, attributed it to his adversaries.

K. Thirty-one propositions condemned by Alexander VIII, by the Decree Sanctissimus Dominus Noster, etc., December 7, 1690

1. In the state of fallen nature, for formal sin and demerit there suffices that liberty by which it was voluntary and free in its cause, original sin, and the will of Adam sinning.

2. Although invincible ignorance of the law of nature be granted, in the state of fallen nature this does not excuse one acting from it from formal sin.

3. It is not lawful to follow an opinion, even the most probable among the probable.

4. He gave himself for us as an oblation to God, not for the elect alone, but for all and only the faithful.

5. Pagans, Jews, heretics, and others of this kind receive no influence at all from Jesus Christ; and so from this you will rightly infer that in them there is a will naked and unarmed, without any sufficient grace.

6. Sufficient grace is not so much useful as pernicious to our state, so that therefore we can deservedly ask: From sufficient grace deliver us, Lord.

7. Every deliberate human action is love of God or of the world: if of God, it is the charity of the Father; if of the world, it is concupiscence of the flesh, that is, it is evil.

8. It is necessary that an unbeliever sin in every work.

9. He really sins who hates sin merely on account of its baseness and disagreement with nature, without any respect to God offended.

10. The intention by which someone detests evil and pursues good merely in order to obtain heavenly glory is not right, nor pleasing to God.

11. Everything which is not from Christian supernatural Faith, which works through love, is sin.

12. When in great sinners all love fails, Faith also fails; and even if they seem to believe, it is not divine Faith, but human.

13. Whoever serves God even with a view to eternal reward, if he lacks charity, is not without fault whenever he operates with a view, even of beatitude.

14. Fear of hell is not supernatural.

15. Attrition which is conceived from fear of hell and of punishments, without the love of benevolence of God for his own sake, is not a good and supernatural motion.

16. The order of putting satisfaction before absolution was introduced not by the polity or institution of the Church, but by the very law and prescription of Christ, the nature of the matter somehow dictating this very thing.

17. By that practice of absolving immediately, the order of penance has been inverted.

18. The modern custom as to the administration of the Sacrament of Penance, even if the authority of very many men sustains it and a long duration of time confirms it, nevertheless is not held by the Church as a use, but as an abuse.

19. A man ought through his whole life to do penance for original sin.

20. Confessions made among religious are for the most part either sacrilegious or invalid.

21. A parishioner can suspect concerning mendicants, who live by common alms, that they impose too light and unsuitable a penance or satisfaction, on account of gain or profit of temporal support.

22. They are to be judged sacrilegious who claim a right to receiving Communion before they have done condign penance for their crimes.

23. Likewise they are to be barred from Sacred Communion in whom there is not yet the most pure love of God, and one free from every mixture.

24. The offering in the temple which was made by the Blessed Virgin Mary on the day of her purification, through two young doves, one for a holocaust and the other for sins, sufficiently testifies that she needed purification, and that the Son (who was offered) was also stained with the stain of the Mother, according to the words of the law.

25. It is unlawful for a Christian to place in a temple an image of God the Father sitting.

26. Praise which is rendered to Mary, as Mary, is vain.

27. Baptism conferred under this form was once valid: *In the name of the Father*, etc., with those words omitted: *I baptize thee*.

28. Baptism conferred by a minister is valid when he observes every external rite and form of baptizing, but inwardly in his heart resolves within himself: I do not intend what the Church does.

29. The assertion concerning the authority of the Roman Pontiff above an Ecumenical Council, and concerning his infallibility in deciding questions of Faith, is futile and so often shaken.

30. Where someone has found doctrine clearly founded in Augustine, he can hold and teach it absolutely, without regard to any bull of the Pontiff.

31. The bull of Urban VIII, *In eminenti*, is surreptitious.

Condemned and prohibited respectively as rash, scandalous, ill-sounding, injurious, next to heresy, savoring of heresy, erroneous, schismatic, and heretical.

L. Twenty-three propositions concerning the most pure love toward God, condemned by Innocent XI, by the Brief Cum alias, etc., March 12, 1699

1. There is a habitual state of the love of God, which is pure charity and without any admixture of a motive of one's own interest. Neither fear of punishments nor desire of reward has any further part in it. God is no longer loved on account of merit, nor on account of perfection, nor on account of happiness to be found in loving.

2. In the state of contemplative or unitive life every interested motive of fear and hope is lost.

3. That which is essential in the direction of a soul is to do nothing other than to follow grace step by step, with infinite patience, precaution, and subtlety. It is necessary to contain oneself within these limits, so that God may be allowed to act, and never to lead to pure love except when God, by interior unction, begins to open the heart to this word, which is so hard for souls still fixed upon themselves, and therefore can scandalize them or cast them into disturbance.

4. In the state of holy indifference the soul no longer has voluntary and deliberate desires on account of its own interest, except on those occasions in which it does not faithfully cooperate

with all its grace.

5. In the same state of holy indifference we will nothing for ourselves, all things for God. We do not will anything in order that we may be perfect and blessed on account of our own interest; but we will all perfection and beatitude insofar as it pleases God to bring it about that we will these things by the impression of his grace.

6. In this state of holy indifference we no longer will salvation as our own salvation, as eternal liberation, as the reward of our merits, as our greatest interest of all; but we will it with a full will, as the glory and good pleasure of God, as a thing which he wills, and which he wills us to will on account of himself.

7. Dereliction is nothing but abnegation, or renunciation of oneself, which Jesus Christ requires from us in the Gospel after we have left all external things. That abnegation of ourselves is only with regard to our own interest... The extreme trials in which this abnegation or dereliction of oneself must be exercised are temptations, by which the jealous God wishes to purge love, showing it no refuge, nor any hope with regard to its own interest, even eternal.

8. All sacrifices which are usually made by souls as much as possible disinterested concerning their eternal beatitude are conditional... But this sacrifice cannot be absolute in the ordinary state. In one case of extreme trials this sacrifice becomes in some manner absolute.

9. In extreme trials it can be invincibly persuaded to the soul by a reflex persuasion, and one which is not the inmost foundation of conscience, that it is justly reprobated by God.

10. Then the soul, divided from itself, expires with Christ on the cross, saying: *God, my God, why hast thou forsaken me?* In this involuntary impression of despair it completes the absolute sacrifice of its own interest with regard to eternity.

11. In this state the soul loses every hope of its own interest; but it never loses in the superior part, that is, in its direct and intimate acts, perfect hope, which is the disinterested desire of the promises.

12. The director then can permit this soul simply to acquiesce in the loss of its own interest, and in the just condemnation which it believes has been decreed to it by God.

13. The inferior part of Christ on the cross did not communicate its involuntary disturbances to the superior part.

14. In extreme trials for the purification of love there occurs a certain separation of the superior part of the soul from the inferior... In that separation the acts of the inferior part flow from an altogether blind and involuntary disturbance; for everything that is voluntary and intellectual belongs to the superior part.

15. Meditation consists of discursive acts, which are easily distinguished from one another... That composition of discursive and reflex acts is the proper exercise of interested love.

16. There is a state of contemplation so sublime and so perfect that it becomes habitual, so that whenever the soul actually prays, its prayer is contemplative, not discursive. Then it no longer needs to return to meditation and its methodical acts.

17. Contemplative souls are deprived of the distinct, sensible, and reflex view of Jesus Christ at two different times. First, in the rising fervor of their contemplation. Secondly, the soul loses the view of Jesus Christ in extreme trials.

18. In the passive state all distinct virtues are exercised, without thinking that they are virtues. At any moment one thinks nothing other than to do what God wills; and jealous love at the same time brings it about that one no longer wills virtue for oneself, nor ever is so endowed with virtue as when one is no longer attached to virtue.

19. It can be said in this sense that the passive and disinterested soul no longer wills even love itself, insofar as it is its perfection and its happiness, but only insofar as it is that which God wills from us.

20. In confessing, transformed souls ought to detest their sins, and condemn themselves, and desire the remission of their sins, not as their own purification and liberation, but as a thing which God wills and wills us to will on account of his glory.

21. The holy mystics excluded from the state of transformed souls the exercises of virtues.

22. Although this doctrine (concerning pure love) were pure and simple evangelical perfection designated in the whole tradition, the ancient pastors did not everywhere propose to the multitude of the just except exercises of interested love proportioned to their grace.

23. Pure love alone by itself constitutes the whole interior life, and then it becomes the one principle and the one motive of all acts which are deliberate and meritorious.

Condemned and reprobated, whether in the obvious sense of their words, or with attention paid to the connection of the sentences, as rash, scandalous, ill-sounding, offensive to pious ears, pernicious in practice, and also respectively erroneous.

M. Propositions of Paschasius Quesnel, condemned by Clement XI, in the Constitution Unigenitus, etc., September 8, 1713

38. The sinner is not free except for evil, without the grace of the Liberator.

39. The will which grace does not prevent has nothing of light except for going astray, nothing of ardor except for casting itself headlong, nothing of strength except for wounding itself; it is capable of every evil, and incapable of every good.

40. Without grace, we can love nothing except unto our condemnation.

41. Every knowledge of God, even natural, even in ethnic philosophers, cannot come except from God; and without grace it produces nothing except presumption, vanity, and opposition to God

himself in place of affections of adoration, gratitude, and love.

45. When the love of God no longer reigns in the heart of sinners, it is necessary that carnal cupidity reign in it, and corrupt all its actions.

46. Cupidity or charity makes the use of the senses good or evil.

47. Obedience to the law ought to flow from the fountain, and this fountain is charity. When the love of God is its interior principle, and the glory of God its end, then what appears exteriorly is pure; otherwise it is nothing but hypocrisy or false justice.

49. As there is no sin without love of ourselves, so there is no good work without love of God.

53. Charity alone makes Christian actions in a Christian manner by relation to God and Jesus Christ.

59. The prayer of the impious is a new sin; and what God grants to them is a new judgment upon them.

60. If fear of punishment alone animates penance, the more violent it is, the more it leads to despair.

61. Fear only restrains the hand; but the heart is addicted to sin as long as it is not led by the love of justice.

62. He who abstains from evil only by fear of punishment commits it in his heart, and is already guilty before God.

63. The baptized person is still under the law like a Jew if he does not fulfill the law, or fulfills it from fear alone.

64. Under the curse of the law, good is never done, because one sins either by doing evil, or by avoiding it only on account of fear.

66. He who wishes to approach God ought neither to come to him with brutal passions, nor to be led by natural instinct or by fear as beasts are, but by Faith and by love, as sons.

67. Servile fear represents God to itself only as a hard, imperious, unjust, intractable Lord.

71. A man, for his own preservation, can dispense himself from that law which God established for his utility.

79. It is useful and necessary at every time, in every place, and for every kind of persons to study and know the spirit, piety, and mysteries of Sacred Scripture.

80. The reading of Sacred Scripture is for all.

81. The obscurity of the Holy Word of God is not for laymen a reason for dispensing themselves from reading it.

82. The Lord's day ought to be sanctified by Christians by readings of piety, and above all of the Holy Scriptures. It is harmful to wish to withdraw a Christian from this reading.

84. To snatch the New Testament from the hands of Christians, or to keep it closed to them by taking away from them the way of understanding it, is to close the mouth of Christ to them.

85. To forbid Christians the reading of Sacred Scripture, especially of the Gospel, is to forbid the use of light to the sons of light, and to make them suffer a certain kind of excommunication.

86. To take away from the simple people this consolation, of joining their voice to the voice of the whole Church, is a use contrary to apostolic practice and to the intention of God.

87. It is a mode full of wisdom, light, and charity to give souls time to bear with humility and to feel the state of sin, to ask for the spirit of penance and contrition, and to begin at least to satisfy the justice of God before they are reconciled.

88. We are ignorant of what sin and true penance are when we wish to be restored immediately to the possession of those goods of which sin stripped us, and when we refuse to bear the confusion of that separation.

Declared and condemned respectively as false, captious, ill-sounding, offensive to pious ears, scandalous, pernicious, rash, injurious to the Church and its practice, contumelious not only against the Church but also against secular powers, seditious, impious, blasphemous, suspected of heresy, and savoring of heresy itself, as well as favoring heretics and heresies and also schism, erroneous, next to heresy, several times condemned, and finally heretical, and manifestly renewing various heresies, and especially those which are contained in the famous propositions of Jansenius, and indeed in that sense in which these were accepted when condemned.

N. Five propositions concerning the duel, condemned by Benedict XIV, in the Constitution Detestabilem, etc., November 10, 1752

1. A military man who, unless he offers or accepts a duel, would be held as fearful, timid, abject, and unfit for military offices, and therefore would be deprived of the office by which he sustains himself and his own, or would have to lack forever the hope of promotion otherwise due and merited by him, would be free from fault and punishment, whether he offers or accepts the duel.

2. They also can be excused who, for the sake of protecting honor or avoiding human contempt, accept a duel or challenge to it, when they know with certainty that the fight will not follow, as being about to be impeded by others.

3. A leader or officer of the military does not incur the ecclesiastical penalties laid down by the Church against duelists when he accepts a duel from grave fear of losing reputation and office.

4. It is lawful, in the natural state of man, to accept and offer a duel, for preserving fortunes with honor, when their loss cannot be warded off by another remedy.

5. The asserted licitness for the natural state can also be applied to the state of a badly ordered city, in which, namely, either by negligence or by malice of the magistrate, justice is openly denied.

Condemned and prohibited as false, scandalous, and pernicious.

O. Propositions of the Diocesan Synod of Pistoia, condemned by Pius VI, in the Constitution Auctorem Fidei, etc., August 28, 1794

On the Power of the Church with Regard to Establishing and Sanctioning Exterior Discipline.

Decree on Faith, §§ 13, 14.

4. The proposition affirming that there has been an abuse of the authority of the Church by transferring it beyond the limits of doctrine and morals, and by extending it to exterior matters, and by force exacting that which depends on persuasion and the heart; and also, much less does it pertain to her to exact by exterior force subjection to her decrees.

Insofar as by those indeterminate words, "extending it to exterior matters," it marks as an abuse of the authority of the Church the use of that power received from God, which the Apostles themselves also used in establishing and sanctioning exterior discipline: heretical.

5. In that part by which it insinuates that the Church does not have authority for exacting subjection to her decrees otherwise than through means which depend on persuasion;

Insofar as it intends that the Church does not have the power conferred on her by God not only of directing by counsels and persuasions, but also of commanding by laws, and of restraining and compelling the wandering and contumacious by exterior judgment and salutary punishments:

From Benedict XIV, in the Brief *Ad assiduas* of the year 1755, to the Primates, Archbishops, and Bishops of the Kingdom of Poland:

Inducing into a system elsewhere condemned as heretical.

Rights Attributed to Bishops Beyond What Is Lawful.

Decree on Order, § 25.

6. The doctrine of the Synod by which it professes itself persuaded that the Bishop received from Christ all rights necessary for the good government of his diocese:

As if for the good government of each diocese superior ordinances were not necessary, whether pertaining to Faith and morals, or to general discipline, the right of which is in the hands of the Supreme Pontiffs and general Councils for the universal Church: schismatic, at least erroneous.

7. Likewise, in that it exhorts the Bishop to pursue energetically a more perfect constitution of ecclesiastical discipline; and this against all contrary customs, exemptions, reservations, which

are opposed to the good order of the diocese, to the greater glory of God, and to the greater edification of the faithful:

Through that which supposes that it is lawful for the Bishop by his own judgment and decision to establish and decree against customs, exemptions, reservations, whether those which have place in the universal Church or even in each province, without the permission and intervention of the superior hierarchical power by which they were introduced or approved and have the force of law:

Inducing into schism and the subversion of hierarchical government, erroneous.

8. Likewise, that it also says that it is persuaded that the rights of the Bishop received from Jesus Christ for governing the Church can neither be altered nor impeded, and that, when it has happened that the exercise of these rights has been interrupted for any cause whatever, the Bishop can always and ought to return to his original rights, as often as the greater good of his Church requires it:

In that it suggests that the exercise of episcopal rights cannot be impeded or restrained by any superior power whenever the Bishop by his own judgment has considered that this is less expedient for the greater good of his Church:

Inducing into schism and the subversion of hierarchical government, erroneous.

Right Wrongly Attributed to Priests of an Inferior Order in Decrees of Faith and Discipline.

Convocatory Epistle.

9. The doctrine which establishes that the reform of abuses concerning ecclesiastical discipline in Diocesan Synods depends equally on the Bishop and parish priests and ought to be stabilized by them, and that without freedom of decision there would be undue subjection to the suggestions and commands of Bishops:

False, rash, injurious to episcopal authority, subversive of hierarchical government, favoring the Arian heresy renewed by Calvin.

From the convocatory epistle, from the epistle to the vicars forane, from the address to the Synod, § 8, from session 3.

Address to the Synod, § 8.

11. The opinion stating that, by the ancient institution of the elders, derived from apostolic times and preserved through the better ages of the Church, it was received that decrees, or definitions, or sentences even of Major Sees were not accepted unless they had been recognized and approved by a Diocesan Synod:

False, rash, derogating by its generality from obedience due to apostolic constitutions, and also to sentences emanating from legitimate hierarchical superior power, fostering schism and heresy.

On the Twofold Love.

On Grace, § 8.

23. The doctrine of the Synod concerning the twofold love (of dominating cupidity, and of dominating charity), stating that man without grace is under the servitude of sin, and that in that state, through the general influence of dominating cupidity, he infects and corrupts all his actions:

Insofar as it insinuates that in man, while he is under servitude or in the state of sin, destitute of that grace by which he is freed from the servitude of sin and constituted a son of God, cupidity so dominates that through its general influence all his actions are in themselves infected and corrupted; or that all works which are done before justification, in whatever manner they are done, are sins:

As if in all his acts the sinner served dominating cupidity:

False, pernicious, inducing into the error condemned by Trent as heretical, again condemned in Baius, art. 40.

24. But in that part in which between dominating cupidity and dominating charity no intermediate affections are placed, implanted by nature itself and laudable by their own nature, which, together with love of beatitude and natural propensity to good, remained as the last outlines and remnants of the image:

From St. Augustine, *De spiritu et littera*, cap. 28.

As if between divine love, which leads us to the kingdom, and illicit human love, which is condemned, there were not given a licit human love, which is not reprehended:

From St. Augustine, sermon 349, *De caritate*, Maurist edition: false, elsewhere condemned.

On Servile Fear.

On Penance, § 3.

25. The doctrine which generally represents fear of punishments as something which only cannot be called evil if at least it reaches so far as to restrain the hand:

As if the fear itself of hell, which Faith teaches is to be inflicted for sin, were not in itself good and useful, as a supernatural gift and motion inspired by God preparing for the love of justice:

False, rash, pernicious, injurious to divine gifts, elsewhere condemned, contrary to the doctrine of the Council of Trent, and also to the common opinion of the Fathers, namely that it is necessary, according to the usual order of preparation for justice, that fear enter first, through which charity may come; fear a medicine, charity health.

From St. Augustine, in the epistle of John, chap. 4, tract. 9, nos. 4, 5. - On the Gospel of John, tract. 41, no. 10. - Exposition on Psalm 127, no. 7. - Sermon 157, on the words of the Apostle, no. 13. - Sermon 161, on the words of the Apostle, no. 8. - Sermon 349, on Charity, no. 7.

On the Sacraments, and First on the Sacramental Form with an Adjoined Condition.

On Baptism, § 12.

27. The deliberation of the Synod, by which, under the pretext of adherence to the ancient canons, in a case of doubtful Baptism, it declares its purpose of omitting mention of the conditional form:

Rash, contrary to the practice, law, and authority of the Church.

On the Application of the Fruit of the Sacrifice.

On the Eucharist, § 8.

30. The doctrine of the Synod by which, while it professes to believe that the oblation of the Sacrifice extends itself to all, yet in such wise that in the liturgy a special commemoration can be made of some, both living and dead, by praying to God particularly for them, then immediately adds: *Not, however, that we should believe that it is in the choice of the priest to apply the fruits of the Sacrifice to whom he wills; indeed we condemn this error as greatly offending the rights of God, who alone distributes the fruits of the Sacrifice to whom he wills, and according to the measure which pleases him*; whence also consequently it presents as false the opinion brought in among the people, that those who supply an alms to a priest under the condition that he celebrate one Mass receive a special fruit from it:

So understood that, besides the peculiar commemoration and prayer, the special oblation itself or application of the Sacrifice which is made by the priest profits no more (other things being equal) those for whom it is applied than any others; as if no special fruit came forth from the special application which the Church commends and commands to be made for determined persons or orders of persons, especially by pastors for their own sheep, which, as descending from a divine precept, was expressly set forth by the Sacred Synod of Trent:

Sess. 23, chap. 1, on reform. - Benedict XIV, constitution *Cum semper oblatas*, § 2.

False, rash, pernicious, injurious to the Church, inducing into an error elsewhere condemned in Wiclef.

On the Fitting Order to Be Observed in Worship.

On the Eucharist, § 5.

31. The proposition of the Synod stating that it is fitting, for the order of divine offices and ancient custom, that in each church there be only one altar, and that therefore it pleases itself to restore that usage:

Rash, injurious to the very ancient, pious usage, prevailing and approved for many centuries in the Church, especially the Latin Church.

Ibid.

32. Likewise, the prescription forbidding that cases of Sacred Relics or flowers be placed upon the altars:

Rash, injurious to the pious and approved usage of the Church.

Ibid., § 6.

33. The proposition of the Synod by which it shows itself to desire that the causes be removed through which, in part, forgetfulness of the principles pertaining to the order of the liturgy has been introduced, by recalling it to a greater simplicity of rites, by setting it forth in the vernacular language, and by pronouncing it in an elevated voice:

As if the existing order of the liturgy, received and approved by the Church, had in some part flowed from forgetfulness of the principles by which it ought to be ruled:

Rash, offensive to pious ears, insulting to the Church, favoring the reproaches of heretics against it.

On the Order of Penance.

On Penance, § 10, no. 4.

35. A proposition conceived in these words: *If charity in the beginning is always weak, according to the ordinary way for obtaining an increase of this charity, it is necessary that the Priest cause those acts of humiliation and penance to precede which have been commended by the Church in every age. To reduce these acts to a few prayers or to some fast after absolution has already been conferred seems rather a material desire of preserving for this sacrament the bare name of Penance, than an enlightened means apt for increasing that fervor of charity which ought to precede absolution. We are indeed far from disapproving the practice of imposing penances also to be fulfilled after absolution; if all our good works always have our defects joined to them, how much more ought we to fear lest we have admitted very many imperfections in the most difficult and important work of our reconciliation*:

Insofar as it intimates that penances which are imposed to be fulfilled after absolution are to be regarded rather as a supplement for defects admitted in the work of our reconciliation than as truly sacramental and satisfactory penances for confessed sins; as if, that the true character of the Sacrament, not the bare name, may be preserved, it were necessary according to the ordinary way that acts of humiliation and penance which are imposed by way of sacramental satisfaction ought to precede absolution:

False, rash, injurious to the common practice of the Church, inducing into the error branded with a heretical note in Peter of Osma.

On the Prior Necessary Disposition for Admitting Penitents to Reconciliation.

On Grace, § 15.

36. The doctrine of the Synod by which, after it has premised that *when there will be unequivocal signs of the love of God dominating in the heart of man, he can deservedly be judged worthy to be admitted to the participation of the blood of Jesus Christ, which takes place in the Sacraments*, it adds that *the suppositions*

of conversions which are made through attrition are not accustomed to be efficacious nor durable; consequently, that *the pastor of souls ought to insist on unequivocal signs of dominating charity before he admits his penitents to the Sacraments*; which signs, as it then hands down (§ 17), *the pastor will be able to deduce from a stable cessation from sin and from fervor in good works*; which fervor of charity, moreover, it declares (*On Penance*, § 10) as the disposition *which ought to precede absolution*:

So understood that not only imperfect contrition, which commonly is given the name of attrition, even that which is joined with love by which man begins to love God as the fountain of all Justice, nor merely contrition formed by charity, but also the fervor of dominating charity, and this indeed proved by long experience through fervor in good works, is generally and absolutely required that a man be admitted to the Sacraments and especially that penitents be admitted to the benefit of absolution:

False, rash, disturbing to the quiet of souls, contrary to the safe and approved practice in the Church, detracting from and injurious to the efficacy of the Sacrament.

On the Authority of Absolving.

On Penance, § 10, no. 6.

37. The doctrine of the Synod, which concerning the authority of absolving received through Ordination states that, *after the institution of dioceses and parishes, it is fitting that each one exercise this judgment over persons subject to him, either by reason of territory or by a certain personal right, because otherwise confusion and disturbance would be introduced*:

Insofar as, after dioceses and parishes have been established, it states that it is only fitting, in order to prevent confusion, that the power of absolving be exercised over subjects; so understood as if, for the valid use of this power, that ordinary or subdelegated jurisdiction were not necessary without which Trent declares that absolution pronounced by a priest is of no moment:

False, rash, pernicious, contrary and injurious to Trent, erroneous.

Ibid., § 11.

38. Likewise, the doctrine by which, after the Synod professed that it could not but admire that so venerable discipline of antiquity, which (as it says) did not so easily, and perhaps never, admit to Penance him who after a first sin and first reconciliation had relapsed into fault, it adds that, *through fear of perpetual exclusion from communion and peace, even in the article of death, a great bridle would be placed on those who consider little the evil of sin and fear it less*:

Contrary to canon 13 of the First Council of Nicaea, to the decretal of Innocent I to Exuperius of Toulouse, and also to the decretal of Caelestine I to the Bishops of the provinces of Vienne and Narbonne; savoring of the depravity which, in that decretal, the holy Pontiff abhors.

On the Confession of Venial Sins.

On Penance, § 12.

39. The declaration of the Synod concerning the confession of venial sins, which it says it desires not to be practiced so greatly, lest confessions of this kind be rendered too contemptible:

Rash, pernicious, contrary to the practice of the saints and pious persons approved by the sacred Council of Trent.

On Indulgences.

On Penance, § 16.

40. A proposition asserting that an indulgence according to its precise notion is nothing other than the remission of part of that penance which had been established by the canons for the sinner:

As if an indulgence, besides the bare remission of canonical punishment, were not also valid for the remission of temporal punishment owed before divine justice for actual sins:

False, rash, injurious to the merits of Christ, long ago condemned in article 19 of Luther.

Ibid.

41. Likewise, in that which is added, that the scholastics, inflated with their subtleties, introduced an ill-understood treasury of the merits of Christ and of the Saints, and substituted for the clear notion of absolution from canonical punishment a confused and false notion of the application of merits:

As if the treasuries of the Church, from which the Pope gives indulgences, were not the merits of Christ and of the Saints:

False, rash, injurious to the merits of Christ and of the Saints, long ago condemned in article 17 of Luther.

Ibid.

42. Likewise, in that which it adds besides, that it is still more lamentable that this chimerical application has been wished to be transferred to the dead:

False, rash, offensive to pious ears, injurious to the Roman Pontiffs and to the practice and sense of the universal Church, inducing into the error branded with a heretical note in Peter of Osma, again condemned in article 22 of Luther.

Ibid.

43. Finally, in that it most shamelessly inveighs against tables of indulgences, privileged altars, etc.:

Rash, offensive to pious ears, scandalous, insulting to the Supreme Pontiffs and to the practice frequented by the whole Church.

On the Reservation of Cases.

On Penance, § 19.

44. The proposition of the Synod asserting that the reservation of cases at the present time is nothing other than an improvident bond for inferior priests, and a sound empty of sense for penitents accustomed not to care very much about this reservation:

False, rash, evil-sounding, pernicious, contrary to the Council of Trent, injurious to superior hierarchical power.

Ibid.

45. Likewise, concerning the hope which it shows that, with the ritual and order of Penance reformed, reservations of this kind will no longer have any place:

Insofar as, the generality of the words being attended to, it intimates that through a reform of the ritual and order of Penance made by a Bishop or Synod, cases can be abolished which the Synod of Trent (Sess. 14, chap. 7) declares the Supreme Pontiffs, by the supreme power delivered to them in the universal Church, could reserve by their own peculiar judgment:

A false proposition, rash, derogating from and injurious to the Council of Trent and the authority of the Supreme Pontiffs.

On Censures.

On Penance, §§ 20, 22.

46. The proposition asserting that the effect of excommunication is only exterior, because by its nature it only excludes from the exterior communication of the Church:

As if excommunication were not a spiritual penalty, binding in heaven, obliging souls:

From St. Augustine, epistle 250, to Bishop Auxilius. - Tract. 50 on John, no. 12.

False, pernicious, condemned in article 23 of Luther, at least erroneous.

§§ 21, 23.

47. Likewise, what it hands down, that it is necessary according to natural and divine laws that, whether for excommunication or for suspension, a personal examination ought to precede; and therefore that sentences called *ipso facto* have no other force than that of a serious threat without any actual effect:

False, rash, pernicious, injurious to the power of the Church, erroneous.

§ 22.

48. Likewise, what it pronounces, that the formula introduced for some centuries now of absolving generally from excommunications into which the faithful person could have fallen is useless and vain:

False, rash, injurious to the practice of the Church.

§ 24.

49. Likewise, what condemns as null and invalid suspensions *ex informata conscientia*:

False, pernicious, injurious to Trent.

Ibid.

50. Likewise, in that it insinuates that it is not lawful for the Bishop alone to use the power, which nevertheless Trent confers on him (Sess. 14, chap. 1, on reform), of legitimately inflicting suspension *ex informata conscientia*:

Injurious to the jurisdiction of the Prelates of the Church.

On Order.

On Order, § 4.

51. The doctrine of the Synod which asserts that, in promoting men to Orders, this method was customarily observed by the usage and institution of ancient discipline, that if any of the clerics was distinguished by holiness of life and was judged worthy to ascend to Sacred Orders, he was accustomed to be promoted to the Diaconate or Priesthood even if he had not received inferior Orders; nor then was such an ordination called by leap, as afterward it was called.

§ 5.

52. Likewise, what intimates that there was no other title of Ordinations than deputation to some special ministry, such as is prescribed in the Council of Chalcedon; adding (§ 6), that as long as the Church conformed herself to these principles in the selection of sacred ministers, the ecclesiastical order flourished; but that those blessed days have passed, and afterward new principles were introduced, by which discipline was corrupted in the selection of ministers of the sanctuary.

§ 7.

53. Likewise, that among these very principles of corruption it refers to this, that there was a departure from the ancient institution by which, as it says (§ 3), the Church, insisting upon the footsteps of the Apostle, had determined that no one was to be admitted to the Priesthood unless he had preserved baptismal innocence:

Insofar as it intimates that discipline was corrupted through decrees and institutions:

1. Whether those by which ordinations by leap were forbidden;
2. Or those by which, for the necessity and advantage of Churches, ordinations without the title of a special office were approved, such as especially by Trent, ordination to the title of patrimony; the obedience remaining by which those thus ordained ought to serve the necessities of Churches by undertaking those offices to which, according to place and time, they will have been assigned by the Bishop, just as it was customary to be done from apostolic times in the primitive Church;

3. Or those by which, by canon law, a distinction of crimes was made which render delinquents irregular; as if through this distinction the Church had departed from the spirit of the Apostle by not excluding generally and indiscriminately from ecclesiastical ministry all and every one who had not preserved baptismal innocence:

Doctrine false in each of its parts, rash, disturbing of the order introduced for the necessity and advantage of Churches, injurious to discipline approved through the canons and especially through the decrees of Trent.

§ 13.

54. Likewise, what notes as a base abuse ever to pretend an alms for celebrating Masses and administering Sacraments, and likewise to receive any proceeds called stole-fees, and generally any stipend and honorarium whatsoever which is offered on the occasion of suffrages or of any parochial function:

As if the ministers of the Church, who according to the received and approved usage and institution of the Church use the right promulgated by the Apostle of receiving temporal things from those to whom spiritual things are ministered, were to be marked with the crime of base abuse:

False, rash, injurious to ecclesiastical and pastoral right, injurious to the Church and its ministers.

§ 14.

55. Likewise, what it professes vehemently to desire, that some plan might be found for removing the petty clergy (by which name it designates clerics of inferior orders) from Cathedrals and Collegiate churches, providing otherwise (namely through upright laymen of more advanced age, with a suitable stipend assigned) for the ministry of serving Masses and other offices, as Acolytes, etc., as formerly, it says, used to be done when offices of that kind had not been reduced to a mere appearance for receiving greater Orders:

Insofar as it reprehends the institution by which it is provided that the functions of the minor orders be performed or exercised only by those who have been constituted and enrolled in them (Fourth Provincial Council of Milan); and this according to the mind of Trent (Sess. 23, chap. 17), that the functions of holy Orders from the Diaconate to the Ostiariate, laudably received in the Church from apostolic times and in many places intermitted for some time, be recalled according to the sacred canons, nor be presented by heretics as idle:

A rash suggestion, offensive to pious ears, disturbing of ecclesiastical ministry, diminishing the decency to be preserved, as far as possible, in celebrating the mysteries, injurious to the offices and functions of the minor orders, and also to discipline approved by the canons and especially by Trent, favoring the reproaches and calumnies of heretics against it.

§ 18.

56. The doctrine which establishes that it seems fitting, in canonical impediments which arise from crimes expressed in law, that no dispensation ever be conceded or admitted:

Injurious to canonical equity and moderation approved by the sacred Council of Trent, derogating from the authority and rights of the Church.

Ibid., § 22.

57. The prescription of the Synod which generally and indiscriminately rejects as an abuse any dispensation whatever, that more than one residential benefice be conferred on one and the same person; likewise, in that which it adds, that it is certain to itself that, according to the spirit of the Church, no one can enjoy more than one benefice, even a simple one:

By reason of its generality, derogating from the moderation of Trent, Sess. 7, chap. 5, and Sess. 24, chap. 17.

On Betrothals and Marriage.

Memorial booklet concerning betrothals, etc., § 2.

58. The proposition which establishes that betrothals properly so called contain a merely civil act which disposes toward the celebration of Marriage, and that they are entirely subject to the prescription of civil laws:

As if an act disposing toward a Sacrament were not subject under this aspect to the law of the Church:

False, injurious to the law of the Church with regard also to effects flowing from betrothals by force of canonical sanctions, derogating from the discipline established by the Church.

On Marriage, §§ 7, 11, 12.

59. The doctrine of the Synod asserting that it belongs originally to the supreme civil power alone to place upon the contract of Marriage impediments of that kind which render it null and are called diriment; which original right, moreover, is said to be essentially connected with the right of dispensing; adding that, with the consent or connivance of princes supposed, the Church could justly establish diriment impediments of the contract of Marriage itself:

As if the Church had not always been able, and were not able, in the Marriages of Christians, by its own right, to establish impediments which not only impede Marriage but also render it null as to the bond, by which Christians are held bound even in the lands of infidels, and to dispense in the same:

Overthrowing canons 3, 4, 9, 12 of Session 24 of the Council of Trent, heretical.

Cited memorial booklet concerning betrothals, § 10.

60. Likewise, the request of the Synod to the civil power, that it remove from the number of impediments spiritual relationship and that which is called public honesty, whose origin is found in the collection of Justinian; then that it restrict the impediment of affinity and relationship, arising from any lawful or unlawful union whatsoever, to the fourth degree according to civil computation through the lateral and oblique line; yet in such wise that no hope of obtaining a dispensation be left:

Insofar as it attributes to the civil power the right either of abolishing or of restricting impediments constituted or approved by the authority of the Church; likewise in the part in which it supposes that the Church can be despoiled by the civil power of its own right of dispensing concerning impediments constituted or approved by itself:

Subversive of the liberty and power of the Church, contrary to Trent, proceeding from the heretical principle condemned above.

On Offices, Exercises, and Institutions Pertaining to Religious Worship, and First on the Adorable Humanity of Christ.

On Faith, § 3.

61. The proposition which asserts that to adore directly the humanity of Christ, and still more some part of it, would always be divine honor given to a creature:

Insofar as by this word *directly* it intends to reprove the cult of adoration which the faithful direct to the humanity of Christ, just as if such adoration, by which the humanity itself and the vivifying flesh of Christ is adored, not indeed on account of itself and as bare flesh, but as united to the divinity, were divine honor imparted to a creature, and were not rather the one and same adoration by which the Incarnate Word is adored together with his own proper flesh:

From the Fifth General Council of Constantinople, canon 9.

False, captious, detracting from and injurious to the pious and due worship given and to be given by the faithful to the humanity of Christ.

On Prayer, § 10.

62. The doctrine which rejects devotion toward the most sacred Heart of Jesus among devotions which it notes as new, erroneous, or at least dangerous:

Understood concerning this devotion, such as it has been approved by the Apostolic See:

False, rash, pernicious, offensive to pious ears, injurious to the Apostolic See.

On Prayer, § 10, and appendix, no. 32.

63. Likewise, in that it accuses the worshipers of the Heart of Jesus also under this name, because they do not advert that the most holy flesh of Christ, or some part of it, or even the whole humanity with separation or precision from the divinity, cannot be adored with the worship of latria:

As if the faithful adored the Heart of Jesus with separation or precision from the divinity, when they adore it as it is the Heart of Jesus, namely the Heart of the person of the Word, to whom it is inseparably united, in the manner in which the bloodless body of Christ during the three days of death was adorable in the sepulcher without separation or precision from the divinity:

Captious, injurious to the faithful worshipers of the Heart of Christ.

On the Order Prescribed in Performing Pious Exercises.

On Prayer, § 14; appendix, no. 34.

64. The doctrine which notes universally as superstitious any efficacy whatsoever which is placed in a determined number of prayers and pious salutations:

As if the efficacy were to be judged superstitious which is taken not from the number considered in itself, but from the prescription of the Church defining beforehand a certain number of prayers or external actions for obtaining indulgences, for fulfilling penances, and generally for performing sacred and religious worship duly and in order:

False, rash, scandalous, pernicious, injurious to the piety of the faithful, derogating from the authority of the Church, erroneous.

On Penance, § 10.

65. The proposition stating that the irregular clamor of new institutions which have been called exercises or missions ... perhaps never, or at least very rarely, reaches so far that they work an absolute conversion; and that those exterior acts of commotion which appeared were nothing other than passing flashes of natural concussion:

Rash, evil-sounding, pernicious, injurious to a usage piously and salutarily frequented by the Church and founded in the Word of God.

On the Mode of Joining the Voice of the People with the Voice of the Church in Public Prayers.

66. The proposition asserting that it would be against apostolic practice and the counsels of God unless easier ways were prepared for the people to join their voice with the voice of the whole Church:

Understood concerning the use of the vernacular tongue to be introduced into liturgical prayers:

False, rash, disturbing to the order prescribed for the celebration of the mysteries, easily productive of many evils.

On the Reading of Sacred Scripture.

From the note at the end of the decree on grace.

67. The doctrine asserting that only true impotence excuses from the reading of the Sacred Scriptures; adding that the obscuring which has arisen from neglect of this precept concerning the primary truths of Religion betrays itself of its own accord:

False, rash, disturbing to the quiet of souls, elsewhere condemned in Quesnel.

On Sacred Images.

On Prayer, § 17.

69. The prescription which generally and indiscriminately, among images to be removed from the Church as furnishing the rude an occasion of error, notes images of the incomprehensible Trinity:

On account of its generality, rash, and contrary to the pious usage frequented by the Church, as if no images of the most holy Trinity existed which are commonly approved and can safely be permitted:

From the brief *Sollicitudini nostrae* of Benedict XIV, of the year 1745.

70. Likewise, the doctrine and prescription generally reproving every special cult which the faithful are accustomed to bestow on some image in particular, and to flee to that image rather than to another:

Rash, pernicious, injurious to the pious usage frequented by the Church, and also to that order of providence by which God, who divides his own things to each as he wills, so willed that those things should not happen at all memorials of the Saints.

From St. Augustine, epistle 78, to the clergy, elders, and whole people of the Church of Hippo.

71. Likewise, what forbids that images, especially of the Blessed Virgin, be distinguished by any titles except denominations which are analogous to the mysteries of which express mention is made in Sacred Scripture:

As if other pious denominations could not be ascribed to images, which the Church approves and commends even in its own public prayers:

Rash, offensive to pious ears, injurious to the veneration owed especially to the Blessed Virgin.

72. Likewise, what wishes the custom by which certain images are kept veiled to be extirpated as an abuse:

Rash, contrary to a usage frequented in the Church and introduced for fostering the piety of the faithful.

On Feasts.

Memorial booklet for the reform of feasts, § 3.

73. The proposition stating that the institution of new feasts drew its origin from neglect in observing the old ones, and from false notions of the nature and end of those solemnities:

False, rash, scandalous, injurious to the Church, favoring the reproaches of heretics against feast days celebrated by the Church.

Ibid., § 8.

74. The deliberation of the Synod concerning transferring to Sunday the feasts instituted throughout the year, and this according to the right which it says it is persuaded belongs to the Bishop over ecclesiastical discipline in order to things merely spiritual; and therefore also concerning abrogating the precept of hearing Mass on days on which, by the ancient law of the

Church, that precept still now remains in force; then also in that which it adds concerning transferring by episcopal authority to Advent the fasts to be observed throughout the year by precept of the Church:

Insofar as it asserts that it is lawful for a Bishop by his own right to transfer days prescribed by the Church for celebrating feasts or fasts, or to abrogate the introduced precept of hearing Mass:

A false proposition, injurious to the right of General Councils and Supreme Pontiffs, scandalous, favoring schism.

On Oaths.

Memorial booklet for the reform of oaths, § 5.

75. The doctrine which asserts that, in the blessed times of the nascent Church, oaths were seen to be so alien from the documents of the Divine Teacher and from golden evangelical simplicity, that even to swear without extreme and ineluctable necessity would have been reputed an irreligious act, unworthy of a Christian man; furthermore, that the continuous series of the Fathers demonstrates that oaths, by common sense, were held as forbidden; and thence it proceeds to disapprove oaths which the ecclesiastical Curia, following (as it says) the norm of feudal jurisprudence, adopted in investitures and in the sacred ordinations themselves of Bishops; and it establishes, therefore, that a law is to be implored from the secular power for abolishing oaths which are exacted in courts, even ecclesiastical courts, for undertaking duties and offices, and generally for every curial act:

False, injurious to the Church, injurious to ecclesiastical right, subversive of discipline introduced and approved through the canons.

On Ecclesiastical Conferences.

On ecclesiastical conferences, § 1.

76. The attack by which the Synod assails Scholasticism, as that which opened the way for finding new and mutually discordant systems concerning truths of greater price, and finally led to probabilism and laxism:

Insofar as it casts upon Scholasticism the faults of private persons who could have abused it, or did abuse it:

False, rash, injurious to the most holy men and doctors who cultivated Scholasticism to the great good of the Catholic Religion, favoring the hostile reproaches of heretics against it.

Ibid.

77. Likewise, in that which it adds, that the change of the form of ecclesiastical government, by which it came about that the ministers of the Church fell into oblivion of their rights, which are at the same time their obligations, finally brought the matter to this, that it caused the primitive notions of ecclesiastical ministry and pastoral solicitude to be obliterated:

As if through a change of government congruent with discipline constituted and approved in the Church, the primitive notion of ecclesiastical ministry and pastoral solicitude could ever have been obliterated and lost:

A false proposition, rash, erroneous.

§ 4.

78. The prescription of the Synod concerning the order of matters to be treated in conferences, by which, after it premised that *in any article whatsoever there is to be distinguished that which pertains to faith and to the essence of Religion from that which is proper to discipline*, it adds that *in this itself* (discipline) *there is to be distinguished what is necessary or useful for retaining the faithful in spirit from that which is useless or more burdensome than the liberty of the sons of the New Covenant may bear, and still more from that which is dangerous or harmful, as inducing to superstition and materialism*:

Insofar as, by reason of the generality of the words, it comprehends and subjects to the prescribed examination even discipline constituted and approved by the Church; as if the Church, which is ruled by the Spirit of God, could constitute a discipline not only useless and more burdensome than Christian liberty may bear, but also dangerous, harmful, and inducing into superstition and materialism:

False, rash, scandalous, pernicious, offensive to pious ears, injurious to the Church and to the Spirit of God by whom it is ruled, at least erroneous.

Reproaches Against Certain Opinions Debated in Catholic Schools Up to This Time.

Address to the Synod, § 2.

79. The assertion which assails with reproaches and insults opinions debated in Catholic schools, and concerning which the Apostolic See has not yet judged that anything should be defined or pronounced:

False, rash, injurious to Catholic schools, derogating from the obedience due to apostolic constitutions.

On the Three Rules Set Down by the Synod in Place of a Foundation for the Reform of Regulars.

Memorial booklet for the reform of regulars, § 9.

80. Rule I, which establishes universally and indiscriminately that the regular or monastic state by its nature cannot be composed with the care of souls and with the duties of pastoral life; nor therefore can it come into a part of the ecclesiastical hierarchy without, on the contrary, fighting against the principles of monastic life itself:

False, pernicious, injurious to the most holy Fathers and Prelates of the Church who joined the institutes of regular life with the duties of the clerical order, contrary to the pious, ancient, approved usage of the Church and to the sanctions of the Supreme Pontiffs: as if monks whom gravity of

morals and the holy institution of life and Faith commend were not rightly, and not only without offense of Religion, but also with much usefulness to the Church, joined to the offices of clerics.

From St. Siricius, decretal epistle to Himerius of Tarragona, chap. 13.

81. Likewise, in that which it adds, that Saints Thomas and Bonaventure were so engaged in defending the institutes of mendicants against the greatest men that, in their defenses, less heat and greater accuracy would have been desirable:

Scandalous, injurious to the most holy doctors, favoring the impious insults of condemned authors.

82. Rule II, that the multiplication of orders and diversity naturally bring in disturbance and confusion; likewise in that which it premises (§ 4), that the founders of regulars who came forth after the monastic institutes, adding orders to orders, reforms to reforms, effected nothing other than to spread more and more the primary cause of evil:

Understood concerning orders and institutes approved by the Holy See, as if the distinct variety of pious duties to which distinct orders have been assigned ought by its nature to beget disturbance and confusion:

False, calumnious, injurious to the holy founders and their faithful pupils, and also to the Supreme Pontiffs themselves.

83. Rule III, by which, after it premised that *a small body living within civil society, without being almost a part of the same, and fixing a small monarchy in the state, is always dangerous*, then under this name it criminates private monasteries, joined together by the bond of a common institute, especially under one head, as so many special monarchies dangerous and harmful to the civil republic:

False, rash, injurious to regular institutes approved by the Holy See for the progress of Religion, favoring the attacks and calumnies of heretics against those same institutes.

On the System or Complex of Ordinations Drawn from the Rules Brought Forward, and Comprised in the Following Eight Articles, For the Reform of Regulars.

§ 10.

84. Art. I. Concerning retaining only one order in the Church, and concerning selecting before the others the rule of Saint Benedict, both on account of its excellence and on account of the illustrious merits of that order; yet in such wise that, in those things which perhaps will occur less congruent with the condition of the times, the instituted manner of life at Port-Royal may offer light for exploring what it is fitting to add and what to remove.

II. That those who have joined themselves to this order should not become participants in the ecclesiastical hierarchy; nor should they be promoted to sacred Orders, except at most one or two, to be initiated as curates or chaplains of the monastery, the rest remaining in the simple order of laymen.

III. Only one monastery is to be admitted in each city, and that outside the walls of the city, to be placed in more hidden and remote places.

IV. Among the occupations of monastic life, its part is to be kept inviolate for the labor of hands, yet with suitable time left to be spent on psalmody, or also, if anyone wishes, on the study of letters; psalmody ought to be moderate, because its excessive prolixity begets precipitancy, trouble, and wandering; the more psalmodies, orations, and prayers have been increased, by that much, in equal proportion, fervor and holiness of regulars has at every time been diminished.

V. No distinction among monks, whether assigned to choir or to ministries, should be admitted; this inequality has at every time stirred up most grave quarrels and discords, and has driven the spirit of charity from communities of regulars.

VI. A vow of perpetual stability is never to be tolerated; the ancient monks did not know it, who nevertheless were the consolation of the Church and the ornament of Christianity; vows of chastity, poverty, and obedience will not be admitted as a common and stable rule: if anyone should wish to make those vows, either all or some, he will ask counsel and permission from the Bishop, who nevertheless will never permit them to be perpetual, nor to exceed the bounds of a year; only the faculty of renewing them under the same conditions will be given.

VII. The Bishop will have every inspection into their life, studies, and progress in piety; to him it will pertain to admit and expel monks, yet always after the counsel of the fellow-dwellers has been received.

VIII. Regulars of orders which still remain, even though priests, could also be admitted into this monastery, provided they wished in silence and solitude to give themselves to their own sanctification; in which case there would be place for dispensation in the general rule established in no. II, yet in such wise that they not follow an institution of life differing from the others, so that not more than one or at most two Masses be celebrated in a day, and that it ought to be enough for the other priests to concelebrate together with the community.

Likewise for the Reform of Nuns.

§ 11.

Perpetual vows are not to be admitted until the fortieth or forty-fifth year; nuns are to be assigned to solid exercises, especially to labor; they are to be called away from the carnal spirituality by which most of them are held; it is to be considered, so far as pertains to them, whether it would be better that a monastery be left in the city.

Subversive of the existing system and of the discipline already approved and received from antiquity, pernicious, opposed and injurious to apostolic constitutions and to the sanctions of several Councils, even General Councils, and especially of Trent; favoring the reproaches and calumnies of heretics against monastic vows and regular institutes assigned to the more stable profession of the evangelical counsels.

P. Syllabus Embracing the Principal Errors of Our Age Which Are Noted in Consistorial Allocutions, in Encyclicals, and in Other Apostolic Letters of Our Most Holy Lord Pope Pius IX

§ I: Pantheism, Naturalism, and Absolute Rationalism

1. No supreme, most wise, and most provident Divine Being exists distinct from this universe of things, and God is the same as the nature of things, and therefore subject to changes; and God really comes to be in man and in the world, and all things are God and have the very substance of God; and one and the same thing is God with the world, and therefore spirit with matter, necessity with liberty, true with false, good with evil, and just with unjust.

Alloc. *Maxima quidem*, June 9, 1862.

2. Every action of God upon men and the world is to be denied.

Alloc. *Maxima quidem*, June 9, 1862.

3. Human reason, with absolutely no respect had to God, is the sole arbiter of true and false, good and evil; it is a law to itself, and by its natural powers suffices for caring for the good of men and peoples.

Alloc. *Maxima quidem*, June 9, 1862.

4. All truths of Religion derive from the native force of human reason; hence reason is the principal norm by which man can and ought to attain the knowledge of all truths of whatever kind.

Encyclical letter *Qui pluribus*, November 9, 1846. - Encyclical letter *Singulari quidem*, March 17, 1856. - Alloc. *Maxima quidem*, June 9, 1862.

5. Divine revelation is imperfect, and therefore subject to a continuous and indefinite progress which corresponds to the progress of human reason.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Maxima quidem*, June 9, 1862.

6. The faith of Christ is opposed to human reason; and divine revelation not only profits nothing, but even harms the perfection of man.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Maxima quidem*, June 9, 1862.

7. Prophecies and miracles, set forth and narrated in the Sacred Scriptures, are fictions of poets, and the mysteries of the Christian Faith are the sum of philosophical investigations; and in the books of both Testaments mythical inventions are contained; and Jesus Christ himself is a mythical fiction.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Maxima quidem*, June 9, 1862.

§ II: Moderate Rationalism

8. Since human reason is equated with Religion itself, therefore theological disciplines are to be treated in the same way as philosophical disciplines.

Alloc. *Singulari quadam perfusi*, December 9, 1854.

9. All dogmas of the Christian Religion indiscriminately are the object of natural science or philosophy; and human reason, cultivated only historically, can by its natural powers and principles arrive at true knowledge of all dogmas, even the more hidden, provided these dogmas have been proposed to reason itself as an object.

Letter to the Archbishop of Freising, *Gravissimas*, December 11, 1862. - Letter to the same, *Tuas libenter*, December 21, 1863.

10. Since the philosopher is one thing, philosophy another, the former has the right and duty of submitting himself to the authority which he himself has proved true; but philosophy neither can nor ought to submit itself to any authority.

Letter to the Archbishop of Freising, *Gravissimas*, December 11, 1862. - Letter to the same, *Tuas libenter*, December 21, 1863.

11. The Church not only ought never to take notice of philosophy, but indeed ought to tolerate the errors of philosophy itself, and leave it to itself that it may correct itself.

Letter to the Archbishop of Freising, *Gravissimas*, December 11, 1862.

12. The decrees of the Apostolic See and of the Roman Congregations impede the free progress of science.

Letter to the Archbishop of Freising, *Tuas libenter*, December 21, 1863.

13. The method and principles by which the ancient scholastic Doctors cultivated Theology are by no means congruent with the necessities of our times and the progress of the sciences.

Letter to the Archbishop of Freising, *Tuas libenter*, December 21, 1863.

14. Philosophy is to be treated with no account had of supernatural revelation.

Letter to the Archbishop of Freising, *Tuas libenter*, December 21, 1863.

N.B. With the system of rationalism there cohere for the most part the errors of Anton Gunther, who is condemned in the letter to the Cardinal Archbishop of Cologne, *Eximiam tuam*, June 15, 1847, and in the letter to the Bishop of Breslau, *Dolore haud mediocri*, April 30, 1860.

§ III: Indifferentism, Latitudinarianism

15. It is free to each man to embrace and profess that religion which, led by the light of reason, he has thought true.

Apostolic Letters *Multiplices inter*, June 10, 1851. - Alloc. *Maxima quidem*, June 9, 1862.

16. Men can find the way of eternal salvation and attain eternal salvation in the worship of any religion whatever.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Ubi primum*, December 17, 1847. - Encyclical letter *Singulari quidem*, March 17, 1856.

17. At least good hope is to be had concerning the eternal salvation of all those who in no way live in the true Church of Christ.

Alloc. *Singulari quadam*, December 9, 1854. - Encyclical letter *Quanto conficiamur*, August 10, 1863.

18. Protestantism is nothing other than a diverse form of the same true Christian Religion, in which it is given to please God equally as in the Catholic Church.

Encyclical letter *Noscitis et Nobiscum*, December 8, 1849.

§ IV: Socialism, Communism, Secret Societies, Biblical Societies, Clerico-liberal Societies

Pests of this kind are frequently reproved, and in most grave formulas of words, in the encyclical letter *Qui pluribus*, November 9, 1846; in the Alloc. *Quibus quantisque*, April 20, 1849; in the encyclical letter *Noscitis et Nobiscum*, December 8, 1849; in the Alloc. *Singulari quadam*, December 9, 1854; in the encyclical letter *Quanto conficiamur maerore*, August 10, 1863.

§ V: Errors Concerning the Church and Her Rights

19. The Church is not a true and perfect society, plainly free, nor is she endowed with her own proper and constant rights conferred on her by her divine Founder; but it belongs to the civil power to define what the rights of the Church are, and the limits within which she can exercise those same rights.

Alloc. *Singulari quadam*, December 9, 1854. - Alloc. *Multis gravibusque*, December 17, 1860. - Alloc. *Maxima quidem*, June 9, 1862.

20. Ecclesiastical power ought not to exercise its authority without the permission and assent of the civil Government.

Alloc. *Meminit unusquisque*, September 30, 1861.

21. The Church does not have the power of defining dogmatically that the Religion of the Catholic Church is the only true Religion.

Apostolic Letters *Multiplices inter*, June 10, 1851.

22. The obligation by which Catholic teachers and writers are wholly bound is confined only to those things which are proposed by the infallible judgment of the Church as dogmas of Faith

to be believed by all.

Letter to the Archbishop of Freising, *Tuas libenter*, December 21, 1863.

23. The Roman Pontiffs and Ecumenical Councils have departed from the limits of their power, usurped the rights of Princes, and even erred in defining matters of Faith and morals.

Apostolic Letters *Multiplices inter*, June 10, 1851.

24. The Church does not have the power of inflicting force, nor any temporal power, direct or indirect.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

25. Besides the power inherent in the episcopate, another temporal power has been attributed, conceded by the civil empire either expressly or tacitly, and therefore to be revoked, whenever it pleases, by the civil empire.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

26. The Church does not have a native and legitimate right of acquiring and possessing.

Alloc. *Nunquam fore*, December 15, 1856. - Encyclical letter *Incredibili*, September 17, 1863.

27. The sacred Ministers of the Church and the Roman Pontiff are to be wholly excluded from every care and dominion of temporal things.

Alloc. *Maxima quidem*, June 9, 1862.

28. It is not lawful for Bishops, without the permission of the Government, even to promulgate Apostolic Letters themselves.

Alloc. *Nunquam fore*, December 15, 1856.

29. Graces conceded by the Roman Pontiff ought to be judged as void unless they have been implored through the Government.

Alloc. *Nunquam fore*, December 15, 1856.

30. The immunity of the Church and of ecclesiastical persons took its origin from civil law.

Apostolic Letters *Multiplices inter*, June 10, 1851.

31. The ecclesiastical forum for temporal causes of Clerics, whether civil or criminal, is wholly to be taken out of the midst, even without the Apostolic See being consulted and while it protests.

Alloc. *Acerbissimum*, September 27, 1852. - Alloc. *Nunquam fore*, December 15, 1856.

32. Without any violation of natural law and equity, the personal immunity by which Clerics are exempted from the burden of undergoing and exercising military service can be abrogated; and civil progress demands this abrogation, especially in a society constituted according to the form of a freer government.

Letter to the Bishop of Monreale, *Singularis Nobisque*, September 29, 1864.

33. It does not pertain uniquely to the ecclesiastical power of jurisdiction, by its proper and native right, to direct the doctrine of theological matters.

Letter to the Archbishop of Freising, *Tuas libenter*, December 21, 1863.

34. The doctrine comparing the Roman Pontiff to a free Prince acting in the universal Church is a doctrine which prevailed in the middle age.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

35. Nothing prevents that, by the sentence of some General Council or by the deed of all peoples, the supreme Pontificate be transferred from the Roman Bishop and City to another Bishop and another city.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

36. The definition of a National Council admits no other disputation, and the civil administration can bring the matter to these terms.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

37. National Churches can be instituted, withdrawn from and plainly divided from the authority of the Roman Pontiff.

Alloc. *Multis gravibusque*, December 17, 1860. - Alloc. *Jamdudum cernimus*, March 18, 1861.

38. The excessive arbitrariness of the Roman Pontiffs contributed to the division of the Church into Eastern and Western.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

§ VI: Errors Concerning Civil Society, Considered Both in Itself and in Its Relations to the Church

39. The state of the Republic, as being the origin and source of all rights, is endowed with a certain right circumscribed by no limits.

Alloc. *Maxima quidem*, June 9, 1862.

40. The doctrine of the Catholic Church is opposed to the good and advantages of human society.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Quibus quantisque*, April 20, 1849.

41. To the civil power, even when exercised by an infidel ruler, there belongs an indirect negative power in sacred things; therefore there belongs to the same not only the right which they call *exequatur*, but also the right of appeal which they name *from abuse*.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

42. In a conflict of the laws of both powers, civil law prevails.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

43. The lay power has authority to rescind, declare, and make void solemn conventions (commonly Concordats) entered into with the Apostolic See concerning the use of rights pertaining to ecclesiastical immunity, without its consent, indeed even while it protests.

Alloc. *In consistoriali*, November 1, 1850. - Alloc. *Multis gravibusque*, December 17, 1860.

44. The civil authority can mix itself into matters which pertain to religion, morals, and spiritual government. Hence it can judge concerning the instructions which the Pastors of the Churches publish, according to their office, for the norm of consciences; indeed, it can even decree concerning the administration of the divine Sacraments and the dispositions necessary for receiving them.

Alloc. *In consistoriali*, November 1, 1850. - Alloc. *Maxima quidem*, June 9, 1862.

45. The whole government of public schools, in which the youth of some Christian Republic is instructed, with episcopal seminaries excepted in some respect, can and ought to be attributed to the civil authority; and indeed so attributed that no right be recognized in any other authority whatsoever of involving itself in the discipline of schools, in the governance of studies, in the conferral of degrees, and in the selection or approval of teachers.

Alloc. *In consistoriali*, November 1, 1850. - Alloc. *Quibus luctuosissimis*, September 5, 1851.

46. Indeed, in the seminaries themselves of Clerics, the method of studies to be employed is subjected to civil authority.

Alloc. *Nunquam fore*, December 15, 1856.

47. The best plan of civil society demands that popular schools, which are open to all boys from every class of the people, and public Institutes generally, which are destined for handing down letters and more serious disciplines and for caring for the education of youth, be exempted from every authority, moderating force, and interference of the Church, and be subjected to the full choice of civil and political authority, according to the pleasures of those ruling and according to the standard of the common opinions of the age.

Letter to the Archbishop of Freiburg, *Quam non sine*, July 14, 1864.

48. That plan of instructing youth can be approved by Catholic men which is separated from the Catholic Faith and from the power of the Church, and which looks only to the science of

merely natural things and to the ends of earthly social life, or at least primarily to them.

Letter to the Archbishop of Freiburg, *Quam non sine*, July 14, 1864.

49. The civil authority can impede the sacred Prelates and the faithful people from communicating freely and mutually with the Roman Pontiff.

Alloc. *Maxima quidem*, June 9, 1862.

50. The lay authority has by itself the right of presenting Bishops, and can exact from them that they enter upon the administration of dioceses before they receive canonical institution and Apostolic Letters from the Holy See.

Alloc. *Nunquam fore*, December 15, 1856.

51. Indeed, the lay Government has the right of deposing Bishops from the exercise of pastoral ministry, nor is it bound to obey the Roman Pontiff in those things which regard the Episcopate and the institution of Bishops.

Apostolic Letters *Multiplices inter*, June 10, 1851. - Alloc. *Acerbissimum*, September 27, 1852.

52. The Government can by its own right change the age prescribed by the Church for the religious profession both of women and of men, and command all religious Families that they admit no one to pronounce solemn vows without its permission.

Alloc. *Nunquam fore*, December 15, 1856.

53. Laws which pertain to protecting the state of religious Families and their rights and offices are to be abrogated; indeed, the civil Government can furnish aid to all those who wish to fall away from the institute of religious life they have undertaken, and to break solemn vows; and likewise it can entirely extinguish those same religious Families, as well as Collegiate Churches and simple Benefices, even of the right of patronage, and subject and vindicate their goods and revenues to the administration and choice of the civil power.

Alloc. *Acerbissimum*, September 27, 1852. - Alloc. *Probe memineritis*, January 22, 1855. - Alloc. *Cum saepe*, July 26, 1855.

54. Kings and Princes are not only exempt from the jurisdiction of the Church, but are also superior to the Church in deciding questions of jurisdiction.

Apostolic Letters *Multiplices inter*, June 10, 1851.

55. The Church is to be separated from the State, and the State from the Church.

Alloc. *Acerbissimum*, September 27, 1852.

§ VII: Errors Concerning Natural and Christian Ethics

56. The laws of morals by no means need divine sanction, nor is it at all necessary that human laws conform to the law of nature or receive the force of obliging from God.

Alloc. *Maxima quidem*, June 9, 1862.

57. The science of philosophical matters and morals, and likewise civil laws, can and ought to decline from divine and ecclesiastical authority.

Alloc. *Maxima quidem*, June 9, 1862.

58. No other powers are to be recognized except those which are placed in matter, and every discipline and honesty of morals ought to be placed in accumulating and increasing riches in whatever way and in satisfying pleasures.

Alloc. *Maxima quidem*, June 9, 1862. - Encyclical letter *Quanto conficiamur*, August 10, 1863.

59. Right consists in material fact, and all duties of men are an empty name, and all human facts have the force of right.

Alloc. *Maxima quidem*, June 9, 1862.

60. Authority is nothing other than the sum of number and material forces.

Alloc. *Maxima quidem*, June 9, 1862.

61. The fortunate injustice of a fact brings no detriment to the sanctity of right.

Alloc. *Jamdudum cernimus*, March 18, 1861.

62. The principle which they call non-intervention is to be proclaimed and observed.

Alloc. *Novos et ante*, September 28, 1860.

63. It is lawful to refuse obedience to legitimate Princes, and even to rebel.

Encyclical letter *Qui pluribus*, November 9, 1846. - Alloc. *Quisque vestrum*, October 4, 1847. - Encyclical letter *Noscitis et Nobiscum*, December 8, 1849. - Apostolic Letters *Cum catholica*, March 26, 1860.

64. Both the violation of any most holy oath whatsoever and any wicked and shameful action repugnant to the eternal law, not only is by no means to be disapproved, but is even altogether lawful and to be extolled with the highest praises when this is done for love of country.

Alloc. *Quibus quantisque*, April 20, 1849.

§ VIII: Errors Concerning Christian Marriage

65. In no way can it be maintained that Christ raised marriage to the dignity of a Sacrament.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

66. The Sacrament of Marriage is nothing except something accessory to the contract and separable from it, and the Sacrament itself is situated in one nuptial blessing only.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

67. By the law of nature the bond of marriage is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority.

Apostolic Letters *Ad Apostolicae*, August 22, 1851. - Alloc. *Acerbissimum*, September 27, 1852.

68. The Church does not have the power of introducing impediments diriment of marriage; but that power belongs to civil authority, by which existing impediments are to be removed.

Apostolic Letters *Multiplices inter*, June 10, 1851.

69. The Church in later centuries began to introduce diriment impediments, not by its own right, but using that right which had been borrowed from the civil power.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

70. The canons of Trent which inflict the censure of anathema on those who dare to deny to the Church the faculty of introducing diriment impediments either are not dogmatic, or are to be understood concerning this borrowed power.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

71. The form of Trent does not oblige under pain of invalidity where the civil law establishes another form and wills marriage to be valid with this new form intervening.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

72. Boniface VIII was the first to assert that the vow of chastity emitted in ordination renders marriages null.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

73. By force of a merely civil contract, a marriage of the true name can exist between Christians; and it is false either that the contract of marriage between Christians is always a Sacrament, or that there is no contract if the Sacrament is excluded.

Apostolic Letters *Ad Apostolicae*, August 22, 1851. - Letter of His Holiness Pius IX to the King of Sardinia, September 9, 1852. - Alloc. *Acerbissimum*, September 27, 1852. - Alloc. *Multis gravibusque*, December 17, 1860.

74. Matrimonial causes and betrothals by their own nature pertain to the civil forum.

Apostolic Letters *Ad Apostolicae*, August 22, 1851. - Alloc. *Acerbissimum*, September 27, 1852.

N.B. To this point can pertain two other errors, concerning abolishing the celibacy of Clerics and concerning preferring the state of marriage to the state of virginity. The former is struck down in the encyclical letter *Qui pluribus*, November 9, 1846; the latter in the Apostolic Letters *Multiplices inter*, June 10, 1851.

§ IX: Errors Concerning the Civil Principate of the Roman Pontiff

75. The sons of the Christian and Catholic Church dispute among themselves concerning the compatibility of the temporal kingdom with the spiritual.

Apostolic Letters *Ad Apostolicae*, August 22, 1851.

76. The abrogation of the civil empire which the Apostolic See possesses would conduce most greatly to the liberty and happiness of the Church.

Alloc. *Quibus quantisque*, April 20, 1849.

N.B. Besides these errors explicitly noted, several others are implicitly reproved by the doctrine proposed and asserted which all Catholics ought most firmly to retain concerning the civil principate of the Roman Pontiff. Doctrine of this kind is luminously handed down in the Alloc. *Quibus quantisque*, April 20, 1849; in the Alloc. *Si semper antea*, May 20, 1850; in the Apostolic Letters *Cum catholica Ecclesia*, March 26, 1860; in the Alloc. *Novos*, September 28, 1860; in the Alloc. *Jamdudum*, March 18, 1861; in the Alloc. *Maxima quidem*, June 9, 1862.

§ X: Errors Which Are Referred to Modern Liberalism

77. In this our age it is no longer expedient that the Catholic Religion be held as the only religion of the State, all other forms of worship whatever being excluded.

Alloc. *Nemo vestrum*, July 26, 1855.

78. Hence, laudably in certain regions of Catholic name, provision has been made by law that it be permitted to men immigrating there to have the public exercise of each one's own worship.

Alloc. *Acerbissimum*, September 27, 1852.

79. Indeed it is false that civil liberty of every form of worship, and likewise the full power attributed to all of openly and publicly manifesting any opinions and thoughts whatsoever, conduces to corrupting more easily the morals and minds of peoples, and to propagating the pest of indifferentism.

Alloc. *Nunquam fore*, December 15, 1856.

80. The Roman Pontiff can and ought to reconcile and compose himself with progress, with liberalism, and with recent civilization.

Alloc. *Jamdudum cernimus*, March 18, 1861.

Addenda: From the Encyclical of Pius IX, Quanta cura

Besides the aforesaid propositions, others are to be remembered, which Pius IX struck down in the Encyclical *Quanta cura*. They are, moreover, of men who teach:

1. That the best plan of public society and civil progress wholly require that human society be constituted and governed with no respect had to Religion, as if it did not exist, or at least with no distinction made between true and false religions.

2. That that condition of society is best in which the office is not recognized in the Empire of coercing, by sanctioned penalties, violators of the Catholic Religion, except insofar as public peace demands.

3. That liberty of conscience and of forms of worship is the proper right of each man whatsoever, which ought to be proclaimed and asserted by law in every rightly constituted society, and that there is in citizens a right to an omnimodal liberty to be restrained by no ecclesiastical or civil authority, by which they may be able to manifest and declare any of their concepts whatsoever.

4. That the will of the people, manifested by what they call public opinion or in some other way, constitutes the supreme law, freed from every divine and human right; and that in the political order accomplished facts, by the very fact that they are accomplished, have the force of right.

5. That the faculty by which citizens and the Church may openly bestow alms for the sake of Christian charity is to be taken away, and that the law by which servile works are prohibited on certain days for the worship of God is to be taken out of the midst.

6. That domestic society or the family borrows the whole reason of its existence from civil law only; and therefore that all rights of parents over children, and first of all the right of caring for instruction and education, flow and depend only from civil law.

7. That the clergy, as being hostile to true and useful science and to the progress of civilization, is to be removed from every care and office of instructing and educating youth.

8. That laws of the Church do not oblige in conscience unless they are promulgated by the civil power; - that the acts and decrees of the Roman Pontiffs which regard Religion and the Church need the sanction and approval, or at least the assent, of the civil power; - that the Apostolic Constitutions by which secret Societies are condemned, whether in them an oath concerning preserving secrecy is exacted or is not exacted, and their adherents and favorers are punished with anathema, have no force in those regions of the world where aggregations of this kind are tolerated by the civil Government; - that the excommunication issued by the Council of Trent and the Roman Pontiffs against those who invade and usurp the rights and possessions of the Church rests on a confusion of the spiritual order and of the civil and political order directed only to pursuing worldly good; - that the Church ought to decree nothing which can bind the consciences of the faithful in order to the use of temporal things; - that the right does not belong to the Church of coercing violators of her laws by temporal penalties; - that it is conformable to the principles of Sacred Theology and public law to assert and vindicate for the

civil Government the property of goods which are possessed by Churches, by religious Families, and by other pious places.

9. That the ecclesiastical power is not, by divine right, distinct and independent from the civil power, nor can a distinction and independence of this kind be preserved without the essential rights of the civil power being invaded and usurped by the Church.

10. That assent and obedience can be refused, without sin and without any loss of Catholic profession, to those judgments and decrees of the Apostolic See whose object is declared to regard the general good of the Church, and its rights and discipline, provided it does not touch dogmas of faith and morals.

Concerning these propositions the Pontiff thus established:

"All and each of the depraved opinions and doctrines individually commemorated in these Letters, by Our Apostolic authority We reprove, proscribe, and condemn; and We will and command that they be altogether held by all sons of the Catholic Church as reproved, proscribed, and condemned."

Note. - Concerning the opportuneness of the Syllabus, its judicial, universal, obligatory character, its dogmatic force, and its interpretation, Schrader of the Society of Jesus writes excellently in the work: *De Theologia generatim commentarius in S. Theol. odigos*, pp. 136-144.

II. Responses and Declarations

II. Responses of the Holy See to Various Moral Questions.

Q. Response of the S. C. of the Inquisition concerning whether a heretical minister is to be called for sick heretics

Most Blessed Father,

"D. N. humbly sets forth to Your Holiness that in the city M. there exists a hospital, of which he himself is rector and chaplain, and in which nuns, called M. N., have care of the sick. But since in this hospital followers of a non-Catholic religion are sometimes received, and these same persons repeatedly ask for a heretical minister, from whom they may receive religious helps and consolations, it is asked whether it is lawful for the aforesaid nuns to call a minister of false religion. It is asked moreover whether the same solution is to be given where a sick heretic lives in the private house of a certain Catholic; namely, whether then the Catholic can licitly call the heretical minister."

Wednesday, March 15, 1848.

"In the general congregation of the Holy Roman and Universal Inquisition held in the convent of St. Mary above Minerva before the Eminent and Reverend Cardinals of the Holy Roman Church, in the whole Christian republic general inquisitors against heretical depravity specially deputed by the Holy Apostolic See, the relation of the above-written suppliant libellus having been heard, together with the vote of the Lords Consultors, the same Eminent and Reverend Lords said: According to the things set forth, it is not lawful; and they added: Let them bear themselves passively.

In place of the seal. "ANGELUS ARGENTI,

"Secretary of the Holy Roman and Universal Inquisition."

R. Encyclical Letter of the Holy Roman Inquisition to all Bishops against the abuses of Magnetism

Wednesday, July 30, 1856.

"... It has been found that a certain new kind of superstition is being introduced from magnetic phenomena, by which several moderns are intent not, as would be fitting, on explaining physical sciences, but on deceiving and seducing men, thinking that hidden, remote, and future things can be detected by the art or pretense of magnetism, especially by the aid of little women who depend solely on the nod of the magnetizer." (The response already given on July 28, 1847, moreover, having been related, whose tenor here was: "Every error, sortilege, and explicit or implicit invocation of the demon having been removed, the use of magnetism, namely the mere act of applying physical means otherwise licit, is not morally forbidden, provided it does not tend to an illicit or in any way depraved end. But the application of purely physical principles and means to truly supernatural things and effects, so that they may be explained physically, is nothing but a deception altogether illicit and heretical." - The Holy Congregation adds):

"Although by this general decree the licitness or illicitness in the use or abuse of magnetism is sufficiently explained, nevertheless the malice of men has so grown that, neglecting the licit study of science, rather pursuing curious things with great loss of souls and detriment to civil society itself, they boast that they have obtained a certain principle of soothsaying and divining. Hence by the prestiges of somnambulism and clear intuition, as they call it, those little women, carried away by gesticulations not always modest, prattle that they behold any invisible things whatsoever, and presume rashly to institute discourses concerning Religion itself, to evoke the souls of the dead, to receive responses, to detect unknown and distant things, and to exercise other superstitious things of this kind, certainly about to obtain great gain for themselves and their masters by divining. In all these things, whatever art or illusion at last they use, since physical means are ordered to non-natural effects, there is found deception altogether illicit and heretical, and scandal against honesty of morals.

"Given at Rome, in the Chancery of the Holy Office at the Vatican, August 4, 1856.

"V. Cardinal Macchi."

S. Responses Concerning Fasting and Abstinence from Meats

1° To the question: Whether on days of fast the time of eating can be inverted, by taking the evening little refreshment between the tenth and eleventh morning hour, but by deferring dinner to the fourth or fifth evening hour?

The Sacred Penitentiary (on January 10, 1834) judged that it should be answered: If some reasonable cause for the aforesaid inversion exists, penitents who use this custom are not to be disturbed.

2° To the question: Whether fathers of families, when in the family there is someone dispensed from the law of abstinence from meats, can extend the dispensation indiscriminately to all persons of the family? (Latin version from the Italian exemplar.)

The Sacred Penitentiary judged that it should be answered: Infirmity and any other reasonable impediment whatsoever, by the counsel of both physicians, but not gluttony, avarice, or generally a saving of expenses, can exempt from the precept of abstinence on days of fasting.

3° To the question: Whether, when a father of a family dispensed from the law of abstinence from meats in the time of Lent cannot or does not wish foods of both kinds, namely fasting foods and meats, to be prepared, his children or household members can eat meats? (From the Italian exemplar.)

The Sacred Penitentiary (on January 16, 1834) judged that it should be answered: It can be permitted to persons who are in the power of the father of a family to whom a legitimate faculty of eating meats has been given, to use the foods indulged to the father of the family, with the condition added concerning not mixing licit and forbidden dishes, and concerning one eating in the day for those who are bound to fast. The reason of this permission, however, is not the Indult conceded to the father of the family, but the impotence in which the children of the family are placed of observing the precept. Thus declared the Sacred Penitentiary, May 27, 1863. - See the periodical *Revue catholique de Louvain*, July 1863. Likewise, *Correspondance de Rome*, October 17, 1863.

4° To the question: Whether the faithful exempt from the law of fasting on account of laborious arts, in the time of Lent, when the eating of meat and milk foods is permitted to all at one meal, can eat meats and milk foods several times in the day, not otherwise than on Sundays of the same Lent, on which the obligation of fasting does not press? (From the Italian exemplar.)

The Sacred Penitentiary (on January 16, 1834) answered: The faithful who by reason of age or labor are not bound to fast can licitly in Lent, when an Indult has been conceded, on all days comprehended in the Indult, eat meats or milk foods permitted through the same Indult, as often as they eat during the day. This, however, does not hold in a diocese whose Bishop by apostolic authority concedes to the faithful that on Monday, Tuesday, and Thursday of the time of Lent they can once in the day eat meats and eggs; but permits those who by reason of age or labor are not bound to fast that they may use eggs more often in the day. Thus declared the Sacred Penitentiary, May 27, 1863. - See the periodical *Revue catholique de Louvain*, July 1863. Likewise, *Correspondance de Rome*, October 17, 1863.

5° To the question: Whether those who by reason of age or labor (on account of parity of reason I add: or of infirmity) are not bound to fast, are subject to the law concerning not mixing dishes of meat and fish when through an Indult meats are permitted.

The Sacred Penitentiary (on February 13, 1834) answered: Let each consult approved Authors. [This controversy is now ended through the affirmative Response of the Holy Office, June 23, 1875. (m) p. 471.]

Appendix annotation (η), to p. LI. A doubt was proposed by the Bishop of Bayonne, whether the obligation of not mixing fish with flesh-meat on days of Lent touches all who by force of an indult can eat meats, or only those who fast. On June 23, 1875, in the General Congregation of the Holy Roman and Universal Inquisition, held before the Most Eminent and Most Reverend Lord Cardinals General Inquisitors, when the above-written Doubt had been proposed, and the vote of the Lord Consultors had been had beforehand, the same Most Eminent and Most Reverend Fathers ordered that reply be made: Affirmatively as to the first part, Negatively as to the second part; and let the Decree of March 24, 1841 be given, namely to the Doubt, Whether the law of not mixing permitted and forbidden foods also regards those who are not held to one meal, such as young persons before they have completed their twenty-first year, and others reasonably excused from the same on account of inability or labor; the Most Eminent Fathers decreed: It is not lawful. Notes to preceding text - printed sequence 1. 1 3. q. 68. art. 11, ad 3. | 2 Ib. | 3 L. VI. 106.

Notes to preceding text - note sequence 1.

1 P. I. n. 403. 2°. 4°. 9°. 10°.

Notes to preceding text - note sequence 2.

1 L. VI. 300 sub 4. Sab. | **2** Ib. | **3** Ib. sub 2.

Notes to preceding text - note sequence 3.

1 Ser. 4. col. 2280 sv. | **2** L. VI. 300 sub 1. | **3** Acta, T. I. p. 429. n. 17. | **4** L. IV. 738-740.

Notes to preceding text - note sequence 4.

2 T. II. n. 440. | **3** T. II. n. 440. | **4** Art. 1559-1569. | **5** Conc. Prov. S. Franc. I. n. XVI.

6° To the question: Whether the faithful dispensed from the law of abstinence on Fridays and Saturdays, during the year, when the obligation of fasting does not press, can eat fish together with meats? (From the Italian exemplar.)

The Sacred Penitentiary (on February 15, 1834), the proposed doubt having been diligently weighed, and a report having been made to the Most Holy Lord Gregory XVI, by command of His Holiness, answered: It is permitted.

7° To the question: Whether on days of fasting in the time of Advent, prescribed by Pius VI, yet with milk foods permitted, to him to whom the eating of meats is lawful on account of infirmity, the promiscuity of meat and fish is forbidden?

The Sacred Penitentiary (on January 8, 1834) answered: In the affirmative, namely that promiscuity of this kind is not lawful.

8° To the question: Whether, under the law of forbidden mixing with meats, there are comprehended little fish dried with salt, or anchovies (French *anchois*, Italian *acciughe*, *alici*, English *anchovy*, sardine), herrings (French *harengs*, Italian *aringhe*, English *herring*), and other things similar to these; or whether they can be mixed after the manner of a seasoning of another dish?

The Sacred Penitentiary (on January 10, 1834) answered: Fish dried with salt ... are forbidden to be mixed with meats, whenever the mixing of meat and fish is forbidden.

9° To the question: Whether in the time of fasting, to him to whom the eating of meats is lawful, it is lawful to mix sea shellfish, which are improperly called fruits of the sea, but commonly are judged fish, that is, oysters (French *huitres*, Italian *ostriche*, English *oysters*), crabs (French *ecrevisses*, Italian *gambari*, *granchi*, English *crawfish*)?

The Sacred Penitentiary (on January 16, 1834) answered: Sea shellfish, which are improperly called fruits of the sea, but commonly fish, are forbidden to be mixed with meats whenever the mixing of meat and fish is prohibited.

10° To the question: Whether those dispensed from the law of abstinence from meats can, on days on which the obligation of fasting presses, for reason of health, eat only broth seasoned with meats, and for the rest eat fasting foods (as others who can eat fish), in order to observe the law of abstinence insofar as can be done? (From the Italian exemplar.)

The Sacred Penitentiary (on February 8, 1828), the things set forth having been attentively considered, answered: In the affirmative.

T. Decrees Concerning Profit Received from Money Given as a Loan

I. Petition of the Bishop of Rennes.

The Bishop of Rennes in France sets forth to the Sacred Congregation of the Inquisition that there is not the same opinion among the confessors of his diocese concerning profit received from money given as a loan to merchants, that by it they may grow rich.

There is keen dispute concerning the sense of the encyclical letter *Vix pervenit*. From both sides arguments are brought forward for maintaining that opinion which each one has embraced, either favoring or contrary to such profit. Hence complaints, dissensions, denial of the Sacraments to many merchants adhering to that mode of becoming rich, and innumerable harms of souls.

That they may meet the harms of souls, some confessors think that they can hold a middle way between each opinion. If someone consults them concerning profit of this kind, they try to deter him

from it. If the penitent perseveres in the plan of giving money as a loan to merchants, and objects that the opinion favoring such a loan has many patrons, and besides has not been condemned by the Holy See, which has been consulted not once concerning this matter; then these confessors exact that the penitent promise that he will obey with filial obedience the judgment of the Supreme Pontiff, if it intervene, whatever it may be; nor, this promise having been obtained, do they deny absolution, although they believe the contrary opinion to such a loan to be more probable. If the penitent does not confess concerning profit from money thus given as a loan, and seems in good faith, these confessors, even if otherwise they know that this kind of profit has been received by him or is even now being received, absolve him, no interrogation having been made concerning this matter, when they fear that the penitent, admonished, would refuse to restore or to abstain from such profit.

Therefore the said Bishop of Rennes asks:

I. Whether he can approve the manner of acting of these latter confessors.

II. Whether he can exhort other more rigid confessors, approaching him for the sake of counsel, to follow the manner of acting of these, until the Holy See gives an express judgment concerning that question.

Wednesday, August 18, 1830.

Our Most Holy Lord Pius VIII, Pope by divine providence, in the usual audience granted to the Reverend Father Lord Assessor of the Holy Office, having heard the relation of the above doubts together with the vote of the Most Eminent Lord Cardinals General Inquisitors, answered:

To I. - They are not to be disturbed.

To II. - Provided for in the first.

II. Response of the Sacred Congregation of the Holy Office, on August 31, 1830, approved by the Holy Father Pius VIII, concerning the following doubts.

1° Whether a confessor can, in conscience, deny absolution to priests who contend that the law of the Prince is a sufficient title for receiving something beyond the principal, without the title either of cessant gain or of emergent loss?

2° Whether he ought to?

Resp. to both: They are not to be disturbed until the Holy See issues a definitive decision, to which they are prepared to submit themselves; and therefore nothing obstructs their absolution in the Sacrament of Penance.

III. Petition of the Bishop of Verona.

I. Whether the manner of acting of those confessors can be approved who, while they hold as more probable the opinion contrary to profit from money given as a loan to merchants, absolve penitents receiving profit in that way, that they may grow rich, when, namely, those penitents, objecting that the opinion favoring profit has not been condemned by the Holy See, nevertheless promise to obey the judgment of the Supreme Pontiff, if it intervene; and who act similarly when penitents, receiving profit in good faith, do not confess concerning it, although otherwise they know that they are

receiving profit, as above, no interrogation having been made concerning that matter, when they fear that the penitents, admonished, would refuse to restore or to abstain from such profit.

II. Whether the Bishop can exhort more rigid confessors, approaching him for the sake of counsel, to follow the manner of acting of the former confessors, until the Holy See gives an express judgment concerning that question.

It is answered:

To I. - They are not to be disturbed.

To II. - Provided for in the first.

Given at Rome in the Sacred Penitentiary, August 14, 1831.

IV. Petition of the Bishop of Viviers.

In the Exposition of the Bishop of Rennes no mention is made of the said title which certain Theologians wish to be found in the law of the prince; but only of a loan given to merchants, and of the sense of the Encyclical *Vix pervenit* concerning such a loan made to merchants.

Whence some say that the judgment of the Most Holy Pontiff Pius VIII is to be attended to in itself alone and separately from the responses given by the Most Eminent Cardinals, so that the sense of that judgment would be that the opinion favoring a loan made to merchants has not been condemned by the Holy See, which has been consulted not once concerning that matter; and therefore if penitents promise that they will obey with filial obedience the judgment of the Supreme Pontiff if it intervene, confessors who do not deny them absolution are not to be disturbed. Those who thus interpret the judgment of the Most Holy Pontiff turn their ears away from the Encyclical Letters of Benedict XIV, *Vix pervenit*, and from I and II of *De Synodo Dioecesana* of the same Pontiff, to which several responses of the Holy See refer, from the Instruction given to Father Charles Felix on April 17, 1749, and from diverse responses given by the Holy Apostolic See.

Others, not conceiving by what way the aforesaid judgment (of Pius VIII) can be reconciled with the said decisions of Benedict XIV and of other Supreme Pontiffs concerning a loan made to merchants, if it be so attended to separately, think that the said judgment is not to be understood thus, but jointly with the Responses given by the Most Eminent Cardinals, to which the Supreme Pontiff seems to refer ..., and that the Judgment is to be referred to doubts concerning the title of the law of the prince, which title was not condemned by the Holy See....

Therefore it is asked:

I. Whether the aforesaid judgment of the Most Holy Pontiff (Pius VIII) is to be understood, as his own words sound, separately from the title of the law of the prince, concerning which the Most Eminent Cardinals speak in these Responses, so that it concerns only the loan made to merchants.

II. Whether the title from the law of the prince, concerning which the Most Eminent Cardinals speak, is to be understood thus, that it suffices for the law of the prince to declare that it is lawful for each person to agree concerning profit from a loan made by itself alone, as is done in the Civil Code of the French, without saying that it concedes the right of receiving such profit.

Wednesday, August 31, 1831.

In the General Congregation of the Holy Office ..., the above prayers of the Reverend Father Lord Bishop of Viviers having been proposed, the same Most Eminent and Reverend Lords (Cardinals), the votes of the Lords Consultors having first been had, said:

Provided for in the decrees of Wednesday, August 18, 1830, and let the decrees be given.

On the same day and weekday, Our Most Holy Lord Gregory XVI, Pope by divine providence, in the audience granted to the Reverend Father Lord Assessor of the Holy Office, approved the resolution taken by the Most Eminent.

V. Response of the Sacred Congregation of the Holy Office, under date March 26, 1840.

The Sacred Congregation of the Holy Office, under date March 26, 1840, the doubt having been proposed whether N. N. is bound to restore anything, whose father had given a great sum of money as a loan with profit of ten per cent, corresponding to the legal rate of that time; and insofar as he would be liable to restitution, whether at least he may licitly retain five per cent, it was rescripted: "As regards usuries in general, let him consult the decrees already issued. As regards the excessiveness of the fruits, let him consult the Reverend Father Lord Bishop, who should weigh the circumstances of the fact and the practice of that time which was in force among men of timorous conscience, and provide."

U. Instruction of the S. Congregation de Propaganda Fide on Bination

1. The faculty of binating, with which the Holy See is accustomed to furnish Ordinaries of Missions, together with the power of communicating the same to their Missionaries, has stirred up not a few doubts proposed by them to the Sacred Congregation. The reason of these doubts is taken from the very rigor of the clauses which, by order of Alexander VII, were appositely placed in the article of the formularies which treats of this faculty. Wherefore it has seemed opportune, in the following Instruction, to gather together the more common principles and rules which are to be kept before the eyes in the use of the said faculty.

2. No one is ignorant that by the general rule, according to the discipline of the Church now in force, it is lawful for a priest to offer the Holy Sacrifice only once in the day. For thus Innocent III disposed: "We answer that, except on the day of the Nativity of the Lord, unless a cause of necessity should persuade it, it suffices for a priest to celebrate one Mass only once in the day."[1]

(1) Cap. Consuluisti, on the Celebration of Masses.

3. Therefore in a case of necessity it is permitted to a priest to repeat Mass on the same day. But this, as is clearly gathered from the terms of the formula itself, must be understood of the permission of only two Masses, notwithstanding the gravity of causes for celebrating a greater number. The Prefect of the Mission of the Capuchins at Tunis asked whether, if, because all his Missionaries had been imprisoned, he could on one and the same day, if necessity urged, celebrate more than two Masses. The Sacred General Congregation of Propaganda, on August

7, 1684, resolved "that he could not, by force of the faculties, celebrate beyond two Masses." This had already been answered in the General Congregation held before the Most Holy One on February 17, 1648; for, the abuse introduced among the captive priests of Algiers of celebrating three Masses having been set forth, "the Most Holy One ... ordered through the said Prefect" (of Algiers) "that it be enjoined upon the priests in the name of His Holiness ... that since the Apostolic See in the faculties of Missionaries has granted the power or license of celebrating twice in the day where necessity requires it, henceforth they are not to celebrate beyond two Masses." The same was repeated in the years 1818 and 1820 to the Apostolic Prefect of Tunis.

4. Necessity, therefore, is the sole title by which bination is permitted to priests. But it is useful to observe with Vericelli,[2] "that this necessity is not to be taken on the part of the scarcity of priests, but on the part of the spiritual necessity of the people and the rarity of priests." This principle being posited, from it various negative rules for the use of this faculty can easily be deduced:

(2) De Apost. Mission., Tit. IV. quest. 98 Dub. 18 n. 201.

5. 1° It is clear that he would reason falsely who would say that he can binate on suppressed feasts, on which the people are exempt from the obligation of hearing Mass, as the Sacred Congregation admonished in the year 1837: "The matter having been maturely weighed, from the words of the formula itself it appeared clearly enough that the faculties cannot be extended to abrogated festivities. For since in the mentioned formula it is declared that the faculty avails if necessity urges, it follows that from this title alone, that those days were formerly feast days, Mass cannot be celebrated twice by the same priest."

6. 2° Likewise it is prohibited to binate for the convenience of those who would wish to satisfy the precept of hearing Mass in their private oratories. In the year 1842 the Apostolic Vicar of Limburg had proposed the custom there introduced of permitting bination in private oratories in the camps of magnates. But since he did not think that in these circumstances the necessity which is demanded by the formularies was verified, he asked, by reason both of the custom and of the moral utility arising from it, license to permit this. But the Holy Office judged: according to the things set forth, it is not expedient. But when the Apostolic Vicar had added that some priests, by reason of a faculty previously given by his predecessor, were continuing the bination, the same Sacred Congregation decreed: "the faculty is to be revoked, insofar as the Apostolic Vicar of Limburg thinks that this can prudently be done."

7. 3° From the same resolutions it is deduced that custom is not a sufficient title, so that the same priest on the same day can celebrate two Masses. This also is conformable to the things which Benedict XIV hands down in the Constitution *Declarasti Nobis* to the Bishop of Huesca in Aragon, on March 16, 1746: "We ask only whether that custom has acquired for itself the nature of prescription or presumption, and we judge both to be false and alien."

And as to prescription he says: "For if, according to the civil laws, sacred things cannot be prescribed, it is absurd on every side to assert that anything has been obtained or acquired by prescription which

is opposed to the universal sanctions of the Church, the observance of which the Holy Council of Trent enjoins upon all priests in the celebration of Masses." Moreover, concerning presumption he adds: "But, passing over the rest, we add that these things can be understood concerning those privileges which could have been obtained from the Apostolic See, if someone had asked for them, but not concerning those which, when they are asked, are wholly accustomed to be denied, lest presumption have more strength and moment than truth."

Hence also the Sacred Congregation, when it learned that in some place the custom of binating without necessity had been introduced, did not omit to reprove such a custom as an abuse, stirring up the zeal of Bishops to eliminate it.

8. 4° Moreover, it is also very far from the case that the poverty of priests justifies bination, as we have already noted from Vericelli.[3] A certain Archbishop of Ireland had asked in the year 1688 "whether, from the sole cause of poverty, Regulars could celebrate two Masses on feast days, doing this in private houses, although all parishes and convents had their churches and chapels." The response of the Sacred Congregation was negative; and when in two particular Congregations, on March 7, 1743, and July 28, 1750, it had been reported that the prohibited abuse was still flourishing in Ireland, namely, that many priests were using the faculty of binating for no other end than that they might have more abundant alms and sustain themselves more comfortably, the Eminent Fathers decreed: Let the priests be gravely admonished not to abuse the faculty of celebrating twice in the day so that they may have a larger and richer stipend. And by Benedict XIV[4] the concession of the faculty of binating to some priest to the end that he might support himself more decently by a double alms is called an intolerable abuse. Only that it might show some concession to the poor Religious of that Kingdom, who had complained of a similar prohibition made in the year 1817 by the Provincial Synod of Tuam, because of the damage arising therefrom, the alms having been taken away from them which they were accustomed to receive at the doors of the church on occasion of the Mass, since they supported themselves from the contributions of the faithful, the Sacred Congregation willed that the Bishops be admonished that "in imparting, by Apostolic authority, license to priests to celebrate two Masses on feast days of precept on account of causes of necessity approved by the Apostolic constitutions, they should have regard for regular priests, and especially for those who dwell in poor monasteries." Besides, the Sacred Congregation of the Council, by declaring that "from the general practice presbyters are not granted permission to receive an alms for a second Mass, even if there is question of those who, being furnished with a parochial office, cannot therefore obtain a stipend for the first Mass, because they are bound to apply it for the people," as it communicated by circular letters of the S. C. of Propaganda on October 15, 1863 to the Ordinaries of missions, utterly removed every pretext of the abuse of binating on account of the stipend. But by reason of the particular circumstances of some Missions, His Holiness deigned, as is clear from the said letters, to furnish the Ordinaries with the faculty of permitting "that, a just and grave cause intervening, priests subject to them may and can receive a stipend also for a second Mass to be celebrated on the same day."

(3) The printed footnote marker points back to the preceding Vericelli reference. (4) Const. Apostolicum Ministerium, May 30, 1753, § 11.

9. 5° Finally, a priest is prohibited from binating as long as another priest can be had through whom the necessity of the people can be satisfied, as Benedict XIV expressly teaches in the praised Constitution *Declarasti Nobis*. Wherefore, before room is given to bination, it must be seen whether there is present any one of the remedies which the canons have established for providing for the spiritual necessity of the people; and in the first place the parish priest himself is bound to supply a stipend to another priest; if he cannot, the people are bound; finally, if not even the people, on account of poverty, can do this, the Ordinary ought to supply.[5]

(5) Benedict XIV, l.c. Vote of Cardinal Zelada, Thesaur. resolutionum, t. 37, in the case Derthus., August 26, 1768.

10. Thus far concerning the cases in which bination is prohibited. The cases in which the necessity required by the canons concurs are enumerated in the Constitution *Declarasti Nobis*. In it, it is first observed that, according to the unanimous consent of Theologians, it is permitted to a priest to binate "who holds two parishes, or two peoples so separated that one of them can in no way be present on feast days when the parish priest celebrates, on account of the very great distance of the places." And this is the first and more common case; the other, which is found in the same place, is "when there is only one Church in which Mass is celebrated, and to which the whole people together cannot come."

11. In the aforesaid cases Mass can be repeated also by those who are not furnished with the faculty of the formularies which the S. Congregation of Propaganda is accustomed to grant, because it is permitted by common law; always, however, with the permission of the Ordinary, in whose power it is to judge whether there is true necessity, and at the same time whether there is any possibility of applying the canonical remedies (§ 9). In fact Benedict XIV, after indicating remedies of this kind, adds: "The things which have been said thus far rest also upon general canonical sanctions"; concordant also is the opinion of Theologians, as Benedict XIV observes, in the case of one parish priest but of two parishes, that "the parish priest not only can, but plainly is bound, to celebrate Mass twice on the same day."[6] From these things it is easily deduced that the analogous article of the formularies, since it is facultative, extends also to other cases of necessity not considered in common law; otherwise it would be useless, at least in places where parishes have been canonically erected, since common law provides for these. This agrees with the things which the praised Pontiff says in the work *On the Sacrosanct Sacrifice of the Mass*,[7] where, after he establishes that the case which really occurs is that in which a parish priest has two parishes, etc., he continues in these words: "nor nevertheless do we wish anything prejudged concerning other cases which happen in missions, for which provision has been made by granting to Missionaries the faculty of celebrating several Masses on the same day; and likewise concerning other cases in which, either on account of distance of places, or on account of fewness of priests, or the persecution of heretics or infidels, lest the faithful lack Mass, it is necessary that two Masses be celebrated by Priests."

(6) De Syn. Dioec., L. VI, c. VIII, n. 2. (7) Lib. III, c. V, n. 4.

And concerning these very cases which occur in Missions, and on account of which the faculty is given to their Superiors, the S. Congregation of Propaganda treated in the year 1832 in a letter to a certain Missionary of Philippopolis, who was not celebrating several Masses, although he had several

congregations. The Sacred General Congregation, having imposed upon him the obligation of binating, adds: "If you ask why in the faculty of binating certain rigorous clauses have been added to the formularies of the indult, in the formula itself you will find the answer; for you will observe that the indult is not restricted to the necessity of the people on feast days, but, since it is contained in general terms, it includes in the question also other cases, as the necessity of administering Viaticum in both parishes, and that in these cases the prescribed cautions have place."

12. In these very less obvious cases Bishops and Missionaries are not rarely distressed as to the use of the faculty, doubting especially concerning the sufficiency of the causes which are required according to the mind of the added clauses. On the other hand, there are so many and so various cases which can happen in this matter in Missions that they can hardly be foreseen, and much less reduced to determinate rules, because the decision is subject to the various circumstances of places, times, and persons which concur in these cases. Therefore the solution of particular doubts which have been proposed concerning this matter has for the most part been left to the prudent judgment of the Superiors of Missions.

13. And first, a rule concerning the number of the faithful which would suffice for Mass to be repeated has often been sought. In the Constitution *Apostolicum Ministerium* it is said that throughout England the faculty can be exercised "when the number of those who on festive days are bound to assist at the Sacred rites exhibits such necessity that, unless the power of celebrating two Masses on the same day be granted to some priest, very many would not satisfy the command of the Church." This general criterion does not remove every doubt as to the number necessary for bination. The same can be said of the negative response of the Holy Office in the year 1688 to certain Capuchin Missionaries of Greece. These had asked: "whether a Missionary priest dwelling alone in a place can celebrate two Masses on Sundays and feast days for fifteen or twenty persons who, being legitimately impeded, could not be present at the first Mass"; and the Sacred Congregation on January 28 of the same year decreed: it is not lawful. If therefore the number twenty is insufficient for the effect, it can be further asked what is the minimum number which suffices.

14. But with respect to this doubt, as also to distance, the Sacred Congregation has had the custom of leaving its decision to the prudence of the Ordinaries of Missions, upon whom the faculty depends, since they alone in the face of the places can weigh the circumstances concurring in particular cases. And in fact as far back as the year 1688 the Prefect of the Mission of Tunis (in Mauretania) had asked in general that it be declared what ought to be the number of faithful who otherwise would be deprived of Mass, and by reason of which bination could take place; and the General Congregation of Propaganda, on November 16, answered: Let it be left to the charity and conscience of Father Prefect. Similarly the Bishop of St. Louis in the Federated States of America, in the year 1828, after setting forth his own fear and that of other Bishops of burdening their consciences through the clauses of the formularies, had asked "whether, as often as thirty or fifty faithful are exposed to the danger of not hearing Mass of precept, they may celebrate twice." By letters of March 13, by order of Leo XII, it was rescripted to him "that you ought to put away every anxiety of soul and, without being moved by the rigor of the words, His Holiness commits to your conscience and prudence that you judge in

what cases, account being taken of the circumstances of your diocese, grave causes are to be judged present for imparting to priests the faculty of which there is question. But where, according to your conscience and prudence, you have judged that these grave causes exist, His Holiness benignly declared that you can use that faculty without any doubt."

15. A similar response was given in the year 1851 to the Apostolic Vicar of Limburg, who had proposed a doubt concerning distance: "In this region," he says, "from an ancient custom, license of binating is sometimes granted on account of moral necessity, although the nearer parish does not lie beyond the space of half a league; it is asked whether rightly." The S. C. of Propaganda, by letters of July 31, answered: "It being premised that it is the office of Bishops to care with all their strength that there be no need to use this faculty for succoring the necessities of the faithful, a general practice to be observed in individual cases cannot be assigned. Wherefore in particular cases as above, the supply of presbyters being deficient, and all other circumstances having been maturely weighed, it must be defined by the prudent judgment of the Superior whether in that case there concur grave circumstances which Doctors teach constitute a case of necessity (as the one proposed seems), in which room is made for a dispensation from the universal precept of not repeating the sacrifice by the same presbyter on the same day, and for the faculty of binating to be granted, which, from the words of the Apostolic indult itself, it is very clearly evident that he ought to use altogether sparingly." And the same instruction in the same words was given to the Bishop of Trier in the year 1853, by whom several doubts concerning bination had been proposed. It was rescripted to him on September 28 that, his questions having been considered, "the Sacred Congregation judged that the instruction should be given which ... the Apostolic Vicar of Limburg obtained under date July 31, 1851."

16. On the other hand, among the various responses which leave the judgment concerning the gravity of causes to the Superior, certain ones are worthy of particular mention, since they, without departing from the ordinary rule, namely, that the Superior himself ought to judge concerning the causes, at the same time indicate in some way the quality, or degree, of necessity required for bination, and at the same time temper somewhat the impression and soften the excessive anxiety which the clauses by which the faculty itself is restricted in the formularies had created for certain Bishops and Missionaries. One of such responses was given to a certain Bishop of the Federated States of America in the year 1848: "I come to your request" (thus in the letters dated May 9) "concerning the manner of interpreting the necessity which is required for the licit use of the faculty of celebrating Mass twice in the day. ... Therefore let Your Amplitude know that a necessity of this kind, of which there is question, is indeed understood to be true, but moral; not however absolute; concerning which, therefore, to judge in individual cases depends upon prudent judgment, with the circumstances having been inspected. It is necessary therefore that you beware in this matter of excessive anxiety in judging, lest the aforesaid faculty seem to have been granted in vain or to be reduced to act in almost no case." More noteworthy also is the declaration given to a certain Apostolic Prefect in the American Antilles. That Prefect, doubting whether he could tranquilly use the said faculty because of the grave conditions annexed to it, implores "a broader faculty from the Apostolic See of giving power to presbyters ... that on Sundays and feast days of precept they may

celebrate Mass twice, when necessity or the spiritual utility of the faithful demands it." A relation having been made to the Most Holy One in the audience of April 13, it was answered to him in the following manner: "Such is the esteem for your virtue and prudence that Our Most Holy Lord ordered that you ought to lay aside every anxiety of soul; and if you judge it necessary or vehemently useful to the faithful that priests celebrate Mass twice on the same feast day, you ought not to be moved by the rigor of the words in which the rescript seems to be contained. Therefore His Holiness commits to the prudence and conscience of Your Lordship to judge concerning that necessity and the gravity of the causes, and he has benignly declared that in those circumstances of things you have the faculty, through the mentioned Rescript, of giving power to priests to celebrate Mass twice."

17. The same rule of committing to the judgment or charity of the Superiors of Missions the application of general principles to practical cases has also been observed when in these, as they were set forth, there did not appear that force and gravity of causes (at least if these causes were considered in themselves and in the abstract) which is demanded by the clauses of that faculty. By this it is again confirmed that, in judging the reasons upon which the use of the faculty rests, great account is to be had of all the conditions and of the state of the faithful. This is clear from the response given by this Congregation in the year 1688 to the Vice-Prefect of the Tripolitan Mission, who, in doubt concerning the clauses often praised, had asked "for how many slaves or free men precisely he can celebrate the second Mass, since sometimes the case happened that in the bath outside the city of Tripoli not even ten or fifteen slaves were present at the Sacrifice of the Mass ... and whether, in defect of priests, he can for these alone celebrate another Mass." Notwithstanding the less favorable decision given in that very year by the Holy Office for a similar case, as was noted above in § 13, the S. Congregation of Propaganda on October 5 answered: "Let it be left to the charity and conscience of Father Vice-Prefect." Nor is it to be wondered at if Propaganda judged that room could be given to a more benign interpretation; for there was question of slaves, who on account of their condition deserved particular indulgence, since perhaps the Sacrifice of the Mass was their only consolation. Another argument of propensity toward a milder interpretation or connivance, account being taken of circumstances, the S. Congregation of the Inquisition gave in the year 1860; for although on June 20 it answered the Apostolic Vicar of a certain kingdom adjacent to China: "the desire of neophytes wishing to receive the Most Holy Eucharist twice or three times in the year is not of itself a most urgent cause, in the case of which there is question," i.e. of repeating Mass according to the faculty, nevertheless it added: "But, all circumstances of places and persons being weighed, it is to be left to the judgment of the Reverend Father Lord Apostolic Vicar." Hence it follows that those causes which in themselves, and therefore for many places, are not grave, can become such in certain other places because of circumstances.

18. These are the principles observed as to the faculty of binating, and they will undoubtedly serve to tranquilize the Ordinaries of Missions in its use. But although it is customary to defer to the prudent discretion of the Ordinaries of Missions, nevertheless it is clearly gathered from what has been said how greatly they ought to be cautious, since their conscience always remains burdened as to the legitimate use of so extraordinary a faculty. And yet (that we may conclude with the admonition given by the S. C. in the year 1832 to the Bishop of Nicopolis in Bulgaria)

the usual clauses in the formularies "are not to be interpreted in extreme rigor, since the Apostolic See grants the said faculty for the spiritual utility of the faithful, and desires that all be able to fulfill the ecclesiastical precept."

19. It remains now that we treat of the rite and manner of bearing oneself in bination of Mass. Concerning this matter it will not be necessary to observe that it has always been prescribed to Missionaries by the Sacred Congregation and by Benedict XIV himself that he who is going to binate ought not to take the usual ablutions of the chalice on account of the fast, so that "if in the first Mass after the reception of the Body and Blood he has taken the purification, he ought not to celebrate the second Mass in the aforesaid cases,"[8] i.e. even in those cases in which otherwise the faithful would be deprived of Mass on feast days. - Moreover, although by the decree of the S. Congregation of Rites in *Elusitana* on September 16, 1815, it had been prescribed that only one chalice should be used by one repeating Mass,

(8) Council of Nimes, a. 1284, apud Benedict XIV, de Sacr. Missae Sacrif., l. III, c. V, n. 4.

nevertheless, since the observance of this decree would involve no slight difficulties when the celebration had to take place in two churches distant from one another, the said Congregation, in the meetings held on September 12, 1857, moderating the preceding decree, declared: that the use of two chalices in the case can be permitted. The annexed Instruction,[9] drawn up by mandate of the same S. R. Congregation, regards the manner of purification of the chalice which served for the first Mass.

(9) It is found in Act. et Decr. Conc. Plen. Balt. II., page 318.

From the Secretariat of the S. C. of Propaganda, May 24, 1870.

V. On Confession Sacramental, to Be Required from Heretics to Be Rebaptized under Condition, If They Are Converted

The Bishops of England petitioned the Holy See concerning this matter:

"Most Blessed Father: Among the decrees of the first Provincial Synod of Westminster, under chapter xvi, n. 8, where there is discussion of the abjuration of adult Protestants, and of Baptism to be conferred upon them under condition, there is added: *Sacramental Confession also is always to be required in such a case*. In the annotations which Father Ballerini added to the Roman edition of Father Gury's *Moral Theology*, it is said that this confession is more conformable to the Instruction published by the Supreme Congregation of the Holy Office concerning the manner of reconciling heretics; from which Instruction it is deduced that an integral confession of sins is opportune. In the text Father Gury holds that it is to be advised in practice."

"But since this Author, both in the *Theology* and in the *Cases of Conscience*, has cited the opinion of other authors teaching that, because of the existence of a doubt concerning the first Baptism received by neo-converts in the time of infancy (so that, if that was none, the true reception of Baptism is that which is handed on under condition on the occasion of abjuration), the obligation of confessing sins integrally before this conditional Baptism is doubtful, certain confessors in England, following those authors, have judged that a doubtful obligation of integral confession is no obligation; and because of the repugnance of converts toward making it, and because of the danger of an imperfect or even sacrilegious conversion, it is altogether expedient that the converted expose only some sins to the

confessor, so that from him they may obtain the benefit of sacramental absolution, if perhaps there is need of it."

"On the other hand there is the constant practice of the greater part of the confessors of the Kingdom, not only advising but also requiring integral confession, both before and after the approval of the Provincial Council; there is the difficulty of converts captivating the intellect unto the obedience of Faith itself, except 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 neo-convert is rightly disposed for that Baptism itself, and whether he wishes, e.g., to make restitution of reputation or goods (if it should happen that he is bound to this), to avoid the proximate occasion of sin, to withdraw from a marriage contracted invalidly, even if through dispensation of the Holy See (as in the daily more frequent cases of marriage contracted after civil divorce) it cannot be sanated; there is moreover the necessity of providing for his salvation through justification in the Sacrament of Penance, from whose integrity no one once baptized in infancy can be exempted; account being taken especially of the diligence of the younger among the Anglican Clergy in faithfully observing the rite of baptizing, and therefore account being taken of the greater number of those concerning the value of whose infant Baptism it is not permitted to doubt."

"But since it is certain that after several years the obligation of integral confession will have entirely lost its force, if in practice Theologians can follow as safe the opinion of the aforesaid authors, the Archbishop of Westminster and the Bishops of England earnestly beg that Your Holiness, in your kindness toward the missions of England, deign to declare, concerning this most grave question, the mind of the Church: Whether according to the decree of the Provincial Synod approved by the Holy See Sacramental Confession must be required from neo-converts in England, and whether it must be integral?"

On Thursday, in the fourth place, December 17, 1868, the Congregation of the Holy Office judged that it should be answered to both parts of the doubt: In the affirmative; and that the decree issued on June 17, 1715 should be given. This resolution Pope Pius IX confirmed on the same Thursday.

That Decree of June 17, 1715: "Whether full faith is to be given to Charles Wipperman of Rostock in the duchy of Mecklenburg, preacher and reader of Quietistic Lutheran Theology, superintendent and chief doctor of the sect of the Lutheran Quietists, reconciled to the Catholic Faith, and concerning certain errors detected in his Baptism; whether he is to be believed concerning the things which he narrates; and, insofar as in the affirmative, then, that provision may be made both for his salvation and also for the salvation 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 in the affirmative, whether absolutely or under condition? And insofar as in the affirmative, whether he is bound to confess all the sins of his past life? And insofar as in the affirmative, whether Confession is to be placed before or after Baptism to be conferred under condition?"

"The Sacred Congregation of the Office said: that Charles is to be rebaptized under condition; and, Baptism having been conferred, let him confess the sins of his past life and be absolved from them under condition."

The S. C. de Propaganda Fide rescripted to the Archbishop of Quebec, July 12, 1869, that this Response binds everywhere. Concerning the time of this Confession see T. II (e) p. 414.

X. Declarations Concerning Soliciting Confessors

I. Declaration of the Holy Office in the year 1661.

1. Whether a confessor is to be denounced who gives a paper to a penitent in Confession, later to be read at home, in which he was soliciting to venery? The Lord Qualifiers judged that he is to be denounced, and that the negative opinion is not probable.
2. Whether a confessor consenting to solicitation, but immediately ceasing to speak of 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? They judged that he incurs them, and that the confessor is to be denounced, the contrary opinion being rejected, which they judged not to be probable.
3. Whether a confessor in soliciting, because of smallness of matter, is to be denounced? Since in venereal matters smallness of matter is not given, and, if it were given, in the present matter it would not be given, they judged that he is to be denounced, and that the contrary opinion is not probable.
4. Whether a confessor who solicits a woman saying in Confession that she wishes to confess on the next day, and dissuades her from Confession, is to be denounced? If the solicitation takes place outside the place of Confession, and without pretext of Confession, they judged the negative opinion to be probable; otherwise, if in the confessional, or in the place of Confession.
5. Whether a priest lacking jurisdiction, if he solicits a penitent in Confession, is to be denounced? They judged that he is to be denounced, and that the negative opinion is not probable.
6. Whether an interpreter, if he solicits a penitent in Confession, is to be denounced? They judged that the negative opinion is not without probability.
7. Whether one commanding a confessor that he solicit in Confession is to be denounced? They judged that the negative opinion is not without its probability.
8. Whether, when the confessor and the penitent mutually solicit one another, the confessor is to be denounced? They answered in the affirmative, and that the negative opinion is not probable.
9. Whether a confessor who has been solicited, if induced by fear he consents to the solicitation, is to be denounced? They judged that he is to be denounced, and that the negative opinion is not probable.
10. Whether a confessor incurs the penalties of the Apostolic Constitution against solicitors if he solicits a woman in the other Sacraments, namely of Baptism, of Matrimony, and is to be denounced, and once denounced can be punished by the Inquisitors? As to each article they judged the negative opinion to be probable.

11. Whether a confessor who solicits a penitent to illicit acts outside venereal acts is to be denounced? They judged the negative opinion to be probable.
12. Whether a confessor, if he praises a penitent for beauty and charm, is said to solicit her, and therefore is to be denounced? They judged that, if that praise is serious and breathes forth nothing of a depraved intention, the negative opinion is probable. But if otherwise, that it is not probable.
13. Whether a confessor is to be denounced who abjured because of the solicitation of another?[1] They judged that the negative opinion is not probable, and therefore that he is to be denounced; which also was resolved on July 26, in the year 1628.
14. Whether someone is bound to denounce a soliciting confessor, if he has heard this not from persons worthy of faith, but only from frivolous persons? They judged that the negative opinion is not without probability.
15. Whether a confessor is to be denounced who, sitting in the confessional, solicits a woman standing before the confessional, not simulating Confession? They judged that the negative opinion is not without its probability.
16. Whether a confessor is to be denounced who, while hearing Confession, gives a gift to a woman, so that by this fact he is said to have solicited her? They answered the same as to the twelfth.

Thus far from Cardinal Albitius (in the work *On Inconstancy in Faith*, c. XXXVIII, n. 65). But Benedict XIV confirmed all and each of these decrees in the Bull *Sacramentum*.

(1) That is, one who on account of another preceding solicitation appeared before the Inquisitor and abjured, namely detested heresy; for since abjuration is a detestation of heresy, someone ought to abjure insofar as he was a heretic or suspected of heresy, and such a solicitor was held to be, who therefore had to abjure at least for caution. If the suspicion of heresy was slight, he was said to abjure de levi; if vehement, to abjure de vehementi. See Diana, part i, on the power of Inquisitors. - Ferraris, V. Abjurantes.

II. Response of the Sacred Penitentiary, 1832.

"The penitentiary canon of the Church of Andria, Marianus, asks that the three following doubts be solved by the Sacred Penitentiary, namely: '1° .... 2° whether a soliciting confessor incurs by the fact itself privation, or inhabilitation, for the celebration of Mass? 3° whether he who has not denounced the solicitor within the month, once the denunciation has followed, can be absolved by anyone?'"

To 2. "The penalty of perpetual inhabilitation for the celebration of the Sacrifice of the Mass, inflicted by Benedict XIV against priests soliciting to shameful things, is not incurred in the forum of conscience except after juridical denunciation and condemnation."

To 3. "Denunciation having been made, even after the time prescribed by ecclesiastical law, once the reservation has ceased, also the case with the annexed censure can be absolved by any confessor."

III. Instruction of the Congregation of the Holy Office, 1867, to Bishops.

"Those things which the Supreme Pontiff of glorious memory Benedict XIV, in the Constitution issued on June 1, 1741, whose beginning is *Sacramentum Poenitentiae*, confirmed and decreed, are reduced especially to these four heads. In the first place, just as had already been sanctioned before,

especially by Gregory XV in the Constitution which, given under date August 30, 1622, begins *Universi*, all local Ordinaries equally with Inquisitors are deputed judges for inquiring and proceeding, and for taking notice with condign penalties, against those soliciting to shameful things in Confession, although they be in any way exempt from ordinary jurisdiction.

"The same likewise, as had also been prescribed before, obliges all priests constituted for hearing sacred Confessions to admonish their penitents that they bring such solicitors as soon as they can before the Inquisitors or local Ordinaries; and not to absolve those penitents who refuse to obey in fulfilling this duty. Moreover, in the third place, there is reserved to the Apostolic See, except at the point of death, the case of those who falsely charge innocent priests before ecclesiastical judges with solicitation, or wickedly procure that this be done by others. Fourth finally, every faculty and jurisdiction is taken away from any priest whatsoever for receiving the sacramental confessions of a person who is an accomplice in a shameful sin committed against the sixth precept of the decalogue, unless an altogether extreme necessity urges, namely if in the very point of death another priest is lacking who may discharge the office of confessor, or cannot be called or come without some grave infamy or scandal about to arise (Constitution of the same Benedict XIV, *Apostolici muneris*, February 8, 1745). And the case of those confessors who have dared to absolve an accomplice in a shameful sin is reserved to the Apostolic See.

"There is surely no doubt that all and each of these prescriptions, prohibitions, reservations extend their force universally to all nations, and are to be observed everywhere on earth firmly and inviolably. This indeed is most evident even to one reading the Constitutions of Gregory XV and Benedict XIV; and this same thing has been confirmed by the approval of succeeding Pontiffs, as occasion has offered itself, down to this day. And in fact, to the Apostolic Vicar of Cochin-China asking: 1° whether the Constitution of Benedict XIV against solicitors obliges also Franciscan missionaries who exercise ministry in Cochin-China? 2° whether the same Constitution can be restricted and moderated in some case because of the great scarcity of confessors in the same Kingdom of Cochin-China? by order of Pius VI, in the year 1775, it was answered by an opportune Instruction: to 1: in the affirmative; to 2: in the negative. And very recently Our Most Holy Lord Pope Pius IX, by a Decree of this Supreme Inquisition, under Thursday, June 17, 1866, declared: In the faculties by which Bishops and other local Ordinaries, by Apostolic concession, have power of absolving from all cases reserved to the Apostolic See, the cases reserved in the Bull of Benedict XIV which begins *Sacramentum Poenitentiae* are always in the future to be excepted and to be held as excepted. Moreover, he commanded that this Decree be signified, without any exception, to all Ordinaries everywhere on earth who are endowed with the aforesaid faculty of absolving. Wherefore all local Ordinaries must strive with the greatest effort that the vigor of the things which are salutarily provided in the aforesaid Constitution not gradually grow weak anywhere. But the Eminent Father Cardinals, Supreme Inquisitors, recently learned that the same Constitution is not everywhere, as would be fitting, being put into execution, and that in some places certain abuses have crept in, both in fulfilling the burden of denunciation and in instituting judgment against solicitors, which without danger to justice and provident severity could by no means be tolerated. Therefore they judged that it would be neither inopportune nor displeasing to the local Ordinaries if the things which have been decreed against these same abuses by this Supreme Congregation according to the paths of the Sacred Canons, collected into one, be kept before the eyes. For this purpose they ordered the present Instruction to be published.

1. Persons, whether males or females, whoever they may be, solicited to shameful things in confession, or on occasion or pretext of confession, just as is explained in detail in the mentioned Constitution, must bring the matter before the Holy See or before the Ordinary of the place.
2. It is necessary to denounce any priest whatsoever, even one lacking jurisdiction, who solicits in Confession, or even consents to the solicitation of the penitent, although he immediately ceases to speak of the shameful matter, defers its completion to another time, and does not furnish absolution to the penitent (from the Decree of February 11, 1661, confirmed in the Constitution *Sacramentum*).
3. Denunciations of this kind can be omitted by no one without mortal fault. Concerning this matter penitents must be admonished, nor does their good faith excuse from admonishing and instructing them.
4. Priests constituted for hearing sacred Confessions who do not admonish their penitents concerning this obligation must be punished (from the declaration of March 20, 1624; October 1, 1626, apud Albitius).
5. Penitents who have been admonished and wholly refuse cannot be absolved; but those who, on account of a just cause, must defer the denunciation, and promise seriously that they will make it as soon as they can, can be absolved.
6. Anonymous denunciations against those soliciting to shameful things have no force; for denunciations must be made in court, namely before the Bishop or his delegate, with the intervention of an ecclesiastical man who holds the office of notary, and with oath and with the expression and subscription of one's name; nor does it suffice if it is done through receipts or through letters without the name and surname of the author (from the declaration of March 20, 1624; October 1, 1626, apud Albitius). Besides, it is prohibited that, in receiving denunciations, witnesses be present besides the judge and the notary, both ecclesiastical men, furnished with a special deputation of the Bishop drawn up in writing. It must also be guarded against that those denouncing be asked whether they consented to the solicitation; and it would be most fitting if nothing be noted in the records concerning such consent, however spontaneously manifested (from Urban VIII, April 17, 1624).
7. The burden of denunciation is personal and must be fulfilled by the solicited person herself or himself. But if that person is impeded by most grave difficulties from being able to accomplish this, then either personally, or by letter, or through another person well-disposed to him or her, let the person approach his or her Ordinary, or the Holy See through the Sacred Penitentiary or also through this Supreme Inquisition, all circumstances having been set forth, and then let the person conduct himself or herself according to the instruction which will be received. But if necessity urges, let the person conduct himself or herself according to the counsels and admonitions of his or her confessor. But if, detained by no impediment, the person wholly refuses denunciation, in this case and the other cases mentioned above the confessor is to be praised who has not denied his assistance to the penitent, and who has consulted either the Ordinary or the Holy See for opportune provisions, the name of the penitent nevertheless

being suppressed. Approved authors hand down the formulas to be used in these cases, among whom are Pignatelli, t. 1: consultation 104; Carena, Albitius, etc.

8. The case not infrequently occurs that a confessor or another ecclesiastical man is deputed by Bishops (to whom, indeed, this power belongs) to receive denunciations in a matter pertaining to the crime of solicitation without the intervention of a notary. A sheet is added to this Instruction concerning the manner in which, in these cases, the denunciation ought to be drawn up.[2] For those men who are especially suitable are destined to this most grave office, and they must be instructed concerning the act of denunciation to be received in judicial manner, and admonished that immediately after the denunciation has been received, they should at once transmit it cautiously to the Bishop himself by whom they were deputed, and should retain for themselves no copy or any trace of the act drawn up. And in nearly this manner the office of denouncing is fulfilled without difficulty. Certainly it must be effected by the local Ordinaries that it not be necessary to apply to places subject to their jurisdiction what was declared for the Missions of Pernambuco in America on January 22, 1627: namely, that solicited women are not bound to denunciation if the ministers of the Inquisition and the Vicars of the Bishop dwelling in distant regions cannot be approached without grave inconvenience.

9. If in denunciations, as not rarely happens, other persons perhaps likewise solicited are indicated, or persons who can in some way bear testimony concerning this crime, all these also are to be examined separately and in the judicial form enunciated above; and first through general questions, then by degrees, so far as the matter allows, proceeding to particulars, they must be interrogated whether and how they themselves were really solicited, or saw or heard that other persons had been solicited.

10. Once a denunciation has been received, procedure is not had immediately, but the ecclesiastical Superior must diligently inquire whether the person denouncing is worthy of faith. The crime of solicitation is for the most part perpetrated secretly; hence it is a privilege that in causes which are instituted against this crime, attestations even singular are admitted for making full proof. But in the mentioned Constitutions of the Supreme Pontiffs it is prescribed that one not proceed with singular witnesses unless presumptions, indications, and other supports concur. Therefore the weight of each denunciation, the qualities and circumstances, must be weighed seriously and accurately; and before proceeding against the denounced person, it must be clear and explored to the judge that the women or men denouncing are of good name and are not being led to accuse by enmity or by another human affection. For it is necessary that singular witnesses of this kind be free from all private affections, so that full faith can be given to them (Instruction by order of Pius VI, 1775).

11. This is the custom of this Supreme Inquisition: that after one or another denunciation it be rescripted that the denounced person be observed, that is, that he be held suspect concerning the reported crime in such a way that, as soon as the matter will have been explored through new denunciations, he is to be called into judgment. For the most part procedure is customarily had only from the third denunciation. Parish priests, or men of proven faith and distinguished virtue, especially ecclesiastics, are called to formal examination, who, with oath concerning the truth to be told and the secret to be kept, are examined concerning the qualities

of the denouncing persons and of the denounced person, and concerning their mutual hatreds and enmities. These diligences having been completed, the accused is brought into judgment, and before the judge, with the intervention of an ecclesiastical man who acts as notary, bound by oath to tell the truth, he must answer concerning each circumstance of every denunciation and examination. It is most carefully guarded that the names of the denouncing persons not be manifested to the accused, and that the sacramental seal not in any way be violated.

12. When the truth of the committed crime has become clear, the accused having been admitted to defense as the laws require, one must come to imposing upon him, in perpetuity, the prohibition that he not receive confessions, by withdrawing all and any faculties whatsoever for that office, even those imparted to him by any privilege whatsoever or by the Holy See itself. The Bishop himself, and not another delegated by him, is to pronounce a sentence of this kind; and according to the measure of the fault, and all circumstances being considered, let him also impose upon the accused the other penalties which are decreed in the above-said Pontifical Constitutions. Moreover, if the accused in judgment has confessed the crime, he must make a suitable abjuration, so that he may thus purge himself of that suspicion of heresy which he has incurred; and by this penalty also let him be punished in the sentence itself. It is to be noted that all penalties of this kind, and the very inhabilitation for celebrating the Most Holy Sacrifice of the Mass prescribed in the Decree of Benedict XIV of August 5, 1745, are only *ferendae sententiae*. Nevertheless one must abstain from inflicting degradation and delivery to the secular arm; for that, indeed, was established by Gregory XV; besides, it must be held to have been imposed rather for terror than so that it be committed to execution (Albitius and Benedict XIV, private letter of November 11, 1743 to Azevedo).

13. Those who, having in no way been forestalled by denunciations concerning this crime, conquered by conscience, present themselves to the Ordinary of the place or his delegate, spontaneously confess the crimes of solicitation committed by themselves, and ask pardon, must be dismissed with a suitable abjuration and merely salutary penances, with the counsel or precept added that they abstain from receiving the sacred Confessions of the solicited persons; nor are they to be affected by the other penalties previously mentioned, even if denunciations should afterward accede. But those who, having already been forestalled in judicial form, but not yet cited, present themselves of their own accord; and likewise those whom the Ordinary of the place will have detected, from denunciations afterward received, to have confessed in spontaneous appearance a truth not integral but diminished, do not enjoy the benefit of impunity; nevertheless, according to the prudence of the Ordinary himself, let them be punished more mildly.

14. What in these causes, whether treated by Apostolic commission or by the proper right of Bishops, must be cared for and observed in the greatest degree is this: that the same causes, as pertaining to the faith, be conducted most secretly, and after they have been defined and already handed over to execution, be altogether pressed under perpetual silence. All ministers of the ecclesiastical Curia, and any others who are assumed for treating these causes, or advocates for defending them, must take an oath concerning the secret to be kept; and the Bishops themselves and other local Ordinaries are bound to keeping the secret as is provided in law, cap. *Statuta* fin. *de haer.*, in 6; and in Clementine *Multorum*, § *porro*, *de haeret*. But those

who satisfy the burden of denunciation, and those who in these causes are subjected to examination, are bound to take an oath at the beginning concerning the truth to be told, and, the act completed, concerning the secret to be kept, touching the sacrosanct Gospels of God, even if they are priests. If these things are held cautiously and holily, no danger of ill-will, infamy, or any other danger whatsoever can be feared, which may restrain either witnesses from speaking the truth, or competent judges from investigating the crime of solicitation and taking notice of it with condign penalties.

15. It was indulged by Pius VI, in the Instruction of which mention was made before, given in the year 1775 to the Apostolic Vicar of Cochin-China, that since in those so remote and disparate regions it is most difficult to observe exactly all those things which must be observed in these causes; and since, if any of these are omitted, justice does not suffer that penalties be inflicted against the accused, concerning whose crime in judicial manner it has not yet been sufficiently established, then perhaps it would be more advisable if, outside the order of judgment, procedure be had for meeting so great an evil by less solemn and more expeditious modes, which in particular cases the prudence of the Apostolic Vicars joined with zeal for souls will suggest. But now anyone sees that this indulgence, made for places so remote and disparate, is neither common to all nor can by right be introduced anywhere without the authority of the Apostolic See.

16. Besides, if local Ordinaries in drawing up processes, or even after the process has been drawn up, in pronouncing sentence against those soliciting to shameful things in Confession, become involved in graver difficulties, they will be able, the acts having been transmitted, to refer the matter to this Supreme Congregation, which, as often happens, will hand down particular instructions accommodated to individual cases, and, if it has been expedient, will itself pronounce the definitive sentence. ...

Given at Rome, February 20, 1867."

(2) The Acta give this, vol. III, p. 505.

V. Instruction Published by Order of the Sacred Congregation de Propaganda Fide on Marriages

Rome, 1821.

To the Venerable Brothers, Bishops, Apostolic Vicars in the Empire of China and the Kingdoms and Provinces adjacent to it.

Venerable Brothers.

The question concerning disordered and clandestine marriages among the Chinese has for a long time vexed not only your minds, Venerable Brothers, and the minds of the Sacred Workers who labor in cultivating that difficult field of the Lord, but has also exercised in no small measure the studies of this Sacred Congregation. And that not only for that cause by which St. Augustine, the light of the Church, professed that the question concerning Marriages is very obscure, and its recesses almost inexplicable; but, what is especially to be lamented, on account of the corruptions of men, darkening the appearance and beauty of the honorable bond of Nuptials. Therefore, solicitous that its own

honor may be restored and stand firm for the great Sacrament, the S. C. has judged that an Instruction of this kind, inscribed to you, Venerable Brothers, should be prepared, in order that you may communicate it with Missionaries, Parish Priests, and Confessors. But the matter must be explained in order from the beginning.

I. Indeed, by your letters, as you well remember, given several times to this S. C., you signified that an evil custom had grown among very many Christians, unworthy of so great a name, namely, that after betrothals had been entered upon, and carnal copula had been had with one woman, they thereafter contract Matrimony with another, the common rites of the Empire and the rites of the Church customarily used there being observed. Concerning this matter, anxiously, and according to the charity with which you burn toward the little sheep committed to your solicitude, you asked from your Mother and Teacher a remedy suitable to the disease growing strong among those nations; and you asked whether that first kind of union, or the second, had the force of a just Matrimony, when within the borders of the Chinese Empire and the surrounding Kingdoms and Provinces the Tridentine Decree on Matrimony had not yet been promulgated.

II. And the Sacred Congregation indeed earnestly exhorted you and your Workers that in every way you strive, both by private and public sermons, and especially in the administration of the Sacrament of Penance, to deter the Faithful from clandestine marriages, which the Holy Church of God, for most just causes, has always detested and prohibited, and from which grave sins take their origin; and especially that they be gravely admonished and under threat of divine judgment who remain in a state of damnation, while, the former wife with whom they had contracted having been left behind, they openly contract with another and live with her in perpetual adultery. Nor, content with these admonitions drawn from the clear fountains of the Holy Synod of Trent, did it fail, for the solution of the proposed Doubt, to enjoin that there be observed the prescription of the Chapter *Is qui*, 30, *de Sponsal. et Matrim.*, received from Gregory IX, Pontiff Maximus, and published from the pure fountains likewise of Pontifical Law among all Catholics. For when the Pontiff was asked what had to be done concerning a man who, after betrothals had been entered into with a woman and intercourse had been had, then married and knew another in the face of the Church, he gave a response of this kind: "He who gave faith to some woman that he wished to take her as wife, and if afterward he knows her carnally, and takes another in the face of the Church, is bound to return to the first: because, although the first marriage seems presumed, nevertheless proof to the contrary is not to be admitted against such a presumption. Hence it follows that the marriage afterward contracted in fact is not a true marriage, but null." This prescription the S. C. undertook to commend to your studies from the year 1786; and the same, in the year 1804, Venerable Brother Stephen Borgia, Cardinal of bright memory, likewise in the name of the Sacred Congregation, writing to one of you, namely to the Apostolic Vicar of Cochin-China, declared should be retained more explicitly.

III. But now, after so great a remedy and counsel had been offered by the S. C., it was hoping that, for rightly establishing the just marriages of those Christians and restraining clandestine ones, with God's help, nothing or almost nothing would remain, when after not a few years it received letters of the same Apostolic Vicar of Cochin-China, in which, besides other things, he signified: that the observance of the Chapter *Is qui* could scarcely, or not even scarcely, be introduced into those regions because of the invincible ignorance of the Chinese concerning that law; that among the heralds of the Divine word who devote vigorous labor to instructing the people, there had been almost no one who

taught that, from clandestine copula following betrothals, a valid Matrimony was to be judged to exist in the external Forum; but that to teach this henceforth would be harsh because of the very grave inconveniences to be feared therefrom, and especially because of scandals about to arise both among Christians and among Gentiles, whose firm persuasion is: that no just Matrimony stands except that which has been celebrated in the sight of the Church, or of the civil law of the Empire.

IV. These letters having been received, the S. C. deliberated that nothing should be defined before letters were sent to you all, Venerable Brothers, by which, as you know, inquiry was made concerning the origin of the opinions among those nations concerning just and illegitimate nuptials; concerning the whole doctrine on Matrimonies explained by the Missionaries; concerning the ecclesiastical and civil rite of nuptials; and concerning the inconveniences and dangers to be feared if at any time the observance of the mentioned Chapter *Is qui* among the Chinese should be introduced.

V. And you indeed made the S. C. more certain by responses almost consistent with one another, which perhaps could have fully satisfied the Most Eminent Fathers, had they not judged that in defining a matter of such great moment they needed diligence beyond what can be said, and the highest maturity. And so other letters in the name of the S. C. came to you, and new responses were given by you, from which the Doubts which follow were formed.

Doubt I. (which in the series of propositions is the seventh) - Whether in China, Cochin-China, and the regions of both Tonkins, in which the Tridentine Decree on Matrimony has not yet been promulgated, copula following betrothals induces true Matrimony, even if the betrothed persons, while coming together, moved not by marital affection but by lust, think that they have rushed into an illicit and fornicary act, incapable of constituting a just Matrimony, and on that account think that the faculty of passing to other vows has not been taken away from them, since this persuasion prevails among those nations?

Doubt II. (which in the series is the eighth) - What counsel is to be given to the Missionaries of those regions concerning the manner to be observed, especially in the administration of the Sacrament of Penance, with those Faithful who, after Betrothals and copula had with one woman, publicly contracted nuptials with another, which they themselves in good faith judge to be just and valid?

Doubt III. (which in the series is the ninth) - Since the Apostolic Vicars and Missionaries urgently ask for a remedy suitable to restraining clandestine unions, and to averting the most disastrous harms about to arise from them, what counsel is to be given, or what is to be prescribed?

For unraveling these Doubts more clearly and accurately, it will help to observe: to the Most Eminent Fathers it seems incredible that the persuasion mentioned in the first Doubt prevails so greatly among the Chinese that it can be judged common, namely, that from Betrothals and copula had clandestinely the faculty of passing to other vows has not been taken away from them. For since the S. C. prescribed that the law contained in that chapter be explained to those nations as often as occasion offered itself; and since it is ascertained with how much zeal and solicitude you have been accustomed to comply with the counsels and mandates of the S. C.; and moreover after counsels and mandates of this kind were received, for several years nothing was reported by you concerning that persuasion; the Most Eminent Fathers rightly think that Missionaries and Catechists did teach the doctrine of the Chapter *Is qui*, not indeed always, but as the matter required, to some of the faithful,

and that these afterward could teach others and still others. And certainly one of you narrated that a certain Missionary, more clearly than the others, openly taught before many leading men that Betrothals after carnal copula had between the betrothed must be judged according to the laws of the Church as Matrimonies, unless the contrary is certainly demonstrated. By this fact indeed it is easily understood that other Missionaries taught the same less clearly, and that those leading men easily communicated with other faithful this most grave rule of the Church. Therefore there will be, not many, but nevertheless there will be, some among whom that persuasion does not prevail; there will be very many among whom it will prevail. Therefore that persuasion will stand on one foot, and fall on the other.

See then, Venerable Brothers, that provision must be made for each kind of the Faithful by suitable counsels and teachings. In order that this may succeed accurately, place before your eyes what Father Pirhing, a most approved explainer of the Sacred Canons, brings forward in elucidating the chapter *Is qui*. For in book IV of the Decretals, title 1, section 1, § 5, after the mentioned rule or prescription of Gregory IX, he adds these things: "The reason is that the Church, from carnal copula, presumes conjugal consent in the betrothed to exclude sin, namely, that the Betrothed man and the Betrothed woman wished to know one another not with fornicary but with marital affection; because a delict is not to be presumed, and this is a presumption of Law and concerning Law, that is, altogether certain and undoubted, against which proof is not admitted; and consequently the Betrothed man asserting that he did not know the Betrothed woman with marital affection or with the mind of contracting Matrimony with her would not be heard. Covarruvias, in *Epitome*, book IV of the Decretals, p. I, chapter IV, § 1, nos. 1 and 2. It is confirmed, because carnal copula following after Betrothals concerning the future is a sufficient sign of present consent unto Matrimony; and the Betrothed persons through it are judged to hand themselves over to each other; which presumption has place in the contentious and judicial Forum only, but not in the forum of conscience and penitential forum. Hence if the Betrothed man truly had known the Betrothed woman not with marital but with fornicary affection, there would not be a true marriage in the penitential Forum and before God, because the Pope cannot make it that without expressed or tacit consent there be a true Matrimony. Hostiensis here, col. 2, at the end. Fagnanus here, nos. 6 and 7." Thus far Father Pirhing, who, exhibiting this doctrine, affirms that the same is published among all the treaters of the Canons. Stand here, therefore; cleave here. Namely, even in those regions in which the Tridentine decree on Matrimony has not been promulgated, if the Betrothed man and the Betrothed woman have come together with one another not with marital but with fornicary affection, not for that reason do their Betrothals pass into true Matrimony before God; and therefore before God, or in the Forum of conscience, the faculty of passing to other vows has not been taken away from them, if a legitimate occasion for dissolving the preceding Betrothals should offer itself.

Besides, if the copula has been brought into the external and judicial forum, the same persons could be held by the ecclesiastical judge in the likeness of legitimate spouses; and therefore, so long as one of them lives, be prohibited from any other marriage, because this is a presumption of law and concerning law, that is, wholly certain and undoubted, against which proof is not admitted; and consequently the betrothed man asserting that he did not know the betrothed woman with marital affection or with the intention of contracting marriage with her would not be heard.

Since these things are so, the S. C. judges that answer should be made to the seventh Doubt in this way, namely: - If in the aforesaid regions, where the decree of the Holy Council of Trent has not been published, two betrothed persons afterward have carnal copula between themselves, yet not from marital affection, but from illicit and fornicary affection, this copula of theirs by no means makes their preceding betrothals pass into true marriage before God; or, in the forum of conscience they remain free, and they will be able, if their aforesaid betrothals have been dissolved from some legitimate cause, licitly to enter other nuptials. Nevertheless, if their copula is proved in the external and judicial forum, they can, from the presumption of Law and concerning Law, against which proof is not admitted, be compelled by Ecclesiastical Power to hold themselves as true spouses, to whom, the consort living, any marriage whatsoever is interdicted. From Chapter 30 *De Sponsalib. et Matrim.*

But a step must be made toward unraveling the other Doubt, which is the eighth in the series of propositions: namely - what counsel is to be given to the Missionaries of those regions concerning the manner to be observed (especially in the administration of the Sacrament of Penance) with those Faithful who, after betrothals and copula had with a woman, publicly contracted nuptials with another, which they themselves in good faith judge to be just and valid. - The Most Eminent Fathers judged that this diligence and caution must be observed with a penitent of this kind. Let the confessor peacefully interrogate him whether he had intercourse with that first woman moved by marital affection, or by illicit and fornicary affection. If the penitent answers this latter, he will dismiss him in peace, nor will he move any doubt concerning the validity of the marriage contracted afterward. But if the penitent answers that he came together with that first woman with marital affection, he will gravely admonish him that he is not the husband of the other, but of the first, and that he must altogether return to her according to the prescription of the Chapter *Is qui* so often mentioned. But let the Missionaries also have another caution before their eyes: namely, if it should happen that a penitent of this kind in the external forum could by no means prove the carnal copula had by himself with the first woman, and therefore should be compelled by the judgment of the Ecclesiastical President to hold in honor the nuptials contracted in the sight of the Church; if this should happen, he ought patiently to tolerate any penalty whatsoever, even excommunication, rather than, being certain that he is entangled by the impediment of bond, have intercourse with the other not without grave fault. For the prescription of Innocent III, Pontiff Maximus, expressed in chapter 44 *de Sent. Excom.*, is known: "If one of the Spouses" (so he says) "knows for certain an impediment of the union, because of which he cannot exercise carnal commerce without mortal sin, although he cannot prove it before the Church ... he ought humbly to sustain rather the sentence of excommunication than to commit mortal sin through carnal commerce."

From the things considered thus far, the S. C. has comprised the Response to this second Doubt in this way: - If some one of the Faithful, after betrothals and copula then had with one woman, contracts marriage publicly with another woman, and in this state approaches some Missionary in the Tribunal of Penance, he ought to interrogate him whether he had that copula with that first woman from marital affection, or from illicit and fornicary affection. If he answers this latter, he will move no doubt for him concerning the validity of his present marriage. But if he answers the first, he will gravely admonish him that he is the husband not of the second but of the first woman, and that he must altogether return to her. But there is added for the instruction of the same Missionaries that if perhaps this man, not being able to prove in the external forum the carnal copula had by himself with that first woman, should hence be forced by Ecclesiastical Power to remain with the other woman

with whom he contracted marriage publicly, he ought humbly to sustain any penalty whatsoever, even excommunication itself, rather than exercise carnal commerce with this other woman not without lethal fault. From chapter 44 *de Sent. Excom.*

It must now be established what counsel is to be given to you, Venerable Brothers, and to the Workers who labor in the Chinese field of the Lord, so that clandestine unions may more easily and happily be restrained, and the scandals and most disastrous harms which could arise from them be cut off; which was proposed in the third Doubt. Certainly it cannot be denied that the greatest remedy and protection for cutting off clandestine unions is placed by the Church in the promulgation of the celebrated Tridentine decree on Matrimony; and the Apostolic See indeed, as often as this promulgation has seemed advantageous to Bishops and Apostolic Vicars, has left nothing undone by which it might show itself easy to the same, and prescribe to such a disease a medicine suitable to it. This it did in the Archiepiscopate of Kiev, whose example one of you indicated in his letters, namely the Venerable Brother Apostolic Vicar of Cochin-China. But concerning the example of Kiev, which especially pertains to our matter, the excellent work of Benedict XIV, Pontiff Maximus, *On Diocesan Synod*, book XII, chapter V, §§ 8, 9, 10, and 11, must be read; and likewise the Constitution of the same Pontiff *Etsi Pastoralis*, § 8, on the Sacrament of Matrimony, n. 1, must be read: - Let the Ordinaries of places take care that the Decree of the Holy Council of Trent *de Reform. Matrim.* be divulged and published in the places and Parishes of the Greeks and Albanians as often as they judge it expedient. - But it is also certain that wherever that Decree was promulgated, and there the prescription concerning the presence of the Parish Priest could by no means be observed, either because the Parish Priest was wholly lacking or could be approached only with difficulty, the Apostolic See declared that in those places the presence of witnesses was enough for validly establishing marriages: so that if the whole Decree could not be observed, nevertheless it should be observed insofar as it could be.

But now the Most Eminent Fathers, directing their mind to such prudent economy of the Apostolic See, and likewise with considered and meditated mind weighing the letters given to the S. C. repeatedly by you, Venerable Brothers, concerning this matter, also looking around at the civil and sacred reasons, and at the very face of the Empire of China, and of the provinces and kingdoms which are joined to it, judged, if it should please Our Most Holy Lord, that in those places in which by mature counsel you will have judged it expedient, you take care that the entire decree of the Council be duly promulgated, or at least insofar as it is permitted to be done, according to the rules handed down a little before.

Wherefore all and each of the marriages which henceforth it shall happen to be celebrated among the Chinese, that they may be called and may be valid, will have to be entered before the Parish Priest, or Missionary, or any other legitimately designated person, and two or three witnesses, and these, insofar as it is permitted, Christians. But in those places in which the Decree could not be promulgated entire, or, if it has been promulgated, nevertheless the Parish Priest or another duly designated person is absent, or easy approaches to him are not present, marriages can indeed be entered, even without the Parish Priest, before at least two witnesses, and these, if it can be done, Christians; "yet in such a way that the contracting parties, lest the dignity of the Sacrament become vile, are bound by law to present themselves before the Missionary or Parish Priest whenever he has returned, so that they may rightly receive the blessing from him. But the Missionary or Parish Priest,

having returned, when it has been established to him concerning the consent of the spouses, before he blesses the spouses, is to instruct them that a blessing of this kind pertains solely to the rite, not to the validity, of the marriage; and therefore he will not permit that consent again be expressed by new words."

Finally, lest the memory and right of the Tridentine Decree grow obsolete, the S. C. desires that, as often as occasion presents itself, the Missionaries explain it to the people committed to them, and declare it according to the rules just set forth. For it is expedient that especially young unmarried girls themselves have this perceived, lest they suffer themselves to be led into fraud, and by secret promises of nuptials which will have no force, to be enticed to any shamefulness.

And this is the way and manner which, by retaining it, the S. C. judges can, God granting, restrain disordered and clandestine unions, and restore to the great Sacrament its own honor, from which among many it had fallen away.

This sentence of the Sacred Congregation, related to Our Most Holy Lord PIUS, Pope the Seventh by divine providence, by me the undersigned Secretary of the same Sacred Congregation in the Audience held on January 14, 1821, His Holiness benignly approved and ordered to be observed altogether.

Given at Rome, from the Buildings of the S. Congregation, on the 17th day of the month and year as above.

C. M. Pedicini, Secretary.

III. Faculties

III. Faculties, Which Are Customarily Granted to Our Bishops.

Faculties - Form I.

1. "Of conferring orders outside the times and without observing interstices up to and including the presbyterate, if there shall be necessity of priests there."
2. "Of dispensing in any irregularities whatsoever, except those which proceed either from true bigamy or from voluntary homicide; and in these two cases also, if there shall be precise necessity of workers there, provided however that, as to voluntary homicide, scandal does not arise from a dispensation of this kind."
3. "Of dispensing concerning a defect of age of one year[1] on account of scarcity of workers, so that they can be promoted to the priesthood, if otherwise they shall be suitable."
4. "Of dispensing and commuting simple vows into other pious works, and of dispensing for a reasonable cause in simple vows of chastity and of religion."[2]
5. "Of absolving and dispensing in any simony whatsoever; and in real simony, the benefices having been dismissed, and concerning fruits badly received, some alms or salutary penance having been enjoined at the judgment of the one dispensing; or even, the benefices having been retained, if they are parochial and there are not those who can be placed over the parishes."
6. "Of dispensing in the 3rd and 4th degree of consanguinity and affinity, simple and mixed only, and in the 2nd, 3rd and 4th mixed degrees, not however in the 2nd alone as to future marriages; but as to past marriages, also in the 2nd alone, provided it in no way touches the first degree, with those who are converted from heresy or infidelity to the Catholic Faith, and in the aforesaid cases of declaring the offspring received to be legitimate."
7. "Of dispensing concerning the impediment of public honesty arising from just" [of justice, according to Feije, *de imp.*, n. 615 (l)] "betrothals."
8. "Of dispensing concerning the impediment of crime, neither of the spouses however plotting, and of restoring the lost right of asking the debt."
9. "Of dispensing in the impediment of spiritual relationship, except between the one lifting and the one lifted."
10. "But these matrimonial dispensations, namely the 6th, 7th, 8th and 9th, are not to be granted except with the clause: provided that the woman has not been abducted, or, if she has been abducted, does not exist in the power of the abductor; and in the dispensation the tenor of faculties of this kind is to be inserted, with expression of the time for which they were granted."
11. "Of dispensing with gentiles and infidels having several wives, so that after conversion and baptism they can retain whichever of them they prefer, if she also becomes faithful, unless the first should wish to be converted."

12. "Of preparing the Holy Oils with the priests whom they can have, and, if necessity urges, even outside the day of the Lord's Supper."

13. "Of delegating to simple priests the power of blessing vestments and other utensils necessary for the Sacrifice of the Mass, where sacred anointing does not intervene; and of reconciling polluted churches with water blessed by a Bishop, and, in a case of necessity, even with water not blessed by a Bishop."

14. "Of granting three times in the year a plenary indulgence to those contrite, confessed, and refreshed by sacred communion."

15. "Of absolving from heresy and apostasy from the faith and from schism any persons whatsoever, even ecclesiastics both secular and regular; not however those who have come from places where the Holy Office is exercised, unless they have offended in places of missions in which heresies roam with impunity; nor those who have judicially abjured,[3] unless they were born where heresies roam with impunity, and after judicial abjuration, having returned there, have relapsed into heresy, and these in the forum of conscience only."

16. "Of absolving from all censures in the Constitution *Apostolicae Sedis moderationi*, dated October 12, 1869, reserved to the Roman Pontiff even in a special manner, excepted the absolution of an accomplice in a shameful sin."[4]

17. "Of conceding a plenary indulgence to those first converted from heresy, and also to any faithful whatsoever at the point of death, at least contrite, if they shall not be able to confess."

18. "Of conceding a plenary indulgence in the prayer of forty hours, to be announced three times in the year on days agreeable to the bishop, to those contrite and confessed and refreshed by sacred communion, if nevertheless from the concourse of the people and the exposition of the Most Holy Sacrament there is no probable suspicion of sacrilege by heretics and infidels, or of offense by magistrates."

19. "Of gaining for themselves the same indulgences."

20. "On each Monday not impeded by an office of nine lessons, or, if impeded by these, on the immediately following day, of celebrating a Mass *de requie* on any altar whatsoever, even portable, and of freeing souls according to their intention from the pains of purgatory by way of suffrage."

21. "Of keeping and reading, but not however of conceding to others, except for a time and only to those priests whom he knows to be especially suitable and honorable, prohibited books, excepted the works of Dupuy, Volney, M. Reghellini, Pigault, le Brun, De Potter, Bontham, J. A. Dulaure, *Fetes et courtisanes de la Grece*, *Novelle* of Casti, and other works treating professedly of obscene things and against Religion."[5]

22. "Of placing regulars over parishes, and of deputing to them their vicars in defect of seculars, with the consent however of their superiors."

23. "Of celebrating twice in the day, if necessity urges, yet in such a way that in the first Mass he has not taken the ablution, - for one hour before dawn and another after noon, - without a minister,

- and under the open sky and under the earth, yet in a decent place, - even if the altar is broken or without relics of saints, - and with heretics, schismatics, infidels, and excommunicates present, - if otherwise it cannot be celebrated. But let him beware lest he use the aforesaid faculty or dispensation of celebrating twice in the day otherwise than from most grave causes and most rarely; in which matter his conscience is gravely burdened. But if it has seemed good to communicate this same faculty to another priest according to the power to be placed below, or to approve the causes of using it for someone who has obtained this faculty from the Holy See, it is seriously enjoined upon his conscience that he communicate the same, or respectively approve the causes, to a few only, and those of more mature prudence and zeal and who are absolutely necessary, nor for any place whatever, but where grave necessity has required, and for a brief time."[6]

24. "Of carrying the Most Holy Sacrament secretly to the sick without light, and of keeping it without the same for the same sick persons, yet in a decent place, if there is danger of sacrilege from heretics or infidels."
25. "Of clothing himself in secular garments, if otherwise they cannot either pass over to the places committed to their care or remain in them."
26. "Of reciting the rosary or other prayers, if they cannot carry the breviary with them, or are not able to recite the divine office because of some legitimate impediment."
27. "Of dispensing, when it shall seem expedient, concerning the eating of meats, eggs, and milk foods in the time of fasts and Lent." See Benedict XIV, Constitution *Libentissime*, June 10, 1745, § *Insula*, whence it is clear that here the faculty is given of dispensing only particular persons. (Z) p. 478.
28. "Of communicating the aforesaid faculties, not however those which require the Episcopal Order, or are exercised not without the use of Sacred Oils, to suitable priests who will labor in their dioceses, and especially at the time of their death, so that, the see being vacant, there may be someone who can supply until the Apostolic See, having been made more certain, which ought to be done as soon as possible, provides in another way through delegates or through one of them; to which delegates by Apostolic authority the faculty is conceded, the see being vacant and in a case of necessity, of consecrating chalices, patens, and portable altars with Sacred Oils, blessed however by a Bishop."[7]
29. "And the aforesaid faculties are to be exercised gratis and without any payment, and are to be understood to have been granted only for a ten-year period,[8] nor can he use them outside the boundaries of his diocese."[9]

(1) See Faculty 3 among Extraordinary C, [p. LXXII](/manuals/konings/iii-faculties#h3). (2) For entering [religion]. (3) Concerning the signification of this word, see [p. LXI, note 2](/manuals/konings/x-declarations-concerning-soliciting-confessors#h1). (4) This faculty comprehends absolutely all censures of the Constitution Apostolicae Sedis, excepted the faculty of absolving: a) an accomplice in a shameful sin; b) a priest who has presumed to absolve an accomplice (Decree of the S. C. of the Inquisition, June 17, 1866), which faculty however, namely of absolving from the censures and penalties in the Constitution of Benedict XIV Sacramentum Poenitentiae, and of dispensing concerning irregularity contracted from violation of the said censures, the Holy See conceded "to individual Archbishops, Bishops and Apostolic Vicars" of the Federated States, but 1° for fifteen cases only; 2° to be exercised in their own Diocese or Vicariate, whether personally, or through their Vicar General, or through suitable confessors deputed by themselves or by the said Vicar; 3° specially for this;

and 4° with expressed mention of Apostolic Authority; 5° in favor only of those priests who, without evident danger of provoking scandal of the faithful, are not able to observe the censures which they incurred by absolving an accomplice; 6° "under this law however, that those thus absolved and dispensed within two months, or another suitable time to be determined by the one dispensing, directly or through the mediation of their own confessor, names having been suppressed, must have recourse to the S. C. de Propaganda Fide, and explain to it how many persons, accomplices in a shameful matter, and how often they absolved from the sin of complicity, and are bound to obey the mandates of the same Sacred Congregation to be borne thereupon, under reincidence into the same censures and penalties if they contravene"; 7° a suitable salutary penance having been enjoined on individuals according to the measure of the faults, and also that they abstain entirely from hearing the confessions of the accomplice person, with other things enjoined which by law are to be enjoined. (See Council Plen. Balt. II, p. CXLVI, I Decree.) (6) p. 486. c) from heresy, from apostasy in faith, and from schism in the cases of which above, faculty 15. d) a person of either sex falsely denouncing some priest concerning solicitation in Confession; Decree of the S. C. of the Inquisition, June 17, 1866. Under what conditions our bishops can absolve from simony, see above faculty 5, p. LXX. (5) See Faculty 2 among Extraordinary C, [p. LXXII] (/manuals/konings/iii-faculties#h3). (6) Concerning this faculty see the Instruction, [p. LIV](/manuals/konings/u-instruction-of-the-s-congregation-de-propaganda-fide-on). (7) See (H) p. 478. (8) Today for a five-year period. (9) Very many things concerning the sense and use of these and the following faculties, insofar as they regard matrimonial dispensations, see in the Appendix to T. II, (A) (a), p. 397 ff. Appendix annotation (6), to p. LXXI. note 2 at the bottom of the page. Since this faculty was granted on Jan. 24, 1868, it is deservedly doubted whether it belongs to those of our Bishops who were created after this day. Moreover, to all Ordinaries, when the case occurs, there is ready at hand the faculty of absolving a priest guilty of this crime, if he is impeded for at least five years from personally approaching the Holy See for absolution. See [p. LXXXI under 6](/manuals/konings/a-principal-testimonies-and-judgments-of-the-holy-see#h7), and n. 1402. II. 2). Appendix annotation (Z), to p. LXXII. Fac. 27. To the doubt proposed by the Bishops of the Province of San Francisco in California, "whether by force of the general faculty made to Bishops under n. 27, namely: of dispensing, when it shall seem expedient, concerning the eating of meats, eggs, and lacticinia in the time of fasts and of Lent, all the faithful of the diocese can be dispensed by a general decree concerning abstinence from meats on some days of Lent": the S. Inquisition, Feria IV, Sept. 15, 1880, replied: "Negatively." Appendix annotation (H), to p. LXXII. Note 2 at the bottom of the page. In the year 1750 the S. C. of the Holy Office wrote these things in rescript to the Procurator General of the S. C. de Propaganda Fide dwelling at Macao: ... "The principal hinge of your doubts rests upon consideration of the faculties which are contained in the first formula, under n. 28 of the aforesaid formula. Since you have seen it noted that the aforesaid faculties cannot be communicated by Apostolic Vicars except to suitable priests who shall labor in their dioceses, for this reason, since you dwell at Macao, where you discharge the office of Procurator for this S. C. de Propaganda Fide, not undeservedly do you suspect that you could indeed have been appointed and declared Vicar General of the province of Houkouang by the Reverend Father Lord of Ecrin, Apostolic Vicar of the same province; but that he could not communicate to you apostolic faculties for the diocese of Houkouang, from which, since you are far absent otherwise, for that reason you do not labor in it. ..." Collect. p. 24. n. 35.

Extraordinary Faculties C.

1. "Of reciting privately, a legitimate cause concurring, Matins with Lauds of the following day immediately after two hours have elapsed after noon, and of communicating the same faculty to ecclesiastical men, whether secular or regular."
2. "Of retaining and reading books prohibited by the Apostolic See, even those professedly dealing against Religion, for the purpose of refuting them; yet let him diligently guard them lest they come into the hands of others, excepted those professedly astrological, judicial, superstitious, and obscene; and of conceding the same faculty also to others, sparingly however, and provided that he can prudently presume that they will suffer no detriment from reading of this kind."
3. "Of dispensing with Deacons of either clergy concerning a defect of age of fourteen months, so that they can be promoted to the Priesthood, if otherwise they shall be suitable."

4. "Of permitting parish priests subject to him, provided a just and legitimate cause concurs, that on those feast days on which the Faithful have been released by Apostolic authority from the obligation of hearing Mass, they themselves may be able to abstain from application for the people, provided that they pray specially for the same people in Mass of this kind."
5. "Of permitting Catholics subject to him that on Fridays, Saturdays, and other days on which the eating of meats is forbidden, they may be able to provide meats to non-Catholics, if it should happen that they are at their table, provided however that contempt of the ecclesiastical law is absent and they use a faculty of this kind soberly and with much circumspection, lest scandal be cast upon Catholics or heterodox persons."
6. "Of deputing some priest in places subject to him with the faculty of consecrating chalices, patens, and altar stones according to the form prescribed in the Roman Pontifical, yet using Sacred Oils blessed by a Catholic Bishop."
7. "Of imparting four times in the year, within the boundaries of his diocese, on the more solemn feasts, the Papal Blessing according to the formula printed in type and inserted, with a plenary indulgence to be gained by those who, truly penitent, confessed, and refreshed by Sacred Communion, have been present at the same Blessing and have prayed to God for the propagation of the Holy Faith and the exaltation of the Holy Roman Church." The Pontifical has the formula, part 3, p. 291, Mechlin edition, 1862.
8. "Of declaring one altar in any church of his diocese to be privileged, provided another privileged altar is not present, for all Sacrifices of the Mass which will be celebrated on the same altar by any presbyter whatsoever, secular or regular of any order."
9. "Of blessing rosaries, crosses, sacred medals, and of applying indulgences to them according to the sheet printed in type and inserted,[10] and also of erecting Confraternities of the Blessed Virgin Mary of Mount Carmel, of the Most Holy Rosary, and of a Good Death, with application of all indulgences and privileges which the Supreme Pontiffs have imparted to the same Confraternities; with the power moreover added of communicating these faculties to presbyters engaged in the sacred ministry."
10. "Of erecting in places of his diocese in which Franciscan Fathers are not present the pious exercise of the Way of the Cross, with application of all indulgences and privileges which the Supreme Pontiffs have imparted to those performing an exercise of this kind, with the power moreover added of communicating this faculty to presbyters engaged in the sacred ministry."
11. "Of promoting Clerics subject to him to the Subdiaconate and other Major Orders up to and including the Presbyterate by title of mission, an oath however having been furnished by the same Clerics before they are ordained Subdeacons, by which they promise, after the manner of Pontifical alumni, that they will perpetually serve their diocese or mission."[11] (kk) p. 473.
12. "Of delegating the blessing of bells, whenever they themselves cannot perform it without grave inconvenience, to priests agreeable to him, the rite of the Roman Pontifical having been observed, and Oils and water blessed by a Bishop having been used; and also without water blessed by a Bishop, if a grave cause concurs."

13. "And the aforesaid faculties are to be exercised gratis and without any payment, nor can he use them outside the boundaries of his diocese."

(10) See this sheet in the Second Plenary Council of Baltimore, p. 311, XIV. (11) Form of oath: "I N., son of N., of the Diocese or Vicariate N., promise and swear that, after I shall have been promoted to Sacred Orders, I shall enter no Religion, Society, or regular Congregation without special license of the Apostolic See or of the S. Congregation de Propaganda Fide, nor shall I make profession in any of them. Likewise I vow and swear that in this Diocese or Vicariate, or in the Mission to which it shall please the Holy See or the S. Congregation de Propaganda Fide to destine me, under the direction and jurisdiction of the Reverend Father Lord Ordinary for the time being, I shall spend my labor and work in administering divine things for the salvation of souls; which I shall also furnish if, with license of the aforesaid Apostolic See, I shall have entered a Religion, Society, or regular Congregation, and shall have made profession in any of them. Moreover I promise and swear that I understand the aforesaid oath and its obligation, and that I shall observe it. So may God help me and these Holy Gospels of God." According to this second manner those must swear who have not yet been assigned to some Mission.

Extraordinary Faculties D.

1. "Of dispensing concerning the impediment of spiritual relationship between the one lifting and the one lifted."
2. "Of dispensing in occult cases and in the forum of conscience only concerning the first and second degree, simple and mixed, of affinity arising from illicit copula, in a line either collateral or even direct, provided that, if there is question of the direct line, no doubt underlies that the spouse can be the offspring begotten by the other of the contracting parties, both in marriages contracted knowingly or ignorantly, and in marriages to be contracted."
3. "Of dispensing with subjects, excepted Italians concerning whom it is not established that they have wholly deserted an Italian domicile, and excepted moreover the case of marriage with a Jewish man or woman, concerning the impediment of disparity of worship, insofar as it can be done without insult to the Creator, and provided that there is complete caution concerning the conditions prescribed by the Church, and especially concerning removing from the Catholic spouse the danger of perversion, and concerning the conversion of the infidel spouse to be cared for according to strength, and concerning the whole offspring of either sex to be educated altogether in the holiness of the Catholic Religion; the instruction printed in type and annexed being observed in the rest."[12]
4. "Of dispensing with his subjects, excepted Italians concerning whom it is not established that they have wholly deserted an Italian domicile, concerning the impeding impediment of mixed Religion, provided that there is complete caution concerning the conditions prescribed by the Church as in the preceding No. 3."[13]
5. "Of dispensing in mixed marriages already contracted, not likewise in those to be contracted, concerning degrees of consanguinity and affinity concerning which he has already obtained Apostolic faculty for Catholics, insofar as the Catholic party, previous absolution from the guilt of incest and censures having been given, can contract marriage anew duly and legitimately with the non-Catholic party, and the offspring received and to be received be declared legitimate, provided that there is complete caution concerning the conditions prescribed by the Church as in the preceding No. 3."

6. "Of sanating in the root marriages contracted, when it is found that there was present a diriment impediment concerning which he himself can dispense from the indult of the Apostolic See, and there would be great inconvenience in requiring renewal of consent from the innocent party; the party conscious of the impediment having nevertheless been admonished concerning the effect of this sanation."
7. "Of absolving the contracting parties in all and each of the cases set forth above, provided there is need, from the guilt of incest and from censures, a suitable salutary penance having been imposed according to the measure of the faults, and of declaring the offspring received and to be received legitimate."
8. "Of subdelegating the present faculties to his Vicars General whenever he must be absent from his own residence beyond a day, and to two or three presbyters agreeable to him in the more remote places of his own diocese, for some number however of the more urgent cases in which recourse to himself cannot be had." (44) T. II, p. 427.

"But His Holiness willed and altogether commanded that the aforesaid Bishop use the above faculties only when just and grave causes accede, and gratis, some suitable alms nevertheless having been enjoined, to be disbursed for a pious work at the judgment of the Bishop himself; and that, the ten-year period having elapsed" (today five-year period), "he ought to make the Apostolic See more certain concerning each dispensation granted."

(12) See this Instruction, Second Plenary Council of Baltimore, p. 311, XIV. (13) And provided that, if there is question of marriages to be contracted, no other diriment impediment obstructs, as is clear from the immediately following faculty and other documents of the Holy See.

Extraordinary Faculties E.

"Of dispensing in either forum with Catholics subject to his jurisdiction, in marriages whether contracted or to be contracted, concerning the following impediments":

1. "Concerning the impediment of the first degree of affinity in the collateral line arising from licit copula, for" (e.g., ten) "cases."[14]
2. "Concerning the impediment of the second degree of consanguinity or affinity mixed with the first in the transverse line, for" (e.g., sixty) "cases."
3. "Concerning the impediment of the second degree of consanguinity or affinity in an equal transverse line, for" (e.g., one hundred) "cases."
4. "Concerning the public impediment of the first degree of affinity, arising from illicit copula, in a line either collateral or even direct, for" (e.g., thirty) "cases, provided that if there is question of the direct line, there is no underlying doubt that the spouse is the offspring begotten by the other of the contracting parties."

"Moreover His Holiness granted to the aforesaid Bishop, in all and each of the cases set forth above, the faculty of absolving the contracting parties, provided there is need, from the guilt of incest and censures, a suitable salutary penance having been imposed according to the measure of the faults, and of declaring legitimate offspring both received and to be received."

"But the same His Holiness willed and altogether commanded that the aforesaid Bishop use these same faculties only when most urgent causes concur, and gratis, some alms nevertheless having been enjoined to be disbursed for a pious work at the judgment of the Bishop himself."

"Finally the Most Holy Father gave the same Bishop the power of subdelegating the aforesaid faculties to his Vicars General, whenever he must be absent from his own residence beyond a day, and to two or three presbyters agreeable to him in the more remote places of his own diocese, for some number however of the more urgent cases in which recourse to himself cannot be had." (44) T. II, p. 427.

(14) The number of cases which is granted to individual Bishops varies not only for various dioceses, but also for a different time of concession in the same diocese and to the same Bishop; for for this reason Bishops, after the time has elapsed for which faculties are granted, must make the Holy See more certain concerning each dispensation of this kind, so that it may be clear what faculties each one needs especially for his own diocese, and in what number.

Therefore the Faculties Which Are Customarily Granted to Our Bishops Are of a Fourfold Kind:

A. Ordinary Faculties, called Formula I, which are distinguished from the others because, 1° all, and consequently also those matrimonial dispensations which are granted by force of them, are to be exercised gratis;[15] 2° Bishops can communicate them indiscriminately to all "suitable priests who will labor in their dioceses," excepted however those "which require the Episcopal Order, or are exercised not without the use of Sacred Oils," and the faculty of celebrating twice in the day, which they can subdelegate "to a few only ... and those who are absolutely necessary."

B. Extraordinary Faculties, called C. Bishops also can communicate these indiscriminately to all priests laboring in their diocese, excepted the following: 1° "Of consecrating chalices, patens, and altar stones ... with Sacred Oils blessed by a Catholic Bishop," which they can delegate only for an act, or to one or another priest in places subject to them. 2° Of imparting the Papal Blessing four times in the year on the more solemn feasts. 3° "Of declaring one altar in any church of his diocese to be privileged, provided another privileged altar is not present." 4° Of blessing bells, unless when "they themselves without grave inconvenience" cannot perform that act, and then "the rite of the Roman Pontifical having been observed, and Oils and water blessed by a Bishop having been used, and also without water blessed by a Bishop, if a grave cause concurs."

C. Extraordinary Faculties, called D. These, 1° all pertain to matrimonial dispensations. 2° They can be subdelegated "only to Vicars General," provided the Bishops "must be absent from their own residence beyond a day, and to two or three presbyters agreeable to them in the more remote places of their own diocese, for some number however of the more urgent cases in which recourse to them cannot be had." 3° They are to be exercised only when just and grave causes accede, and although gratis, 4° "some suitable alms nevertheless having been enjoined, to be disbursed for a pious work at the judgment of the Bishop himself." 5° "After the ten-year period has elapsed" (today five-year period), Bishops must "make the Apostolic See more certain concerning each dispensation."

D. Extraordinary Faculties, called E. These also, 1° all pertain to matrimonial dispensations. 2° They can be subdelegated only to those to whom Extraordinary Faculties D can be subdelegated. 3° Most urgent causes are required. 4° They are granted to Bishops only for a certain number of cases. 5°

Those things are to be observed which above, 4° and 5°, are prescribed to be observed as to Extraordinary Faculties D.

(15) Cf. Council Plen. Balt. II, p. CXLIII, under 3°.

St. Alphonsus's Moral Doctrine

A. Principal Testimonies and Judgments of the Holy See concerning the Moral Doctrine of St. Alphonsus

Benedict XIV.

1. **Letter of November 2, 1753, to St. Alphonsus.** - "We have received the first volume of your *Moral Theology*, dedicated to Us, and We give thanks to you for the honor shown to Us by this dedication, and also for Our Encyclical Letters opportunely inserted in the aforesaid Work. We make certain to you that We shall read your Work, when leisure shall be given to Us for this; for We cherish the due esteem of your merit, diligence, and fair judgment."

2. **Another Letter, dated July 15, 1755.** - "We have received your letters dated the eighth of June, together with the second volume of your *Moral*, and with several other books, which, although they are of lesser bulk, nevertheless will be of the greatest utility for the salvation of souls. For this gift We give thanks, especially because you have dedicated your moral Work to Us; when We had run through this cursorily, We judged it to be most choice and certainly about to be most approved and most useful to the whole society of men. We shall turn it over calmly, and We trust that the things to be read will be worthy of the things read."

3. How highly Benedict XIV valued the merit, diligence, and fairness of Alphonsus in deciding controversies is clear from the things which the most learned Pontiff hands down in the golden Work *On Diocesan Synod*.[1] - It is also established from the fact related by Father Tannoja[2] in these words: "So great was the esteem which the same Pontiff Benedict XIV had conceived concerning his wisdom, that when he was asked by the learned Neapolitan missionary and distinguished servant of God, Don Joseph Jorio, to state his opinion concerning the cursing of the dead, he abstained from opening it by himself, and answered: 'You have your Liguori; consult him.'"

(1) Lib. 11, cap. 2, n. 17. (2) Vita ed Istituto di S. A., lib. 2, cap. 38, at the end.

Clement XIII.

1. **Letters in the form of a Brief, August 4, 1767, to St. Alphonsus.**[3] - "We have most gladly received your book against the errors which at the present time have infected almost all Europe; both because it is yours, whose genius and doctrine and zeal for God, greatly burning, We know well from several other writings of yours....

Moreover, Venerable Brother, We greatly love you, because, by no means content to profit your one Church, whatever time remains to you from your episcopal charge, you do not suffer it to perish, but spend it all in labors of this kind, whose utility is not circumscribed by the boundaries of your Diocese, but is extended to the universal Church. We pray God that He give you firm health, and add

life and strength, by which you may be able happily to complete several other things which perhaps you have begun...."

2. **From the Acts of Beatification.**[4] - "Having returned to Rome" (Alphonsus), "he was embraced most lovingly by the Supreme Pontiff and was deemed worthy of a conversation of three hours. When, among the most grave affairs of the Church concerning which he himself was being consulted by the Pontiff, he had related that the Book which he had recently published on the utility of frequent Communion had been attacked, the Pontiff burned with zeal; and, showing that most holy practice to be very useful for souls, and confirming it by his own experience, he ordered him to refute the adversary; as indeed he did shortly at Rome, and offered the published response to the Pontiff himself."
3. Brilliant testimonies of the Supreme Pontiffs Clement XIV and Pius VI are extant; nevertheless, since these regard certain dogmatic works of the Holy Doctor, we abstain from reviewing them. - Let it suffice here to allege what the praised Father Tannoja[5] reports concerning Pius VI: "When the Advocate Vincent Picerni had dedicated to him, in the year 1798, the *Defense of the System of Alphonsus*, he testified in the answering Brief given to the same Picerni that he had greatly rejoiced over it."

These things having been premised, let us proceed to setting forth the weightier judgments.

(3) Cf. ibid., lib. 3, cap. 38. (4) Positio super Introduct. Causae, Rome, 1796. Informatio, n. 71. (5) Vita ed Istit. di S. A., lib. 4, cap. 43, at the end.

Pius VII.

1. **Decree on the Revision and Approbation of the Works of Venerable Alphonsus.**[6] - "... A full relation having been made both of the aforesaid printed Works and of all the other manuscripts, ... NOTHING worthy of censure was found in them.... These things having been related to Our Most Holy Lord, His Holiness benignly assented. May 18, 1803."
2. **Decree on the Doubt whether it is established concerning the Virtues in heroic degree.**[7] - "... The great opinion concerning the chaste and holy morals of Venerable Alphonsus, which took hold among all persons whatsoever, ... was always more and more increased.... It shone forth ... in the ministry of the word of God among the rude and abandoned people, while he imbued them with the precepts of the divine law; in the chair of morals, among the moderators of consciences, while he poured forth an abundance of doctrine; ... in the pastoral office among the flock committed to him, while by vigilant guardianship he nourished it with salutary pastures.... But with how excellent a right men made so much of him, the present judgment of the Apostolic See manifests. For an inquiry having been instituted concerning his particular actions, ... and a discussion having been made concerning any exceptions whatsoever, even the smallest, which could have been opposed to the more perfect exercise of the Christian virtues, and again renewed, ... all the difficulties seemed so to vanish that nothing further could be opposed as still needing to be weighed.... But this Decree" (His Holiness) "ordered to be published and to be referred into the acts of the Sacred Congregation of Rites, on the Nones of May, 1807."

3. **Decree on the Doubt whether one can safely proceed to Beatification.**[8] - "The omnipotent word of God, who calls the stars that they may shine in the firmament of the militant Church, called His Venerable servant Alphonsus that he might gleam with the light of apostolic virtues. He answered that divine voice, and sent forth, as a radiance, virtues worthy of an Apostle, ... when, both by voice and by writing, in the middle night of the age, he showed to those wandering the way by which, rescued from the power of darkness, they could pass into God's light and kingdom.... But surely the Pastors of souls also, and preachers of the divine word, and pious and learned men also, will understand how much ornament and protection has been established for them in imitating Alphonsus Maria. Since, therefore, Our Most Holy Lord Pius

Pope VII ... has declared that the virtues of this most luminous star of the militant Church are to be held heroic, ... he rightly pronounced: That one can proceed safely.... And he ordered this Decree to be published among the people ..., December 21, 1815."

4. **Brief of Beatification, of September 6, 1816.**[9] - "For stirring up emulation of the better charisms, the Lord always renews in the Church the greatest examples of virtues. But now, besides so many others who in our memory have been seen to flourish with a manifold array of virtues, it is established that the Venerable servant of God Alphonsus shone in a wonderful way.... Like an arrow in the hand of the mighty, he rushed upon vices.... Hence it is indeed wonderful how many hatreds he extinguished, how many straying persons he led back to the right path, and even to Christian perfection, by word, example, and multiple Writings...."
5. It is also certainly established that Pius VII advised the Bishops of the Pontifical Dominion that the moral Theology of Blessed Alphonsus be handed down in their Seminaries.[10]

(6) Cf. the little work entitled Santita e dottrina del B. Alfonso, Ferentino, 1834, p. 45. (7) Santita e dottrina, p. 54. (8) See the cited little work Santita e dottrina, p. 59. (9) Ibid., p. 61. (10) Cf. Morale Sistema del B. Alfonso ... del Sacerd. Andrea Coppola, Naples, 1824, p. 144.

Leo XII.

1. **Letters to the Typographer Hyacinth Marietti, dated February 19, 1825.**[11] - "That the filth of evil books, with which, by a calamity of our age never enough to be deplored, all regions overflow, may do less harm, no slight part is played by the number of Writers outstanding in piety and doctrine, whom God, for the guardianship of Religion and morals, by the counsel of His merciful Providence, never fails to oppose to the audacity of the lost. Among these, since especially the most holy and likewise most learned man, Blessed Alphonsus de Liguori, is numbered by the best right, ... (whose writings) are most firm protections against every depravity: you have indeed deserved very well of Religion, and, if it knows its advantages, of the universal society of men, who have placed your work and industry in gathering and publishing the Works of a Writer of this kind...."
2. Don Gaume testifies that at the same time similar Letters in the form of a Brief were given by Leo XII to the Bishop of Marseille.[12]

(11) See the stereotype edition of the Works of St. Alphonsus, Turin, Marietti, vol. 5, at the beginning. (12) Manuel des confesseurs, Preface.

Pius VIII.

1. **Letter given (when he was still Major Penitentiary) to the Bishop of Marseille.**[13] - "There is indeed reason why I vehemently congratulate Your Lordship concerning the most pious counsel by which you strive to foster among your flock veneration toward Blessed Alphonsus; whom we behold not only as having brought, by the splendor of virtues, an illustrious honor to the Episcopal Order in our age, but also as having shone forth by sound doctrine and according to God, so many volumes on this matter having been published, in which we are admonished by venerable judgment that there is nothing worthy of censure. This now remains, that these your wishes for the good of the sheep, from the protection of Blessed Alphonsus himself, be heaped up with the desired outcome."
2. **Decree on the Doubt whether it is established concerning Miracles, December 3, 1829.**[14] - "To Blessed Alphonsus Maria de Liguori God gave the knowledge of the Saints, and honored him in labors; he who ... unto extreme old age ... studied ... by most salutary Books, elaborated by him, to enkindle the minds of the faithful toward contempt of the deceitful age and toward the love of eternal glory.... The Name of this Blessed Man, both by his brilliant deeds and by his volumes filled with piety and doctrine, has been diffused everywhere among the nations, and has been invoked in adversities...."
3. **Decree on the Doubt whether one can safely proceed to Canonization, May 16, 1830.**[15] - "Among the Workers whom the heavenly Householder at no time ceased to send for cultivating His vineyard, Blessed Alphonsus labored very much for instructing the people by word and by writing...."

(13) Cardinal Villecourt, Vie de S. Alph., tom. 4, p. 250. (14) Santita e dottrina, p. 67. (15) Ibid., p. 70.

Gregory XVI.

1. **Bull of Canonization, of May 26, 1839.**[16] - "Holiness and Doctrine, according to the sentence of the Apostle of the nations, ought to adorn every Bishop.... But for renewing this eminent example of an excellent Bishop, Alphonsus Maria Liguori seemed to have been given divinely to the Church in the preceding age; he who, since ... he was wonderfully powerful especially in sacred doctrines, was called to the very greatly impeded office of the Episcopate....

This however is altogether wonderful: that, although in the function of the apostolic office he was detained by perpetual occupations, and weakened and tormented his members by every harshness of sufferings, nevertheless he could busy himself with such eagerness in studies of sacred things, and spend so much time, that by learned and equally laborious Works published into the light, he wonderfully helped the Christian commonwealth. Indeed, that he might devote himself and all the accounts of his life to divine worship, he emitted a most arduous vow, and of a kind almost new, that he would spend not even the smallest bit of time idly, but in perpetual action. He indeed wrote very many books, whether for defending the doctrine of morals, or for the full instruction of the sacred Order, or for confirming the truth of the Catholic Religion, or for asserting the rights of this Holy Apostolic See, or for stirring up the sense of piety in the souls of Christians. Moreover, in these one may admire an unusual force, abundance, and variety of doctrine, singular documents of ecclesiastical solicitude, and an exquisite zeal for Religion. But this above all is worthy of note: that, although he

wrote most copiously, nevertheless after diligent examination had been instituted, it was found that his Works can be run through by the faithful WITH AN ENTIRELY UNOFFENDING FOOT."

2. **Decree of January 10, 1840.**[17] - "Among the greatest lights and ornaments of the Catholic Church, St. Alphonsus Maria de Liguori shines forth; he who, distinguished by doctrine and holiness, and inflamed with the highest charity, serving only the glory of God and the spiritual salvation of men by wonderful examples of all virtues and by very many most learned and most pious Works, after a life most holily spent, now crowned, possesses the palm, and triumphs with God in heaven."

3. **Response of the Sacred Penitentiary, of July 5, 1831.**[18]

Consultation. - "Most Eminent one. Louis Francis Augustus, Cardinal de Rohan-Chabot, Archbishop of Besancon, strives to foster wisdom and unity of doctrine among all those of his diocese who have care of souls. Since certain of them attack the Moral Theology of Blessed Alphonsus Maria de Liguori as too lax, dangerous to salvation, and contrary to sound morals, he asks the oracle of the Sacred Penitentiary, and proposes to it the following doubts of one professor of Theology to be solved:

"1°. Whether a professor of sacred Theology can safely follow and profess the opinions which Blessed Alphonsus de Liguori professes in his Moral Theology?

"2°. Whether a Confessor is to be disturbed who follows all the opinions of Blessed Alphonsus de Liguori in the practice of the sacred tribunal of Penance, for this reason alone, that by the Holy Apostolic See 'nothing worthy of censure was found in the Works'? - The Confessor of whom there is question in the doubt does not read the Works of the Blessed Doctor except to know his doctrine accurately, not weighing the moments or reasons upon which the various opinions rest; but he thinks that he acts safely, by that very fact that he can prudently judge that doctrine which contains 'nothing worthy of censure' to be sound, safe, and in no way contrary to evangelical holiness."

Decision. - "The Sacred Penitentiary, the things set forth having been weighed, judged that answer should be made to the Most Reverend Father in Christ, Cardinal of the Holy Roman Church, Archbishop of Besancon:

"To the 1st question: IN THE AFFIRMATIVE, without however judging from this that those are to be reprehended who follow opinions handed down by other approved authors.

"To the 2nd question: IN THE NEGATIVE, account being taken of the mind of the Holy See concerning the approbation of the Writings of Servants of God for the effect of Canonization.

"Given at Rome, in the Sacred Penitentiary, July 5, 1831.

"A. F. De Retz, Regent of the S. P.

"F. Tricca, Secretary of the S. P."[19]

4. **Another Response of the Sacred Penitentiary, of June 8, 1842.**[20]

Consultation. - "Most Blessed Father. The Bishop of Le Mans ... most humbly represents: Nearly all younger spouses do not wish to have a more numerous offspring, and yet they are morally unable to abstain from the conjugal act.... The aforesaid Bishop of Le Mans, foreseeing that immense evils will

arise from this, and disturbed with anxiety, solicitously asks Your Beatitude: ... 2°. If the act is to be held as morally evil, whether spouses not accusing themselves of it can be considered as constituted in that good faith which excuses them from grave fault? 3°. Whether the manner of acting of Confessors is to be approved who, lest they offend married persons, do not interrogate them concerning the mode by which they use the rights of matrimony?"

Response. - "The Sacred Penitentiary, the proposed questions having been maturely weighed.... To 2 and 3 it answers: that the aforesaid Confessor should recall to mind that saying: holy things are to be treated holily; and should also weigh the words of St. Alphonsus de Liguori, a learned man and most expert in these matters, who in the *Practice of Confessors*, 1. 4, n. 41, says: 'Moreover, concerning the sins of spouses with respect to the conjugal debt, ordinarily speaking, the Confessor is not bound, nor is it fitting, to interrogate, except wives, whether they have rendered it, in the more modest manner in which he can.... Concerning other things let him be silent, unless he has been asked.' And let him not omit to consult other approved authors."

(16) From the acts of the cause. (17) From an authentic copy. (18) Authentic copy. (19) This response of the Sacred Penitentiary was approved and confirmed by His Holiness Gregory XVI under date July 22, as is established from the letter of His Eminence Cardinal de Rohan-Chabot to Don Gousset, his Vicar General, who had taken care that the aforesaid doubts be proposed: "In the audience of July 22 (1831), His Holiness confirmed the Response of the S. Penitentiary, submitted to Him by me, approving both the Response itself and the counsel which I had taken of publishing it and supporting it with these Pastoral Letters...." (Cf. Gousset, Justification de la Theol. mor. du B. Alphonse, Besancon, 1832, p. 251.) (20) See Gury, Roman edition, 1869, tom. 2, n. 929.

Pius IX.

1. **Letters to Father Hugues, C.SS.R., dated November 25, 1846.**[21] - "If ever at another time, now certainly it must be cared for with every zeal and industry that by salutary writings vices be routed, and virtue, religion, and piety be stirred up and fostered in the souls of all.... Therefore We greatly commend the pious labor undertaken by you, and We add courage to you, that with ever greater eagerness you spend your work in promulgating more and more from day to day the most salutary writings of St. Alphonsus, whose reading can greatly profit not only the Christian people, but also ecclesiastical men, especially those devoted to the care and rule of souls. For indeed the books of that most holy and most learned Man ... abundantly supply all the best admonitions, counsels, and precepts, which are especially conducive to guarding and procuring the salvation of souls...."
2. **Letters of April 7, 1847, to Don Scavini.**[22] - "We vehemently congratulate you, because in composing these Theological Institutions you held nothing more ancient than to propagate more and more the salutary doctrines of the most holy and most learned Man Alphonsus Maria de Liguori, and to imbue especially the souls of ecclesiastical youth with them. Therefore We greatly commend the counsel undertaken by you...."
3. **Letters to the Typographer Marietti, June 12, 1847.**[23] - "In so great a number of depraved books which daily come forth into the light in this age, you certainly seem to Us worthy of the greatest praise, beloved Son, by whose work and expense a Typography has been open there for several years, which publishes books, or again commits them to the press, most useful and opportune especially for defending Religion and for fostering piety. But in publishing these, you rightly judged that St. Alphonsus de Liguori should go before the others; to him indeed, as

there was wonderful gentleness toward neighbors, so there was never-weary zeal for the salvation of souls. We indeed praise that you have now begun to publish a new edition of the Works of the same holy Bishop...."

4. **Response of the Sacred Penitentiary, of December 19, 1855.**

Petition. - "Most Eminent and Reverend Lord. The undersigned suppliant, named by his Bishop to the office of Prefect of public moral Conferences, because of his own devotion and reverence toward St. Alphonsus de Liguori, greatly desires to hold, hand down, and defend in all things the doctrine of this so great Saint, and to make this public in the Diocesan Calendar soon to be published (as also is pleasing to his much-praised Bishop, very favorable toward St. Alphonsus); adhering to and observing the Decision published on this matter by this Sacred Penitentiary under date July 5, 1831. But as to this he is held back by some religious scruple,

because, when he long ago obtained academic Degrees, he furnished the Oath as below, that he would retain the doctrine of the same University (which follows Probabiliorism and the opinions of Probabiliorists). - Since these things are so, and since moreover the very renowned Scavini, who emitted the same oath, in his Moral Theology dedicated to Our Most Holy Lord Pope Pius IX, had the same St. Alphonsus especially as Leader; hence, for the quiet of his conscience, he most humbly has recourse to Your Eminence and urgently supplicates:

"1. That he be taught whether it is an obstacle to the aforesaid oath to follow the doctrine of St. Alphonsus de Liguori in all things and to hand it down publicly, as is set forth above? Or 2. that he be dispensed from observing the same oath...."

Response. - "The Sacred Penitentiary, the things set forth having been maturely weighed, judged that answer should be made to the beloved orator in Christ to the proposed doubts, as it answers: To the first, In the negative. - To the second, Provided for in the first.

"Given at Rome, in the S. Penitentiary, December 19, 1855."

5. **Response of the Holy Roman and Universal Inquisition, July 18, 1860.**

Petition. - "Most Blessed Father. Bishop N. in France ... humbly asks ... 2° Whether those impeded from going to Rome in person are bound to go at least by letter or procurator, in order to obtain absolution from cases reserved to the Apostolic See? ..."

Response. - "Thursday, July 18, 1860. In the general Congregation of the Holy Roman and Universal Inquisition held, ... the Eminent and Reverend Lords ordered it to be rescripted: ... To the second Doubt. Let him consult approved Authors, among whom St. Alphonsus Maria de Liguori...."

6. **Another Response of the Holy Roman and Universal Inquisition, of July 18, 1860.**[24]

Petition. - "Most Blessed Father. The present Bishop N. in France ... asks ... 2° Whether" (the Bishop) "at least has the aforesaid faculty" (namely, outside Italy, whether by himself or by a delegate, of absolving from an occult excommunication which a Confessor contracted by absolving, outside the article of death, an accomplice in a shameful crime) "in the case in which, because of imminent danger of scandal or of another grave evil, recourse to the Holy See cannot be made at an opportune time? - 3° Whether, in the same circumstances, he has the faculty of absolving a priest who would

not be of his diocese? - 4° Whether, in absolving from the aforesaid excommunication because of an urgent cause, he ought to impose upon the penitent the burden of recurring, the impediment ceasing, to the Holy See, under penalty of reincidence? - 5° Whether he can delegate the aforesaid faculty for a fixed time, or for a fixed number of cases, or only for the case set forth? ..."

Response. - "Thursday, July 18, 1860.... To the II, III, IV and V Doubt. Let him consult the Decretals of Clement III ... and approved Authors, among whom St. Alphonsus de Liguori, book 7, chapter 1, doubt 5, *On Censures*, nn. 84 to 92...."

7. **Response of the S. C. of the Council, of August 29, 1860.**[25]

Petition. - "Most Blessed Father. Henry ... most humbly asks: 1° Whether a priest who has received a stipend richer than usual can, in favor of a pious work, hand over to another priest only the ordinary stipend, retaining entirely the part which surpassed the ordinary tax? - 2° Whether the same priest can substitute another priest for himself, under this law, that he remit some part of the ordinary or extraordinary stipend in favor of a determinate pious work? - 3° And insofar as in the negative in each case, whether a priest so acting is held to restitution? - 4° Whether a priest asking from another a condonation of this kind ought first to hand over to him the whole stipend? - 5° And insofar as in the affirmative, whether acting otherwise he is held to restitution?"

Response. - "August 29, 1860. Let him consult Theologians, especially St. Alphonsus de Liguori, tract XIII, *On the Sacrament of the Eucharist*, chapter VII" (or book 6, tract 3, chapter 3, n. 321 and following), "and Benedict XIV ... in like sentences he agrees...."

8. **Response of the Sacred Penitentiary, of December 18, 1860.**[26]

Petition. - "18. In what way ought Parish Priests to conduct themselves in the celebration of the marriages of those who notoriously have fallen into ecclesiastical censures?"

Response. - "Let the Parish Priest consult the Ordinary, who, account being taken of things and circumstances, and all things having been weighed which are handed down by approved authors, and especially by St. Alphonsus (book 6, tract 1, chapter 2, n. 54), should declare those things which he will have judged to be more expedient in the Lord...."

9. **Decree *Urbis et Orbis* of March 23, 1871, concerning the Concession of the Title of Doctor.**

"Among those who did and taught, and whom Our Lord Jesus Christ called to be great in the kingdom of Heaven, St. Alphonsus Maria de Liguori is deservedly to be numbered.... But what he completed by holy operation, he also taught by words and writings. For he himself, by learned Works, and especially by the treatments of Moral Theology, drove off and removed the darkness of errors widely diffused by Unbelievers and Jansenists. Moreover, he elucidated obscure things, and declared doubtful things, since among the entangled opinions of Theologians, whether laxer or more rigid, he laid down a safe way by which the Moderators of the souls of Christ's faithful could walk with unoffending foot...."

10. **Apostolic Letters in the form of a Brief, of July 7, 1871, concerning the Confirmation of the Title of Doctor.**

"He wrote very many Books, filled with sacred erudition and piety, whether, among the entangled opinions of Theologians, both laxer and more rigid, for fortifying a safe way by which the Moderators of the souls of Christ's faithful could walk with unoffending foot; or for forming and instructing the Clergy; ... This moreover can most truly be proclaimed: that there is no error even of our own times which, at least in greatest part, has not been refuted by Alphonsus. What of the fact that those things which have been sanctioned by Us, both concerning the Immaculate Conception of the Holy Mother of God, and concerning the Infallibility of the Roman Pontiff teaching from the chair, are found in the Works of Alphonsus both set forth most brightly and demonstrated by most valid arguments?

"Since these things are so, ... by Our Apostolic Authority, by the tenor of the present letters, We confirm, or, insofar as there is need, again attribute and impart to Him, the title of DOCTOR in honor of St. Alphonsus Maria de Liguori; in such a way indeed that in the Universal Catholic Church he is always to be held as Doctor.... Moreover, We will and decree that the Books, Commentaries, little Works, and finally all the Works of this Doctor, like those of the other Doctors of the Church, may be cited, brought forward, and, when the matter demands it, used not only privately, but publicly in Gymnasia, Academies, Schools, Colleges, Lectures, Disputations, Interpretations, Addresses, Sermons, and all other Ecclesiastical studies and Christian exercises...."

(21) Cf. Villecourt, Vie de S. Alph., t. 4, p. 258. (22) See Scavini, Theol. mor., tom. I, at the beginning. (23) See the stereotype edition of the Works of St. Alphonsus, Turin, Marietti, vol. 5, at the beginning. (24) Cf. the periodical entitled Revue des sciences eccles., t. 3, 1861, p. 367. (25) Ibid., p. 272. (26) Memoriale theol. moral., by Henry Sarra, Rome, 1869, p. 501, to 18.

His Holiness Lord Leo, Pope XIII.

1. **Letter to L. J. Dujardin and J. Jacques, C.SS.R., translators of the works of St. Alphonsus into the French language, August 28, 1879.**

"... To say nothing of the Moral Theology most celebrated everywhere on earth and offering a safe norm which moderators of conscience may follow, ... We even congratulate you also on your undertaking for this reason: that since the Holy Author often glories in his writings that he followed the doctrine of the Angel of the Schools, from the homage of this more recent Doctor of the Church toward him there accrues new praise and glory to the doctrine of St. Thomas, which commends more gravely also that restoration of Christian philosophy which We most zealously urged, by Our recent encyclical letters, to be measured according to the mind of the Angelic Doctor." *Acta*, t. XII, p. 273.

2. **Letters to the renowned Ernst Muller, author of Moral Theology, March 13, 1880.**

"... We have gladly recognized ... that you have furnished what you signify in the letters: that after the holy Fathers of the Church you followed as chief leaders the two most outstanding Doctors, St. Thomas Aquinas and St. Alphonsus de Liguori.... For besides distinguished expertise and prudence in moral matters, each vindicates this to himself, that the doctrines which they approve, holding a middle way between extremes, are equally distant from relaxed indulgence, which loosens the reins

for sinners, and from importunate rigor, which converts the sweet yoke of Christ into an intolerable burden."

B. On the Excellence and Authority of the Moral Doctrine of St. Alphonsus

I. We understand the excellence of the moral doctrine of St. Alphonsus in this sense: that, if you take together all the titles of pre-eminence, he is easily the chief of all who have written on moral matters up to this time. For:

1° Among those whom we call the great Moralists, he is the most recent. Therefore he was able to investigate and weigh the excellent sayings and reasonings of the other Doctors; and he investigated and weighed them most diligently, most patiently, with a mind free from every preconceived opinion, and illumined by the heavenly light which he obtained by his prayers and virtues.

2° He brings into the open the opinions of all the distinguished Doctors who have treated of moral matters, so that he can supply the place of the other Authors who wrote before him.

3° Scarcely, or not even scarcely, is another Doctor found who has written so much, and so particularly, concerning moral matters.

4° An indefatigable practice of the sacred ministry, prolonged for many years, especially in missions, which furnish a harvest of very varied and very intricate cases, preceded his writing; this practice is lacking in many Authors, but is scarcely found in any other so abundantly as in our Saint.

5° He was of a most acute genius, so that, being scarcely sixteen years old, he obtained the laurel of both laws in the University of his native land.

6° He excelled very greatly in holiness of life; and this indeed must be considered of very great moment in a writer on moral matters, since to saintly Authors this is before all other things dear to heart: that they teach nothing which is not most consonant both with the doctrine and with the sense of the Church; nothing which, whether by too great laxity or by too great rigor, could even lightly hinder the glory of God and the salvation of souls; nothing which they have not meditated upon after fervent prayers sent beforehand to God, and, according to that humility and prudence which are theirs, after others have been consulted, maturely and without excited or inordinate affection. While the illustrious De Wit[1] contemplates this holiness of life in Alphonsus, he addresses his reader most beautifully in this way: "You see how the whole Work inwardly nourishes and pervades the spirit of sanctity, and how much confidence those things deserve which the man of God thinks, teaches, affirms, as one who, joining to the greatest industry of labor the perpetual exercise of prayer and heroic virtues, was also suffused with heavenly light."

(1) De studio et usu Theol. Mor. S. Alph., pag. 11.

7° He has been declared Doctor of the Universal Church by the oracle of the Pontiff; but no one is declared Doctor of the Church unless his eminent doctrine has been approved by Apostolic judges.

8° The moral doctrine of no Author has been commended by so many and such great praises of so many Roman Pontiffs. See above p. LXXVI sq., where the praises of the Roman Pontiffs concerning the moral writings of St. Alphonsus are displayed in one view.

9° No one's moral doctrine has been received with such confidence in the whole Catholic world, as far as it extends, and reduced into practice, and this because:

10° No one's moral doctrine has been endowed with so great an authority by the Church herself, as will be clear from the things to be said.

II. **The authority of the moral doctrine of St. Alphonsus in the Church.** - The moral doctrine of no Author enjoys in the Church so great an authority as that of St. Alphonsus; for the moral doctrine of no Author has been approved by the Church in the way in which his has been.

With Vittozzi[2] we distinguish a twofold approbation which can be given by the Church to the Writings of some Saint: one negative, the other positive. - Negative is

(2) S. Alfonso de Lig. e la teologia morale, dissert. teologico-morale, Napoli 1873, p. 43.

that judgment of the Church by which the doctrine of some Saint is declared immune from every theological censure whatsoever, without however anything being decreed concerning its merit or excellence. But if the judgment of the Church is borne also upon the merit and excellence of the doctrine, it is called positive. - Positive is subdivided into tacit, or usual, and express. Tacit or usual "is called that which is made by long use, and is established as it were by the glory of the name by which one has filled the Christian world."[1] Express, which is also called solemn, is that which is declared in the public acts of the Church by set words. - Express is subdivided into general, special, and most special. General "consists in this: that the writings of someone are generally received, and are permitted to be read in public Schools or Churches, and are commended to the faithful as useful, true, and Catholic. And in the number of writers of this kind they hold the first place who ... have been adorned ... with the excellent title of Doctors."[2] "Moreover, a general declaration of this kind has a threefold effect: for, first, it removes from the authors the suspicion of voluntary heresy; secondly, it grants to the faithful the faculty of reading the books of those who have obtained such approbation, indeed it also praises their reading as useful and fruitful; thirdly, it commends the authors to that degree that, if anyone shall appeal to them for proving a sentence, he is protected at least by a certain probability, even 'other reasons' being excluded, until the contrary is proved."[3] - Special consists in this: that the works of some Saint in a certain matter are declared to be preferred to the writings, taken separately, of the rest in this kind, and his doctrine on this subject is declared Catholic and free from error, although not as a rule of Faith. An example of special approbation of this kind is furnished by the writings of St. Augustine on Grace and Free Will against the Pelagians and Semipelagians, as being more often commended to the Christian world either by the Supreme Pontiffs or by Councils, either naming them expressly, or using them by their act and example for defining dogmas.[4] - Most special is had if the little work of some Father or Doctor is proposed by the Church as a rule of Faith to be held by all. Thus the letter of St. Cyril of Alexandria with the twelve anathemas against Nestorius was approved, and the synodical Letter of St. Leo the Great to Flavian against the Eutychian heresy.[5] There are some who add to these another approbation besides, namely that given by Paul III, in the Brief *Pastoralis officii cura*, dated July 31, 1548, to the book of the Exercises of St. Ignatius, by which all and singular things contained in that book are approved, praised, and fortified by Apostolic authority. - By others negative is also called permissive; positive special is called elective; most special definitive. - These things having been premised:

(1) Permaneder, Bibliot. Patrist., T. I. § 217. (2) Ibid. § 218. (3) Ibid. § 219. (4) Ibid. §§ 220, 221. (5) Ibid. § 222.

Question 1°. Which of these approbations belongs to the Moral Doctrine of St. Alphonsus?

Response 1°. Negative, as is clear from the Decree of the S. R. C. dated May 18, 1803, confirmed by Pius VII (p. LXXVII under 1).

Response 2°. Positive tacit; for, among other reasons, Pius P. P. IX was moved by this reason to admit the cause of the concession of the title of Doctor in honor of St. Alphonsus: that, as he says in the Decree dated March 23, 1871, "the nations tell forth his wisdom and the Church proclaim his praise."

Response 3°. Positive express general, as is established from the concession of the title of Doctor of the Church; and among other causes of this concession the Supreme Pontiff mentions that "among the intricate opinions of Theologians, whether laxer or more rigid, he paved a safe way, by which the Moderators of the souls of the faithful could walk with unoffending foot" (p. LXXXII. 9, 10).

Question 2°. What may be concluded, A) and what may not be concluded, B), from those various approbations given by the Church to the moral doctrine of St. Alphonsus?

Response to A). I. From the negative approbation you conclude:

1° No moral sentence which St. Alphonsus defends was, at the time when he wrote,[6] worthy of any censure, except perhaps one then universally unknown.[7] The list of the principal theological censures, and their sense, see, if you wish, in Scavini.[8]

(6) Ben. XIV, de Serv. Dei Beat. et Canon., Lib. II, c. 29-31. (7) Vittozzi, p. 50, l. dissert. cit. (8) T. II, n. 999.

2° The sentences of St. Alphonsus not only, like those of the other Authors whom the Church has not declared immune from every censure, are simply tolerated, but are also positively permitted. The matter is illustrated by examples by the illustrious Grandclaude,[1] and is clear from the Decisions and Responses of the S. Penitentiary in the years 1831 and 1855 (see p. LXXIX. 3 and LXXX. 4), by which it is declared: 1) that a professor of sacred Theology is safe; 2) that a confessor is not to be disturbed who follows all the sentences of St. Alphonsus, led by his authority alone; 3) that it is lawful for a Professor to follow the doctrine of St. Alphonsus in all things and to hand it down publicly, without his needing a dispensation from the oath furnished of defending Probabiliorism and the sentences of the Probabiliorists. Nor let the word "to be disturbed" in the Response of 1831 delay anyone; for by that word, in Roman style, not mere toleration but positive permission is indicated; see this in St. Alphonsus himself,[2] and it is clear from the context itself of the Response. For the S. Penitentiary was not more severe toward the confessor than toward the professor, whom it calls safe.

(1) Revue des Sciences Eccles., Nov. 1873, p. 478. (2) L. IV. 765.

3° With the exceptions to be excepted in the Response to B), "those sentences which St. Alphonsus de Liguori expressly taught, held, followed, or simply called probable, are to be held as truly probable,"[3] namely at least extrinsically; that is, the authority of the Saint is so great that by itself alone it renders some opinion truly probable. This follows from the Response just cited of the S. Penitentiary, dated July 5, 1831, where to the question: "Whether a Confessor is to be disturbed who follows all the opinions of Blessed Alphonsus de Liguori in the practice of the sacred tribunal of Penance, for this reason alone, that by the Holy Apostolic See 'nothing worthy of censure was found in the Works'?" the Response was: "In the negative." But if a confessor is not to be disturbed, but on the contrary is safe, who follows all the opinions of St. Alphonsus, although he does not perceive their intrinsic value, or their intrinsic probability, and follows them only on account of the authority

conferred on them by the negative approbation of the Church, it is evident that from that approbation the opinions of the Saint obtain true probability, and at least extrinsic probability. For the Church cannot permit anyone to follow opinions which are not truly, and at least extrinsically, probable.

(3) Thus the most learned anonymous Annotator of the new Edition of the Compendium of Gury, Tom. I, p. 553 (ed. Rom. 1873).

4° This at least extrinsic probability is not extended only to the whole body of the moral doctrine of the Saint, but also to each and every one of his opinions. For the Confessor of whom there is question in the Response just cited of the S. Penitentiary does not reduce into practice the whole body of the moral doctrine of St. Alphonsus in the tribunal of S. Penitence, but all his opinions taken distributively.[4]

(4) Vittozzi, pp. 48, 49, diss. cit.

5° It will be lawful also to teach and to bring into practice those opinions of St. Alphonsus which may be contrary to the more common, or even to the common, sentences of theologians. This clearly follows from 3° and 4°.

6° An attack upon the opinions of St. Alphonsus will be unlawful unless it is modest and is made with a preface of honor. This follows from the things which Benedict XIV hands down.[5]

(5) De Serv. Dei Beat. et Can., L. II, c. 28, n. 8.

II. From the positive tacit approbation you conclude:

The opinions of St. Alphonsus today must be called universally common, as having been universally received in the Christian world.

III. From the positive express general approbation, or from the title of Doctor of the Church conferred on the Saint, you conclude that his doctrine is eminent.[6]

(6) Ibid., L. IV, p. II, c. 11, n. 13 sq.

Response to B). 1° It is not lawful to conclude that the individual sentences of the Saint either a) are intrinsically probable; for the approbation given to them is not most special or even special; or b) are, or will always remain, extrinsically probable. For the authority of the Church, by which they become extrinsically probable, cannot be invoked in favor of those sentences of the Saint against which there stand Pontifical Decrees or Declarations of the Sacred Congregations, furnished with those characteristics which we shall enumerate in the Treatise on Laws.

2° It is not lawful to conclude that the authority of the Saint is exclusive; for in the Response of the S. Penitentiary dated July 5 (see p. LXXIX. 3) it is expressly said that those are not to be reprehended who follow opinions handed down by other approved authors.

3° It is not lawful to conclude that no new force or probability has accrued to the sentences of the Saint from the approbation of the Church; for there has accrued to them:

a) Extrinsic probability, and indeed as great as is that of the Doctors of the Church, that is, public. Concerning the authority of the Holy Doctors, see the things said above, and compare, if you wish, the Sixth Book of the Decretals, L. III, T. XXII, c. unic., and Benedict XIV, Const. *Militantis Ecclesiae*.

b) A presumption, and indeed a most vehement one, of intrinsic probability; for extrinsic probability supposes intrinsic.[1]

(1) S. Alph., Dissert. de opinionum probab., a. 1749, § II.

c) Since a presumption does not yield except to truth, no opinion of the Saint must necessarily be deserted unless its improbability is evidently established. Compare the things said above concerning the force of express general approbation.

d) A most notable extrinsic probability has accrued to the moral System of St. Alphonsus, to his doctrine concerning habitual sinners and relapsers, and to those special sentences to which, as safe, the Sacred Roman Congregations refer those proposing doubts.

I say: 1) To the moral System and to the doctrine concerning habitual sinners and relapsers. This is clear from the Decree dated May 7, 1807, by which Pius VII solemnly declared: "That it is established concerning the theological and cardinal Virtues of the Venerable Servant of God Alphonsus and those annexed to them, in heroic degree." That the signification of this Decree may be clearer, it must be known that, after the Decree concerning "nothing worthy of Censure" had already been issued, and while the heroic virtues of Alphonsus were now being discussed, a new Position or disputation concerning the Virtues of the Saint, specifically concerning his Prudence, had been instituted in the year 1806 by command of the Pontiff at the instance of the Promoter of the Faith, and this on account of some rules of morals contained in his Works. Hence, besides other particular questions, the moral System and the doctrine concerning habitual sinners and relapsers were called back especially to a more severe weighing. The outcome of this peculiar inquiry is displayed by the Decree just cited,[2] dated May 7, 1807. Therefore, by force of this Decree, St. Alphonsus must be called heroically prudent not only with respect to the whole body of his moral doctrine, but specifically also with respect to the moral System, and with respect to the doctrine concerning habitual sinners and relapsers, since these two points were submitted more especially to the examination of the Most Eminent Fathers, nor were they seen to stand in the way of his heroic prudence. Therefore St. Alphonsus was declared heroically prudent individually also with respect to these two heads of his moral doctrine.

(2) [p. LXXVII. 2](/manuals/konings/a-principal-testimonies-and-judgments-of-the-holy-see#h3).

I say: 2) And to those special sentences to which, as safe, the Sacred Roman Congregations refer those proposing doubts. See these on p. LXXX (at the top of the page) and p. LXXXI under 5, 6, 7, 8.

Conclusion from the Things Said.

We conclude that anyone may licitly and more safely follow the opinions of St. Alphonsus, except if there stand against these: - either a) Pontifical Decrees or Declarations of the Sacred Congregations which are furnished with those characteristics which we shall enumerate in the Treatise on Laws; - or b) legitimate Custom; - or c) some Synodal Statute, especially of a Provincial or Plenary Council; - or d) just civil Law; - or e) the certain and evident progress of the natural and physical sciences; - or f) a changed, yet just, condition of commerce; or g) one's own persuasion, not changed by the reflective principle concerning the excellence and authority of the moral doctrine of the Saint, that some opinion of his is false;[3] for in this case one would act against his own conscience, which is never lawful. - I said, however: and by the reflective principle, etc. But outside the cases alleged in this conclusion, anyone will easily be able to change his persuasion from this twofold reflective principle:

1) The authority of St. Alphonsus, in moral matters, is surpassed by no other private authority, such as mine is. 2) If the Holy Doctor himself, although endowed with heroic prudence and eminent knowledge, could err, much more will I be able to err in rendering judgment concerning the greater or lesser probability, or even falsity, of some opinion.

Therefore the proposition which I undertook to prove stands, namely: The moral doctrine of no Author enjoys in the Church so great an authority as that of St. Alphonsus.

(3) Vind., p. XLIV. 1, and 904. Ed. 2a, T. I, p. CXII, n. 80; T. II, p. 560. IV.

C. Key of the Moral Works of St. Alphonsus, or Certain Rules for Discerning His True Sentences

It is of the greatest interest that a disciple of St. Alphonsus clearly know which are the opinions which the Holy Doctor professes; since these alone have been approved by the Church, and by no means the others which indeed are mentioned by St. Alphonsus, but which he himself does not embrace. This is, moreover, of greater moment because some Writers here and there falsely ascribe several opinions to the Holy Doctor, and thus not a few students of his Moral Theology are led into error. Therefore we have thought it worth the labor to set forth here at least certain general rules, by the help of which a disciple of St. Alphonsus may be able more easily to discern his genuine sentence in various questions. - Hence we shall say a few things: 1. Concerning the various moral Works of the Holy Doctor; 2. Concerning the manner in which St. A. is everywhere accustomed to enunciate his own sentence.

§ I: It Is Explained Which of the Various Moral Works of St. A. Is Chiefly To Be Adhered To, For Knowing His Genuine Sense

I. - Among all it is confessed that the true and genuine sentence of some Author must not only be sought where he treats professedly of some matter, but it must also be diligently inspected what he teaches in his latest writings; so that generally the true sentence of any Author whatever must be called that alone which he enunciated last. - Now, no one is ignorant that St. Alphonsus published several moral Works and Compendia at various times. Besides the nine editions of the *Moral Theology*, and several other Opuscules, Dissertations, and Apologies treating of the System or of other matters, the principal moral Works of St. A. are: 1° *Pratica del Confessore per ben esercitare il suo ministerio* (1748); in Latin: *Praxis Confessarii ad bene excipiendas confessiones* (1760); - 2° *Istruzione e pratica per li Confessori* (1756); in Latin: *Homo Apostolicus*, with four Appendices (1759); - 3° *Il Confessore diretto per le confessioni della gente di campagna* (1764); - 4° *Istruzione al popolo* ... in Latin: *Institutio catechistica ad populum, in praecepta Decalogi et Sacramenta* (1768). Therefore it is useful to inquire which is the last, and hence the preferable, sentence of the Holy Doctor, in the case in which he seems to follow diverse sentences in his various Works. - Concerning this matter, let it be permitted briefly to set forth the following things.

II. The true sentence of St. Alphonsus is generally to be taken from the larger Work, inscribed *Theologia moralis*, and, as to the order of the matters, arranged according to the text of Busembaum. But since nine editions of this Work came forth while the Holy Author was still alive, it is clearly evident that, before the others, one must stand by the ninth, published in the year 1785; both because it is the last, and because it was revised by the Holy See and approved as containing nothing

worthy of censure. - The reason is that it is established that the Holy Doctor amended the *Moral Theology* in several questions even to the end of his life; which cannot be said with the same right of the other Works. - This rule, however, commonly admitted by the interpreters of St. Alphonsus, suffers some exceptions. For:

1. In the aforesaid *Moral Theology* the Holy Doctor did not add Notes or Questions elaborated by himself to all and singular parts of the text

of Busembaum. Therefore, in order to know whether he departs from the sentences of that Author, which are neither explicitly rejected nor approved by him, or at least whether he differs in the manner of enunciating them, besides the larger Work the texts of the other Works must be inspected, especially *Homo Apostolicus*, in which he treats the same matter. For those lesser Works, as having been written wholly by St. Alphonsus, in that case exhibit his sense not only more accurately, but also positively; while the text of Busembaum, not amended by the Holy Doctor, refers it only negatively.

2. It is established, moreover, from the various Works inspected, that St. Alphonsus, in the course of time, reformed several opinions, or at least partly changed them, by attributing greater or lesser weight to the same, or by adducing distinctions not previously made, without however explicitly commemorating all and singular emendations of this kind, inserted into one or another Work, in their proper places, in the subsequent editions of the *Moral Theology*. And therefore the diverse editions of that larger Work are to be compared, especially the second, of the year 1753-1755, with the ninth approved by the Holy See, so that from their collation what was changed and when may appear evidently. - Hence another rule is to be established, namely: Whenever the text of the NINTH edition of the *Moral Theology* agrees perfectly with the SECOND, without any emendation occurring made in the List of reformed questions added to the same Work, regularly the text of the lesser Works posterior to the aforesaid second edition is to be preferred, in the case in which those lesser Works disagree from this edition. The reason is that in this case the last edition of the *Moral Theology* is nothing but a mere reimpression of the second, and therefore, although published last, it cannot really be called the last sense of St. Alphonsus. This holds at least for those questions concerning which the Holy Doctor, in the aforesaid Compendia, testifies in express words that, the matter having been more maturely weighed, he either came down into another sentence, or at least partly changed the prior opinion.

3. Besides, those moral Compendia of St. Alphonsus can serve especially for this: that it may be better known to which sentence he adheres in practice. For it not rarely happens that the Holy Doctor, after in the larger Work he has said concerning a controverted question, *I remit the matter to those wiser than I*, without explicitly enunciating his own sentence, in the aforesaid Compendia ascribes to the same controverted opinion a determinate note of greater or lesser probability.

§ II: The Manner Is Weighed in Which St. Alphonsus Is Everywhere Accustomed To Enunciate His Sentences

The other question now comes to be examined: namely, What is the true and proper sentence of St. Alphonsus, when he reports the diverse opinions of Authors, or sets forth several reasons, without declaring in express words what is to be held in practice?

Wherefore the Notice must be premised by which St. A. himself concludes the Preface of the *Moral Theology*: "I have taken care for the most part to set forth my sentence, by attributing the just weight of greater, or equal, or lesser probability to each sentence, as it seemed to my weakness, lest I leave the reader doubtful, after the manner of some who, by only reporting the sentences of others, make themselves not a little hateful to readers. But where I did not find a reason convincing for one side, I did not dare to condemn the opposite.... For the rest, kind reader, I wish you to be warned, lest you think that I approve those opinions from the fact that I do not reprove them; for sometimes I shall faithfully set them forth with their reasons and patrons, so that others, according to their prudence, may judge of what weight they are. - Then notice that when I call some opinion truer, then I do not hold the contrary as probable, although I do not expressly condemn it as improbable. Moreover, when I call one of the sentences more probable, no judgment having been given concerning the probability of the other, or I use this word - I do not dare to condemn; on that account I do not understand myself to say that it is probable, but to remit it to the judgment of the more prudent...."

The Holy Doctor confirms these things in nearly the same words, Book II, n. 76, at the end, when he says: "And here again I repeat that which I protested at the beginning, namely, that when I call some opinion only more probable, I do not on that account understand myself to say that the contrary is probable.

Likewise, when I say concerning some opinion: I do not dare to condemn, or to call it improbable, I do NOT on that account admit it as probable; but I doubt concerning its probability. Likewise, when I call some sentence truer, I understand that the opposite does not possess, for me, solid probability, although I do not altogether reprove it."

Now, from the aforesaid Notices of St. Alphonsus, the following principal rules can be determined:

1. Generally that opinion alone is probable for the Holy Doctor which he himself calls probable. - Wherefore attention must be paid to his manner of speaking. Namely, when he says: "The Authors say probably," then regularly he judges a sentence of this kind probable. But when he writes: "The Doctors say that it is probably lawful," from this it is not clear that this sentence is held by himself as probable; for by speaking thus, generally he merely reports the judgment of those Authors.

2. If, speaking of some opinion, he says: "it does not seem improbable," or: "it is said not improbably," then regularly he holds it as sufficiently probable, at least in the case in which he opposes to it nothing certainly or notably more probable. - But concerning sentences of this kind, it will be worth the labor to inspect other places of the Holy Doctor.

3. An opinion which he calls neither probable nor improbable he generally leaves to the judgment of others. - Yet one must see what he says either before or afterward; for if he opposes nothing

at all, and the Author alleged is grave, regularly that opinion will have to be held as sufficiently probable; as, for example, when at the end of a question he adds: "Lugo adds, notices...."

4. If concerning some sentence he expressly says: "I do not dare to condemn," or: "I do not dare to call it improbable," by that very fact he declares that it is, in his judgment, doubtfully probable, or that he remits it to the judgment of the more prudent. - Yet one must see whether in another place or Work he puts forward his judgment concerning it, or not.

5. A sentence which he alone calls probable, opposing nothing to it (which case however rarely happens), ordinarily founds moral certitude for practice. See n. 68. 2°. 69. 2°.

6. When he calls some opinion truer, or much or absolutely more probable, or more probable and at the same time common or most common,[1] then he does not judge the opposite solidly probable, at least with respect to the other, even if he does not expressly reject it as improbable, or although perhaps he judges it probable in general, or in itself, before the weighing of each has been instituted.

(1) See, for example, Book IV. 716, 717, 261, etc.

7. The same also must be said when he names one of the sentences more probable or more common, no judgment having been given by him concerning the opposite; for by this manner of writing St. Alphonsus intends to signify that that opinion seems so much more probable to him that he does not acknowledge the opposite as truly probable.

8. A sentence which he simply calls common, no judgment having been borne concerning the opposite, must regularly be called his own.

Wherefore it will be useful to note that the words "common sentence," or "they commonly say," speaking in themselves, express more than these other words: "more common sentence," or "they more commonly say." For the word more common, since it is comparative, only denotes that more Authors stand for that sentence than for the other. On the contrary, the word common, as positive, declares that Authors generally stand for this sentence. - But when it is said: "it is the most common sentence," or: "they most commonly teach," by that very fact it is affirmed that the consensus of Authors is nearly unanimous. - Finally St. Alphonsus admonishes that one must diligently notice that the authority of Writers is to be estimated not from their multitude, but from their gravity, as is clear from the texts alleged in the preliminary Dissertation of the *Vindiciae Alphonsianae*,[2] where it is also shown that most at least of the sentences which the Holy Doctor holds have today become common, and that they, generally, from his pre-eminent authority, deservedly must be called probable, or even more probable.

(2) p. LIII. Ed. 2a, T. I, p. CXIII.

Prolegomena to Moral Theology

I. **What is Moral Theology?** If you consider the name, it is that part of Theology which is concerned with morals; if the thing, it is that part of theological science which directs human actions to moral honesty in order to eternal life.

It is said: 1° **that part of theological science**, by which words the proximate genus of the definition is expressed.

It is said: 2° **which directs human actions to moral honesty**, which words exhibit the ultimate difference of the definition, and the object of our science, both material and formal. - a) The ultimate difference, namely from the other theological disciplines, especially from Dogmatic Theology, which treats of faith and of divine things universally, in order that it may establish and confirm rules of believing, while Moral Theology treats of virtues and vices, in order that it may establish and confirm rules of acting, especially in the internal forum. - b) The object, both material, or human actions considered in themselves; and formal, or the aspect under which the material object is considered, that is, the directibility of those human actions to honesty.

II. **What are the places, or sources, of Moral Theology, from which the rules are taken according to which human actions are to be directed to honesty?** They are almost the same as those of Dogmatic Theology, namely Sacred Scripture; the Holy Fathers of the Church; the Decrees of the Supreme Pontiffs; Councils; constant and firm Tradition; Law both canonical and civil; the Authority of Theologians; Reason both natural and theological. Concerning each, hold these few things - which for the greatest part I have taken from the Dissertation preliminary to the Moral Theology of St. Alphonsus, which Fr. Ant. Zacharia composed:

A) As Regards Sacred Scripture.

1° To confirm some conclusion, use the Scriptures only in the literal or mystical sense, never however in the accommodated sense, and not even in the mystical unless it is established that this is truly the mystical sense.

2° Do not think that histories in which Sacred Scripture narrates that just men performed something which either is truly evil, or has the appearance of evil, are rules for solving cases. Therefore beware lest from the deed of Noah cursing the descendants of Ham you conclude that it is lawful for parents to curse their children.

3° Do not take singular examples which are read in the Scriptures for confirming a universal law. Thus someone would prove ridiculously by this argument the true proposition: Four conditions are required in him who absolves from censures: 1) he must be a cleric; 2) he must have contentious jurisdiction; 3) he must absolve with certain knowledge; 4) he must absolve spontaneously, and not coerced: Paul, who absolved the incestuous Corinthian, had the four aforesaid conditions. For the reasoning would be similar to this: Paul, who absolved the incestuous man, was an apostle; therefore he who absolves from censures ought to be an apostle.

4° Do not take the moral precepts which are sanctioned in the Old Testament in that restriction in which they seem to be expressed in Exodus, nor according to the false interpretation of the Scribes or the popular tradition of the Hebrews, but according to that addition which either Moses or other Canonical Writers applied, and especially according to that explanation which Christ hands down in the Gospel. Thus, although the Jews thought that only external acts were prohibited by the law, and by no means thoughts, desires, etc., nevertheless it is unlawful to think thus, since Christ preaches the opposite doctrine.

5° One must see lest, incautiously, we should wish the force of preception to be present in words of Scripture by which some pious counsel is proposed.

B) As Regards the Holy Fathers of the Church,

or the ancient ecclesiastical writers from the Apostolic age to the middle of the twelfth century, whose line Bernard, the Mellifluous Abbot of Clairvaux, closes.

1° If in some question which regards morals, and which is to be defined, all the Fathers teach the same thing, it must be held as certain.

2° The authority of one or two Fathers in those things which pertain to the doctrine of morals can indeed furnish a probable argument, but not a firm one.

3° Even the authority of several Fathers, with the rest, although fewer, reclaiming, cannot avail to suffice and furnish to the Theologian those arguments against which it would be unlawful to resist.

4° Those things which are had from the homilies of the Fathers, ascetical books, and orations, and labors of that kind, do not make for the Theologian that faith which those things can make which are read in Dogmatic instructions, letters, etc. For many things in books of this kind are put forward more exaggeratively; nor is this wonderful, since this is solemn for all orators; many things also regard counsel rather than precepts.

5° It is ill-advised to select those places of the Fathers where the Fathers, treating of something altogether different, indicate a few things concerning another matter after occasion has been taken, while neglecting those places where they examine this matter professedly.

6° In investigating the sense of the Fathers, these rules especially must be observed. a) Those things which are in the context of the book or chapter must be diligently considered. b) Similar and dissimilar places of the same Father must be compared. c) The time at which that book was published by some Father must be attended to. For from the occasion of writing the book the mind of the author will easily become known; we shall also understand whether perhaps at that time that Father was occupied by some preconceived opinion, which it is probable, or even certain, that he afterward put off. d) We shall consult other Fathers synchronous with this one concerning whose mind we inquire; for what this or that word signified in this or that century, and to what the notation of this or that custom may regard, we shall more easily discover. Let this example be that of Cyprian,[1] where he permits that, the priest being absent, the sick may also make the exomologesis of their fault before a deacon. For it does not follow from this that a deacon was then the minister of Sacramental Confession; for not only this is denoted by the name exomologesis, but also the canonical reconciliation of public penance, which Tertullian[2] calls the discipline of casting down and

humbling the man. e) It is of an imprudent man to fish out the mind of the Fathers from doubtful Works of theirs, when certain Works, received by all, of the same Fathers are at hand.

(1) Epist. 12. (2) Lib. de Penit. Cap. 9.

C) As Regards the Decrees of the Supreme Pontiffs.

1° One must see whether the things which are cited are genuine. Hence you will accomplish nothing from the false decretals of the Pontiffs up to Siricius, which all critics explode.

2° Beware lest you draw what was merely a precept of discipline to deciding moral questions. Thus from the response of Nicholas I to the consultations of the Bulgarians, that in Lent every pleasure is to be renounced by spouses, one would now badly infer that the conjugal work is not lawful in the time of Lent.

3° In those questions in which the validity of some thing is treated, for instance of clandestine marriage, decrees of the Pontiffs are cited in vain which establish only that something is illicit.

4° A subsequent

decree which in certain special cases limits something does not derogate from a decree of a Pontiff permitting that thing universally. Innocent III,[1] for example, permits clerics to dwell together with those in whom the natural bond permits nothing of suspicion of a base crime. On the contrary, the Council of Nantes, whose constitution was inserted into the Decretals of Gregory IX, excludes even mother, aunt, and sister from the houses of clerics, namely when there is question of this or that man whose morals are depraved, and when familiarity with absolutely any woman is suspect.

5° It is not lawful to draw the words of a Pontiff permitting something to a sense repugnant to Catholic dogma, or foreign to the obvious sense of the words by which that decree was issued. Benedict XIV brings an example in the Book *De Synodo Dioecesana*.[2]

6° If a Pontiff grants something which he had previously denied, from that prior denial it is understood very well what was afterward lawful through him. Again you have an example in the same Benedict XIV.[3]

7° In Pontifical constitutions which command something to be done, one must note first of all whom they affect, then what reasons moved the Pontiff to command that thing. Thus what is prohibited to Latin priests is not always to be judged prohibited likewise to Greeks. Hence from the decretal of Innocent III, by which priests established at Constantinople are prohibited from conferring Confirmation, it is badly inferred that Confirmation conferred by Greek priests is invalid and illicit. For the Pope speaks expressly concerning Latin priests. - It is also badly inferred from the constitution of Nicholas I commanding that Bulgarians confirmed by them be confirmed again, that this is not lawful universally for Greek priests. For Nicholas was led to this by reasons altogether other than those which would make this prohibited to all Greek priests.[4]

8° Where the Pontiffs condemn some proposition, they are to be judged to have condemned it especially in the sense in which it was published by the Authors. Thus, for example, what Alexander VIII condemned when he struck the proposition saying that it is not lawful to follow an opinion most probable even among the probable is to be taken especially from Sinnichius, from whose book it was excerpted.

9° From the pontifical condemnation of some proposition it is not lawful to infer the condemnation of another which rests upon an altogether different reason. You have an example in Benedict XIV,[5] which regards Confession through an internuncio.

10° If the Pontiffs have prohibited something, one must see whether by an oracle of the living voice they have so explained their mind that the prohibition is to be restricted in some part of itself. You have an example in the Treatise on Censures as regards the faculties revoked by the Constitution of Pius IX, *Apostolicae Sedis*. See n. 1753, q. 1°, R. 3°.

11° One must also see whether later Pontiffs have restricted a prohibition made by their predecessors.

12° Finally, that too must be noticed: whether a pontifical Constitution prohibiting something has not been received somewhere.

(1) L. III, Decr. T. I, c. 9. (2) L. VIII, C. IV, n. 3. (3) L. I, VII, C. VI, n. 15. (4) See Ben. XIV, de Syn. Dioec., L. VII, Cap. IX, n. 3. (5) Ibid., Cap. XV, n. 8.

D) As Regards Councils.

1° All Councils which have neither been gathered nor confirmed by the authority of the Roman Pontiff can err in the doctrine of morals, and therefore cannot make certain faith concerning those things which are to be done or avoided.

2° Councils of any kind whatever - but especially General Councils - which have been confirmed by Pontifical authority furnish a most certain rule of doctrine to the Moral Theologian.

3° From councils which indeed have not been approved by the Roman Pontiff, but neither have been condemned by him, a probable argument is taken, as for persuading dogmas of faith, so also for establishing doctrines which regard morals. Of this matter that argument is abundantly great, namely that from innumerable Councils of this kind very few are found which have declined from right doctrine.

4° Beware lest you confuse decrees of Councils which regard discipline with those which regard morals. For Canons of morals are not subject to variety; on the contrary, Canons of discipline can be changed according to the diversity of places and times. Hence an argumentation limps from the ecclesiastical discipline of some region, or of an older century, if either it was not received everywhere, or it was abrogated by a contrary law. - Likewise, something can be illicit in some diocese which may be lawful in others.

5° We shall interpret the Decrees of Councils from the sense and custom of the times in which they were established.

6° The very formulas of Councils will have to be exacted according to the style and barbarism of the age in which they were celebrated; for communion, imposition of hands, and six hundred other things of that kind did not signify the same thing in all centuries. Wherefore the Glossary of Du Cange will be able to be of the greatest use to the Moral Theologian.

7° Do not believe that all things which you will find in Councils regarding morals were precepts; but many of them proceeded from pious counsel, and savor more of exhortation than of preception. Several examples of this matter are to be found in the Second Plenary Council of Baltimore. Thus, for

example, in article 149 of this Council it is said: "To them," that is, to priests, "we also vehemently commend" (which word is not of one commanding, but of one exhorting) "that they constantly wear the cassock, insofar as it can be done."

As regards the remaining places of Moral Theology, we remit the reader to those things which Dogmatic Theology teaches concerning Tradition, and also to those things which we ourselves shall hand down in the Treatises on Conscience and on Laws concerning Canonical and Civil Law, and concerning the authority of Theologians and the use of reason.

III. **How is the whole of Moral Theology divided?** The following order of treating the matters has seemed to us more accommodated to practice. The first disputation for us will be concerning the nature of human acts, insofar as it regards moral goodness or depravity; for this will be as it were the foundation of the other disputations. - From there we shall make a step to the twofold rule of human acts: one indeed internal, which is conscience, the other external, which is law. - Then we shall speak of human acts insofar as they agree or disagree with this twofold rule, or concerning sins and virtues. And these indeed will constitute as it were the general part of our Theology. - In the part which has begun to be called special, various laws and precepts will follow one another in order, namely those of the Decalogue and of the Church; we shall treat in a special place the disputation concerning the Seventh precept of the Decalogue, which involves the most ample question concerning Justice and Right, and also concerning Contracts. There will follow the laws by which the various states of men and the administration and reception of the Sacraments are ruled. Finally, since the observance of laws is assisted by the infliction of penalties, we shall have a discourse concerning ecclesiastical penalties, or concerning censures and irregularities, and shall conclude this whole work with an Appendix concerning Indulgences.

IV. **How great is the necessity of Moral Theology?** For one undertaking the office of hearing Confessions, or one who will sometime undertake it, the necessity of learning Moral Theology is as great as that of saving the soul. For "if the blind offer leadership to the blind, both fall into the pit."[1] But a blind confessor is one who, although he may excel in zeal and be strong in talent and also in practical judgment, is ignorant of the principles and practical rules by which both talent and judgment must be directed, and zeal moderated. Scavini aptly says:[2] "Not all," he says, "ecclesiastics ought to be great orators, illustrious doctors, erudite historians; nevertheless all of the clergy ought to be very instructed in Moral Theology." And the learned Mabillon:[3] "The study of Moral Theology is to be cultivated before the others; ... to this, as long as one lives, work will altogether have to be given."

V. **History of Moral Theology from Bonquillon.**[4] - Three epochs are suitably distinguished in the history of Moral Theology: the first from the beginning of the Church to the time when Scholasticism was introduced; the second from the beginnings of the School to the Council of Trent; the third from the Council of Trent down to our age.

Epoch of the Fathers. - In the first epoch moral truths had not yet been scientifically reduced into some body of doctrine, but were explained separately, without any connection among themselves: whether in apologies against the heathen (St. Justin, Athenagoras, Tertullian); or in

instructions for Christians (Clement of Alexandria, *Paedagogus*, *Stromata*, etc.; St. Cyprian, *de lapsis*, *de oratione dominica*, etc.; St. Gregory of Nyssa, *de perfecta Christiani forma*; St. Augustine, *de mendacio*, etc.);

or in homilies to the faithful people (Sts. J. Chrysostom, Basil, Gregory the Great); or in special admonitions to the clergy (St. J. Chrysostom, *de sacerdotio*; St. Ambrose, *de officiis*; St. Gregory the Great, *de cura pastorali*); or in doctrinal letters; or finally in explanations of the Sacred Letters (the two books of St. Ambrose, *de Cain et Abel*; the two books *de Abraham*; the two books *de Jacob et anima beata*; the book *de Elia et Jejunio*; St. Gregory the Great, *Moralia in Job*, etc.). But although during this whole time the positive method was chiefly employed, nevertheless the speculative method also was cultivated, nor was casuistry neglected, as is clear from the questions which ecclesiastical writers weigh with great study, for example, whether it is lawful to serve as a soldier in the army of heathen emperors. To this also belong the penitential canons of the Holy Fathers and Councils, which may be read in Zacharia in the cited preliminary dissertation.[1]

Epoch of the Scholastics. - The complete system of moral doctrine is owed to the second epoch, under which truths were handed down not only theoretically, but also practically, now in a coherent order. Moreover, in this age, the positive part having been as it were presupposed from the work of Peter Lombard, in which especially the sentences of Sacred Scripture and of the holy Fathers were found collected, the doctors were wholly occupied in illustrating Ethics together with Dogmatics speculatively by the help of Aristotelian philosophy. In this matter Alexander of Hales, Blessed Albert the Great, St. Thomas, St. Bonaventure, and Scotus stood out before the others by labor, diligence, and talent. But to casuistry belong the *Summa de casibus poenitentialibus* of St. Raymond of Pennafort; the *Speculum morale* of Vincent of Beauvais; the *Summa major seu confessariorum* of John of Freiburg; the Astesan *Summa de casibus conscientiae*; the *Summa casuum conscientiae*, called the golden and Monaldina; the *Pupilla oculi* of John de Burgo; the three-part little Work of John Charlier de Gerson, concerning the precepts of the Decalogue, concerning Confession, and concerning the art of dying; the *Consolatorium timoratae conscientiae*; the *Preceptorium* and book *de contractibus mercatorum* of John Nider; St. John Capistran's *Speculum conscientiae*; the *Summa theologica* and *Summa confessionalis* of St. Antoninus; the *Summa Angelica*, etc.

Epoch of the more recent authors. - The third epoch comprehends three periods altogether to be distinguished.

The first, which extends itself from the Council of Trent through the space of nearly one century down to Jansenism, can truly be called the golden age of Moral Theology. For then, after the question concerning probabilism had been thoroughly discussed, the fundamental principles of Ethics were explained systematically; and Ethics as a whole was also handed down accurately, not only in the most learned commentaries on St. Thomas or on the Master, but also separately from Dogmatics, both in summas and compendia by Navarro, Toletus, Sa, Busembaum, and in ampler form by Layman, Azor, Castropalao, Filiuccio, Sayrus, Bonacina, and very many others. Besides, ample treatises were published concerning individual matters, in which all questions are resolved under whatever aspect positively, speculatively, and practically; of this kind are, others being omitted, the works of L. Molina concerning right and justice, of Thomas Sanchez concerning Matrimony, of Suarez concerning laws, concerning the virtue of religion, concerning Faith, Hope, and Charity; of L. Lessius concerning right and justice; of J. De Lugo concerning Faith, concerning justice and right, concerning the Sacrament of the Eucharist, concerning Penance; of Aeg. De Coninck concerning the Sacraments.

In the second period of this epoch the lot of Moral Theology was most sad because of the very bitter controversies excited by the work of the Jansenists. For just as their dogma concerning the wounds of

fallen nature, and especially concerning invincible ignorance, cannot stand with the foundation of Christian Ethics, so the consequences which those heretics deduced into practice from their principles, and which directly tended to this, that the yoke of the precepts should be rendered unendurable and the help of the Sacraments become null, are altogether opposed to the rules by which Catholic doctors directed the morals of the faithful. Meanwhile, however, sound doctrine did not lack its defenders and champions. But, as is wont to happen, some, while they wished to avoid the Charybdis of Rigorism, fell into the Scylla of Laxism.

Since these things were so, at last a new period, happier even than the golden one itself, began with

St. Alphonsus, concerning the merits and authority of whose doctrine we have already spoken, and whose influence upon Moral Theology was so great that the authors who in the last thirty or forty years have published books concerning it have either copied St. Alphonsus and reduced him into a compendium, or at least followed him as their chief master. From this it happened that the salutary doctrines of the most holy and most learned man are propagated more and more, and that the minds especially of ecclesiastical youth are imbued with them.[1]

(1) Matt. 15. 14. (2) Tom. I, n. 4, p. 16. (3) De Studiis monast., P. III, c. 4. (4) From Muller, Th. Mor., Introd. § 11. sq. (1) Th. Mor., S. Alph., ed. Helig., T. I, p. xxxii sq. (1) Brief of Pius IX to Scavini.

Treatise on Human Acts

Since the whole of Moral Theology is concerned with directing human acts, the beginning of our treatment, as the order of things and common custom requires, must be taken from human acts themselves. Therefore we must here treat 1° of the notion, 2° of the principles, 3° of the morality of human acts.

Chapter I: On the Notion of Human Acts

1. Definition. - An act, in general, is the potency of a being placed in exercise. But potency (faculty, power, virtue) is defined by St. Thomas:[1] The proximate principle of the operations of the soul; proximate, I say, or immediate; for the mediate and remote principle is the very essence of the soul, which, by means of the potencies, is the principle of actions, in the same way in which the root of a tree brings forth fruit only by means of branches.[2]

As many as are the genera of potencies[3] in the soul, so many are the genera of acts proceeding from those potencies. But man has some potencies common with irrational creatures, and others proper to himself. Wherefore "of the actions which are done by man, those alone are called human which are proper to man, insofar as he is man. But man differs from irrational creatures in this, that he is master of his own acts. Now man is master of his own acts through reason and will.... Therefore" (behold the definition) "actions are properly called human which proceed from deliberate will. But if any other actions belong to man, they can indeed be called actions of man," such as are all acts of man destitute of the use of reason in whatever manner at last, "but not properly human, since they are not of man insofar as he is man."[4]

(1) q. 78, a. 4. (2) Sansev., Comp. Dignam., n. 2-4. (3) Ibid., n. 7-9. (4) 1. 2, q. 1, a. 1. Yet the object of Moral Theology is not all actions which are of man, insofar as he is man, or insofar as he is distinguished from brutes; for from the actions of these, human actions are distinguished both as to substance, and as to mode, and as to substance and mode together. Acts of the first kind are necessary intellections and volitions; and in this way human is the act by which the Blessed in heaven love God: human, I say, according to the mode of operating which man has, not in this life, but in the other life [Bouquillon, Th. Mor. fund., n. 30 (2)]. In the same way human is the act by which man on earth assents to an evident truth, for example that the whole is greater than its individual parts, or desires beatitude in general, or "not determinately in this or that" (S. Th. 2, D. 25, q. 1, a. 2). Acts of the second kind are, for example, actions of eating and drinking, in which we are distinguished from brutes as to the mode in which they can be placed by us, namely with deliberation. Acts of the third kind are free intellections and volitions, in which we are discerned from brutes both as to substance (to understand and to will), and as to mode (freely to understand and to will). Moralists treat only of acts of the second and third kind, but not of acts of the first kind; for these, since they are produced without counsel, or are not within man's free power, cannot be directed by the laws of Ethics (Signori, Ph. Mor., P. 1, n. 68).

2. Division. - A human act is distinguished in manifold ways:

1° **Elicited**, namely that which is perfected and consummated in the will itself, without the aid of another faculty, such as purely internal volitions and nolitions; or **commanded**, which, the will commanding, is perfected by another potency subject to the will, and that either internal, as the act of thinking about some particular thing, or external, as the act of walking, writing. Therefore each proceeds from the will (for otherwise it would not be a human act), yet not in the same manner.[1]

2° **Internal**, which is made manifest by no sensible sign, such as an act of thinking, of loving; or **external**, which is outwardly manifest, for example walking about. All elicited acts are internal; but commanded acts can be either internal or external.

3° **Good**, which is conformed to right reason; or **evil**, which is not consonant with it. Good is also called licit; evil, illicit.

4° **Valid**, which enjoys all the requisites essential for producing its proper effect, for example the transfer of ownership in an act of sale; or **invalid**, which lacks even some one of the essentials, as, for example, because in an act of sale the thing is not the seller's own, and is as if it had by no means been placed.

(1) S. Th. 3, D. 27, q. 2, a. 3 ad 4; a. 4, quaestiunc. 4, sol. 3.

Chapter II: On the Principles of Human Acts

3. - Three principles of human acts are numbered: 1° cognition, 2° will, 3° liberty. For these are constitutive of them, and therefore are required for any properly human act, as is clear from the definition of a human act and from the very nature of the thing. For will necessarily supposes prior cognition; for nothing can be the object of the will unless it has first been apprehended by the help of the intellect. Hence the axiom: Nothing is willed unless first known. But liberty supposes each of these; for liberty is the faculty of choosing, or of determining oneself to some act; but choice cannot be made unless the will moves itself toward this or that part which has first been known.

Cognition here is the same as conscience, concerning which in the following treatise. Here, therefore, we shall speak only of will and of liberty, or of the voluntary and of the free, and also of the impediments of each.

Article I: On the Voluntary

§ I. On the Voluntary in General

4. Definition. - The voluntary, properly so called, is that which proceeds from an intrinsic principle with cognition of the end, or of the object willed: **from an intrinsic principle**, which is common to every act proceeding from any potency of the soul whatever, for example from the vegetative potency, and is not proper to the voluntary alone; **with cognition of the end**, which belongs to the voluntary alone. Therefore an act is voluntary insofar as it is done with cognition of the end. Hence if some circumstance of the action is altogether unknown by the agent, the action in relation to that circumstance will not be voluntary, by that very fact that it is unknown. Thus, if someone strikes a man while ignorant that he is a priest, he will indeed be guilty of injustice, but not of sacrilege, since he was ignorant of that sacred quality of priest in the man struck.

From this definition it is clear that the voluntary differs from the coerced, from the spontaneous, from the willed, from the free, and from a human act: 1° from the **coerced** or violent, because that proceeds only from an extrinsic principle; 2° from the **spontaneous**, because although it proceeds from an intrinsic principle, nevertheless it does not proceed from that principle with cognition of the end. For a spontaneous act is of those who apprehend only the end (object), but not the reason of the end and its proportion to the act. Thus a dog, seeing bread, begins to move toward it, and an infant smiles upon its mother caressing it;[1] 3° from the **willed**; for willed is not said of an act of the will, but of the object into which the will tends, and this can happen although the object does not depend on the will as an effect from its own cause. Thus rain poured out upon dry land, with respect to the farmer, is called willed, but not voluntary. 4° from the **free**, because that proceeds from the will determining itself to acting, with the power of not acting. Therefore everything free is voluntary, but not conversely. Thus the Blessed in heaven love God voluntarily indeed, but not freely; say the same of man as wayfarer, who voluntarily indeed, yet necessarily,

pursues happiness. Nevertheless in the schools voluntary is regularly taken for free, since in the acts by which man as wayfarer tends to his end they are in fact not distinguished. The reason is from St.

Thomas,[1] because the will "has determination in this alone," "that it naturally desires happiness, but not determinately in this or that"; 5° from a **human act**, which, although it agrees with the voluntary insofar as it proceeds from the same principle, namely from deliberate will, nevertheless differs from it, both because a human act, since it is an act, comprises only action or omission, while the voluntary also extends to their effects (n. 6); and because a human act, since it is human, is effected by man alone, but the voluntary by any being endowed with intellect and will; and because the human act (of the 2nd and 3rd kind, p. 1, note 1 at the bottom of the page), which is considered by Moralists, is free, while there is also necessary voluntary (n. 4 under 4°).[2]

(1) For Theologians and Canonists spontaneous is also whatever is done "from the inclination of the will, with no precept compelling, or fear, force, or fraud." St. Alph., L. II, n. VI. Compare n. 1825, q. 7°, Except 2°, and n. 1731, XVII. (1) 2, D. 25, q. 1, a. 2. (2) Rutten, Ethica, n. 112.

5. Division. - The voluntary is manifold, namely:

1° **Necessary** or **free**, of which the one differs from the other as voluntary and free (n. 4 under 4°).

2° **Perfect**, which supposes that full cognition of the intellect by which the character of good and evil becomes known, and the full consent of the will, such as is in him who perfectly knowing and willing eats flesh on a forbidden day; or **imperfect**, or semi-voluntary, which proceeds from the will with that imperfect cognition by which the character of good and evil becomes known only somewhat obscurely, and in which there can be a manifold degree. But an imperfect or semi-voluntary act, even in the violation of a grave precept, does not exceed venial sin, as happens in those half-asleep or distracted by other things.

3° **Voluntary simply**, which proceeds from the full inclination of the will without any repugnance, as, for example, in a youth who, for the comfort of his mind, wishes a game, when he could choose for himself another kind of recreation, for example walking; or **voluntary according to something**, which indeed comes from the consent of the will, but with some repugnance, or with some inclination of the will toward the opposite. Therefore, if someone, induced by human fear or by threats of companions, violates a precept which obliges gravely and notwithstanding fear of any evil whatever, he places an act truly voluntary (unless the fear is of such a kind that it wholly disturbs reason), and indeed gravely sinful; for he acts with full determination of the will, although he acts reluctantly and would prefer not to act. Yet an act of this kind is also involuntary according to something, and therefore becomes less culpable.

4° **Actual**, **virtual**, **habitual**, **interpretative**. It is called **actual** if the will here and now, and immediately and directly, is borne toward the thing willed. Thus actually voluntary to me is, for example, this my response to the question proposed, or contrition while here and now I elicit an act of penance. **Virtual** is an act of the will physically indeed now past, but which morally perseveres in some thing which is done in a human manner, as in its effect, and therefore is its cause. Thus, for example, in a traveler who "desires to reach the wished-for goal of his course," the individual steps which he places toward it are themselves virtually voluntary, although he does not attend to the individual steps, indeed, while making the journey, he thinks about things altogether diverse. The reason is that those steps proceed from the act of the will by which the traveler at the beginning wished to undertake the journey to that goal. Resolve the same concerning absolution imparted by a distracted confessor. **Habitual** is an act of the will not retracted, but not persevering either in itself or in its effect, as the application of the fruit of a Mass to be celebrated long afterward, not revoked.

Interpretative is that which has been had neither physically nor morally, but which can prudently be presumed would be had, if thought were taken of it, or could be taken. Thus the consent of an absent Superior, reasonably presumed by a religious, is interpretatively voluntary. Sometimes it gives honesty to an act, when there is question of lawfulness alone, as in the proposed example; often it does not give honesty, especially when there is question of the validity of an act, because then it is required that another's will either truly exist, or have existed and not been revoked. Thus you cannot absolve someone sacramentally if you trust that the Superior would consent to the jurisdiction if you asked, because jurisdiction actually had is required (Haine, *Th. Mor. Elem.*, p. 4, q. 7).

The interpretative voluntary is sometimes taken in the sense of the indirect voluntary, and by St. Alphonsus (L. I. 170) is called virtual or interpretative advertence; improperly, however, as is clear from the Holy Doctor himself, L. V, 177, § *Ratio* 2 and § *Dictum est*; L. VI, 14; L. III, 313.

By the ancient scholastics under the name of the habitual voluntary there is sometimes understood that voluntary which is now called virtual; for example, by St. Thomas, p. 3, q. 64, a. 8 ad 3.

5° **Express**, which is manifested externally (by words or signs), for example if a Bishop, asked to grant jurisdiction to someone for hearing confessions, responds: I grant it, or assents by a nod of the head; or **tacit**, which is not declared externally, but is sufficiently gathered to be present from some fact, or from the omission of some fact. Thus the sins of subjects are voluntary and imputable to a superior if he omits to oppose himself to them when otherwise he can and ought to do this. Hence rule of law 43 in the Sixth: "He who is silent is seen to consent." Tacit is also called presumed, namely concerning the present.

6° **Explicit** or **implicit**, according as something is intended in terms, or in a proper and distinct concept - as if one about to baptize should say: I wish to baptize - or in a confused concept, or in some general thing willed, as if one about to baptize should say: I wish to do what Christ instituted or what the Church here does or intends.[1]

7° **Absolute** or **efficacious**, and **relative** or **inefficacious**. This division supposes two volitions which cannot stand together. From this twofold contrary volition, that is called absolute and efficacious which explicitly or implicitly contains the revocation of the other; but that which is thus explicitly or implicitly revoked is called relative or inefficacious.[2] See n. 1219, Note, under 2°; n. 1319, q. 2°, and St. Alph., L. IV, 210; L. VI, 24.

8° **Direct** and **indirect**, concerning which in the following §.

9° Some add the voluntary **by one's own will**, which proceeds from the operator's own will, and the voluntary **by another's will**, which indeed proceeds from the will of another, yet is imputed to us on account of subordination or subjection, or the pact of a legitimate Superior or of the parties among themselves. Thus the sin of Adam was voluntary for us; thus, at least in the external forum, the will of the father is sometimes judged the will of the son who is under puberty, or even of a minor. See, for example, n. 1525, *It is said*, 3°.

(1) Bouquillon, ibid., n. 42. (2) Ibid., n. 43.

§ II. On the Voluntary in Species

Since no special difficulty occurs in the other species of the voluntary, we shall speak only:

On the Indirect Voluntary, or Voluntary in Cause.

6. The direct and indirect voluntary comes among theologians in a twofold sense. In one sense, indeed, according as something proceeds from the will directly, as from one acting (as to sink a ship by a war-cannon), or indirectly, as from one not acting, as the sinking of a ship from the helmsman, insofar as he ceases from steering.[1] The direct voluntary taken in this sense others call positive; the indirect, negative, according as acting denotes something positive, not acting something negative. Yet from this do not conclude that the voluntary consists in negation; for, as St. Thomas says,[2] "something is called voluntary not only because it falls under the act of the will, but because it falls under the power of the will. For thus even not willing itself is called voluntary, because to will and not to will are in the power of the will, and similarly to do and not to do."

But in another and more common sense, the direct voluntary (or, as others say, express[3]) is called that "which is willed in itself" (therefore it is also called voluntary in itself) "and immediately, as when someone steals something, because he has in himself the will of stealing";[4] indirect is that "which is willed not in itself, but in another thing which is apprehended, at least confusedly,[5] as the cause"

"of some effect." Hence it is also called voluntary in cause.[1] By others, for the same reason, it is also called implicit or virtual voluntary.[2]

Hence you will gather: a) An effect not only foreseen, but also intended, is directly voluntary.

b) What is intended in itself is directly voluntary, even in the case in which it is intended not for its own sake, or as an end, but only as a means; and therefore the killing of a fetus is directly voluntary, although it is intended only as a means of saving the life or reputation of the mother. "For voluntary is not only what we will for its own sake, as an end, but also what we will for another thing, as for an end."[3]

c) Sins voluntary in cause are imputed at that time at which their cause is voluntarily placed. Yet from this do not conclude that the evil effect itself, when in fact it follows (for example pollution in sleep arising from a voluntary cause), is not sinful, and therefore that it is sufficient to disclose in Confession the guilt of the cause itself. For, as the exterior act is the substantial complement of the interior act and each is morally one and the same act (n. 25), so, in the case, the effect is the substantial complement of the cause, and with it morally one and the same act. Wherefore, just as it is not sufficient to confess the interior act, so neither is it sufficient to confess the placing of the cause. Thus, as the truer opinion, St. Alph., L. V, n. 149, against others.

d) For the imputation of a sinful effect foreseen from a voluntary cause, it makes no difference whether the effect in fact follows or not; for, as was said under c), the effect is imputed when its cause is placed.

That the things to be said concerning the voluntary in cause may be rightly understood, it is useful to premise these things concerning cause. - The efficient cause, concerning which there is speech here, is that by which something is done. But this is:

1° **Physical** or **moral**. The former is that which, by acting physically, produces the effect, as fire produces a conflagration, the sun light. The latter is that which effectively moves another free cause to acting. Thus one commanding homicide is the moral cause of the killing.

2° **Immediate** or **mediate**. The former is that which produces the effect, no other cause intervening, for example, if someone pierces the breast of another, he will be the immediate cause of his death. The latter is that which does not produce the effect except another cause being interposed. Hence a moral cause is always a mediate cause.

3° **Proximate** or **remote** (in moral matters). A proximate cause has a necessary or ordinary connection with the effect; but a remote cause, although it is able to produce the effect, nevertheless does not have great force upon it, nor does it notably influence it; or it is that from which the effect does not frequently arise. Thus the drinking of wine for a drunkard will be a proximate cause, for a sober man a remote cause, of drunkenness.

4° A cause **per se** or **per accidens**. The former is that which from its own nature tends, or is ordered, to producing the effect. Thus excessive drink is a cause per se of drunkenness. But the latter is that which, although from its own nature it is not ordered to some effect, nevertheless sometimes, some circumstance being added, can produce it. Thus homicide can follow from drunkenness. For the most part this last division falls back into the preceding one.

(1) S. Th. 1, 2, q. 6, a. 3, c. and ad 1. (2) De malo, q. 2, a. 1 ad 2. Compare 2, D. 35, q. 1, a. 3 ad 5. (3) L. I, n. 10. (4) Ibid. (5) To apprehend something confusedly and something sub-obscurely are very far distant from one another. Sub-obscure apprehension or advertence is opposed to full or perfect apprehension or advertence; and the latter is required for the perfect voluntary, the former for the imperfect (n. 5 under 2°). But confused is opposed to distinct. Namely, something is apprehended or adverted confusedly when there is not had a proper apprehension of all the elements which constitute its essence, or of the parts which are contained in it; but distinctly, when it is had (compare S. Th. 1, q. 85, a. 3). Therefore sub-obscure advertence exists rather on the part of the act of knowing; confused on the part of the object known. (1) L. II, n. IX. (2) Ibid., and concerning the whole, S. Th. 1, 2, q. 77, a. 7. (3) S. Th. 1, 2, q. 6, a. 6 ad 1.

7. - An evil effect following from the indirect voluntary, that is, from the direct volition of a cause, is imputed to the agent for fault, if he could and ought to have avoided the cause on account of such an effect. Hence these things flow:

Corollaries. - I. A threefold condition is required that an effect can be imputed to the agent, or to the one placing the cause, namely:

1° That the agent foresaw the effect, at least confusedly. The reason is that an effect in no way foreseen can in no way be voluntary; for nothing is willed unless it has first been known. Hence drunkenness is not voluntary, nor to be imputed to him who becomes drunk from a little wine, whose force he did not know. Therefore, as some have contended, it is not sufficient for fault that the evil effect could have been foreseen or ought to have been foreseen; for the supposition must be denied, namely that an effect can be foreseen if in fact it is not foreseen, at least confusedly; for the first idea of some thing is not in man's power. Hence also, not even indirectly, is the omission of acts voluntary concerning which a man in no way thinks, as, for example, the omission of Vespers in him who, wholly immersed in studies, does not notice the twelfth hour of the night approaching, before which he had determined to finish them. Nevertheless, voluntary in cause and imputable to sin are the blasphemies, impurities, quarrels, which are wont to be done by someone in drunkenness. For such things are sufficiently foreseen from the custom of doing such things in this state.

2° That the agent could have not placed the cause; for otherwise, liberty being lacking, the voluntary would necessarily be lacking. Besides, an obligation cannot be given when it cannot be fulfilled. Hence the axiom: No one is held to the impossible. Thus a priest who gives Communion to a hidden

sinner publicly asking for it is not guilty of sacrilege; for he could not, in those circumstances, not place the cause of the sacrilege which this man will commit.

3° That there be present a law by force of which the agent is held not to place the cause, or to remove it once placed; for where there is no law, neither is there transgression. But no one is held not to place the cause, or to remove it once placed, if he has a right of placing it, founded in necessity, utility, or honesty; for from the rule of law: to one pursuing his own right an effect following beyond intention is not imputed. Hence inordinate motions are not voluntary, nor therefore imputable, to a physician or surgeon in the exercise of his art, or to a theologian in the study of Moral Theology, provided, namely, that the proximate danger of consent is absent or remote; because the former are not held to omit their art, nor the latter his study, in order to forestall this effect, but on the contrary they have a just reason for giving work to them. Thus also evil desires of the curious are in no way imputed to a woman honestly adorning herself.

8. II. - It is lawful to place a good or indifferent cause from which there immediately follows a twofold effect, one good, the other evil, if there is present a proportionately grave reason and the end of the agent is honest, namely if he does not intend the depraved effect.[1]

The reason of this principle is that, if this were not lawful, the agent would sin either from the intention of the depraved effect, or from the placing of the cause, or from the foresight of the evil effect. But none of these can be said. Not the first; for the end is supposed honest. Not the second; for the cause is supposed good, or at least indifferent. Finally not the third; for in the hypothesis the depraved effect is not intended, but merely not avoided; and there is present a proportionately grave and just reason for not avoiding it.

Moreover, five conditions which are directly or indirectly enunciated in this principle are altogether required, namely: 1° that the end of the agent be honest, that is, not disordered; 2° that the cause which is placed, or once placed is not removed, be good or at least indifferent; 3° that the good effect be immediate; 4° that there be present a grave reason for placing the cause, or not removing it once placed, nor is the agent held by justice, or by office, or by charity to omit it, or to remove it once placed; and 5° that practically there be no prudent judgment that the agent will consent to the illicit effect.

Therefore, 1° a good end is required; that is, one placing the cause or not removing it once placed must not intend the evil effect,[2] because otherwise he would intend something disordered, and therefore would sin. Thus in the example just adduced of the physician, surgeon, student of theology, woman honestly adorning herself, it would be a sin if besides the honest end a dishonest one were sought by them. 2° It is required that the cause which is placed, or once placed is not removed, be good or at least indifferent; namely that the act not be opposed to some law from which here and now he is excused by no legitimate cause. The reason is evident. For if the cause were not of this kind, it would induce guilt per se. Hence a girl gravely sins who, pregnant from a crime, procures abortion in order to avoid infamy; for the cause is not indifferent, and besides the 3rd and 4th condition fail. 3° It is required that the good effect follow equally immediately from the cause. The reason is that, if the cause directly and immediately has a depraved effect, and only by means of that depraved effect the good effect exists, then good is sought from evil; but it is never lawful to perpetrate evil, however slight, for procuring any good whatever; for according to the commonly known axiom, drawn from the Apostle,[3] evils are never to be done that goods may come. Thus it is

not lawful for you to lie, even for saving the life of a man. 4° It is required that there be present a proportionately grave reason for placing the cause, nor is the agent held from another obligation to omit it; because the natural law obliges us to avoid evils and to forestall harms to the neighbor, when we can do this without proportionately grave harm.

When a reason is proportionately grave will be explained in n. 307, 308. 5° It is required that practically there be no prudent judgment that the agent will consent to the illicit effect when it is produced. For consent into sin is never not to be avoided. Suppose, for example, that from riding there is wont to follow pollution for someone, and that the one riding does not intend this (the evil effect), but honest recreation (the good effect). Nevertheless he knows by experience that, notwithstanding the purpose of not consenting and of employing the means for forestalling consent, frequently, because the means have not in fact been employed, or have not been employed seriously enough, he consents; on this man certainly the obligation rests of abstaining from riding.[1]

Note. - a) That it may rightly be decided whether the cause of permissively bearing oneself toward an evil effect is proportioned, the advantages and disadvantages which will follow from the action are to be compared with one another; but not only those which will arise in this or that particular case, but also those which would exist for society considered universally, or for the human race, if either it were necessary to abstain from the action, or it were lawful to place it. Wherefore, if I offer a just wage to a worker, and he demands more than the just amount, I am by no means held to consent to it, although I foresee that he will therefore blaspheme; for from this there would exist for society, or for timorous men, this grave harm: that whatever they asked would have to be furnished to those scoundrels, in order to forestall their blasphemies, which otherwise would not only not be forestalled, but to which a more frequent occasion would also thereby be given. On the contrary fornication will never be lawful, because permission for it, if it were given in any event, would yield to the harm of the human race (n. 493, I, under 2°).[2]

b) If the effect is lightly evil, it can never be imputed unto grave fault; but if it is gravely evil, it will not therefore always be imputed unto grave fault. For, as I said in n. 7 under 3°, in order that an effect can be imputed to one placing a cause, it is required that there be present a law by force of which the agent is held to avoid the cause on account of such an effect, or insofar as it is the cause of such an effect. But the obligation of this law, and likewise the degree or quantity of the obligation, depends both on the causality which intervenes between the action and the effect - namely whether the action influences the effect per se, or only per accidens, and, if per se, whether proximately or remotely - and on the reason which one has for placing the cause of such an effect. - Therefore under grave fault a gravely sinful effect will be imputed if it follows per se and proximately from the action (pollution from an immodest touch); but the killing of an unjust aggressor will in no way be imputed to you if this is necessary for the defense of your life, since you have a just reason for placing a cause producing even per se and proximately the death of the aggressor. - Under grave fault also will be imputed an evil effect which tends to grave harm of the neighbor if either no reason for placing the cause is present (no good effect follows for you from the cause), or a reason is indeed present, but not proportioned to the harmful effect (the good effect to follow from the placing of the cause is so little that, considering the gravity of the harm that will occur to the neighbor, it is to be esteemed as nothing). A case, for example, would be if, by not placing some action from the placing of which you can abstain without any inconvenience, or at least without proportioned inconvenience, you would

avoid a cause, although only remote, of so grave a harm (suppose the killing of a neighbor), that you are held under grave fault by charity to avoid that harm, even with this inconvenience. Besides this case, there is not given a grave obligation of avoiding an effect, although gravely evil, if that effect follows from an act as from a cause per se, but only remote. Wherefore, by force precisely of this principle, inordinate motions following from honest conversation (a remote cause), although useless, are excused from grave fault; but if the conversation is truly useful, those motions by themselves are free from every fault. Notice, however, that a cause remote of itself can, for someone, considering his special disposition, be proximate. Examples are had in n. 502, I, under 2°.

(1) S. Thomas, 2, 2, q. 64, art. 7. (2) Neither as the end of acting, nor as the means of obtaining another end, however good. I say: nor as the means, etc.; but the illustrious Walsh, de Act. Hum., n. 155 sq., in order that the principle may comprehend absolutely all cases, limits this to means so dishonest that in no event whatever can they be licitly intended, for example pollution, which it is never lawful to intend, not even for preserving the health of the body. (3) Rom. 3. 8.
(1) L. IV, 438, 483; L. VI, 457. (2) Walsh, de Act. hum., n. 135-138.

Article II: On the Free

9. Definition. - Free is said of that which proceeds from the will determining itself with the power of not acting. But liberty is the faculty of acting or not acting, or the faculty of choosing one thing before another. Hence everything free is voluntary, but not conversely. See above n. 4 under 4°.

Division. - Manifold species of liberty are distinguished.

1° **Liberty from necessity**, or liberty

of indifference, or of election, which is immunity from every antecedent intrinsic necessity; and this is liberty properly and strictly so called.

2° **Liberty from coercion**, or liberty of spontaneity, which is immunity from every extrinsic violence brought upon one.

3° **Liberty of contradiction**, which is the faculty of bearing oneself toward contradictories, for example of studying or not studying.

4° **Liberty of contrariety**, by which someone can choose one thing, or the contrary of this, for example to love or to hate.

5° **Liberty of specification**, which is the faculty of bearing oneself toward diverse things, for example to walk, to play, etc.

Article III: On the Things Opposed to the Voluntary and to the Free

Four things are opposed, namely ignorance, concupiscence, fear, and force or violence.

§ I. On Ignorance

10. Definition. - Ignorance, taken generally, is the lack of knowledge.

Division. - Ignorance is distinguished:

1° On the part of the subject, into **positive** (or privative) and **negative** (or nescience), according as it is the lack of knowledge owed, or of knowledge not owed, for example ignorance of canon law in a countryman. Each differs from error; for the latter denotes a discrepancy between that which the

mind judges and the thing concerning which it judges. Thus, with respect to a usurious contract, he labors under ignorance who does not know it to be usurious (lack of cognition); but he labors under error who, although he knows it to be usurious, nevertheless judges it lawful. Therefore every error is ignorance, but not conversely. How error differs from fraud, see n. 882. 3°.

2° On the part of the object, into ignorance of law and of fact, according as it is concerned with the existence of a law, or of a particular fact.

3° On the part of the cause, or of the will from which it proceeds, into vincible and invincible, according as, with diligence applied, it can be overcome or not. - But invincible ignorance is physically such, if in no way it can be overcome; morally such, if, after moral diligence has been applied, it cannot be removed.[1]

But that diligence is judged moral which prudent persons, according to the gravity of the matter and according to their own capacity, in such circumstances, are wont to employ.[1]

4° On the part of the action which is done from ignorance, one kind is **antecedent**, which is in no way willed and is the cause of the work, so that, if the ignorance itself were not present, the work would not be done; as if someone pierces a man whom he invincibly thinks to be a wild beast, and would not have killed him unless he had been ignorant that he was a man. Another kind is **concomitant**, which neither is voluntary, nor is the cause of the work, so that, although it were absent, the work would equally be done; as if someone, invincibly thinking that he is killing a wild beast, kills a man long sought for death, whom he would also have killed if he had known him. Another kind is **consequent**, which in some way follows an act of the will unwilling or negligent to inquire, and is directly or indirectly willed; and therefore it is otherwise called vincible ignorance. Haine, ib. p. 11. q. 27.

Vincible ignorance is distinguished in three ways, namely: 1° simply such, when some diligence, yet not sufficient diligence, is applied to dispel it; 2° crass or supine, when no, or scarcely any, zeal is put into investigating the truth; 3° affected, when someone voluntarily shuns the means of laying aside ignorance, lest he be drawn back from his own purpose.

To invincible ignorance perfect forgetfulness and full inadvertence must be referred. But these, if they are not perfect, or if they proceed from culpable negligence, belong to vincible ignorance.

(1) By moralists only ignorance that is morally vincible is considered, not that which is merely physically vincible; for the latter is nothing other than the absolute - metaphysical - remote - potency of knowing, the aptitude of the intellect so that it can know, such as exists in all men, even in those who at present cannot use reason. Therefore it differs from that proximate and ready potency (i.e. not impeded potency) of knowing, which is required for ignorance to be morally vincible (L. II. n. 171); but this is impeded as often as no thought at all concerning the truth to be investigated enters, or has entered, the mind. Cf. n. 34. (1) I say: according to the gravity of the matter; wherefore diligence sufficient in one matter will not always be sufficient in another. Thus, for example, in investigating the owner of a thing found, other things being equal, greater diligence is required if the thing is of extraordinary value than if it is of ordinary value; - according to one's own capacity; wherefore diligence sufficient in one person may be insufficient in another. Thus the unlearned, in deciding cases of conscience, are to be said to have applied moral diligence if they have consulted a pastor or confessor free from suspicion of ignorance; but the same cannot be said of a learned person; - in such circumstances, or insofar as time or other circumstances permit; for it happens that a matter is so urgent that it does not allow a longer investigation.

11. Principles. - I. **Invincible ignorance entirely takes away the voluntary**, both because it itself is not voluntary, and because nothing can be voluntary where there is no cognition. Therefore no act proceeding from invincible ignorance can be imputed to the agent. Thus likewise one must determine

concerning perfect forgetfulness and inadvertence, since the same reason obtains. - Antecedent ignorance precisely causes the involuntary, and indeed positively, because, if knowledge were present, the act would not be placed.

II. **Vincible ignorance does not take away the voluntary.** For ignorance of this sort, whether directly or indirectly, is truly voluntary. Nevertheless it diminishes the voluntary, because it is the cause of willing that which, if it were absent, one is supposed never to have willed. The same also, by parity of reason, say concerning imperfect forgetfulness and inadvertence, and also concerning consequent ignorance.

III. **Crass ignorance and affected ignorance diminish the voluntary much less, and consequently sin.** The reason is that the former arises from grave negligence, while the latter is retained deliberately for sinning more freely, and therefore is an indication of a very intense voluntary, under which respect it also increases the sin. S. Th., *De malo*, q. 3. a. 7.

IV. **Concomitant ignorance causes the involuntary, but only negatively**, or the non-voluntary, not positively, because it is not against the inclination of the will; for the agent rejoices when he notices it. Hence it does not wholly excuse from sin, because it does not take away every habitual or actual conditioned will of sinning; nor again does it wholly cause sin, because it is involuntary and invincible. Hence he who from such ignorance kills, as if it were a wild beast, a cleric who is his enemy, remains guilty of internal homicide because of the evil will of killing his enemy, if he had known him; nevertheless he is excused from external homicide, nor does he incur excommunication, irregularity, or restitutions; because an external act not voluntarily placed does not induce these penalties, and an internal act does not induce them. Haine, ib. p. 13. q. 29.

Resolutions. - 1° Children who have done things illicit in themselves without any pang of conscience or suspicion of malice did not formally sin in reality, even if they had already attained the use of reason; and therefore afterwards they are not bound to confess them, when they understand those things to be illicit, since material sins are not matter for confession.

2° If a confessor or judge notices that he lacks sufficient knowledge to discharge his office as is fitting, and neglects to acquire knowledge, or before he has acquired it continues to exercise his office, he will be held for the errors which he foresaw at least in some way, because they are voluntary to him, at least in their cause.

3° Those who through their own fault are not accustomed to hear Mass on Sundays and are little solicitous about the feasts and fasts to be observed, as such persons have become accustomed, are not excused from sin if they do not observe the feasts and fasts, on the ground that they are ignorant of them; for the ignorance is vincible, since they voluntarily neglect to apply the means by which they could know them. But if only once or twice they have omitted Mass, whether with or without their own fault, and have not even suspected that a feast day or day of fasting was occurring during the week, they are excused from sin, since their ignorance is invincible; for he cannot be called voluntarily negligent in applying the means of dispelling ignorance who does not even think about applying them. - Likewise they sin who, dwelling in the country, far from a church, have neglected to inquire from books, or, if they do not know how to read, from others, for example Catholic neighbors, concerning feasts and fasts. But those are excused who, unskilled in reading and living

among non-Catholics, have no one to admonish them concerning these things. The reason for both is the same as that which was brought forward just now.

4° If negligence in laying aside ignorance is culpable only venially, the deed following from it will be imputable only to venial fault. The reason is that acts of this sort are voluntary and therefore culpable only in their cause; therefore, since the cause, namely ignorance, does not reach grave fault, the effect cannot exceed light fault.

5° Vincible ignorance of a thing knowledge of which is prescribed by reason of itself (for example, of the mysteries of Faith, n. 257 sqq.) is a sin specifically distinct from that which is done from ignorance of this sort; because one sinning in this way acts against two diverse precepts issued for a diverse motive (n. 213). But if cognition is prescribed only by accident, by reason of the work to be done, it is not a special sin, but only one sin against that virtue

to which belongs the observance of the precept that is vincibly ignored. For by the same precept by which I am bound, for example, to fast, I am also bound to inquire. Hence, if through negligence in inquiring I do not fast, it is enough if I confess: I violated the fast. Haine, ib. p. 14. q. 31.

See many other things concerning ignorance elsewhere passim, especially in the treatise on Conscience, on Laws, on Sins, and on Contracts in general, where error is treated.

§ II. On Concupiscence

12. Definition. - Concupiscence is commonly defined: a motion of the sensitive appetite, or a motion which operates not only in the soul, but also in some sensible part of the body, at least in the heart, namely moving it more intensely toward a real or apparent good, or drawing it back more intensely from that which is represented as evil. In order that this may be understood more fully, it must be known that often we suffer in our body certain commotions, which vehemently impel and excite us toward something; these, moreover, are called passions, which are far from being evil in themselves. For they are from the author of nature, and can be incentives of virtues: thus, for example, a soldier inflamed with desire of true glory fights more bravely. Yet because in the present state of corrupted nature the passions snatch man beyond the limits within which virtue stands, therefore in ordinary usage the passions themselves, just as also concupiscence, are regarded as evil movements; and therefore concupiscence, insofar as it is opposed to the voluntary and to the free, is defined: an **inordinate motion** of the sensitive appetite, by which the will is borne toward sensible good.

13. Division. - A twofold concupiscence is distinguished: one antecedent, another consequent. The former is that which, in the order of causality, precedes any deliberation or consent of the will, yet allures and draws it to consent; thus, for example, when an enemy has been seen, at once the appetite of vengeance is aroused. But the latter is that which, in the order of causality, follows an act of the will: either because a vehement motion of the will overflows into the inferior appetite, as is wont to happen in those who have a habit of some sin, for example of lust; or because the will directly and deliberately excites this very thing, as, for example, when someone reads obscene books in order to excite lust, - or deliberately thinks about an enemy or about injuries received, in order to kindle hatred in himself or increase the desire for vengeance, - or, when about to rebuke those whom he loves with tender affection, he in some way excites himself to applying himself seriously to the rebuke.

14. Principles. - I. **Antecedent concupiscence, and therefore non-voluntary concupiscence, the greater and more vehement it is, the more it diminishes sin; indeed it can excuse entirely from sin.** The reason is that the motion of the sensitive appetite disturbs, diminishes, or even impedes the judgment of reason; but causes which diminish the judgment of reason also diminish the voluntary. Since therefore an act is sin insofar as it is voluntary, by that very fact concupiscence, while it diminishes the voluntary, diminishes also the sin; and therefore where concupiscence is more intense and stronger, there the sin is less. Indeed the notion of sin will entirely cease if the motion of concupiscence totally impedes the use of reason (first-first acts).[1]

II. **Consequent concupiscence, and therefore voluntary concupiscence, does not diminish sin, but rather increases it; or rather it is a sign of its greatness, insofar as it demonstrates the intensity of the will toward the act of sin.**[2]

The former part is proved, because although physically, nevertheless not morally, it diminishes the voluntary, since the very diminution of the judgment of reason proceeds from the will of the agent himself; for he who wills the cause, by that very fact also wills the effect. Haine, ib. p. 15. q. 33.

The latter part is proved, because, as St. Thomas has it:[3] "When from a strong movement of the will the lower appetite is stirred to passion, ... passion adds to merit or demerit, because the passion is a sign that the movement of the will is stronger; and in this way it is true that he who does alms with greater compassion merits more, and he who commits sin with greater lust sins more, because this is a sign that the movement of the will is stronger."

(1) S. Th. 1. 2. q. 73. art. 6; and q. 77. art. 2, 6 and 7. A motion leaving semi-full advertence is called first-second. (2) Ibid. q. 77. art. 6. (3) De malo, q. 3. art. 11.

§ III. On Fear

15. Definition. - Fear is a trepidation of mind on account of some danger present or future to oneself or to those closely joined to oneself.

Division. - Fear is commonly divided as follows, namely:

1° By reason of itself, into **grave** and **light**, according as a grave evil is feared (hard imprisonment, notable detriment to reputation, great loss of goods), certain or probable, inevitable; - or an evil either light, or improbable, or avoidable. Thus, if you take fear objectively. - Subjectively it is most grave, grave, or light according as it disturbs reason entirely, notably, or lightly.

But grave fear is such absolutely or relatively. Fear is called absolutely grave when evils truly grave in themselves are feared; but relatively grave when, although light in itself, nevertheless it is grave with respect to certain persons. Thus boys, women, and old men are wont to be affected by greater fear in the same danger than men of mature age.

2° Fear, by reason of the cause, is from within or from without, according as the thing itself produces fear, as disease, shipwreck, etc., or an extrinsic cause, namely a man bringing fear upon someone.

3° Fear, by reason of the manner in which it is struck in, is struck in justly or unjustly, according as it is inflicted from a cause either just, for example deserved penalties, or unjust; and this fear is unjust as to substance. It is called unjust as to manner when it is inflicted indeed from a just cause, but without the order of law being observed. See n. 1599. II.

4° By reason of the end, fear from without can be struck in either for extorting some act, or for another end.

Reverential fear must also be added, which is had when someone fears lest he have offended his parents, or other Superiors. It is referred to just or unjust fear according as its cause is just or unjust. But it can be grave if there is prudent fear lest those who strike in the fear be held offended for a long time and gravely.

16. Principles. - I. **An act placed from fear, however grave, is simply and absolutely voluntary and free.** The reason is that through fear neither is cognition taken away on the part of the intellect, unless the mind is entirely disturbed, - nor election on the part of the will, which always enjoys the faculty of determining itself to the opposite. Hence those have always been regarded as apostates who, conquered by fear of torments, denied the Faith.

II. **Those things which are done from fear, although simply voluntary, nevertheless regularly are also involuntary in a qualified respect; whence also the gravity of fault is diminished.** The reason is that, by hypothesis, when someone is impelled to acting by fear alone, he acts in such a way that, with fear absent, he would recoil from acting; and therefore a work done from fear alone has joined with it a certain sadness and repugnance of the will, although inefficacious. It is said **regularly**, because sorrow for sins which is elicited from fear of divine vengeance excludes every true notion of the involuntary, or every deliberate affection toward sin. Understand this of fear or attrition that is simply servile, not of servilely servile fear; for the latter does not exclude the will of sinning absolutely, as the former does. Namely, just as in a merchant who casts his wares into the sea from fear of shipwreck there remains an affection simply voluntary toward the wares, so in a sinner detesting his sins from servilely servile fear there remains an affection simply voluntary toward sins; and neither this detestation nor that casting overboard is involuntary except in a qualified respect.

III. If fear takes away the use of reason, the act, as is clear, can in no way be voluntary. But if it does not indeed take away the use of reason, but notably impedes it, the act will be imperfectly voluntary because of imperfect cognition of the thing.

17. Note. - 1° What has been said holds concerning those things which are done **from fear**, not concerning those things which are done only **with fear**; for the latter can in no way be called involuntary, and are wont to belong to a man acting manfully or overcoming fear, for instance to a soldier fighting bravely. Bouq. n. 59.

2° It happens that together with fear other causes impel one to acting, and then the action can be pleasing rather than troublesome. For example, someone eats meat on a forbidden day from fear indeed of the mockery of companions, but at the same time from affection for meat. In this case it is not always evident what the act has from fear and what from elsewhere, nor therefore in what degree it is involuntary in a qualified respect. Ib. n. 61.

3° Theologians treat of fear under a threefold respect: 1. as an impediment of the voluntary; 2. as a cause excusing from law; 3. as a cause of invalidity of acts. Here we have spoken of it under the first respect.

§ IV. On Force, or Violence

18. Definition. - Force or violence is coercion which is brought upon someone by an extrinsic and free cause, while his will is resisting.

Division. - A twofold violence is distinguished, namely absolute and in a qualified respect, according as coercion is brought upon someone resisting in every way, or only in some measure. Moreover it happens in two ways that someone resists only in some measure, namely: 1° when the force is not of such a kind that it cannot be broken or weakened by stubborn resistance; or 2° when someone does not unwillingly suffer the force brought upon him, whatever finally it may be.

Observe that, in a moral matter, absolute violence is that to which, on the part of the one who suffers it, that resistance is opposed which can be opposed to it according to one's power. I say: **according to one's power**; this intimates two things: one, that the resistance to be applied must be not only internal, but also external; for internal resistance cannot be sincere and efficacious unless there is also external resistance which can be applied. The other, that that external resistance must be as great as, according to the circumstances, can and ought to be applied. See the examples in n. 20 under 2° and 3°.

19. Principles. - I. **Elicited acts of the will can in no way be coerced**, because force cannot be brought upon the will. Therefore St. Anselm:[1] "No one can will unwillingly," he says, "because no one can will while not willing."

II. **Other acts, placed from absolute violence, are in no way voluntary or free, and therefore are not sinful or demeritorious; but external acts which are placed from violence only in a qualified respect are more or less free according to the greater or lesser difficulty of resisting, or according to the greater or lesser affection by which someone suffers the force.**[2] Moreover, not only the exterior members of the body, but also the interior faculties, such as phantasy, the sensitive appetite, etc., can be moved to some acts by some extrinsic force, for example of an angel, whether good or bad, or of another natural cause, while the will resists in vain; for instance, to distractions, to obscene imaginations, etc.

(1) De libero arbitrio, c. 5. (2) L. II. n. XVII. XVIII.

20. Resolutions. - 1° A woman who resists in every way the violence which is brought upon her sins in no way, even if she suffers violation; for no one sins wholly unwillingly.

2° Women suffering force sin gravely if, through pusillanimity or vain fear, for example of offending the aggressor, etc., they do not resist as much as they can, even with the danger of consent set aside; because although they do not consent to sensual delight, nevertheless, while they resist less than is fitting, they equivalently consent to the violation of themselves and cooperate in the crime of another. - Whether a woman oppressed by force sins if, on account of fear of death, she omits to cry out, is disputed. - It seems probably to be denied, with danger of consent set aside. Indeed, very probably, with the aforesaid danger set aside, the woman is not bound to cry out when there stands a danger of any notable harm, whether of infamy or of excessive shame; for if otherwise she already resists as much as she can, she is not bound to repel force with so great an inconvenience. Thus expressly St. Alphonsus.[1] In practice, however, the opposite manner of acting is to be advised, because of the danger of consent.[2]

3° Sometimes resistance altogether absolute and continuous to the coercion brought upon one is not required, namely when, on the one hand, it would be useless, and, on the other hand, the matter at issue is less dangerous. Thus martyrs led to the temples of the pagans were not sinning, although they walked. But in every case resistance must be made as much as is required for averting danger of scandal or injury to Religion.

Note. - From what has been said it is clear that force and fear, although in Law they are sometimes used promiscuously, differ very much from each other. "For 1° force is an impulse brought upon one from without, and does not act upon the mind; but fear is an affection of the mind arising from the apprehension of an evil, whether to be brought on by force, or to happen in any other way; 2° force does not act except insofar as it is brought upon one as actually present; fear arises from the apprehension of an evil either present or to happen afterwards; 3° the things which are done under one compelling are altogether involuntary; the things which are done from fear are more often voluntary." Walsh, n. 348.

(1) L. IV. 430. (2) Ibid. 368.

Chapter III: On the Morality of Human Acts

It is said: 1° Of the essence of morality; 2° of the sources of the same.

Article I: On the Essence of Morality

21. - As was said above in n. 1, for theologians a human act is the same as a moral or imputable act. Yet theoretically each must be distinguished; for a twofold being is found in any human act, namely physical and moral. A human act considered according to physical being, or in the genus of nature, is an act which proceeds from the free will of man. But a human act according to its moral being, or in the genus of morals, is that same act insofar as it agrees with or is opposed to the rule of morals; and therefore the morality of human acts in general is their agreement with the rule of morals, or their discrepancy from the same. With certain more obscure formulas of speaking from the schools being set aside, the essence of morality can be said to consist in the bearing or relation of a human act to the rule of morals.

22. - But the one rule of morals is right reason; if the human act has been conformed to it, it will be called morally good; but if deformed from it, morally evil. Now since right reason is distinguished as twofold, one uncreated, which exists in the divine mind and is called the eternal law; the other created, which is the light impressed by God upon the rational creature, by which the eternal law itself is known; therefore:

I. **The essence of morality consists primarily in the bearing or relation of a human act to the eternal law**, which is the divine reason, or the will of God commanding the natural order to be preserved and forbidding it to be disturbed. The reason is that the eternal law alone can be the primary rule of morals. And indeed a rule of this sort must be infallible, indefectible, and capable of obliging in conscience; but such is the eternal law alone, from which alone other laws receive the force of obliging; therefore. Thus from St. Thomas.[2]

II. **The essence of morality consists secondarily in the bearing of a human act to right reason.** The reason is that right reason alone can manifest to man the eternal law, or the primary rule of morals. Therefore it belongs to right reason to direct the act of the will to God as to the ultimate end. Therefore right reason is the subjective rule manifesting the primary rule. Therefore the essence of morality consists secondarily in the conformity or deformity of the human act with right reason.[1]

(1) L. II. n. XXXIV. (2) 1. 2. q. 71. a. 6. (1) S. Th. 1. 2. q. 19. a. 4.

23. Resolutions. - 1° Therefore a moral being is all and only that which lies under the rule of morals, or under the law of God commanding, forbidding, or permitting. For through this alone we are ordered to our ultimate end, or disordered from it. Therefore, that our acts may be good, they must be in some way conformed to the divine will, since this is the supreme and primary rule of morals.

2° Liberty is pre-required for the foundation of morality; otherwise the act would not be human, and therefore all sins and merits would be removed from the midst.

3° It is false that the essence of morality must be placed in liberty alone. For the morality of a human act embraces its imputability to praise or blame, to reward or punishment; but an act is not worthy of

praise or blame only because it is free, but also, and most of all, because it is conformed to or deformed from the rule of morals, or the divine will.

4° It is false, a fortiori, that morality consists in the voluntary alone. For the voluntary can be necessary, as, for example, in the natural appetite for happiness in general (n. 4 under 4°).

5° Moral goodness or malice is twofold, namely objective or material, and subjective or formal. The former is the very conformity or discrepancy of the action with the rules of morals considered in itself and in the object itself, independently of the will of the agent; but the latter is the same conformity or discrepancy, insofar as it is freely willed by the agent.

24. Questions. - It is asked 1° whether there are acts properly indifferent, or lacking morality, whether in species or in the individual.

Resp. 1° It is certain that there are acts indifferent in species, or acts which in their own species are without morality. For there are acts which, considered in themselves, abstracting from end and circumstances, have no agreement or repugnance with law or right reason, and therefore are to be judged neither good nor evil. Thus to walk, to write, and innumerable similar things are acts indifferent in themselves.

Resp. 2° But there is controversy with respect to acts in the individual, or as considered in the agent. The more common and more probable sentence with St. Thomas denies this, and St. Alphonsus proves it in these words: "It cannot happen that some singular act proceeding from deliberate will is done without circumstances: therefore either those circumstances are consonant with reason; namely, so that the act is done when, where, how, and on account of what it ought to be done, and thus it is good; or they are not consonant with right reason, at least not all of them, but some one is lacking, and thus it is evil: therefore no act in the individual, and considered according to all circumstances, can be indifferent."[1]

25. - It is asked 2° whether the external act (actually to assist or harm one's neighbor) adds morality to the internal act (to will to assist or harm one's neighbor).

Resp. 1° In itself the external act adds no morality to the internal act, and therefore neither increases nor diminishes the substantial merit or demerit of the internal act. Thus with St. Thomas,[2] St. Alphonsus[3] against certain others. - The reason is that, since the internal act of the will is the cause of the external act, and the effect (the external act) is wholly in the cause (in the internal act), the whole goodness or malice of the former must be placed in the goodness or malice of the latter.[4]

This is also clear from Sacred Scripture, which often regards the will as the deed itself. Thus, with respect to goodness and merit, it is clear from Gen. 22. vv. 16, 17, where God said to Abraham, who only willed to immolate his son: "Because thou hast done this thing, and hast not spared thy son ... I will bless thee." And, with respect to malice, from Matth. 5, 28, where Christ says: "He who shall have looked at a woman to lust after her has already committed adultery with her in his heart." - Nor is the obligation of declaring the external act in Confession an obstacle; for it must be declared because from the internal act of the will and the exterior work there arises one and the same moral act.[5] Nor again is an aureola an obstacle, which is attributed to martyrs, doctors, and virgins, and is not granted to those who are inwardly prepared to suffer and do the same things which the former have done and suffered; for an aureola is a certain accidental reward or joy corresponding to a special

difficulty joined with an exterior act. Nor, moreover, is it an obstacle that the real reception of a Sacrament confers greater effects than the will alone of receiving it; for in the question the matter is not of an equal effect of the internal and external act, but of the equal morality and imputability of them. Add that the real effect of the reception of a Sacrament comes from the privilege of Christ, who willed that it have power *ex opere operato*, and not by reason of a greater goodness in the recipient. Finally, the matter is also of effect, not of morality, when we say that by an internal act an indulgence is not acquired which the Church has granted to an external act; that a censure or irregularity is not incurred by the mere will of placing the work to which by law they are annexed; and that the burden of restitution does not exist from affective injustice alone.

It must also be noted, if the matter is concerning goodness, that the internal act is supposed to proceed from a will so disposed that, given the opportunity, it would operate, and besides that the case of an internal act is excluded which by its nature would be necessarily inefficacious in order to the execution of the action which it would even sincerely will. Thus an elicited act by which I would will only to please and obey God as much as Christ did could not reach that goodness which the actions of Christ had; for however much I should will this, I would will it inefficaciously, since I am not capable of a theandric action.[1]

Resp. 2° Per accidens, the external act generally increases morality, because very often it is the occasion by which the goodness or malice of the internal act is increased, for example so that it is prolonged or multiplied, etc. For the internal act is increased because of the arduousness of the good external work, or because of delight in evil, or because of the longer delay of time necessary in completing the external work. Besides, often in the external work there is scandal or harm to one's neighbor, or, on the contrary,

his edification; from these also the morality of the internal act is increased. Thus commonly the theologians.

(1) L. II. n. XLIV. (2) 1. 2. q. 20. a. 4. (3) L. II. n. XL. (4) S. Th. ib. ad 2. (5) Moral, I say; for although these acts, as being of two diverse potencies, are physically two, nevertheless they constitute one act morally, because those two potencies are so ordered to each other that one acts under the command of the other. S. Th. 1. 2. q. 17. a. 4 ad 1 and 2; q. 20. a. 3. (1) Bouq. n. 425.

Article II: On the Sources of Morality

The sources or principles of morality are those things from which it comes about that a human act is good or evil, better or worse.

Three sources of morality are numbered, namely: 1° the object; 2° its circumstances; 3° the end of the agent. These three are altogether required for a good act; if even one is evil, the act will become evil. Hence the commonly known axiom: Good is from an integral cause; evil, from any defect whatsoever.

I say: **are required**. Yet, in order that goodness be imputed, it is required besides that it be directly willed; for "for the will to be good, it is required that it be good under the aspect of good, that is, that it will the good and on account of the good."[1] Wherefore it is imputed to no one for praise that, for example, he visited the sick only for the sake of conversation. Yet it is not required that it be intended explicitly and reflexively, or in a signate act, for example that you say or think: I will to fast because it is honorable; but it suffices that it be sought implicitly and equivalently, or in an exercised act, that is, that the act be apprehended as becoming, praiseworthy, worthy of reward, commended by pious men,

or especially as a work, for example, of mercy, etc., and thus be done with a good intention. Cf. n. 31. Corol. 2. - On the contrary, in order that the malice of an act be imputed, it suffices that it be indirectly willed. Hence it is not necessary that the agent tend into the act as evil, because in that way scarcely anyone would sin; but it suffices that he intend an act to which malice is known to be annexed, although this malice in itself does not please him, or that he not avoid the act or the effect of the act which here and now he can and is bound to avoid; because by this very fact he virtually contemns the law and indirectly wills the malice. The reason for the difference is that good must be sought; but evil not only cannot be sought, but must be avoided; and it is not avoided by him who freely places an action to which evil is annexed. Hence he who voluntarily makes himself drunk, although he does not directly will the malice itself of drunkenness, but intends only the delight from drinking, nevertheless acts shamefully and sins. Haine, ib. p. 17. q. 42.

(1) S. Th. 1. 2. q. 19. a. 7.

§ I. On the Object

26. - The object is everything (thing or person) about which some action is morally[1] concerned. Hence in theft the object is another's thing which has been unjustly taken away; in an act of justice, another's thing which has been restored; in detestation of sin, an evil action which has been perpetrated. - Now this object can be something either good, as to venerate parents; or evil, as to steal another's goods; or indifferent, as to walk, to speak, to sleep. Again something can be either evil from its own nature, as drunkenness; or evil only because it is prohibited, as to eat meat on Friday without permission. But things evil from their own nature, or intrinsically evil, are of a threefold class, namely:

1° Certain things are such absolutely, or independently of every circumstance, because of themselves they involve repugnance with an absolutely necessary right order, as is hatred of God, blasphemy, etc.

2° Other things are intrinsically evil, not precisely in themselves, but by reason of some adjunct or condition which depends on the dominative power of God or man; such are the taking away of another's thing, the injuring of body or reputation, and similar things, which sometimes become lawful.

3° Finally, other things are evil only by reason of the danger which is ordinarily joined to them, as the sight of a base object, the reading of a wicked book, etc. ... These, when a just cause has been given and the proximate danger of sinning removed, can become lawful.[2]

That a human act derives its distinct morality from the object is clear from this, that from the object it has that it is such a moral action and not another, that is, good or evil; justice or religion; lust or blasphemy. And indeed from the object the act derives its first and essential morality. First, because it belongs to the act before any other morality (arising from circumstances or end); essential, because it cannot be absent from the act, although others (arising from circumstances

or end) were absent. Thus theft of a sacred thing in order to make oneself drunk is primarily conceived as evil by reason of the object, insofar as it is the unjust taking away of another's thing; and this injustice cannot be absent from theft, even when the end, which is drunkenness, and the circumstance of the sacred thing, are absent. Haine, ib. p. 19. q. 44.

(1) That is, in a manner consonant or dissonant with reason (L. II. n. XXXVII), not physically; for under this respect it is always good, namely with the goodness of nature or of being. Thus another's thing is good whether it is unjustly stolen or restored; God, whether He is praised or blasphemed. (2) S. Th. Quodl. 9, a. 15. c.

§ II. On Circumstances

27. - Circumstances, so called as if standing around the act, can be defined: "Accidental determinations, or certain accidents of an act, without which this act could indeed exist as to substance, but which nevertheless add to it a morality in some way different from that which that act already participates from the object and the end." Therefore, in order that a circumstance confer some morality upon an act, it is required that, for example, the circumstance of the sacred place in which it is perpetrated confer the malice of sacrilege upon an act of lust; but that the fact that a theft was committed with the right or left hand confers nothing of morality upon the theft.

Circumstances, as also the end, **as such**, attribute to the act a secondary and accidental morality. Cf. the things said at the end of n. 26. I said: **as such**; because sometimes they attribute to the act a first and essential morality, as if either a work objectively indifferent becomes evil from the end for which it is placed (to sing for vain glory) or good (to sing so that the profit coming from it may fall to pious causes), or if an evil circumstance is the whole reason why a good work is chosen (to sing divine praises in church merely so that you may be praised by men). But then circumstances, as being intended in themselves, induce the notion of object in the genus of morals. Haine, ib. p. 19. q. 46.

I say: **A human act derives true morality from circumstances.** The reason is that circumstances determine the act as moral, namely as having a relation of agreement or disagreement with reason and right order; indeed, as I have said, sometimes circumstances alone induce agreement or disagreement into an act, as happens in the acts about which we spoke above. Hence some circumstances leave the object in the same moral species, as the quantity of money stolen by theft or given in alms; for the species of malice in theft, or of goodness in alms, is not changed by the quantity of money stolen or given. But others change the species itself, or add a new one over it; thus the circumstance that the thing taken away is sacred adds over the malice of theft a new species, namely sacrilege.

From the former circumstances, some aggravate malice, but others diminish it, and that gravely or lightly. Thus the greater or lesser quantity of money taken away by theft, or given in alms, renders either the malice of theft or the goodness of alms greater or lesser, and that gravely or lightly lesser, according as the quantity of money is notably or not notably greater or lesser.

But if circumstances transfer a sin from venial into mortal, or conversely, then they are said to change not the objective species, which they only increase or diminish, but the theological or demeritorious species. Thus the theft of one cent does not differ as to the virtue to which it is opposed from the theft of a gold coin; nevertheless it differs as to fault, namely theologically, because the theft of one cent, as being a light sin, does not deserve the privation of grace and glory, as does the theft of a sum that is grave, as being mortal.

Number of circumstances. - Seven circumstances of human acts are commonly enumerated, and they are comprehended in that common little verse:

"Who, What, Where, By what helps, Why, How, When."

See the reason for precisely this number, if you wish, in St. Thomas.[1] Bouquillon[2] and Haine[3] explain them clearly in the following practical way.

Who, or the one acting, is considered not by reason of himself, for thus he belongs to the substance of the human act, but by reason of his accidental quality or condition, which morally attributes to the act in moral estimation either a diverse value (changing the species), or a greater or lesser value (aggravating or diminishing in the same species). It changes the species, for example, in a sin of lust, if it is committed by a religious; it aggravates in theft, if it is perpetrated by a priest, insofar as, other things being equal, any sin whatever is graver in a priest than in a layman. I say: **other things being equal**, that is, supposing that in each the act is voluntary in the same degree, and thus in a holy man the same venial sin, committed from frailty or subreption, is wont to be lighter than in one not holy, because the holy commonly neglect less to guard against sins of this sort.[1] Similarly it also increases goodness, if, for example, an eminent man humbles himself, or a poor man gives alms.

What, that is, not the object itself into which the will is borne first and of itself, for a circumstance comes to the object; but the quantity or accidental quality joined to the object. In theft, for example, it is aggravating insofar as it signifies quantity, and thus the theft of 1000 coins is worse than of 100; but it can change the species insofar as it signifies quality, as if the thing stolen is sacred.

Where, or the circumstance of place, namely sacred, profane; public, private. If it operates anything morally, it ordinarily changes the species. Thus the holiness of the place adds the species of sacrilege to a homicide perpetrated in a church; publicity adds the species of scandal to a sin which is committed in a public place. But if you cling to base thoughts in church, it is only aggravating. But if an act, lawful in itself, is prohibited in reverence for a place, for example the extraction of a thief from an immune place, the quality of the place passes into the substance and gives the first species.

By what helps, or by what means which is not necessarily joined to the act; for, as I again admonish, circumstances are accidents of a human act. It changes the species if, for example, by the help of a demon or magician you have brought evil upon your neighbor, or have put on sacred vestments in order to deceive another; it aggravates if, for example, someone steals the ladder of one person in order that he may take away the money of another.

Why, or the end of the one acting, about which presently.

How, or by what accidental manner an act of virtue or of sin is placed; intensely or remissly; from malice or from vincible ignorance; with force brought upon someone or without it, etc. It changes the species, for example, in violation and in robbery; it aggravates, for example, if you sin from malice; it diminishes if you sin from vincible ignorance, from grave fear, from strong temptation, etc.; it changes the theological species if with semi-full advertence.

When, or the accidental quantity (for a long or short time) or quality of time, namely sacred or not sacred. The quality of time ordinarily does not notably aggravate the malice of an act; but, according to Lugo,[1] to a sin which is perpetrated on a feast day it can add a malice diverse in species (namely sacrilege), and that grave, if from the circumstance of sacred time notable irreverence were inflicted upon divine worship; as if someone should exhibit public games, etc., on the Parasceve of the Lord.[2] I would add: in places where that day is publicly or at least commonly distinguished from other days. - If an act not evil in itself is prohibited at that time, for example the eating of meat, the time passes into the object.

(1) 1. 2. q. 7. a. 3. (2) Op. cit. n. 408 sq. (3) Op. cit. p. 21. q. 49. (1) 1. 2. q. 73. a. 10. (1) De Pen. D. 16. n. 518. (2) L. IV. 46.

§ III. On the End

28. - The end is that for the sake of which something either is of itself, namely independently of the will of the one acting (the end of the work; proper; intrinsic), or is made at pleasure by the agent (the end of the one acting; extrinsic). Thus the relief of the poor person is the end of the work in almsgiving; but in the one giving it, either that very relief or vain glory will be able to be the end of the one acting. Concerning this alone, as being the only thing properly called end (motive), we must speak.

But this is: 1° either primary, which flows into the act as an efficient cause, so that without it the act would not be done; or secondary, which only allures to acting, without nevertheless being the efficient cause of the action. Thus a priest in celebrating Mass primarily intends the worship of God, secondarily the stipend.

For others, the primary end is that on account of which the act is chiefly placed; the secondary is that which moves the agent less than the primary, yet so that nothing prevents the agent, if that (secondary end) were lacking, from not acting. Primary in the former sense (which is ours) is equivalently the only or total end, and thus it is understood by St. Alphonsus (H. A. XVI. 136), when he explains who are to be judged to pass otherwise into fraud of reservation. Secondary, in the latter signification, is employed by the same holy Doctor, L. IV. n. 206, § *Nota igitur*, and is called by him the secondarily motive, without which the act (he is treating of a vow) would not be done. The *Vindiciae* give an example (Ed. 2. T. I. p. 307 (1); Ed. 1. p. 919. 1) in one who resolves to enter Religion in order to work out his eternal salvation; but since he is borne inordinately toward the eating of fish, he wishes to enter none but that of the Carthusians.

2° The end is intermediate or ultimate, according as it is referred to another end, or the will rests in it. Again the ultimate end is either a) positively or negatively ultimate, according as it is intended, or is not intended, with the exclusion of another end; or b) explicitly or implicitly intended, according as the agent is moved by an end of this sort expressly or only virtually. Thus the dealings by which a miser strives to increase riches, in which he places his beatitude or ultimate end, can be called so many intermediate ends. But if in riches the will rests in such a way that it excludes God, these will constitute an end positively ultimate; otherwise negatively ultimate. Again, if it expressly excludes God, those dealings will be an ultimate end explicitly intended; if not expressly, but he acts in such a way that he must be said by his deed to exclude Him, as if for increasing riches he commits mortal thefts, those dealings will be an ultimate end implicitly intended; for through mortal sin he renounces God. - A means is that which is intended insofar as it is useful for the end, without the will taking pleasure in it, as, for example, the lack of food which the miser unwillingly tolerates in order to increase his riches. Hence the intermediate end participates in the nature of a means insofar as it is referred to a further end; but in the nature of an end insofar as the will takes pleasure in it.

I say: 1° **A human act derives true morality from the end, as being consonant with or dissenting from reason.** Thus it is conformed to right reason not only to give alms, but also to give them for the remission of sins; just as likewise it is repugnant to right reason not only to steal, but also to steal in order to make oneself drunk.

I say: 2° **He sins who acts for delight alone.** The reason is that he acts inordinately, perverting the order of things instituted by the author of nature. For according to the order instituted by the author of nature, delight exists on account of operation, and not conversely; namely delight, for example in eating or drinking, is as a certain salt and seasoning, which serves for enticing one to actions necessary or useful for life. Therefore delight is only a means for carrying out those actions more easily, better, and more constantly, but is not the ultimate end of the action. For thus St. Thomas says: The divine intellect, which is the institutor of nature, has appointed delights on account of operation.[1] Confirmation from proposition 8 condemned by Innocent XI (p. XV). - Yet this disorder of itself is not grave, and therefore does not exceed venial sin; because ordinarily the ultimate end is not excluded, not even implicitly, unless the matter is of those "whose," as the Apostle says, "God is the belly."

(1) S. Thom. 1. 2. q. 4. art. 2. (1) Philip. 3. 19.

29. Resolutions. - 1° Every choice of an evil means is evil, but, conversely, not every choice of a good means is good. Thus no one is praised from the fact that he abstains from drink from avarice; but he is to be held guilty who steals money for making alms.

2° He who chooses an honorable means for an honorable end places an act of twofold honorableness, if each honorableness is intended. Likewise he is guilty of twofold malice who chooses an evil means for an evil end, for instance if someone steals money in order to make himself drunk.

3° He who employs an evil means for a good end contracts only the malice of the means, for example if someone lies in order to free his neighbor from danger. Likewise, conversely, he who employs an honorable means for an evil end contracts only the malice of the end.

4° He who employs an indifferent means for a good or evil end contracts only the goodness or malice of the end. Thus, for example, if you take up a journey in order to show a traveler the way, you have only the merit of the end; likewise if you sing in order to cause annoyance to another, you contract only the guilt of the end.

30. Questions. - It is asked 1° whether any evil end corrupts the whole goodness of the act.

Resp. 1° A gravely evil end always wholly infects the act, however good the object may be in itself. For an act by which someone, by sinning mortally, totally withdraws from God, can in no part be approved by God. Thus if someone gives alms to a needy girl in order to entice her to sin, although also in order to relieve her poverty, the act is wholly infected by the evil end.

Resp. 2° A lightly evil end also corrupts the whole act if it is the total end, or at least the primary end of the agent. For the total end (i.e. the end intended solely), since it embraces the whole object, infects the whole, because the agent wills the good under the aspect of evil, and therefore, insofar as it is willed by him, it is evil.[2]

This is also clear from the words of Christ:[1] "If ... thy eye be evil, thy whole body will be dark." But if there is a twofold end, and the evil one is primary, it must be resolved in the same way, because in such a case there is not indeed physically, but morally, one act of the will, since the secondary end is subordinated to the primary end[2] (in the sense declared above in n. 28 in the former place); as if someone gives alms from mercy and from vain glory, and would not give unless he expected the praises of men.

Resp. 3° But if the end, lightly evil, is merely secondary, more probably it does not corrupt the whole act, which is partly good and partly evil. The reason is that in this case two acts of the will are present, even morally, of which one is not subordinated to the other, and of which one is good, the other evil. If it were otherwise, fewer good acts would be found. - You have an example in one who from a sincere affection of mercy wishes to give alms to a poor person, but because the poor person asks publicly, there also enters the stimulus of vain glory, which is not repelled. - Let the same be the judgment concerning a lightly evil circumstance sometimes accompanying an act good from the object, as when someone, rebuking another from charity, incidentally consents to a movement of anger. For a movement of this sort is an act standing of itself. Wherefore properly it does not deprave the act which it accompanies, but mixes evil with it.[2]

(2) S. Thom. 1. 2. q. 19. art. 7.

31. - It is asked 2° whether all our actions must be referred to God, according to the words of the Apostle:[3] Whether therefore you eat, ... do all things unto the glory of God?

Resp. More commonly, with St. Thomas, Doctors teach[4] that in the words of the Apostle a precept is truly contained.

It is asked 3° what is required so that one not sin against this precept.

Resp. "This relation" of all works "unto the glory of God is understood either in act, or in aptitude of being referred, which is not only in good things, but also in indifferent things."[5] With these things set down, I say:

1° On the part of the work, it is required that it be referable to God; such is also a work indifferent from the object. Therefore it suffices that it be neither mortally nor venially evil.

2° On the part of the agent, some positive relation of works to God is certainly required. But what kind?

Resp. a) An actual relation is required as often as the precept of eliciting an act of charity urges; for "under the precept of charity it is contained that God be loved from the whole heart; and therefore a man cannot fulfill the precept of charity unless all things also are referred to God."[1]

b) When the precept of eliciting an act of charity is not urging, a virtual relation is required and suffices. It is required, "so that an actual relation to God be joined to every action of ours, not indeed in act but in virtue, according as the virtue of the first ordering," i.e. of the actual ordering previously had, "remains in all following actions, just as the virtue of the ultimate end also remains in all ends ordered to it."[2]

c) In neither case is an explicit relation required, but an implicit one suffices. It suffices in the former case, namely when the precept of eliciting an act of charity urges, "because whenever the habit of charity goes forth into act, the ordering of the whole man to the ultimate end takes place, and consequently of all the things which are ordered to him."[3] It likewise suffices in the latter case; for "it is not necessary," nor possible, "that someone always think of the ultimate end whenever he desires or does something."[4]

d) It is not required that we refer our works to God from the motive of charity; for the mode of charity does not fall under the precept of the divine law, except when from precept an act of charity is

to be elicited.[5] St. Alphonsus agrees,[6] requiring nothing other and nothing more, except that works be referred "to any honorable good."

e) Nor is it required that all things be done from a supernatural motive. "And therefore when some unbeliever, from the dictate of reason, does some good thing, not referring it to evil, he does not sin."[7] This is confirmed from proposition 8 among those condemned by Alexander VIII (p. XXII).

Corollaries. - 1. Those are to be said to observe this precept, insofar as it demands an actual relation, who elicit an act of charity when the precept of eliciting it urges.

2. Likewise those who, when this precept does not urge, deliberately place a work honorable in itself, "not referring it to evil";[1] - who study to preserve the mean of virtue in jokes, games, recreations, adornment, etc.;[2] - who collectively order all their works to God. For those who deliberately place a work honorable in itself, by this very fact that they do not refer it to evil, are to be judged to intend, at least implicitly, the honorableness of the work. But those who study to preserve the mean of virtue in jokes, etc., by this very zeal of theirs show themselves to seek the good of virtue. Finally, the collective relation of all works to God implicitly contains the relation of each one.
3. "Although someone approaching the table does not think of the conservation of life, but only of the delight of food, ... he does not on that account sin, because he wills such delight," at least virtually (as is supposed), "on account of the conservation of life, and thus he does not inordinately seek it."[3]
4. "That the intention may remain more in virtue in our daily actions,"[4] and that the precept of the Apostle may be fulfilled in a more perfect and more salutary manner, "one ought more often in the day, at least in the morning, generally to offer all one's acts to God."[5]

It is asked 4° in what way the human will, that it may be good, ought to be conformed to the divine will.

Resp. 1° In all things it ought to be conformed at least negatively, i.e. it is never permitted to disapprove that which God wills, or to murmur against it; for He disposes all things wisely.

Resp. 2° Positively our will can be conformed to the divine will in two ways, namely in the thing willed materially and in the thing willed formally. The thing willed materially is the thing itself or object which we will; the thing willed formally is the reason or end on account of which we will that thing. Again, the thing willed formally is of two kinds: one proximate or particular, i.e. the particular reason on account of which we will that thing; the other universal or ultimate, and it is the glory of God. Thus, while I will my father to live, whom God wills to die, the thing willed materially is the life of the father; the thing willed formally and proximately is the reason of piety toward one's father, the good of the family, etc. But if I should will this ultimately on account of the glory of God, my will is conformed to the divine will in the thing willed formally and ultimately; because just as the ultimate reason on account of which God wills my father to die is the glory of God, so the ultimate reason on account of which I will my father to live is also the glory of God. With these things set down:

I say: **a)** Our will ought positively to be conformed to the divine will in the thing willed formally and ultimately, but not always in the thing willed formally and proximately. - I say: "it ought positively to

be conformed to the divine will in the thing willed formally and ultimately"; for the motive of the divine will is ultimately referred to the glory of God, to which the human will, that it may be right, ought to refer all its actions, at least virtually, as was said above.

I added: "but not always in the thing willed formally and proximately"; because, although it is unlawful to will something opposed to the divine will under the same reason under which God wills it, nevertheless it is not always unlawful to will it under a diverse reason, namely one which is not dishonorable. Thus it can happen that a son, on account of reasons of particular good, lawfully wills his father to live; but God wills him to die on account of other reasons, for example on account of sins, or because the course of nature demands it.

I say: **b)** Our will ought to be positively conformed to the divine will also in the thing willed materially, where the matter concerns a sufficiently known precept or prohibition; for the will of God commanding or prohibiting, when sufficiently known, always has annexed the will of obliging man to willing and doing what He commands, or to not willing and not doing what He forbids. I said: "where the matter concerns a precept or prohibition." - Wherefore 1. of itself I am not bound to will to follow the evangelical counsels. Yet I am bound, as is clear from the things said under Resp. 1°, to be conformed negatively to the divine will with respect to them, insofar as it is not permitted to disapprove them, since they are good and salutary. - Nor 2.

am I bound to will all things harmful to me which, God willing, happen to me, hunger, sickness, the death of parents, etc., in such a way that it is lawful for me, as much as I can, to flee them or strive against them. But after and insofar as these things have already happened, it is not permitted with an absolute and consequent will to oppose them, because again this would be the same as not being conformed to the divine will even negatively. But with an antecedent or conditioned will I am not bound in these things to be conformed to the divine will; and in this way it is lawful for a son to will his father, who is already dead, to live, namely while he wills this under another reason than that under which God willed the opposite. For the antecedent or conditioned will considers the life of the father under the reason of a particular good, abstractly from the circumstance of the divine will. - Haine,[1] Dens.[2] Cf. S. Th.[3] and St. Alphonsus.[4]

(1) Matth. 6. 23. (2) Bouq. n. 414. (3) 1 Cor. 10. 31. (4) L. II. n. XLIV. (5) S. Th. in 1. Cor. Lect. 7. (1) 1. 2. q. 100. a. 10. ad 2. (2) 2. D. 40. q. 1. art. 5. ad 7. (3) Ibid. ad 6. (4) 1. 2. q. 1. a. 6 ad 3. S. Alph. L. II. n. XLIV. § fin. (5) 1. 2. q. 100. a. 10 ad 2. (6) L. II. n. XLIV. § fin. (7) S. Th. Lect. 3 in Rom. c. 14. (1) S. Th. Lect. 3 in Rom. c. 14. (2) 1. 2. q. 18. a. 9; 2. 2. q. 168. a. 2 and 3; q. 169. a. 1 and 2. (3) L. II. n. XLIV. § fin. (4) Estius in 1. Cor. c. 10. (5) L. II. n. XLIV. § fin. (1) Ib. p. 27. q. 61. (2) Tr. De Act. Hum. n. 70. (3) 1. 2. q. 19. a. 9 and 10. (4) L. I. 65. § Hanc suam, and Tratt. var. Uniformita alla volonta di Dio (Opere Ascetiche, T. I. p. 483), a little work most useful for all and very full of consolation.

Treatise on Conscience

Since conscience is the proximate rule of human (moral) acts, logically discussion of it is made before law is treated, which is the remote rule of those same acts. For law indeed binds all subjects in first act; but in second act, or by reason of imputability to fault, only those who have knowledge of the same. Hence St. Thomas:[1] "a human act is judged virtuous or vicious according to the good apprehended, toward which the will is borne, and not according to the material object of the act." But the treatise on conscience follows the treatise on human acts in right order, since in the former the matter is of the human (moral) act considered abstractly, but in this treatise of the same act taken concretely.

Proemium.

On the General Notion of Conscience.

32. Definition. - Conscience is the judgment which someone makes concerning the formal morality of an act to be placed or omitted by himself here and now. - It is said:

1° **Judgment**, namely an act by which the mind affirms or denies something; and hence conscience is not a habit, nor an act of the will. - a) It is not a habit. Yet he who ordinarily affirms well or badly is said to have, as if by habit, a good or bad, true or false conscience. But conscientiousness (*conscientiousness*) is the habit of executing the dictate of conscience with a prompt mind; - b) nor is it an act of the will. Yet it is exercised under the command of the will, and therefore it will be able to be prudent or imprudent, according as one neglects or does not neglect the rules of prudence in affirming or denying.

2° **Concerning morality.** Wherefore it differs from psychological consciousness. Nor does conscience judge concerning utility, facility, etc. (Syllab. pp. 58, 64, p. XLV), but concerning the relation of some action or omission to the moral law, namely whether it is alongside it, against it, or outside it.

3° Concerning **formal morality**, and therefore it differs from science, which judges concerning material morality, as will be clear from the things to be said concerning erroneous and doubtful conscience. See n. 35. 49.

4° **Of an act**, namely adequately taken, i.e. considered by reason of the object, circumstances, and end of the one acting, or not abstracting from the end of the one acting. For acts in the individual, or formally, indifferent are not given, chiefly because in them abstraction cannot be made from the end of the one acting (n. 24).

5° **By himself**; yet this does not prevent you, in forming this judgment, either from helping another or being helped by another. Indeed, it is sometimes permitted to adopt another's judgment without discussion, although it must necessarily become one's own, since the formation of conscience is essentially personal. Thus an uneducated person rightly forms his conscience from the judgment of his pastor, and anyone from the judgment of St. Alphonsus; but in doing so he does not cease to

judge personally, or by himself, presuming, namely, that he can safely follow the judgment of the pastor or of St. Alphonsus.

6° **To be placed or omitted here and now.** Hence conscience:

a) Differs from synderesis (conservation), which is a habitual speculative judgment of general principles, for example that sin must be avoided, virtue must be loved, etc. But conscience is an actual practical judgment by which a general principle is applied to an action to be placed or omitted here and now. Wherefore Sporer[1] rightly calls the judgment of conscience the particular conclusion of a syllogism whose "major premise Synderesis places (for example, evil must be fled), whose minor premise reason submits (theft is evil), whose universal conclusion moral science infers (theft must be fled), but whose particular conclusion, or conclusion concerning here and now, prudence and conscience infer (therefore this or that, because it is theft, is not permitted)."

b) As the rule of morals it regards the morality of a present action only (and this is called antecedent conscience); but if it regards the morality of a past action (consequent conscience), it is the rule of actions only in a broad sense.

For it belongs to the former alone to direct one to acting, since it impels, permits, or turns away; but it belongs to the latter to weigh the act, or that which has already been done; namely it approves, praises, accuses, or bites back. Hence antecedent conscience alone is conscience properly so called, or the rule of morals; for consequent conscience can indeed manifest that some action was good or evil, but cannot make it that that action was good or evil. Hence they err who, after an act has been placed, before, for example, they approach Confession, inspect books or inquire whether this and that which they have done is a sin, and whether therefore they must confess it; for an opinion of this sort formed afterwards will be able to have no influence upon the preceding action. Likewise, in vain do some ask the confessor whether by doing this and that they have sinned; for this depends on the conscience which they had while they were acting; but they themselves will know this, and the confessor will learn it from them. But such things are rightly asked for other ends, namely for better directing actions in the future, for avoiding scandal, etc.; and therefore consequent conscience can be called conscience in the sense given, as I have said.

(1) Quodlibet 8. art. 27. (1) Tr. I, Proem. c. 1. n. 7.

Corollaries.

I. Conscience has one object, namely the formal morality of the act to be placed or omitted by you here and now, and considered in the concrete and in the individual, i.e. a) in its single elements, namely in object, circumstances, and the end of the agent, and b) in these taken together; for good is from an integral cause; evil, from any defect whatsoever. - Hence:

II. Only the practical question in the strict sense, or the practically-practical question, namely that which is resolved through the particular conclusion of the syllogism [above 6° a)], is that to which answer is made through the dictate of conscience. - Hence:

III. The remaining questions, although more or less connected with this one question, are only questions preliminary to it. But among these preliminary questions:

1. Some are such in themselves, others per accidens. In themselves, for example, the question concerning the existence of a law, concerning the validity of a vow; for, in order that the question, for example, whether this or that is permitted to me, be resolved, the very nature of that question demands that the question whether there is some law by which it is prohibited first be resolved. Thus likewise, in order that the question whether I am bound to furnish that which I promised by vow be solved, it is required in itself that the question whether my vow was valid be previously decided. - Per accidens, for example, the question whether the fluid flowing from a vine, with which an infant is to be baptized, is natural water or not; for this question is not in itself to be raised when Baptism is administered, but when the case occurs in which necessity urges and certainly natural water is not present.
2. Some are proximately preliminary, others remotely preliminary. - Proximately, the major and minor premises of the syllogism about which above, 6° a); remotely, all those things which must be discussed before the major or minor premise is established. Let the following be an example. There is an obligation of repeating an invalid Baptism (major premise); but Paul was invalidly baptized (minor premise). Therefore, he must be rebaptized. In this example, questions concerning the invalidity of the matter or form, or concerning a defect of intention in the minister, are remotely preliminary to the conclusion or practically-practical question; for these questions must be resolved before the minor premise can be established.
3. Some are of law, others of fact, concerning which see n. 48 under 2.

IV. Conscience is:

a) **Commanding**, when it judges that an act is to be placed as being of precept.

b) **Counseling**, when it judges that an act, although by no law to be placed or omitted, is more rightly placed or omitted, as being consonant with or dissonant from a counsel intimated to me here and now either by divine inspiration, or from the dictate of reason soliciting to more perfect things, or from the directive ordinance of a Superior.

c) **Prohibiting**, when it judges that an act, as repugnant to a negative law (n. 125. IV), is to be omitted.

d) **Permitting**, namely if it is taken inadequately, or insofar as it judges concerning the object and circumstances only, abstracting from the end of the one acting. For a merely permitting conscience can never be given if it is taken adequately, namely with the end of the agent also included, as is clear from what was said in n. 24. R. 2°, where we proved that indifferent acts in the individual are not given, since these have their morality chiefly from the end of the one acting.

e) **True, false, perplexed, scrupulous, lax, certain, doubtful, probable, improbable**, concerning which in what follows.

On the Obligatory Force of Conscience.

The question concerning the obligatory force of conscience is that in which it is discussed whether and which of the consciences just enumerated one either ought or may follow. Hence this question is set forth: 1) concerning true, false, and perplexed conscience; 2) concerning scrupulous and lax conscience; 3° concerning certain and doubtful conscience; 4° concerning probable and improbable

conscience, and concerning all these insofar as conscience is commanding, counseling, prohibiting, or permitting.

Chapter I: On True, False, and Perplexed Conscience

33. Definition. - True conscience is that which from true principles rightly concludes that something is lawful or unlawful, which truly is such; as if someone from this true principle: it is not lawful to obey parents commanding sin, should infer: therefore it is unlawful for me to perpetrate this theft which they command me. - True conscience, strictly speaking, is not the same as right conscience, although sometimes they are used promiscuously; for true is said according to what is, but right according to what is apprehended. Namely, true is that which really in itself is such; but right is that which is done according to the rules of prudence. Hence right conscience can be predicated even of him who labors under an invincibly false conscience; for he acts prudently, since he acts from an intimate and insuperable persuasion. You have an example in him who, from invincible error, thinks that it is not a fast day when it truly is. His conscience is not indeed true, but nevertheless is right.

34. - False (or erroneous) conscience is that which dictates as true and lawful that which nevertheless in itself is false and unlawful.

A twofold false conscience is distinguished: invincible and vincible. Invincible is that which morally cannot be overcome, since no thought or doubt of error, not even in the confused, comes into the mind of the one acting while he places the action or its cause. But vincible is that which the one acting can and ought to overcome, because a) he has already noticed the error, or at least doubts about it, and b) at the same time notices the obligation of overcoming it; nevertheless c) he neglects to overcome it. Thus conscience is invincibly erroneous in him who, not even confusedly noticing that it is a fast day, eats meat; but vincibly erroneous in the same person if, suspecting that it is a fast day, he notices the obligation of inquiring about the matter, and nevertheless neglects to inquire.

35. Principles. - I. **True conscience, commanding, must always be followed.** For conscience is the herald of law, or of God, in the case truly commanding; therefore he who refuses to obey true conscience refuses to obey God Himself.

II. **Invincibly erroneous conscience, whether commanding or prohibiting, must likewise be followed in every case.** It is proved: a) From Sacred Scripture: Everything that is not from faith (according to the dictate of conscience) is sin.[1]

b) From reason. For the object of the will is good and evil, not in whatever way, but formally insofar as it is in the apprehension of the intellect; whence, when the intellect apprehends something as a moral good that is necessary and commanded, although in reality it is not good nor commanded, indeed is evil and prohibited, the will, by rejecting it, consents to a transgression of law. Again, if the intellect apprehends something and proposes it to the will as morally evil and prohibited, although in reality it is not evil nor prohibited, indeed is good or permitted and even commanded, the will, by embracing it, consents to an evil and prohibited object, and therefore sins. Thus he who thinks that there is a fast when there is not, on account of erroneous conscience sins against the precept if he does not fast.

III. **Invincibly erroneous conscience permitting exempts from every sin**, because there can be no sin where no malice is apprehended. Thus he does not sin who lies in order to free his neighbor from danger of life, invincibly thinking that this is lawful for him in the case.

IV. **It is not permitted to follow a vincibly erroneous conscience, whether permitting or commanding**, because, since by hypothesis the error is vincible, whoever acts with such a conscience errs voluntarily. Nor is it permitted to act against it when it is commanding or prohibiting, because by acting thus he does that which he judges prohibited, and therefore sins.

Therefore before the action that conscience must be laid aside through inquiry into the truth. Thus he who with some doubt thinks that he must lie or steal in order to assist his neighbor cannot follow such a conscience nor act against it; but he must, if he can, inquire, lay it aside, and afterwards act; for such error is vincible.

Nevertheless, one acting against a vincibly erroneous conscience does not incur penalties latae sententiae against transgressors of that law against which by error he thinks that he is acting; because penalties are inflicted on transgressors of the law truly, not putatively. Thus, for example, he who strikes a layman, thinking him to be a cleric, does not incur excommunication.

(1) Rom. 14. 14-23. Cf. Beelen in h. l.

36. Practical admonitions. A) A confessor will be able more easily to judge that the conscience of his penitent was invincibly erroneous:

1° If the thing ignored is not concerning the first moral principles, or concerning conclusions proximately connected with them; for these are inscribed by nature itself in the hearts of all. Hence, if someone admits that in his past life he perpetrated openly dishonorable things, but did not have them as sins, do not easily believe him, unless the matter is of a sin committed by a child or an uneducated person, or with some circumstance apparently making it honorable, and not prolonged for a longer time.

2° If it is not concerning the obligations of one's own state; for this ignorance is ordinarily culpable in its cause. Hence St. Thomas teaches that a judge who errs in passing sentence is not excused on the ground that he is ignorant of laws which, by reason of his office, he was bound to have learned.[1] - But by length of time vincible ignorance can become invincible. For just as it happens that you forget those things which you once learned, so a fortiori it happens that the memory of your ignorance entirely slips away from you; in which case, indeed, new errors and errors of good faith will not be culpable in themselves, but in the cause, or as effects of culpable ignorance, so long as the cause itself has not been retracted, at least indirectly, through penance.

3° If the penitent is sufficiently diligent and accurate in fulfilling those things which are wont to be performed by others of the same condition; or, if noticing that through ignorance he has violated a precept, he grieves and is saddened; for through these things his good faith is rightly presumed.

B) Erroneous conscience can in no way bind unless the matter is placed in the free choice of man. Hence they do not sin who unwillingly are agitated either by obscene imaginations, or by blasphemous and heretical thoughts, although they falsely believe that they are either giving consent to these things, or even by error judge it a great fault to be touched by thoughts so horrible.

C) Great prudence is required in the theologian, preacher, confessor, instructor of boys, nurses, parents, in a word in all those who must direct others, lest by exaggerating erroneous conscience they induce it in them. Yet do not understand this in such a way as if, when preaching, it were not

permitted to you with more vehement speech to censure certain things which, although they are not in themselves mortal, are exceedingly dangerous. See St. Alph. L. III. n. 55. § *cum ego munus*, etc.

(1) De verit. q. 17. De consc. a. 4.

37. - Perplexed conscience is called that by which someone thinks that he sins whichever of two incompatible precepts he neglects. Such would be the conscience, for example, in him who, assisting a sick person, thinks that he would sin both if he should leave the sick person in order to be present at Mass, and if, conversely, he should omit Mass in order to remain at home in the care of the sick person.

He who labors under a perplexed conscience, if he can suspend the action without grave harm, is bound to suspend it until he has consulted experts; for each person must avoid that by which he thinks God is offended. But if he cannot suspend his action, as ordinarily happens, he is bound to choose the lesser evil; for the will cannot tend into that which appears the greater evil, because thus it would freely choose this excess of malice. But if he cannot discern which is the lesser evil, then whichever part he chooses, he does not sin; because he is indeed free physically by reason of the act, but he is not free morally by reason of sin; for there can be no sin in that which in no way can be guarded against.

CHAPTER II: ON SCRUPULOUS AND LAX CONSCIENCE

38. ○ A scrupulous conscience is that which, resting upon slight foundations, doubts, or rather fears, that such an action is a sin, although nevertheless it is not; or that it is a grave sin, although it is only light. From these things it is clear who a truly scrupulous man is; for they err by the whole heaven who call that Christian scrupulous who, solicitous for his salvation and led by filial love toward his God, searches all his works, lest perhaps in some matter he offend God Himself: such a one is to be called not scrupulous, but God-fearing.

We shall speak briefly concerning the causes, signs, harms, remedies of scruples, and also concerning rules for scrupulous penitents and their confessors.

I. Causes of Scruples.

39. ○ Some are intrinsic, others extrinsic. The intrinsic are: a character very much disposed to suspicions and fears, as is the melancholic; weak health of the head, especially in women; slowness of understanding, by which someone does not well perceive the precepts of God and of the Church; hidden pride, by which someone trusts too much in his own judgment; excessive abstinence and immoderate vigils, by which, when the head has been weakened, the soul is easily disturbed.

But the extrinsic are:

1° God, who permits scruples in the just, that, being purified, they may make greater progress; in the tepid, that they may perform the duties of Christian piety more fervently; in penitents, that they may pay the penalty of past sins. Moreover, scruples are judged to be from God if those harassed by them become better.

2° The demon, who, God permitting, can move the melancholic humors in a man, through which the imagination can either err or be disturbed unto inordinate fear.[1] Scruples are thought to come from the demon if the scrupulous person feels himself being brought to tepidity, withdrawn from virtue, and especially inclined to despair.

3° The society of scrupulous persons, especially if scrupulous persons are ruled by their counsels and converse frequently with them about spiritual matters; for those with whom we associate, we imitate more easily.

4° The reading of books which are excessively strict, establishing harder precepts which the human condition cannot sustain;[2] for gradually and without perceiving it we assent to those opinions which we study.

Notes to n. 39. (1) St. Antoninus, p. 1a, T. III, apud Scav. (2) St. Ambrose, on Ps. 118, apud the same.

II. Signs of a Scrupulous Conscience.

40. ○ It is of very great importance that directors of souls discern true scrupulous persons from false ones. For often those who are not scrupulous are thought to be so, and vice versa; and from this great errors in direction flow, with no slight danger of spiritual harm: therefore much circumspection is needed here. Now the chief signs of scruples are:

1° Pertinacity of judgment, by which someone refuses to obey the counsels of the confessor, or of wise men; and while he consults various persons, he acquiesces in the judgment of none; indeed, the more persons he hears, the more he becomes entangled.

2° Frequent change of judgment from slight motives, whence there is frequent inconstancy in acting, and continual disturbance of mind.

3° Fear of sinning in all things, joined with pertinacity of mind against the judgment of the confessor, of prudent men, or even against one's own judgment; whence follows frequent questioning about the confessor's answers, and repeated inquiry whether, in acting according to the counsel given, the conscience can be free from fault.

4° Impertinent reflections about circumstances which were present in the action or could have been present, and certainty anxiously sought in all things.

5° Obstinacy in always repeating the same sin in confession, or in holding as a sin that which has already several times been declared by the confessor not to be such.

6° Continual anxiety about past confessions, notwithstanding the judgment of the confessor, or the repetition of confessions.

7° If he makes no end of examining his conscience, and explains the most minute things.

8° If he uses ridiculous signs, gestures, and other similar things to drive away temptations; for example, suddenly closes his eyes, contracts his eyebrows, nods and shakes his head, mutters to himself: I do not will; depart, devil.

But he cannot, at least immediately, be judged scrupulous, 1° who is moderately solicitous, or anxious, lest he offend God; 2° who, after a life spent in sins, is still distressed, nor after confession seems to have satisfied his obligation, but wishes to confess again and expiate his sins; 3° who deliberately still consents to grave sins, although after the sin has been committed he is greatly troubled and confesses anxiously, for there is a just cause of anxiety, at least moderate: nevertheless even in this case there can be a true scrupulous person; 4° who in only one or another case has a passing scruple.

Moreover, it sometimes happens that the confessor, after hearing the penitent the first or second time, cannot at once determine whether he is scrupulous, even if he appears anxious about many things; for some just and reasonable cause of anxieties can be present. Much less can a scrupulous confessor easily judge whether the penitent is scrupulous or only fearful.[1]

Notes to n. 40. (1) Lacroix, Lib. 1, n. 517, etc.

III. Harms of Scruples.

41. ○ Scruples generally draw with themselves grave inconveniences and spiritual harms, and often also bodily harms, provided they have not been sent in by God, but persevere from man's fault. The principal ones are these:

1° They harm the body; for through continual anguishes they constrict the heart, corrupt the blood, consume the vital spirits, and weaken the head.

2° They render the scrupulous person unfit for fruitful action with his neighbor; for many scrupulous persons are severe, and no less peevish toward those of their household than toward strangers.

3° They harm obedience, or even totally impede it; since the scrupulous person rather follows trifles and the mockeries of his own fantasy, and thus is impelled to act against the will of God, which is manifested to him through his spiritual father or director.

4° They weaken the pursuit and love of prayer, or even take them entirely out of the way; because they enervate the force of the mind, distracting it by leading it to trifles, fill the soul with anxieties, and make it unfit for union with God. Hence follows not only spiritual profit ceasing, but also great emerging harm.

5° They break fortitude: for what great thing will he dare, who is wholly occupied in trifles and, neglecting the assault against his passions, is so easily cast down in soul?

6° They greatly diminish hope, or even destroy it, because the matter is finally brought to this point, that, confidence in God having been lost, he declines into laxity. For how will he duly trust God, who always beholds Him as a most severe exactor? Therefore the scrupulous person, unless he fights strongly against scruples, will shortly be driven by them, while vexed, into despair, and will loosen the reins to his desires, or at least will lead a most miserable life and one with great danger of damnation.

If scrupulosity is found in a confessor, it is even more harmful; for that someone is scrupulous with himself is an infirmity: that he is so with others is a contagion. Moreover, this cannot exist without the derision of the ministry and the despair of penitents. Therefore let the confessor guard as much as possible against scruples, if he wishes to exercise usefully the parts of his office: whence, if they arise in him from ignorance, let him devote himself to studies; if from excessive subtlety, let him not be wise more than is necessary, knowing that he acts not as a mathematician, but as a moralist; but if from a certain, so to speak, perverseness, by which he wishes all to think that very thing which he himself thinks, let him know that each one has his own gift, and one indeed in this way, another in that, and therefore let him seek what is just, not what is his own.[1]

Notes to n. 41. (1) Thus the anonymous booklet praised by St. Alphonsus and Benedict XIV: Istr. per i nov. conf.

IV. Remedies of Scruples.

42. ○ I. To commend oneself earnestly and confidently to God, who consoles us in all our tribulation.[2]

II. To attack the causes of scruples which are in man's power, so that their effect may cease. Therefore let the proud man not lean upon his own prudence; let the pertinacious man break his own judgment; let the unlearned man be instructed; let the idle man work; let the timid man meditate on

the goodness of God; let the melancholic man take solace; let the infirm man be cured; for sometimes the evil proceeds from inflamed blood, etc.

III. To commit oneself wholly to the judgment of one's own director; for it is written: an obedient man shall speak victory.[3] Indeed, this alone must be called the remedy of scruples. For since the reason of scrupulous persons is plainly powerless, nothing else remains except that they be governed by another's reason. In this matter no temperament is admitted.

Notes to n. 42. (2) 2 Cor. 1. 4. (3) Prov. 21. 28; L. I. 12.

V. Rules for Scrupulous Persons.

43. ○ 1° In moral matters certainty is not to be sought in all things. This must be applied to all, but especially to the scrupulous person.

2° Supreme and blind obedience must be rendered to the confessor, and one must proceed in all things with great humility and confidence.

3° A doubt which could seem reasonable in others is to be entirely spurned in scrupulous persons.

4° It is lawful, indeed often obligatory, and sometimes under grave obligation, to fight against scruples.[1]

5° Confession is never to be repeated unless it was certainly invalid; nor is the examination of the last confession ever to be renewed, even if a doubt about a grave sin omitted seems to arise.

6° Scruples are to be contemned; nor must scrupulous persons ever dispute with themselves about them.

Notes to n. 43. (1) L. I. 17.

VI. Rules for the Confessor.

44. ○ I. With scrupulous persons let him be patient, discreet, prudent, brief.

1° Patient and full of charity; for since the care of scrupulous persons is long and difficult, and their condition most miserable, and unless they obtain a faithful friend, they are exposed to so many and such great dangers, they very greatly deserve our compassion.

2° Discreet, so that he may duly know what the origin of scruples is in the penitent; also whether he is scrupulous in all things, or in one thing only, so that he may be able to remedy the evils fittingly.

3° Prudent, namely in prescribing rules, which indeed ought to be general; for scrupulous persons are almost never able to accommodate themselves to particular rules, because they cannot apply them to themselves. Indeed they always doubt whether the case was sufficiently well explained and perceived, and whether the rule prescribed to them is well accommodated to that case.

4° Brief and peremptory in his answers, and, so far as can be done, let him define all things promptly and firmly; otherwise the penitent would be confirmed in his anxiety by the authority of the confessor himself.

II. For the various objects of scruples let him keep the following things before his eyes.

1° A scrupulous person concerning the hearing of Mass:

a) Let him not be distressed about intention; for this is present as long as it is not openly certain that he went to church solely from another end; nor b) about attention, since that external attention is sufficient which voluntarily admits nothing incompatible with advertence to those things which are carried on at the altar; c) let the confessor take care not to permit him to hear another Mass for the purpose of satisfying his scruple about Mass already heard, and let him take the same care with him who [source text breaks off after Latin: *qui*].

2° A scrupulous person is concerned about prayers to be recited by obligation, such as the divine office and sacramental penance. For the scrupulous person with regard to the divine office, - if a) he is anxious about intention, let it be said that the intention of satisfying the ecclesiastical law is not required, but that the intention of reciting is sufficient, even implicit and virtual, which he already has who takes the breviary in hand and in fact recites the office. - If b) about attention, let him openly say with St. Alphonsus[1] that he is not bound to repeat anything, unless he is certain that he rejected the intention of praying. - If c) about accurate pronunciation of the words, it should be advised that he not stick while reciting, but proceed without any anxious solicitude, without compression of voice, mouth, or chest, without motions of impatience or sadness. Finally, by whatsoever cause he is distressed, let him forbid repetition to him, and, if he suffers grave anxieties, even the recitation of the office.[2] With regard to sacramental penance, let him hold the same, with due proportion observed. Moreover, it will help to impose on him only easier penances, and to tell him that his own mind (namely, the confessor's) is once for all that he recite the imposed prayers only materially and mechanically, so that he satisfies even though he pronounces them with voluntary distraction.

3° A scrupulous person concerning past confessions. If the anxiety regards - a) preparation for the sacrament, let him render him secure, teaching that nothing is required except ordinary diligence and preparation. - If b) the confession itself, namely that he does not know whether he confessed certain things, or confessed them integrally, let him order him to be wholly silent about past things, especially if he has already made a general confession; for all sins innocently omitted have been taken away indirectly, by the force of the absolution already given, nor is anyone bound to search past things with so much inconvenience to himself, so that individual sins may be remitted directly. But if nevertheless he continues to be distressed, and affirms that he knows certainly that he has forgotten something, let him order him to confirm these three things by oath: 1° that the sin was certainly committed; 2° that it was mortal in his mind when he committed it; 3° that he certainly forgot it in confession. If he swears promptly, let him hear him; otherwise, if he hesitates. - If c) contrition and consequently the efficacy of absolution, let him teach him that confessions are not to be repeated unless it is certainly clear that they were invalid.

4° A scrupulous person concerning consent given to evil thoughts against chastity, faith, or charity should be ordered to despise these thoughts as mere phantasms, and, unless he can swear that he certainly and truly consented to them, to abstain from confessing them.

5° To scrupulous persons who in almost all actions are distressed by fear of sinning, it must be enjoined that they act strenuously against scruples, and abstain from confessing them, unless they are most certain that sin is present there. For although, in acting thus, they sometimes sin materially, they will not sin formally, by reason of the obedience which they must render to the confessor.[1] Nor does it matter that they act with an actual fear of sinning; for they do not therefore act against the

dictate of conscience, but only against a vain apprehension, which vain apprehension cannot remove the judgment about the honesty of the action, previously formed from the judgment of the confessor or in some other way.

Notes to preceding text.

1 L. I. 17.

Notes to n. 44. (1) L. V. 177, at the end. (2) Ibid.

45. ○ A lax conscience is called that which, from a lighter reason, judges that what is illicit is licit; or finds only a venial sin where there is mortal sin: namely, that which, without sufficient reason, bends judgment in favor of liberty, either to avoid the law, or to diminish the gravity of fault.

Such a conscience is very greatly dangerous, as is easily clear to one attending to it; for it casts souls into the broad way, which leads to perdition.

It can be distinguished in three ways, namely: 1° a conscience lax simply, which tends to extend liberty more than is just, relying upon an opinion slightly probable or improbable, or even, according to St. Alphonsus (nn. 71-73), upon the less probable for liberty when the certainly more probable for the neglected law stands; 2° a cauterized conscience, which, from a long-standing habit of sinning, accounts grave sins, indeed even most grave sins, as nothing;[1] 3° a pharisaical conscience, which makes great things small, and conversely small things great. It takes its name from the Pharisees, who spurned the most grave commandments of the law, while they would have judged themselves guilty of great sin by eating with unwashed hands, or by passing over empty traditions.

46. ○ The things which generally pertain to a lax conscience can be comprised in these few words.

I. He sins gravely who, knowingly obeying a lax conscience, transgresses some law in a grave matter. And indeed ignorance of this kind, as being voluntary, can easily be overcome; therefore he cannot be excused from lethal sin under the pretext of this ignorance.

II. Indeed he can sin gravely in a light matter, if his own rashness impels him to act while any dictate whatsoever has been omitted and contemned.

Quest. What are the causes, effects, and remedies of a lax conscience?

Resp. to the first. The causes are: omission of prayer; tepidity of soul; excessive solicitude for temporal things; familiarity with sinful men; a custom of sinning, which removes the horror of sin; a soft life, which enervates the heart and turns it away from spiritual things.

Resp. to the second. The effects are blindness of mind; hardness of heart, which is scarcely wont to be moved by any means; obduration in evil, which induces the greatest danger to salvation, according to that saying of the Apostle:[2] According to thy hardness and impenitent heart, thou treasurest up to thyself wrath in the day of wrath.

Resp. to the third. The following remedies, among others, can be proposed: humble and assiduous prayer; sacred exercises; pious meditation on the last things, according to that saying: Remember thy

last things, and thou shalt not sin forever;[3] frequent reading of pious books; daily examination of conscience; frequent recourse to the Sacrament of Penance; flight from the wicked and conversation with the good; to adhere to the principles and opinions of St. Alphonsus, and frequently to handle his ascetical works; for the writings of the Most Zealous Doctor possess very great force for moving the soul, and for turning the mind away from secular and carnal desires and leading it back to God, as the experience of those proves who have read through them for some notable space of time.

Notes to n. 46. (1) 1 Tim. 4. 2. (2) Rom. 2. 5. (3) Eccli. 7. 40.

CHAPTER III: ON CERTAIN AND DOUBTFUL CONSCIENCE

ARTICLE I: ON CERTAIN CONSCIENCE

47. Definition. - A certain conscience is that by which someone firmly and without fear of erring judges that something is good or evil.

Now certainty, or the certain generically, is that which determines the mind to assent. Certainty is divided in many ways; there is certainty of the supernatural order and certainty of the natural order. This latter is subdivided into metaphysical, physical, and moral certainty.

That is metaphysically or mathematically certain which is so essentially disposed that in no other way and by no power can it be or be conceived. That is physically certain which, although it does not have it from its essence that it cannot be otherwise, and therefore absolutely could be otherwise, nevertheless according to ordinary power cannot be otherwise. These things having been premised:

Moral certainty generically (for there are several species of it, as we shall see below) is that which neither by its own nature (and thus it differs from metaphysical certainty), nor from the ordinary course (and thus it is distinguished from physical certainty), has it that it cannot be otherwise, but is so disposed according to the estimate of the inner sense. More briefly it can be defined: that which is ruled by the laws which men use in their acts, or also: that which rests upon the estimate of the inner sense.

Moral certainty in species. - There are four species of moral certainty: direct and indirect; perfect and imperfect.

Direct moral certainty is that which is sought from direct principles, or which is obtained by reasons sought from the very nature of the thing. Thus it is directly certain that children owe love to parents; for the certainty of this matter is sought from the very relation of cause which parents have toward children.

Indirect or reflex moral certainty is that which is obtained by a reflected act of the mind, or which is sought from reflex or concomitant and indirect principles. Therefore this is not borne immediately upon its own object as direct moral certainty is, but mediately, namely through principles adduced from elsewhere. Similarly it does not have the ultimate reason of assenting in the object itself, as direct certainty does, but in something else, upon which the mind or intellect reflects. Thus, when there is a probable opinion concerning the non-existence of a law and another equally probable concerning its existence, then the non-existence of the law is not directly certain, but doubtful. But (and this is the reflex principle) a doubtful law does not oblige. Therefore, when it is equally probable that the law does not exist as that it exists, then this law does not oblige. And since the aforesaid reflex principle is certain, the conclusion also is certain.

Perfect moral certainty, which is also called absolute and strict, is that which is so founded upon moral laws, that is, those by which men are governed in their acts, that it is clearly perceived that the proposition cannot be false, for example, parents are to be honored.

Imperfect, or broadly so-called, certainty is that which belongs to those propositions in which it is not absolutely repugnant that there be error, although this can happen very rarely. This alone is understood when Moralists call something morally certain, and it admits various grades; namely, it is called highest when against it possibility alone militates; ordinary, if, besides possibility, certain slight moments militate against it, which, all things weighed, are reasonably contemned.

Note. - Not even an opinion certainly more probable enjoys this imperfect certainty, if it is considered speculatively and in itself. Wherefore St. Alphonsus must be understood in a comparative and practical sense when he calls an opinion of this kind morally certain; for this reason also he calls it quasi morally certain. In the same way, an opinion solitarily probable, which is also called probable certainty, is practically held as in the place of morally certain. More broadly on these matters, nn. 52, 53, 68.

Principle I. - Conscience cannot be a legitimate rule of operating unless it is certain; namely, the practico-practical judgment or conclusion of the particular syllogism (n. 32, Cor. II) must be so firm that the agent in no way doubts concerning the formal licitness of his action, but without fear of erring judges that he, in acting thus, does not sin, or that this is licit for him here and now. The reason is 1° because everything which is not of faith is sin (n. 35, II); 2° because he sins who deliberately commits himself to the danger of sinning; but he commits himself to such danger who operates uncertain whether he acts rightly and honestly; therefore, one operating thus sins. And indeed he who, uncertain concerning the goodness of the action, nevertheless acts, implicitly and interpretatively says: I wish to do this whether it is licit or illicit; which is a virtual contempt of the law. Likewise, he who, uncertain whether this or that is mortal, nevertheless operates, is so disposed in soul that he as it were says: even if to do this is a mortal sin, nevertheless I shall do it; which certainly is a grave delict. - Wherefore he who acts probably does not for that reason act prudently.[1]

II. For the formal honesty of an action, imperfect moral certainty, even ordinary certainty, suffices, nor is the highest required.[2] This is the most common doctrine. - It is proved: 1° Because imperfect certainty, although only ordinary, is true certainty with respect to things to be done; and therefore one operating from such a conscience truly operates from faith; for from such certainty prudent men act, even in matters of grave moment. 2° Because perfect certainty, or even the highest imperfect certainty, generally cannot be had in particular moral actions; therefore, since God does not command impossibilities, imperfect certainty suffices.

III. For formal honesty, indirect certainty suffices, as will be proved below.

IV. It suffices that someone be certain, in act, concerning the licitness of his action; namely, it is not necessary that he judge reflexively that he is certain; it is enough that the operation be done as indubitably licit, or that no danger of formal sin appear. This is plain in itself.

Notes to n. 47. (1) L. I. 58. (2) Diss. 1755, n. 52.

ARTICLE II: ON DOUBTFUL CONSCIENCE

48. Definition. - A doubtful conscience is a suspension of judgment concerning the goodness or malice of some act in particular. This happens, namely, when conscience suspends its assent for each part of the doubt, and remains uncertain and hesitating concerning the morality of its action. Moreover, since conscience is a practical judgment of reason, and here there is had only

a suspension of judgment, it is clear that a doubtful conscience is not conscience in the true and proper sense of the name, but only improperly and in the usage accepted by the Schools.

Division. - Doubt is divided:

1. Into positive and negative. Positive doubt is either strict, and exists from equal or almost equal reasons for each part (which coincides with a probable opinion), or broad, when for one part alone there is present a grave motive, or a certainly graver one than for the other. Negative doubt is when reasons are supplied from neither part, or only very slight ones; and this also is deservedly called strict, for as a balance, so also the mind stands in equilibrium, whether there are no weights on either side, or equal ones.
2. Into doubt of law and doubt of fact. Doubt of law is when there is doubt either about the law, for example, whether fasting on such a day has really been prescribed in the law; or about its obligation, for example, whether the law of fasting obliges in such a case or not; or about the legitimate authority of the legislator, for example, whether he can prescribe fasting in such a case. Doubt of fact is when there is doubt about some fact, for example, whether the medicine which I am about to take is healthful or poisonous; whether he who lies hidden in the woods is a man or rather a beast.
3. Into speculative and practical doubt. Speculative doubt is when there is doubt concerning the goodness or malice of an action in itself, abstracting from the execution of the action itself: for example, whether to paint on a feast day is a servile work or not. Practical doubt is when there is doubt whether a singular action, with its circumstances and in order to the end of the agent, may lawfully be given over to execution; for example, whether it is licit for me, constituted in these circumstances, to do a servile work on a feast day; whether it is licit for me, a servant, to obey my master commanding me in this matter. Wherefore between each doubt there intervenes the same distinction (which indeed intervenes very widely) as between true and licit. For speculative doubt, although obliquely and secondarily, or consequently, it regards also the licit, nevertheless directly and principally regards the true. But practical doubt directly, immediately, and primarily regards the licit itself. According to this twofold species of doubt, even doubtful conscience itself can, indeed must, with St. Alphonsus, be divided in two ways, namely into a speculatively doubtful conscience and a practically doubtful conscience.

49. Principles. - I. A merely negative doubt is to be held as nothing, because it is founded upon absolutely no reason, or upon a very slight one: therefore, even if it remains, the obligation still urges, or liberty stands, according as it existed before; nor can it effect that the moral certainty of the opposite be overturned. But if a prudent suspicion of error arises for you, you are bound to inquire. And so, when hereafter cases of negative doubt occur, you will easily solve them, once this rule has been established; and therefore we shall attend only to positive doubt.

II. It is never lawful to operate with a practically doubtful conscience, but the safer part must be followed. The reason is clear from what has just been said concerning certain conscience, principle I, n. 47. - But sometimes it is lawful to operate with a speculatively doubtful conscience, namely when, the practical doubt having been laid aside from a practically certain dictate, or from certain reflex principles, conscience is formed, as we shall soon say when treating of Probabilism.

50. Resolutions. - 1° As often as someone doubts whether an act which he is going to perform here and now is licit or not, he is bound to employ diligence in seeking the truth, congruent with the gravity of the matter and the condition of the person and place; namely, to consult upright and expert men, to investigate their practice, and to weigh the reasons with the sole pursuit of truth: otherwise he exposes himself, by negligence of inquiry, to the danger of violating the law, and sins in that very thing.

2° If he cannot inquire, nor is able of himself to weigh the reasons of each part, nor in another way, for example, through reflex principles, to free himself from doubt, let him embrace the safer part; because otherwise he would act in practical doubt, that is, with a truly doubtful conscience, and without any certain judgment concerning the honesty of the action.

3° He who, after diligent and sufficient inquiry has been made, still doubts whether there is present a law commanding or prohibiting, is not bound to obey this law; because he can form for himself a conscience from a reflex principle, namely that a law which cannot be found cannot oblige, as will be said below, where Probabilism is treated.

51. Questions. - Quest. 1° Does one sin gravely when operating with practical doubt concerning the gravity of sin?

Resp. Affirmatively. For he who acts with a practically doubtful conscience, according to common principles, sins with that species of sin, both moral and theological, concerning which, practically, while he acts, he doubts. The reason is that he violates a certainly grave obligation of taking precautions lest through voluntary ignorance or inadvertence he fall into transgressions of law which can be grave.

Quest. 2° Does he sin gravely who knows that his action is evil, but does not attend to its gravity?

Resp. It is disputed; but for St. Alphonsus[1] the sentence of those who say that such a one, of himself, sins only venially is sufficiently probable. The reason is that for sinning mortally it is required that someone consent directly or indirectly to what is mortal; but he who in no way thinks of or suspects what is mortal can in no way be said to consent to what is mortal. Therefore. Yet I have said: of himself, that is, supposing a) that he does not apprehend, at least confusedly, the danger of sinning gravely, or the obligation of investigating the matter; b) that the object is not certainly of itself a grave sin, of which kind, for example, it is in external sins whose gravity is known of itself to all, such as homicides, adulteries, thefts in grave matter, concerning which no one prudently supposes that they can be committed without advertence to grave malice, or at least without doubt about it, or without notable remorse of conscience; c) that the agent is of a fearful conscience; for otherwise, at least indirectly, he must be judged to consent to what is mortal.

Notes to n. 51. (1) L. I. 23.

CHAPTER IV: ON PROBABLE AND IMPROBABLE CONSCIENCE, AND ON THE EQUI-PROBABILISM OF ST. ALPHONSUS MARIA DE LIGORIO

ARTICLE I: NOTION OF PROBABILITY

52. ○ An opinion is called probable which rests upon a grave foundation, whether intrinsic, of reason, or extrinsic, of authority, so that it is able to draw to itself the assent of a prudent man, although with fear of error.

Probability, therefore, 1° adds something to opinion, namely a solid motive, but does not take away fear, and that a prudent fear, lest the contradictory be true. - 2° Between a probable and a certain opinion this distinction intervenes, that the latter excludes every prudent fear of falsity, so that the opposite sentence is reputed altogether improbable.[2]

Various species of probability. Probability is distinguished in various ways:

1° By reason of the object, one probability is speculative or of fact, which is concerned with the truth of an opinion, for example, whether to paint on a feast day is a servile or liberal work; whether a contract entered upon with such a condition is usurious or not; whether a sacrament conferred with such matter is valid or null. - Another is practical or of law, which is concerned with the licit use of a probable opinion, or with the formal honesty of an action, for example, whether it is licit to paint on a feast day; whether to enter into a contract with such a condition; whether to confer a sacrament with such matter. Cf. n. 48, 3.

Therefore, as we have already said above, the true must be carefully distinguished from the licit; for a speculative doubt, although mediately and consequently it regards the licit, as is clear from the examples brought forward, nevertheless immediately and principally regards the true; but a practical doubt entirely regards the licit.[1]

2° By reason of the foundation: a) one probability is intrinsic, which rests upon a grave reason sought from the very nature of the thing; another is extrinsic, which rests upon the authority of grave Doctors; b) an opinion is certainly probable when it rests upon a certainly grave motive; doubtfully probable, when upon a doubtfully grave one; slightly probable, when upon a slight one, namely one of such a kind that it is not able to draw to itself the assent of a prudent man.[2]

Slight probability is not true probability, as is clear from the definition itself; just as slight fortitude or slight skill cannot be called true fortitude and true skill, but rather must be called weakness and lack of skill. Therefore it is nearly equivalent to possibility, which is not to be esteemed, because little is reputed as nothing, and consequently the slightly probable is equated with the improbable.[3]

3° By reason of degree, it is distinguished as solitary, sole, or not impeded, to which no probable opinion or reason is opposed; and comparative, to which an equally, less, or more probable opinion is opposed, according as this latter rests upon reasons equally, less, or more solid than the opposite.

Moreover, a more probable opinion is one thing when it is a little more probable, and this is called by St. Alphonsus that which rests upon a foundation a little graver than the contradictory, but at the

same time with a prudent fear of the opposite, so that the contradictory also is judged probable. Therefore two opinions of this kind are almost equally probable; but little is reputed as nothing, since a small excess is fallacious. Another is evidently and notably more probable, whose foundations are certainly graver; or most probable, whose foundations are most grave, so that the sentence opposed to these is judged doubtfully or slightly probable. The notably more probable and the most probable are practically equated, because they differ little from each other.[1]

Note. - The word most probable can be used in a threefold sense; for it signifies either 1° the most probable of all opinions in general; or 2° the most probable of the opinions which in a particular question are subjected to examination; or 3° the most probable in itself and absolutely taken (very probable). In this third sense it is regularly employed by St. Alphonsus; but the Holy Doctor very rarely uses this ambiguous word in weighing sentences.

Notes to n. 52 - note sequence 1. (2) L. I. 40. Notes to n. 52 - note sequence 2. (1) L. I. 21, 25, 41; S. Th. 1. 2, q. 57, a. 5 ad 3. (2) L. I. 40. (3) Ibid. 54, 82.

53. Comparison of the probability of opposed opinions, according to the mind of St. Alphonsus. - After we have reviewed the various grades of probability, it will not be beside the matter to append a schema by which the reader will perceive at one glance how, according to St. Alphonsus, diverse opinions are opposed to one another. They are opposed thus:

1° To a true sentence, - morally certain: -

An improbable opinion (altogether).

2° To an opinion more true, - most probable, most grave, - more probable (notably, certainly, truly, absolutely): -

Not solidly probable (slightly, doubtfully).

3° To an opinion more probable (a little, doubtfully), - very probable, - probable (truly, certainly, gravely, solidly, absolutely): -

Probable (equally, almost equally, sufficiently).[2]

Notes to n. 53. (1) L. I. 40, 54. (2) Vind. Ed. 2a, T. I, p. 491.

54. ○ It must be noted in this place that probability and the safety of opinions differ greatly. Probability is sought from the appearance of truth; safety, however, from the removal of the danger of sinning; but according as it removes that danger either altogether or more or less, the opinion is called safe, safer, or less safe. Moreover, the danger of material sin and the danger of formal sin can be considered here; and by this reason an opinion less safe with respect to the danger of material sin (as is generally considered in this question) can be altogether safe with respect to the danger of formal sin, which alone is imputed unto fault, as we shall prove below. Finally, although the opinion which stands for the law is safer, but that which stands for liberty less safe, it is clear that the more probable opinion is not always the safer; since the greater probability can be in favor of liberty.

ARTICLE II: RULES FOR JUDGING THE PROBABILITY OF OPINIONS

55. ○ Reason alone constitutes the probability of opinions. Nevertheless, the authority of Doctors is of such great strength that it is sometimes equated with intrinsic probability, insofar as the Doctors are presumed to have diligently weighed the opinion which they hold and to have taught it on account of good reasons. Hence extrinsic probability is to be esteemed more from the merit and erudition of the Doctors, and also from their study and diligence in investigating the truth of the matter, than from their number.[1]

Wherefore, for judging the probability of opinions, the following rules should be attended to.

56. ○ Who can judge concerning the probability of opinions.

1° Concerning intrinsic probability, only learned men and those versed in moral matters can judge; for many times to men indeed talented, but little instructed in moral science, that will seem evident which experts judge false.[2]

2° Concerning extrinsic probability, a moderately learned man can judge, if, rightly understanding the state of the question, he finds the asserted opinion as probable from Doctors greater than every exception, that is, entirely approved among theologians.

3° The unlearned, who are not able of themselves to consult Doctors, can stand by the testimony of preachers and confessors whom they judge upright, prudent, and learned.[3]

Notes to n. 56. (1) Dissertation on the moderate use of probable opinion, 1763, nn. 83, 87. (2) Dissertation cited, n. 84. (3) L. I, n. 24.

57. ○ When an opinion is to be held as probable.

1° Unless a certain and convincing reason militates against some opinion, certainly probable is to be held both that which, the Church tolerating it, is commonly asserted as probable by theologians generally or by most theologians; and that which five Doctors strong in authority simply teach, or which some Doctor of the Church holds; and then finally that which some great theologian testifies to be probable. Now he is esteemed a great theologian who possesses the greatest authority among theologians on account of his distinguished doctrine, prudence, and probity. Such are: Suarez, Soto, Azor, Cano, Sylvius, Cajetan, Bannez, Navarrus, Paludanus, Toletus, Sylvester, Lessius, Sanchez, Angelus, Vasquez, Armilla, Valentia, Laymann, Molina, de Lugo, Castropalaus, Bonacina, Emmanuel Sa, Pontius, Cabassutius, Collet, Roncaglia, the Salmanticenses, Petrocorensis, Abelly, Cardenas, Coninck, Gamachaeus, Isambert, and others, whose learning, how great it is, is known everywhere; besides St. Thomas, St. Bonaventure, St. Antoninus, or Scotus, whose authority indeed must be preferred to others.[1] To these, mentioned in the last place, St. Alphonsus must be added, whose authority alone is so great that an opinion which he holds as probable must be held as extrinsically such.

2° The authority of a few Doctors who discuss some question expressly is to be preferred to the sayings of many others who write about it in passing. Indeed, sometimes, although rarely, the authority of one Doctor will be able to constitute an opinion probable, and even more probable, against the common opinion of others, if that author is very learned, upright, prudent, free from

party zeal, and not a lover of novelties, and if he brings forward a valid reason which the others have not considered or have not sufficiently solved, while he himself conveniently solves the opposed reasons.

3° "Of Casuists who wrote after the condemned propositions, greater account is to be had than of the more ancient, in those things which regard the very opinions branded, or which are akin to them."[2]

4° Concerning particular cases not discussed by theologians, for a learned and God-fearing man that opinion is sufficiently probable which he knows that he himself has diligently examined, both by carefully weighing the reasons and by consulting the learned, and which he judges, without inordinate affection, to be such; for probability is not to be restricted to public doubts.

For the rules for discerning the judgment of St. Alphonsus concerning the value of sentences, see p. LXXXVIII sq.

Notes to n. 57. (1) Cf. Diss. 1763, n. 87. (2) Zachar. Diss. P. II, C. V, Can. VII.

ARTICLE III: MATTER TO WHICH THE CONTROVERSY CONCERNING THE LICIT USE OF PROBABLE OPINION DOES NOT EXTEND

58. ○ The controversy of theologians concerning the licit use of a probable opinion can be moved only when the question is about the honesty of the action alone, but by no means where there intervenes the danger of some evil that will follow, distinct from the honesty of the action. For all theologians, at least the more recent, agree that it is illicit to follow a probable opinion whenever from its use some evil is feared to be going to follow, which cannot be averted by the dictate of conscience and which we are bound to avoid.

For the understanding of this saying, it must be observed that the evil which is feared to be going to follow from some action can be either one only or manifold, namely either the lesion of honesty alone, or sin, or besides this some other temporal or spiritual evil distinct from the former. Thus, for example, homicide comprises both moral evil, or sin, and physical evil, or grave harm of the neighbor through privation of life.

Therefore, before we expound the systems of theologians concerning the choice of opinions which we can licitly follow, we must set aside the matter which is not their object.

59. Proposition. - Where there is present danger of an evil which does not depend upon conscience and which we are bound to avoid, the safer part must always be followed in doubt.

It is proved. When a man is bound to avoid some evil, he is also bound to avoid its danger; for in morals this is equivalent. But in speculative doubt concerning the honesty of the action alone, the danger of sin can indeed be removed; while in a doubt of this kind concerning an evil distinct from the morality of the action, the danger of this evil cannot be removed. Therefore in the former case, the danger having been removed, it is lawful to act with speculative doubt, but not in the latter.

The minor is proved. For in the former case conscience is the proximate and formal principle of the honesty of the act; but in doubt the reflex principles of Probabilism form the ultimate certain dictate of conscience concerning the honesty of the action, as we shall prove below: therefore the danger of

formal sin is then altogether taken away. But the contrary obtains in the latter case. For an evil of this kind depends in no way upon the dictate of conscience, but upon what is true on the part of the thing. Therefore it can equally happen, whatever the conscience of the agent may be. Therefore unless we follow the certain or safer way, we do not avoid the danger.

It has been said: which we are bound to avoid; for sometimes there is a just cause for permitting an evil, and therefore its danger, either because between two evils the lesser must be chosen, or because the safer way is judged morally impossible. Therefore in a case of this kind it will be lawful to leave the safer way and to choose the less safe.

60. Corollaries. - From the proposition proved it follows that the use of an opinion, however probable, is prohibited by the precept both of religion and of charity and justice; but that the safer, or morally certain, sentence is to be followed where the question is about the validity of a sacrament, about danger to one's own soul, or about the spiritual or temporal harm of the neighbor.

And so the use of a probable opinion will be illicit:

I. In the administration and (practically) reception of the Sacraments, with regard to essentials; for the virtue of religion prohibits that they be exposed to the danger of frustration. - But that danger is not to be feared if either 1° the necessity of administering the Sacrament urges, provided that then it is conferred under condition; or 2° the Church can and is reasonably presumed to supply, in which case it must be conferred absolutely: this indeed can be presumed in two Sacraments, namely a) in the Sacrament of Penance, if from a just cause it is conferred with jurisdiction probable in law; b) in the Sacrament of Matrimony, if there is present an ecclesiastical impediment doubtful by a doubt of law.[1] See proposition 1 among those condemned by Innocent XI, p. XV.

Note. - With regard to the matter of each Sacrament, the same degree of certainty is not required. LL. VI. 57, 461.

II. In danger of one's own harm (at least spiritual) or of the neighbor:

1° In things necessary for salvation by necessity of means; therefore, for example, in the matter of faith the safer religion must be followed. For in things absolutely necessary for salvation, the dictate of conscience does not take away the danger of damnation; therefore in these the axiom must be followed: "No security is excessive where eternity is endangered." Add that here the truth will most certainly offer itself to the one inquiring. For this reason proposition 4 was condemned by Innocent XI: "An infidel, not believing, led by a less probable opinion, will be excused from infidelity."

Similarly, it is wrong to follow several opinions which are indeed speculatively probable, but which, translated into practice, taking account of the common or special fragility of the operator, are certainly joined with probable danger of lapse into sin, as we shall say more broadly later.

Likewise, on account of scandal of the neighbor, a law must sometimes be observed which probably does not exist.[1]

2° Physicians, surgeons, etc., from a pact even tacit, are bound to the safer means. Nevertheless, when the health of the sick person is despaired of, it is lawful to apply a dangerous means probably going to be useful, but also probably going to be harmful; because in that desperation of affairs some

hope of life is to be preferred to the danger of hastening death. But it is not lawful, for the sake of experiment only, to apply remedies altogether uncertain and unexplored to the sick, even the desperate, with danger of gravely harming; for this is, as someone says, to seek medicines through deaths.[2]

The same holds in other similar cases. Therefore, for example, offensive war is illicit in doubt of law; the discharge of a gun is illicit in doubt of fact whether that at which one aims is a beast or a man, etc.[3]

3° A judge, from a pact with the republic, in a civil cause where neither party possesses in good faith, is bound to follow the more probable opinion, by rendering judgment in favor of that party for whom the more probable opinion stands. The reason is that justice obliges the judge to render to each one his own right according to the merits of the cause and the weight of the reasons which favor each one. Hence proposition 2 was condemned by Innocent XI: "I probably judge that a judge can judge according to the less probable opinion."

But if the cause of each litigating party is equally probable, the judge is bound to reconcile the parties through a settlement (what a settlement is, see n. 1051), by dividing the controverted thing, if it is divisible, or, if it is not divisible, its price between the parties. The reason is that in judgments there must be no respect of persons, which would be had if in such a case he favored one rather than the other. Hence the opposed doctrine was condemned by Alexander VII, proposition 26, p. XIV.

I have said: 1° where neither party possesses in good faith; because possession makes the reasons preponderate for the possessor, so that his condition becomes the better; 2° in a civil cause; because in criminal causes, where the question is about inflicting punishment, especially capital punishment, between opposed probable sentences the opinion favoring the accused must always be followed, even if it is less probable, according to the rule of Canon Law 11 in Sexto: "When the rights of the parties are obscure, the accused is to be favored rather than the accuser."

The same holds in other similar cases, whenever the neighbor is in certain possession of his right. For this reason, for example, hidden compensation is illicit unless the debt is certain.[1]

Notes to n. 60 - note sequence 1. (1) L. I. 47; L. V. 210. Notes to n. 60 - note sequence 2. (1) L. I, n. 27. (2) L. I, nn. 44-48. (3) L. I, n. 52. Notes to n. 60 - note sequence 3. (1) L. I, 47; L. V, 210.

ARTICLE IV: VARIOUS SYSTEMS CONCERNING THE USE OF PROBABLE OPINION

61. ○ Since in practical doubt concerning the honesty of an action we cannot act honestly, and since that doubt very often cannot be directly overcome by reasons proper to individual cases, there must certainly be given from elsewhere some means of laying aside the doubt, so that, resting upon a certain conscience, we can act rightly. Now it is manifest that this means cannot consist except in some certain principle.[2] Therefore the state of the question here is:

In the concurrence of two opinions concerning the honesty of an action, of which one, the less safe, favors liberty, while the other, the safer, favors the law, what in this doubt is the certain universal rule to be followed for acting rightly?

This question is of such great moment that upon its solution depends the whole system of Moral Theology, whatever system may be chosen. For doubts of this kind occur many times in the individual matters of Moral Theology, since in it especially the application of laws to particular cases is treated, which is often uncertain.

But now, to solve this celebrated question, theologians have entered upon various ways. Some, namely, of excessive rigor in favor of the law; others, of excessive benignity in favor of liberty; and others finally have held the middle way between each extreme. Hence several systems have come forth, which we here briefly review:

Notes to n. 61. (2) L. I, 69, 78 at the end.

62. Systems. - I. Rigorism or strict Tutiorism, according to which it is not lawful to follow a sentence favoring liberty unless it is morally certain; otherwise the safer part must always be followed. This is a condemned system.

II. Mitigated Tutiorism, according to which it is not lawful to follow the less safe sentence unless it is most probable.

III. Probabiliorism (another mitigated Tutiorism), according to which it is prohibited to follow an opinion favoring liberty unless it is more probable than the opposite one for the law.

IV. Equi-probabilism, according to which, in the concurrence of two opinions equally or almost equally probable, while doubt stands concerning the existence of the law, it is lawful to follow the opinion favoring liberty; but in doubt concerning the cessation of a certain law, the opinion favoring the law must be followed. This is the system of St. Alphonsus.

Since the followers also of simple Probabilism in our age are accustomed to distinguish their system by the title of Moderate Probabilism, and thus, by the celebrated name of Alphonsus, cover a doctrine altogether diverse from the doctrine of the Holy Doctor, for the sake of greater clarity we have preferred in this edition to call the Alphonsian system by the name Equi-probabilism; the more so because authors today commonly use that term, and the Saint himself (for example, H. A. Tr. I. 75) calls his system "my system of the equally probable opinion."

V. Simple Probabilism, according to which it is right to follow an opinion less probable and favoring liberty in the concurrence even of a notably more probable one for the law; and it is lawful promiscuously to follow a probable opinion that is less safe, even in doubt concerning the cessation of a certain law.

The followers of simple Probabilism are divided into two classes; for some, although they favor liberty, nevertheless say that in doubt both concerning the cessation and concerning the existence of a law, the law must be followed when the opinion favoring liberty is certainly less probable. Thus Martinet and certain more recent authors. Others teach that it is lawful to follow an opinion less probable and favoring liberty, even if it is evident that the opposite one is more probable. Thus Lacroix and other Probabilist authors of the eighteenth century almost commonly, and also Gury in the later editions of his Compendium, and Ballerini.

VI. Laxism, according to which it is lawful to follow a sentence favoring liberty, even if it is only doubtfully or slightly probable. This system also is condemned.

Therefore, excepting I and VI, the remaining systems can be maintained without the Church's condemnation. Yet among them we judge that only Equi-probabilism, which claims St. Alphonsus for itself as its principal author and as a second quasi-parent (Vind. P. I, p. 74. - Ed. 2a, T. I, p. 509), holds the middle way and for this reason is true.

ARTICLE V: EQUI-PROBABILISM OF ST. ALPHONSUS

§ I. Previous Notions

63. ○ For a clearer understanding of the matters to be treated in this article, it will help to premise certain notions. And indeed:

I. Concerning liberty and law.

1° A twofold liberty is distinguished: one physical, and it is the force of choosing one's actions, concerning which we treated in nn. 4, 8, and 9; the other moral, involving the right and power of licitly doing or omitting something. Hence physical liberty, or liberty of choice, is also called liberty from necessity; but moral liberty is called liberty from law. In this place, as is clear, the dispute is about moral liberty.

2° Law is the bond of liberty, obliging it to certain acts and prohibiting it from certain others.

64. ○ II. Concerning doubtful law.

Law can be doubtful in two ways: 1° Simply, that is, with respect to existence, namely when it is doubted whether it has been enacted; whether promulgated; whether the time of obligation has already begun; whether it comprehends such a case or such a burden; whether it extends itself to such persons; whether it commands something or only counsels it.

2° In a qualified sense, that is, with respect to cessation, when the existence of the law is certain, and a doubt only supervenes whether its obligation has ceased; whether someone has an excusing cause; whether he has been dispensed; whether he has fulfilled the law, and so forth.[1]

Notes to n. 64. (1) L. I, 27.

65. ○ III. Concerning the possession of law and of liberty.

Since St. Alphonsus applies to liberty and to law the known principle of law: "In doubt the condition of the possessor is better," we must explain what that possession of liberty and of law means for itself.

This possession signifies here, the due proportion being observed, exactly the same thing as in the matter of justice; for by analogy it is extended from the matter of this virtue to the matter of the other virtues. For the understanding of this matter, the principle of presumption must be explained by us: "In doubt one must stand for that part for which presumption stands," as that from which the principle of possession draws its force. Presumption is defined by jurists: an anticipated proof of a doubtful thing, drawn from valid arguments and indications. It is called anticipated because presumption, before every legitimate proof (that is, a proof held by law as sufficient), takes

something as true; namely, as long as the contrary is not proved, that which is presumed is held as true.

These indications are distinguished in various ways according to the diverse nature of things. One of them, which pertains to the present matter, it helps to unfold in this way: as often as something is known to exist which of its own nature perseveres until it is removed by some contrary fact, it is judged to persevere in its own condition as long as the contrary is not established, so that this judgment yields only to sufficient proof, the burden of which rests upon the other part which impugns it. But it does not yield to an arising doubt; indeed, neither does the doubt effect that even the presumed certainty itself be brought into doubt. Wherefore that which was known to exist, even while the doubt has arisen, is judged to continue and to remain entire. Thus, for example, boundary markers are presumed to be where they were before, unless they are proved to have been changed. Finally, the principle of presumption is plainly general and is accommodated to very many particular cases, the chief of which it helps to enumerate:

1° When suspicion is had concerning someone's crime, his antecedent probity, while the doubt stands, is judged to persevere as long as wickedness is not established; whence the adage: "Everyone is presumed good until he is proved evil."

2° If someone possesses an estate which another contends to be his by doubtful right, the possessor remains in possession until the competitor proves his right; because possession gives birth to a presumption of dominion; whence the axiom: "In doubt the condition of the possessor is better."

3° A law or precept concerning which it is doubted whether it is just is held as just until injustice is proved; whence the principle: "In doubt one must obey the Superior."

These things having been premised, it is permitted to hand down the following notion of possession. Just as in the matter of justice possession is called - a pre-existing exercise of dominion in a certain thing on the part of someone, with respect to another contending concerning dominion, from which possession the thing is presumed to be the possessor's until the contrary is demonstrated - so in like manner, in the matter of honesty, possession of liberty is nothing other than its antecedent certain right with respect to a doubtful law; but possession of law is its antecedent certain obligation with respect to doubtful liberation. This priority effects that, when a doubt supervenes, that which was certain first has for itself a presumption of law, and therefore transfers the burden of proving to the other part. Therefore possession in this matter is taken analogically for any certain right preceding a doubt; whence it follows that the force and sense of the principle of possession can be rendered in this way: "A preceding certain right is not taken away by a supervening doubt, but perseveres until the cessation of the same is proved."

From the given notion we conclude in the following way: just as in the matter of justice, where two dispute about the property of some thing, he who, when the doubt has arisen, possesses the thing is presumed to be its owner, and therefore preserves the right in the thing until the contrary is proved; so in the matter of honesty, as often as there is a doubt between man's liberty and the obligation of law, that which was certain first is said to remain in possession until the contrary is proved.[1]

Notes to n. 65. (1) L. I, 26.

66. ○ IV. Concerning reflex principles.

Some are for doubts of law, others for doubts of fact. The chief ones are those which follow.

For doubts of law. 1° In doubt the condition of the possessor is better. Moreover, that which was first certain possesses and is presumed. Hence, where liberty was first certain, but an obligation arises as doubtful, there liberty possesses; where, on the contrary, obligation was first certain, but liberation is doubtful, there the law possesses, according to the things just said. To this pertains that other principle of law: "In doubt one must stand for that part for which presumption stands"; for presumption begets moral certainty, at least broad or imperfect certainty. Cf. n. 47.

2° A doubtful law does not oblige. This is understood of a law simply doubtful, that is, with respect to existence, not however doubtful with respect to the cessation of a law certainly existing; for then the law continues to oblige, because, just as certain liberty is not taken away by a supervening doubt, so neither is a certain law. Therefore in this case the principle must be converted, and one must say: "Doubtful liberty does not liberate."[1]

Hence, for example, in doubt whether sins doubtfully mortal, or mortal sins doubtfully committed, must be confessed; whether notably aggravating circumstances must be explained, there is no obligation. On the contrary, he who, certain that a mortal sin was committed, doubts whether he has already confessed it, must confess it. In like manner, one who doubts whether he has a sufficient excuse from the observance of the fast, when he cannot conveniently approach the Superior for a dispensation, is bound to observe the law, unless he prudently judges that in the case an excusing cause is probably present, while no probability stands to the contrary; for then there is imperfect moral certainty.[2]

As to the principle: "In doubt the safer part is to be chosen," applied to a speculative doubt concerning only the honesty of the action, it is proper to the rigorists and altogether false, as will be proved clearly below. It is true in this case alone, when practical doubt is not laid aside or cannot be laid aside, as we showed above in Article III.

Notes to n. 66. (1) L. I, 26. (2) L. VI, 468, 473, 474, 477. L. I, 195. Likewise Vind. Alph. p. 901, 5.

67. ○ For doubts of fact. 1° In doubt a fact is not presumed, but must be demonstrated. That principle proceeds when doubt concerns the principal fact, for example whether you emitted a vow, whether you confessed, etc.

Hence a doubt of law resulting from a doubt of fact must be resolved according to the diversity of the fact to be proved, according to the following rules.

a) In doubt of a fact founding the law, that is, upon which being posited the law or obligation is born, liberty possesses. Hence, for example, in doubt whether the time is present at which the law begins to oblige, you are not held by the law; whether someone is fasting, he can receive Communion; whether or not he sinned mortally, he can receive Communion without having confessed (practically [n. 60, I] contrite). Likewise, in doubt whether counsel given was directed to harm, or, if indeed this is established, whether it is doubted whether harm followed from it, no restitution is to be made after the due inquiry, of course.[1]

b) In doubt of a fact supposing the law, that is, upon which being posited the law ceases or has been fulfilled, the law possesses. Hence, for example, in doubt whether the time during which the law obliges has elapsed, you are held by the law.[2] Likewise, if you doubt whether you have fulfilled the

law, for instance whether you have recited the Hours or fulfilled penance, you are obliged, unless from a prudent reason, to which another is not opposed, you can probably judge that you have fulfilled it; for then there arises probable certainty, which, where a legal debt is concerned, suffices so that you are excused. In this way those things must be understood which St. Alphonsus says in L. I, 29-99 at the end, L. IV, 112, q. 3, Second sentence.[2] It is confirmed from Question I recently reformed, from which it is clear that the reformed doctrine must be restricted to the case in which probability is present for and against. As to L. I, n. 99 at the end, the passage according to the mind of St. Alphonsus seems to have to be reformed according to the cited Question I recently reformed, inasmuch as it was not corrected by the Holy Doctor through forgetfulness.

Likewise, when the debt is certain, but the fact of payment is doubtful, the debtor is bound to pay, or a composition must be made between the parties according to the proportion of the doubt.[3]

c) In doubt of a fact inducing a conflict of laws or rights, the stronger law prevails. By this reason, for example, a sexagenarian is excused from fasting, because the natural right of preserving life preponderates over an ecclesiastical precept. Likewise, he who prudently doubts whether the hearing of Mass in church on a feast day, or the recitation of the Office, or fasting, is not perhaps going to harm his health gravely, if he cannot conveniently seek counsel or a dispensation, is excused.[4]

2° In doubt one must stand for the validity of the act, or: In doubt every fact is presumed to have been rightly done. This principle holds when the principal fact is established and only some accessory fact is doubted, for instance concerning some circumstance or necessary condition, or concerning the due manner, whether it was present. Then, namely, this kind of accessory fact, due by law or customarily done, is presumed to have been present; its defect, on the contrary, must be demonstrated. This is customarily enunciated by the following axioms: In doubt the fact is presumed which had to be done by law, or which ordinarily is customarily done; and this other one: Delict or defect is not presumed, but must be demonstrated.[1]

It is useful to clarify these axioms by some examples, so that it may appear to which cases they can be accommodated, and to which they cannot.

If, for example, someone truly vowed, but doubts whether in vowing he knew or adverted to the obligation of the vow, or whether full deliberation was not lacking, whether he did not vow compelled by fear, whether that fear was grave - one must stand for the validity of the act. But it is otherwise if doubt concerns the very emission of the vow, or whether that which someone vowed is matter capable of a vow, or whether it was not a simple proposal. Likewise in doubt whether a sacramental confession was valid: if it is doubted whether some one of the conditions required for validity was lacking, one must stand for the validity of the act, because then the fact is presumed which by law had to be done. On the contrary, if it is certain that something was lacking, even if required only probably for the validity of the sacrament, for instance knowledge of the mysteries of the Most Holy Trinity and of the Redemption, or an explicit purpose, one must not stand for the validity of the act, but the confession must be repeated. For then it is certain that the fact was not done which by law had to be done; namely, the sacrament had to be received with all things required for validity, even only probably required. Hence from the reflex principles themselves it is clear that St. Alphonsus by no means fights with himself in Theol. Mor. L. III, 2 at the end, L. VI, 450 compared with n. 505.[2]

3° From things commonly occurring a prudent presumption is made. Hence in doubt whether boys, who before the seventh year certainly arrived at the use of reason, are held by merely ecclesiastical laws, they are not held; because the Church is presumed not to oblige except according to things commonly occurring. But after the seventh year, in doubt whether reason has been attained, they are held; because then from things commonly occurring the obligation is presumed. - In doubt concerning voluntary adherence in venereal delight, if a pious and timorous person who is not accustomed to consent doubts, he must be presumed not to have consented, at least not fully; but if he doubts who is accustomed easily to fall into mortal sins, he is presumed to have consented. - In doubt concerning the validity of the confessions of recidivists, if the recidivist after his confessions has for the most part relapsed quickly and without any resistance, he must be presumed to have had no sorrow or a too slight sorrow and purpose. But it must be said otherwise if he persevered for some time, or before the fall offered at least some resistance.[1]

Notes to n. 67. (1) L. I, 32, 38, 39. L. VI, 475. L. IV, 562. Cf. Vind. Alph. p. 901, 5. (2) Cf. Vind. Alph. p. 901, 5. (3) L. I, 29, 32, 34. (4) L. IV, 325, 1036. L. V, 154, note 3.

§ II. Exposition of the System

68. ° In the concurrence of two opinions equally or almost equally probable, of which one favors liberty and the other the law, while the doubt stands concerning the existence of the law, it is permitted to follow the opinion favoring liberty; but in doubt concerning the cessation of a certain law, the opinion favoring the law must be followed.[2]

Conditions to be observed. The use of a probable opinion favoring liberty must be moderated by the following conditions.

1° At least ordinary diligence must be employed so that the truth may be discovered; for this investigation is necessary so that ignorance may be invincible and possession of liberty may be preserved in good faith.

2° The opinion must be truly probable, that is, founded in a reason grave in itself and comparatively, even if it is a little less probable than its opposite. Wherefore an opinion is not solidly probable whenever the opposite is notably or certainly more probable. For a certain excess of probability takes away the suspension of the intellect, and consequently begets probable certainty, as we shall prove below. But in moral matters, since they must be estimated morally, strict certainty and evidence cannot be demanded, but probable certainty (that is, broad or imperfect) must suffice, as St. Thomas teaches. Therefore notable greater probability elides the comparative probability of the opposite sentence, so that this is only slightly or doubtfully probable; consequently an opinion much more probable is now not strictly doubtful, but morally or almost morally certain.[3]

Therefore the System of St. Alphonsus must always be kept before the eyes as proceeding only in a case of true doubt, or in the conflict of equal or almost equal probability; for an equilibrium of this kind produces a true suspension of the intellect between both parts, and therefore a true doubt, to be resolved only through reflex principles, according to the doctrine of St. Thomas:[1] "Our intellect . . . sometimes is not inclined more to one thing than to another, either because of a defect of things moving it, as in those problems concerning which we do not have reasons, or because of the apparent equality of those things which move it to each part: and this is the disposition of one doubting, who

fluctuates between the two parts of a contradiction." But the System does not proceed when either one opinion is notably more probable than the other, or there is a single probable opinion. For in that case there is not strict doubt, but a sufficient motive, in moral matters determining the intellect to give assent to such an opinion and to follow it as sufficiently certain.

Then, when one opinion is certainly and without any hesitation more probable, it can only be notably more probable.[2] Therefore no one is bound to embrace an opinion as long as he does not in the least doubt concerning its greater probability.

3° Liberty must be in possession against the law, that is, according to what was said above in n. 65, the certain right of liberty must precede the doubtful law.

Notes to n. 68 - note sequence 1. (1) L. I, 26. (2) L. IV, 196, 201, q. 3. Notes to n. 68 - note sequence 2. (1) L. IV, 270. L. VI, 476, 505. (2) L. I, 26-39, 57-59, 97-99. (3) L. I, 54, 56.

69. ○ It helps in this place to clarify two locutions of St. Alphonsus.

1° The Holy Doctor sometimes says that a law, in order to oblige, must be certain and manifest;[3] but sometimes he says that it obliges, although it is not altogether certain, provided it is notably more probable.[4] Yet in no way does he contradict himself. For a twofold moral certainty, of which the Holy Doctor speaks here, must be distinguished, namely one strictly so called, or perfect, which is evidently deduced from certain principles of morals; and one broadly so called, or imperfect, whose arguments, even if they do not beget evidence, nevertheless so convince that the opposite remains only doubtfully or slightly probable. The former is not required in moral matters, but the latter suffices. Hence the sense of his words is that the law, in order to oblige, must indeed be certain and manifest, but that broad certainty suffices, without need of strict certainty. In the same way we say that an opinion notably more probable is morally certain.

2° Sometimes he distinguishes doubt from probability, and says that in doubt concerning the cessation of the law the law must be observed, but otherwise if probability is present. This ambiguity vanishes if it is attended to that the Holy Doctor understands in the former case strict doubt, namely when there are two opinions almost equally probable according to the doctrine of St. Thomas already related in n. 68; but in the latter case an opinion which alone is probable, or whose opposite rests on no reason.

That the system expounded is the genuine system of St. Alphonsus is luminously proved by Vind. p. 1-125. 2nd ed., T. I, p. 453 sq.

Notes to n. 69. (1) De Verit. q. 14, art. 1. (2) L. I, 56. (3) L. I, 63. (4) L. I, 67. Notes to nn. 69-71. (1) L. I, 67 at the end, and 71.

§ III. Proof of the System

For the sake of clarity and order, we divide the subject matter into three parts, demonstrating the System 1° by parts, by intrinsic and extrinsic arguments; 2° as a whole at once, from the approbation of the Church; 3° by refuting the opposite systems.

I. Proof of the System by Parts.

70. ○ The Equi-probabilism of St. Alphonsus, as is clear from its explanation, is opposed on one side to Probabiliorism, insofar as it teaches that, in the concurrence of opinions equally or almost equally probable, it is lawful to follow the less safe one, as often as the doubt is turned, as most often happens, to the existence of the law. On the other side, however, and indeed by the twin part of itself, it excludes simple and common Probabilism, insofar as it teaches that it is illicit to follow the less safe opinion in the concurrence of the safer, when 1° the latter is notably more probable, or 2° the doubt concerns the cessation of a certain law. We complete the whole matter in three propositions.

PROPOSITION I.

71. ○ It is not permitted to follow the less probable opinion for liberty in concurrence with a notably more probable one for the law.

Proof I. From reason. - For in the case posited, on one side the opinion for liberty does not appear truly probable; and on the other side the law is not truly doubtful. Hence it follows that the reflex principles of Probabilism cannot be applied here, since they proceed only in doubt; for they are: "A doubtful law does not oblige. - In doubt the condition of the possessor is better."

I say: 1° The opinion for liberty does not appear truly probable. - That opinion is truly and readily, that is, notwithstanding the opposite, probable, whose motives are such that they suffice to obtain the assent of a prudent man. But the motives of the less probable sentence in concurrence with one much more probable do not suffice to obtain the assent of a prudent man, but only to introduce some fear of the opposite. Therefore a sentence of this kind is not truly and readily probable.

Proof of the minor. For 1° the force and efficacy of those motives is weakened and elided by much stronger motives, since, as St. Alphonsus says,[1] the certainly or notably more probable sentence has for itself a certain foundation that it is true, which foundation the opposite lacks.

2° No prudent person can assent to an opinion which he judges to be much more probably false than true. For assent is an act of the mind by which we judge something true or likely to be true; but the more one opinion is much more likely to be true, the more we necessarily judge this one much more probably true, but the opposite not only not probably true, but on the contrary much more probably false. Therefore we cannot prudently assent to the latter.

Therefore, although a less probable opinion considered apart can appear probable, nevertheless, compared with the opposite much more probable opinion, it certainly ceases to be probable. Wherefore St. Alphonsus writes suitably:[2] "A truly probable opinion is only that which has intrinsic and extrinsic foundations equally or almost equally valid as the opposite for the law, so that the law appears certainly and strictly doubtful."

I say: 2° The law is not truly doubtful. - For doubt is a suspension of assent between opposites. But in the case of the proposition assent for the law cannot be suspended. Therefore the law is not truly doubtful.

Proof of the minor. Then alone does the intellect fluctuate between two opposed parts, when motives for each part are either absent or appear equal. This is the doctrine of St. Thomas, which we related

in n. 68. But in the case the motives are by no means equal, but appear much stronger for the law than for liberty. Therefore the intellect cannot deny assent to the law, though with some fear of the opposite part.[1]

72. ○ Proof II. From the authority of St. Thomas. The Angelic Doctor altogether favors the doctrine of St. Alphonsus, since on one side he teaches that doubt then occurs when reasons move equally or almost equally to each part, as we noted in n. 68, 2°; whence it follows spontaneously that, if reasons move much more strongly to one part, we are outside the state of doubting; and on the other side he affirms that in human acts strict certainty is not demanded, but probable certainty suffices, as we showed in n. 68 under 2. These two things agree perfectly with the thesis of St. Alphonsus.

Notes to nn. 72-74. (1) L. I, 56. (2) L. I, 56. (3) H. A. Tr. I, 31.

73. ○ From the things said above we conclude: if, notwithstanding these things, the will should choose the part favoring liberty, it will choose from affection alone toward that part, not from the dictate of reason; therefore it will choose rashly and imprudently, because an election which is not led by reason cannot be free from imprudence and temerity.[2]

Deservedly, therefore, the Holy Doctor affirms: "This sentence" (that someone can licitly follow an opinion even less probable for liberty, although the opinion for the law is certainly more probable) "the authors of the past century almost commonly held; but we say that it is lax and cannot licitly be embraced."[3]

Notes to n. 73. (1) L. I, 56. (2) Dell' uso moderato a. 1765, chap. 5, n. 25.

PROPOSITION II.

74. ○ When opinions almost equally probable concur, in doubt concerning the existence of the law, it is permitted to follow the opinion favoring liberty.

I. It is proved from reason.

The obligation of pursuing the safer part, if any were present, would come either from the part of liberty destitute of its right, or from the part of the law endowed with the force of obliging. But from neither of the aforesaid parts can the obligation arise. Therefore no obligation of pursuing the safer part is given.

Proof of the minor by parts. I. Not from the part of liberty as though destitute of its right.

This is drawn from the principle of possession: "In doubt the condition of the possessor is better," which in other words signifies: A certain right cannot be taken away by a supervening uncertain opposed right. Hence I reason thus: in doubt the possessor conquers; but liberty is in possession against every doubtful law (understand: doubtful as to existence); therefore in doubt concerning the existence of the law, liberty conquers. - The same reasoning can be proposed thus: in doubt no one is to be deprived of his own thing or his own right, which he legitimately possesses; but liberty is a

legitimately possessed right; therefore on account of a doubtful law a man is not deprived of his liberty.

Proof of the major assumption. In doubt the possessor conquers. - Natural reason proclaims the truth of this axiom. For whoever certainly and in good faith possesses some thing cannot be deprived of that thing except on account of certain reasons which prove that there is no longer a right of possessing for him, since everyone who possesses is presumed to possess by right until the contrary is shown, just as no one is presumed evil unless he is proved so. Therefore until this has been proved by certain reasons, the presumption arising from possession gives a certain right to the possessor according to the principle of law: "In doubt one must stand for that part for which presumption stands." Besides, that principle has always been admitted by all in the matter of justice before all tribunals, both civil and ecclesiastical.

Proof of the minor assumption. Liberty is in possession against every doubtfully existing law. The minor assumption will stand if we have proved the following two things: 1° that the principle of possession also holds in the matter of simple honesty; 2° that man possesses liberty against a doubtful law.

As to the 1st. Both the principle of presumption, "In doubt one must stand for that part for which presumption stands," and that one, "Against a preceding certain right a doubt which has arisen cannot prevail," are plainly universal principles and of natural right. But the principle of possession taken analogically is exactly the same, as we explained above in n. 65. Therefore the principle of possession holds in any matter of simple honesty.

Besides, St. Alphonsus suitably notes: "Possession," says Sanchez,[1] "is a universal title for all the virtues, in that way in which another potential part of justice, such as obedience to God, transcends all virtues. For since the essence of justice is to render to each one his own right, this belongs to every virtue; insofar as religion renders his right to God, charity to the neighbor, temperance to oneself, and so of the others; and therefore it is deservedly said that the notion of justice is a potential, or generic, part of all the virtues, in which the other virtues agree among themselves. Wherefore, if it were against justice to deprive a possessor in doubt of his own right, it is likewise against justice in doubt of law to despoil man of his possessed liberty."[1]

Notes to preceding text - note sequence 1.

1 Dec. L. I, c. 10, n. 11.

Add that the force of this principle in the matter of simple honesty is commonly admitted by Probabilists, chief among whom besides St. Alphonsus are Suarez,[2] Lugo,[3] Sanchez,[4] Croix, Salmanticenses,[6] Roncaglia,[7] Bonacina,[8] Sporer,[9] etc.

It will help to have noted in this place that the principle of possession admits a stricter application in the matter of justice than in the matter of the other virtues, because justice is more rigid than the other virtues. For unlike the other virtues, the mean of justice is the mean of the thing, that is, of equality of thing to thing; and the right which justice regards is a strict or rigorous right. Hence it happens that disputes concerning justice demand stricter proofs.[10]

As to the 2nd. God from his good pleasure created man free and afterwards imposed precepts upon him by which his liberty is restricted, according to that of Eccli.[11] "God from the beginning

established man and left him in the hand of his own counsel. He added his commandments and precepts."

Notes to preceding text - note sequence 2.

1 Dissert. a. 1763, n. 19. **2** In 1. 2. D. Thom. tr. 3, de bonit. et malit. act. human. Disput. 12, Sect. 5, n. 7, 8. - De Relig. tr. 6, l. 4, c. 5, n. 7 et seqq. - De Censur. Disp. 40, Sect. 5, n. 14, 15. **3** De Justit. Disp. 17, n. 87. Disp. 23, n. 110. | **4** Decal. L. I, c. 10, n. 10, 11. | **5** Lib. I, n. 502. | **6** Tr. 20, c. 6, n. 7. | **7** Tr. 1, q. 1, c. 3, q. 3. **8** De Peccat. q. 4, p. 7, n. 13. | **9** Tr. 1, n. 75. | **10** Cf. S. Alph. L. I, 36. L. VI, 905. | **11** 15, v. 14, 15.

From this, in doubt concerning the existence of some law, the following argumentation can be used. The certain divine will must be preferred to the uncertain; but that God endowed man with liberty and does not will that he be deprived of his liberty insofar as some precept does not require its restriction (for that is called licit, from St. Thomas, which is prohibited by no law), is a certain divine disposition. But whether God wills that in the case of a doubtful law man renounce his own liberty is uncertain. Therefore with a safe conscience he persists in possession of the liberty with which God endowed him, until his contrary will becomes known to him.[1]

Conclusion. - From the things proved there follows: 1° Since liberty is certain and prior to the law, man is presumed free in every case where the law is not established. Hence this rule flows spontaneously: "What is not certainly prohibited is licit."

2° The rule of the Anti-Probabilists is false: "Nothing is licit unless it is morally established that it was permitted by God." For if this were true, God should not have had to promulgate a law, but those things which he permits us to do.[2]

75. ° II. No obligation is given from the part of the law, as though endowed with the force of obliging. - In order that the assertion may appear, the principle must be established: "A doubtful law does not oblige."

But it must be warned beforehand that the enunciated principle, taken in a too general sense, is false. For from the things proved and still to be proved in Proposition III, it is established that it must be understood of a law simply doubtful, that is, doubtfully existing. In the same way St. Alphonsus understands the principle; for he always uses it to prove that a doubtful law, as insufficiently promulgated, and therefore doubtfully existing, does not oblige.

That principle is proved: 1° From defect of promulgation and invincible ignorance. The promulgation of law in subjects is required essentially, so that the law may have the force of obliging. But where the law is doubtful, true promulgation of it is lacking. Therefore a doubtful law does not oblige.

Proof of the major. Law cannot be a rule of acting for a free being unless it becomes known to him; but it is brought to his notice through promulgation; therefore promulgation is of the essence of law.[3]

Proof of the minor. A law invincibly unknown to subjects is not sufficiently promulgated; but doubt of law, invincible by human study, is invincible ignorance; therefore a doubtful law is a non-promulgated law.

Proof of the minor assumption. We are said invincibly to be ignorant of those things concerning which we do not have sufficient foundation for affirming rather than denying. But such a sufficient foundation is equally lacking where the reasons for law and liberty are almost equal on each side, and where there are none, since in either case the intellect remains equally suspended. Therefore.

Note. - 1° In the argument brought forward, the Holy Doctor does not expressly distinguish the promulgation of the law made to the community from the knowledge of it in the subject. He considers the matter practically; for practically a law not becoming sufficiently known to the subject returns to the same point as a law not sufficiently promulgated.

2° You would wrongly turn back upon him the argument which he seeks from invincible ignorance, by inferring from it that even a certainly more probable law, as not certainly known, is invincibly unknown. For he holds that this law, as sufficiently known, that is, from the rules of prudence, which is a virtue of the practical intellect,[1] obliges.

2° From the principle of causality. A doubtful law obliges either certainly, or doubtfully, or in no way. But the first is impossible, because an effect cannot be greater than its cause. The second is absurd; for the will follows the intellect, and therefore unless the intellect is convinced, the will is not bound. But no doubtful knowledge necessitates the intellect to assent; therefore no doubtful law binds the will to obey. Therefore the third remains.

3° From the presumed will of the Divine Legislator. God is legitimately presumed not to will to oblige by a doubtful law when the end of creation is obtained equally. But thus the matter stands. Therefore.

Proof of the minor. The end of creation is the glory of God and the salvation of men. But each is obtained even when doubtful laws are not observed. Therefore.

Proof of the minor assumption. The glory of God as well as the salvation of men exists from the perfect obedience of men given to the divine laws. But while certain laws are observed, doubtful laws, which are believed not to oblige, even not being observed, an equally perfect submission is given to God by men. Therefore, without the observance of those laws, the end of creation is obtained equally.

Proof of this minor. Although the law exists objectively, nevertheless God does not will it to oblige proximately and subjectively unless it also exists subjectively in conscience, sufficiently known by moral diligence. But when doubtful laws are believed by the conscience of men not to oblige, men perfectly obey God from the observance of certain laws alone.[1]

Notes to n. 75 - note sequence 1. (1) L. I, 77, 78. Dissert. a. 1763, n. 6, 18. (2) L. I, 77. (3) S. Thom. 1. 2, qu. 90, a. 4.
Notes to n. 75 - note sequence 2. (1) 1. 2, qu. 57, a. 5 ad 3.

76. ○ It pleases us to note in this place that it is illicit to use two probable opinions at the same time in the same act, if from this one law is certainly violated. For example, a testament lacking legal form is probably valid; it also more probably is not valid. Therefore it is not permitted, by following the former sentence, to enter upon the inheritance, and at the same time, by following the latter, not to pay the legacies contained in the same testament. By this deed the observance of one or the other law is necessarily evaded, and the agent contradicts himself in the same act.[2]

Notes to n. 76. (1) L. I, 60-76. (2) Lugo de Euchar. Disp. 15, n. 46-54. Croix, Lib. I, n. 370-374. Sporer, Tr. 1, n. 35.

II. It Is Proved from Authority.

77. ○ Historical notice. Disputations about the choice of opinions in practice arose after the middle of the sixteenth century. Then first came forth the System of Probabilism, whose author is reputed to be Bartholomaeus Medina, of the Order of Preachers; this System was immediately received very commonly, as the adversaries themselves confess. (Therefore if, St. Alphonsus observes, the rigid sentence, as its followers assert gratuitously, had from the beginning of the Church up to that time been in possession, how could it have happened that so quickly it was commonly rejected by the Doctors, and the benign sentence received?) In the time of Cornelius Jansenius various Systems of Anti-Probabilism came forth, among which Probabiliorism, from the influence of Jansenistic fraud, was more commonly received up to our century. But, as usually happens in controversies of this kind, extremes were avoided by neither part. For just as certain Probabilists slipped into too lax doctrines, which the Supreme Pontiffs proscribed, so also their adversaries struck upon extreme rigor, which was likewise reproved by the Holy See. For the rest, that the use of probable opinion in the matter of honesty alone has always flourished in the Church can be proved against the Anti-Probabilists by many testimonies, some of which we shall bring forward, and by no certain testimony can it be refuted. Besides, Probabilism numbers among its patrons theologians of great name. Finally, today it is received everywhere in the Church.

78. ○ I. From the testimony of the Holy Fathers. From them it is evidently shown that in doubt the safer part is not always to be followed. Thus St. Augustine: "For what is proved to be neither against faith nor against good morals must be held indifferently."[1] St. Gregory Nazianzen: "Either prove that the matter is thus, or if you cannot do that, do not condemn; but if the matter is doubtful, let humanity and ease conquer."[2] St. Leo the Great: "In those things which are doubtful or obscure, let us know that this must be followed which is found neither contrary to the evangelical precepts nor opposed to the decrees of the Holy Fathers."[3] St. Bernard: "Indeed there each one abounds safely in his own sense, where that which is thought by him does not stand opposed either to certain reason or to an authority not to be despised."[4]

That the force of the argument sought from the Fathers may be clearer to you, go, if you please, to the cited passages of the Fathers, where, from the occasion on which the words adduced were written, you will discover that cases really probabilistic are dealt with in them. The cited words of St. Leo the Great and Bernard are general. The praised epistle of St. Augustine is wholly occupied in admonishing Januarius that he should not condemn customs observed in various regions or churches, unless they are certainly opposed to the Faith or good morals. The passage from St. Gregory Nazianzen regards the question whether it is lawful for widows after Baptism to proceed to second marriages.

Notes to n. 78. (1) Epist. 54 ad Januar. (2) Orat. 39. (3) Ep. 167. (4) Ep. 77 ad Hug.

79. ○ II. From the consent of the Doctors. The prince of theologians, St. Thomas, speaks thus: "The command of one governing is related to binding in voluntary matters by that mode of binding which can happen to the will, as bodily action is related to binding bodily

things by the necessity of coercion. But the bodily action of an agent never introduces necessity into another thing except through the contact of the coercion itself with the thing in which it acts; hence neither is anyone bound from the command of any lord unless the command reaches him to whom it is commanded. But it reaches him through knowledge. Hence no one is bound by some precept except through the mediation of knowledge of that precept. . . . As in bodily things a bodily agent does not act except through contact, so in spiritual things a precept does not bind except through knowledge."[1] St. Isidore: "But the law will be manifest."[2] To these are added most excellent theologians who are Probabilists, as Suarez, Lugo, Sanchez, Sylvius, Toletus, Lessius, Laymann, Bonacina, the Salmanticenses, Amort, and many others.[3]

80. ○ From the approbation of the Works of St. Alphonsus. Recall what was said on p. lxxix, and notice that by the judgment of the Holy See itself the System of St. Alphonsus is safe, and that any other system, for example that of simple and common Probabilism, lacks a testimony of this kind.

PROPOSITION III.

81. ○ When opinions almost equally probable concur, in doubt concerning the cessation of a certain law, the opinion favoring the law must be followed.

It is a logical corollary of the preceding proposition. For: 1° If a doubtful law, supervening upon certain liberty, does not bind the latter, by the same reason, conversely, doubtful liberty, supervening upon a certain law, does not dissolve the latter. 2° As invincible ignorance concerning the existence of a law excludes obligation, so the same ignorance concerning the cessation of the law excludes disobligation. 3° If in invincible doubt concerning the existence of a law liberty is presumed, likewise in invincible doubt concerning the cessation of a law obligation is presumed; for the rights of law and of liberty, in an equal cause, must be equal. On these causes especially the Probabilism of St. Alphonsus merits the name of Equi-probabilism, namely because it not only indicates most rightly the limits of true probability, but also favors law and liberty with an equal balance, attributing equal rights to each in the same circumstances, not using weight and weight.[4]

Notes to n. 81. (1) Quaest. de Verit. q. 17, a. 3. (2) Dist. 4, can. 2. (3) Cf. S. Alph. L. I, 59. Dissert. a. 1755, n. 4-12, 81-101. (4) L. I, 26. Dissert. a. 1763, n. 25.

II. The Opposite Systems Are Refuted.

82. ○ I. Strict Rigorism. This System was condemned, proposition 3 having been condemned by Alexander VIII: "It is not permitted to follow an opinion, either among probable opinions the most probable, or among probable opinions the most probable of all." This proposition is openly false; for if the opinion for liberty is most probable of all, the opinion for the law will be only slightly or doubtfully probable; but on account of a weak motive to despoil liberty of its own certain right is openly against natural right. Therefore the System is false.

83. ○ II. Laxism. It was condemned, proposition 3 having been condemned by Innocent XI: "Generally, when relying on probability either intrinsic or extrinsic, however slight,

provided one does not depart from the bounds of probability, we do something, we always act prudently"; and proposition 27, condemned by Alexander VII: "If a book is by some younger and modern author, the opinion must be judged probable, as long as it is not established that it has been rejected by the Apostolic See as improbable." Deservedly also was this doctrine condemned; for a law cannot be judged truly doubtful which is founded on so grave a reason that against it no solid reason can be brought forward, but only a slight reason or authority.

84. ○ III. Mitigated Tutiorism. As such it did not live long. It is refuted by this argumentation. If the less safe opinion is notably more probable, the opposite for the law becomes slightly or doubtfully probable; but on account of a motive only slightly or doubtfully probable to despoil liberty of its own right is certainly against natural right; therefore . . . Besides, notable greater probability for some opinion founds probable certainty of it; but in human acts probable certainty must suffice; therefore . . . Recall what was said in n. 68 under 2.

85. ○ IV. Probabiliorism. This System adds uncertain obligations to certain obligations, and thus, with the number of obligations increased, it increases the number of sins. But from the principles of Equi-probabilism it has been demonstrated that uncertain obligations are repugnant to the natural right of liberty. Therefore Probabiliorism denies to liberty the justice owed to it.

86. ○ V. Simple Probabilism. This system labors under a twofold vice. First indeed, it extends the limits of probability more than is just, by contending that an opinion can enjoy solid probability even though the opposite is much more probable, which we sufficiently showed cannot be admitted in nn. 71-73. Then Probabilism does not temper the principle by the principle of possession; hence it violates the right of possession of the law and indulges liberty more than is just. For the patrons of this System, by always defending the parts of liberty wherever the opinion is probable, use weight and weight; indeed, the arguments by which they prove that liberty is not bound by a doubtful law do not convert against liberty, where precisely the same reason has force for a certainly existing law. For if the following reasoning has force in favor of liberty where the law is doubtful - a doubtful law does not oblige, because he is not obliged who invincibly does not know himself to be obliged - the conversion of the same must necessarily be made in favor of the law when a doubt concerning liberty follows.

Finally it must be noted here that most Probabilists sustained a false principle, namely: "He who acts probably acts prudently." The vice of this principle is in this, that in order to make a certain judgment concerning the honesty of an action it relies on probability, and therefore on doubt as on a motive, but not as on a mere condition, which being posited, a certain reflex principle is employed to form a certain conscience. For when two opposite opinions are about equally probable, the motives of each elide each other's strength for determining the assent of the intellect to one rather than the other. For as much as the motives of one strive to obtain assent, so much do the motives of the other strive in the opposite direction; hence the intellect can prudently adhere to neither before the other, but necessarily remains unmoved and suspended, just as a balance remains suspended in equilibrium

when equal weights are in each pan, or just as a stone, drawn in opposite parts by a double equal force, rests unmoved. Therefore he who in such a case commands assent to the opinion favoring liberty, and from it forms the ultimate dictate of conscience, acts imprudently and culpably.[1]

Notes to n. 86. (1) L. I, 58, 69, 71, 80. Dissert. a. 1773, n. 21, 23.

Conclusion concerning the Practice of Probabilism.

87. ○ Up to this point we have proved that the moderate use of a probable opinion is licit. Further, now it is asked here whether it is also expedient for the salvation of souls to follow benign opinions rather than rigid ones. Concerning this the following rules are handed down.

I. In general: 1° "Where it is a question of removing a penitent from the danger of formal sin, the confessor must, generally speaking, and insofar as Christian prudence suggests" (elsewhere[1] he says more expressly: "insofar as Christian prudence concedes"), "use benign opinions." 2° "But where benign opinions render nearer the danger of formal sin, . . . then it is always expedient that the confessor use, indeed I say that he himself, as a physician of souls, is bound to use, the safer opinions, which lead penitents to be preserved in the state of grace."[2] Yet as to the manner let him observe this distinction: where the probable danger of sin is present only doubtfully, he is bound altogether to persuade safer opinions; but where such danger is certainly present, he is bound altogether to oblige them to be followed. Moreover, of this kind are some opinions, probable but dangerous in practice, in the matter of the Sixth Precept, concerning touches, kisses, dances, comedies, the repression of sensual motions, the avoiding of proximate occasions, readings dangerous with respect to faith or morals, and similar matters.[3]

II. As to perfection. Certainly it is more perfect to follow the safer opinions wherever they contain acts of greater virtue and do not give occasion to anxieties and scruples. Hence, generally speaking, we ought to counsel the use of opinions of this kind, as of counsels, when penitents show themselves prepared to follow safer things and prudence dictates that this will profit them.[4]

Notes to n. 87. (1) L. VI, 456. H. A. Tr. ult. 7. (2) L. I, 84. (3) L. I, 84. L. II, 63. L. VI, 605. Prax. Conf. n. 69, 192. H. A. App. IV, 21. Diss. a. 1755, n. 107. (4) L. VI, 606. Diss. a. 1775, n. 107.

Objections Are Solved.

88. ○ Objections against Probabilism in general. - Some of these attack the application of the principle: In doubt the condition of the possessor is better, namely, of liberty; and you will easily refute these if you always have properly before your eyes the proper thesis of the Probabilists. For they do not ask whether liberty precedes the law insofar as it is existing in first act, but this one thing: whether it precedes the law insofar as it is actually obliging, or apprehended by conscience.[5] The Anti-probabilists, by denying this, fall into that absurdity which we noted in n. 74, Conclusion, under 2°. - Notice besides that Probabilists do not affirm that doubtful liberty is certain in itself (which would imply a contradiction in terms), but that in doubt concerning the law liberty certainly possesses, and therefore preserves its right.

Notes to n. 88. (5) L. I, 73.

89. ○ Others attack the principle itself: A doubtful law does not oblige, and deny that it has force; either because a) in very many cases it is not doubted whether the law exists, but whether a certainly existing law comprehends this or that case; or because b) the Probabilist, by following a probable less safe sentence, is exposed to the danger of sin; or because c), according to the principle of Canon Law, in doubt the safer part must be chosen.

You will easily remove the objection under a), if you notice that a law, although certainly existing, becomes doubtful with respect to that case about which there is really doubt whether it is comprehended under the law, and therefore with respect to that case does not oblige.[1]

To the objection under b):

Resp. 1° I retort the argument against the Probabiliorists: for by following the more probable opinion favoring liberty, which itself can be false, the same danger is given; therefore one would have to flee to condemned Rigorism.

2° I distinguish. It is not permitted to expose oneself to the danger of formal sin: I concede; of material sin: I deny; because merely material sin is not imputable, nor does it offend God, since it is nothing other than the matter of sin, separated from every malice of the will; but where no depraved will intervenes, no sin is present. For this reason proposition 46 of Baius was condemned: "To the reason and definition of sin the voluntary does not pertain."[2] But Probabilists are in danger of material sin, not of formal sin; for from the reflex principles of Probabilism we are plainly certain that a doubtful law, even if objectively perhaps it were present, is not present subjectively, or does not oblige, that is, is not a law as to us, and therefore its material transgression cannot be imputed to fault.

3° The objection of the adversaries either proves that the principle of possession cannot be applied even in the matter of justice, or it proves nothing. For in the matter of justice, if someone, after a doubt has arisen, perseveres in the use of the right which he possesses, he exposes himself to the danger of violating the natural law; but, as the adversaries confess, this danger of violating the natural law in the matter of justice does not prevent the possessor from conquering in doubt. Therefore the same has force for liberty in any other matter. - Proof of the major. For as soon as a doubt has arisen concerning the property of a thing which someone possesses, there is danger of exercising a right which perhaps belongs not to the possessor but to another, and of receiving fruits which perhaps are not the possessor's, but belong to another despoiled of his right; these two things are manifestly contrary to the natural law.

Notes to n. 89. (1) L. I, 74. (2) Dissert. a. 1763, n. 37.

90. ○ To the objection under c):

Resp. 1° The aforesaid rule has force a) in practical doubt concerning the formal honesty of the action; b) in doubt of fact with which there is joined the danger of an evil which does not depend on conscience and which we are bound to avoid, about which we spoke in nn. 58-60. For such were the doubts to which the Canons apply that rule; for in those cases it was always a question of practical doubt, or of some evil to be avoided, independent of conscience, as St. Alphonsus clearly proves,[1] by

discussing each of those cases. Besides, theologians almost commonly teach that the aforesaid rule of the Canons, as to speculative doubts, is of counsel, not of precept.

2° To the cited rule we oppose Rule 15 in the Sixth: "It is fitting that odious things be restricted and favors amplified"; the 30th: "In obscure things the minimum must be followed"; and this Canon: "Unless you have been certain of the mandate of the Apostolic See, you will not be compelled to execute what is commanded."[2]

Notes to n. 90. (1) L. I, 79. (2) L. I, Decr. T. XXIX, c. 31.

91. ○ There are those who also object this: that Probabilists are not consistent with themselves, since they except from the principle, A doubtful law does not oblige, those cases which we said in nn. 58-60 must be excepted. But this is objected absurdly, since those cases are improperly called excepted, and in reality must be called cases foreign to Probabilism or not pertaining to Probabilism. For what is the case? Probabilism is occupied with doubtful law, not with certain law. But in those exceptions there is a question of cases in which some law is known certainly to exist, and the doubt is whether by those means which are employed for executing the law the end of the law, and that necessarily to be obtained, is in reality obtained, and therefore whether the law itself is really fulfilled; in which case the safer thing must always be chosen. And the reason is ready to hand: for, since the law is certain, and its execution altogether urges, those means must be used by which the end of the law is certainly, or at least more safely, obtained, and in this way satisfaction is made to the law. For he who wished to employ only doubtful means, where certain means are supplied, would deliberately commit himself to the danger of violating a known law, and therefore would sin. Therefore, where there is a certain obligation of obtaining the end, safer means for attaining this end must be used.

92. ○ Objections against Equi-probabilism.

These are reduced to three classes.

The first is of those who contend that the distinguished authority of St. Alphonsus, and one sanctioned by the Church, is invoked undeservedly for the patronage of Equi-probabilism, since, as they say, the Holy Doctor of the Church in his Dissertations for the moderate use of probable opinion openly adheres to simple Probabilism. - But how falsely this is objected, and how much this betrays either sloth in reading the works of the Saint or obstinacy in an opinion once undertaken, the things which follow show more clearly than light.

For to one looking through the writings of the Holy Doctor, and indeed the very Dissertations objected, these two things will easily become clear: first, that the Holy Doctor never adhered to simple Probabilism even in his earlier writings, but already taught Equi-probabilism implicitly; second, that in the later writings Equi-probabilism is handed down by him explicitly and systematically. Since even the adversaries themselves do not deny this second point, we dispense all the more from proving it, because the nature of our Compendium does not allow useless discourse (see, for the rest, what was said in n. 73, § Deservedly, and, if you wish, the Vindiciae[1]). Therefore it remains that we prove the first. Let the following arguments suffice.

The 1st is sought from the very inscription of the Dissertations, even the two earlier ones, which especially are objected. Namely, the inscription is this: "Dissertation . . . for the *moderate* use of probable opinion." But the epithet *moderate*, which the Holy Doctor was the first to use, and certainly not without some reason, sufficiently intimates that Probabilism circumscribed by certain limits is defended by him, and that not only by those by which it is distinguished from condemned Probabilism, but by those by which it is discerned from simple Probabilism. For you see the same epithet placed in the title of the later Dissertations, in which Equi-probabilism is explicitly defended.[1] This argument, although by itself it would not seem to complete the matter, receives force from the following.

The 2nd argument is sought from the little work published by the Holy Doctor in the year 1765, whose title is: "Appendice all' Apologia" (1764), "in risposta all' autore della Regola de' costumi."[2] In this little work the Holy Doctor writes these things pertaining to our matter: "Speaking of our controversy, *in which the question is of two equally probable opinions*," etc. Then a little below he adds: "My sentence," namely that very one which he embraces concerning two opinions equally probable, "I examined and recalled to the balance for thirty years and more, . . . often conferring concerning the reasons both of one part and of the other, with Probabilists and Probabiliorists." . . . Therefore, unless you should wish to charge the most holy man with a lie (which God forbid!), it will be necessary to admit that he, at least from the year 1735, and even throughout the very 14 years which preceded the first Dissertation (1749), had already adhered to Equi-probabilism. For in the cited little work, or in the year 1765, the Saint affirms two things: one, that he is an Equi-probabilist; the other, that he had been an Equi-probabilist for 30 years and more. Therefore already long before the first Dissertation, and certainly at that time at which he wrote this first Dissertation, namely in the year 1749.[3]

The 3rd argument is drawn from the Dissertations of the years 1749[4] and 1755,[5] or from those very ones which especially are opposed.

For in these, to the axiom objected to him, "greater probability elides the lesser," the Holy Doctor responds, "that it is false that greater probability elides the lesser, unless when that lesser probability is drawn from the same principle, or unless the more probable opinion has for itself so convincing an argument that the contrary opinion seems truly improbable, or no longer gravely and certainly probable. Yet otherwise it must be said, if the excess is not notable, and the opposite probability receives force from diverse principles (as almost always happens in the concurrence of opinions)." Therefore St. Alphonsus clearly and distinctly teaches that the use of a probable opinion for liberty is licit in concurrence with a more probable one; but only in that case in which the excess is not notable, such as also is the evident excess of only one degree, as the Saint teaches elsewhere.[12]

That we not be longer, we send the reader to the Vindiciae,[3] where difficulties are dissolved which are opposed against these three arguments from the writings of the Saint, admonishing our readers of this one thing: that, mindful of the rules of sound criticism, they seek the sense of the Holy Doctor, where his earlier writings seem to fight with his later ones, from these later writings and not from the earlier; and that in the earlier writings, in which he attacks the Probabiliorists, they attend to the purpose of the writing.

Notes to n. 92 - note sequence 1. (1) p. 46 sq. and 2nd ed., T. I, p. 50 sq. p. 461, a. n. 17. Notes to n. 92 - note sequence 2. (1) Vind. p. 41, I. 2nd ed., T. I, p. 45, I. (2) Opere, etc. Ed. Taurin. 1830, p. 271. (3) Vind. p. 42, III. Ed. 2nd, T. II, p. 46, III.

93. ○ The second class of objections comprehends those difficulties which are opposed to Equi-probabilism insofar as it favors the law when the latter is notably or certainly more probable. Namely, the adversaries say that nothing prevents the opinion for liberty from remaining truly and solidly probable even in the case in which the opposite opinion for the law is notably or certainly more probable, provided the more probable reasons which fight for the law are not taken from the same motives from which the reasons for liberty are taken.

But those who argue thus do not attend to the following things.

1° They do not attend to the nature of probability. For a probable opinion is that which rests upon a foundation which has force to draw to itself the assent of a prudent man, or is consistent with the prudence of the agent (n. 52). But prudence requires that, where the truth cannot be clearly found, we embrace that opinion which is undoubtedly known to approach nearer to truth.[4]

2° They do not attend to the inclination implanted in the human mind itself. For where truth cannot be known certainly, the intellect spontaneously embraces what it clearly perceives to approach nearer to the truth; so that he who preferred the less probable opinion to another certainly more probable one would satisfy the will, wherefore he would not act consistently with reason, nor prudently, nor therefore well. See the words of St. Alphonsus cited in n. 73, § From the things said above.

3° They do not attend to the true sense of the reflex principles: "In doubt the condition of the possessor is better," and "A doubtful law does not oblige." For those principles have force only in a true or strict doubt (n. 48, 1 and 68, 2°), or in a perfect suspension of the intellect between each part of a contradiction. This perfect suspension is lacking where the intellect without any hesitation knows one opinion to approach nearer to certainty than the other. Hence St. Alphonsus[1] says: "when an opinion is certainly more probable, in that case, . . . although the law is not altogether certain, nevertheless because of that greater probability, the opinion for the law seems morally truer, and consequently the law also seems morally or sufficiently promulgated; and therefore the law cannot then be called altogether doubtful, with strict doubt; in that case there remains only some broad doubt, which does not permit one to depart from the safer opinion." - You have almost the same in Scotus[2] in these words: "Since to many the negative part is more probable, someone exposes himself to doubt not without sin, by following the less probable affirmative." Likewise in Suarez[3] in these other words: "Greater probability is a certain certainty, if the excess of probability is certain."

4° They do not attend to the twofold mode by which greater probability can elide lesser probability. For one is absolute, by which namely the probability of one proposition is so destroyed by the probability of another that it no longer exists either in itself or relatively; this happens when the probability of contradictory propositions is sought from the same motives. The other, however, is relative or moral, consisting in this, that one probability by reason of the manifest preponderance of reasons takes away from another the force of moving the intellect to a prudent assent.[4]

Notes to n. 93 - note sequence 1. (1) Vind. p. 48, I. Ed. 2nd, T. I, p. 489, n. 90 sq. (2) Vind. p. 42, 43, n. 1, 2. Ed. 2nd, p. 46, 47, n. 1, 2. (3) p. 97 sq. Ed. 2nd, p. 116 sq. (4) S. Alph. apud Vind. p. 68, I. Ed. 2nd, T. I, p. 81, I. Notes to n. 93 - note sequence 2. (1) Apud Vind. Ed. 2nd, T. I, p. 485, n. 80. (2) In IV, Dist. q. 6. (3) De Leg. L. VIII, c. III, n. 9. (4) Vind. Ed. 2nd, T. I, p. 487, n. 86. Notes to nn. 93-95. (4) Ed. Taur. 1829, p. 20, § Falsum est. (5) n. 13.

94. ○ The third class of objections is constituted by the difficulties which are moved against that part of Equi-probabilism which regards doubts concerning the cessation of a law (n. 81).

To dissolve these, always have before your eyes:

1° That the principle of possession has force not in the matter of justice alone, but also in the matter of honesty, or of any virtue whatsoever, as we proved in n. 74, p. 37, col. 1, § Besides.

2° The more specious objections are those which here we set down with responses.

Obj. I. As often as the law has not proved its own existence, it is nothing for the human will; therefore also as often as the law ceases to prove its own existence, that law also ceases to exist for the human will. For just as obligation depends upon certain knowledge of the law, so also the continuation of the obligation depends upon the continuation of the certain knowledge of the same.

Resp. 1° I retort the conclusion. Therefore also as often as liberty ceases to prove its own existence, liberty also ceases to exist; therefore also, as often as someone ceases to prove his own innocence, innocence also ceases to exist; therefore also, as often as a superior ceases to prove his own power, his power also ceases to exist for the human will. But these conclusions are certainly false. Therefore also the conclusion of the objection, since all rest on the same foundation.

2° It is a pure sophism. I deny the parity. For once the existence and obligation of a law are known, it continues to exist and to oblige until cessation is proved; for it is of the nature of a law to remain, just as it is of the nature of a precept to be determined to one or a few acts. Hence one would have to argue in the following way: As often as the existence of a law is not proved, it is nothing for conscience; therefore also as often as the cessation of a certain law is not proved, there is no cessation for conscience. For just as obligation depends upon certain knowledge of the law, so also cessation of obligation depends upon certain knowledge of cessation.

Obj. II. If a law doubtful with respect to cessation obliges, it follows that a doubtful law obliges as certainly as a certain law; but this does not seem reasonable; therefore it does not oblige.

Resp. 1° I retort the argument. If a doubtfully existing law does not oblige, it follows that doubtful liberty liberates as certainly as certain liberty, which does not seem more reasonable.

2° I distinguish the major. It follows that a law which has doubtfully ceased obliges as certainly as a certain law directly, or by its own force: I deny; indirectly, or by the force of a reflex principle: I concede. - I deny the minor. For this is altogether reasonable, since that principle renders conscience practically certain in doubt.

Obj. III. Equi-probabilists, relying on the principle of possession, teach that one certain of a debt, but doubtful concerning its payment, is bound to pay the whole debt. But it seems too hard and irrational to oblige such a debtor to pay the whole debt, with danger of paying twice and thus undergoing grave loss. Therefore the principle of possession cannot be admitted as a general rule.

Resp. 1° I retort the argument. That does not seem more hard and irrational than prescription made by a possessor who in good faith acquired a thing of notable value, but afterwards invincibly doubts whether it is not another's; and nevertheless, according to the common sentence of theologians and of all tribunals, he can retain that whole thing, with danger of retaining another's thing and gravely

harming a third party, that is, the true owner. Likewise, one doubtful concerning a debt is obliged to pay nothing, notwithstanding the same danger of gravely harming another, perhaps the true creditor. Modern writers who in the case objected wish payment to be made according to the proportion of the doubt, if they wished to be consistent with themselves, should also, in the cited case of prescription, oblige the possessor to divide according to the proportion of the doubt, and similarly, in the case of a doubtful debt, oblige the debtor to pay according to the proportion, since in each case entirely the same reason fights; indeed, they should utterly reject the principle of possession even in the matter of justice, which nevertheless they do not do.

2° I deny the minor. The resolution of the Equi-probabilists has nothing contrary to equity, since it rests on a certain principle and, if it is considered as it ought to be, in general, before every event, can equally benefit anyone as it can harm him. In doubts of this kind each one must equally, now for himself, now against himself, resolve the doubt, and in his turn undergo the danger of loss and enjoy the hope of gain: in a doubtful debt, the uncertain creditor sustains the danger; in a doubtful payment of a debt, the uncertain debtor. What is not reasonable in this solution? Neither in this case certainly suffers unjust loss or receives unjust gain. On the contrary, if the debtor in the aforesaid doubts is always forced to pay according to the proportion, one or the other will certainly undergo unjust loss. For in a doubtful debt, if the debt does not exist, someone is forced to pay what he does not owe; but if it exists, the creditor does not receive the whole of what is his; and so likewise in doubt concerning payment having been made. Is this not much less reasonable?

95. ○ Obj. IV. He who has probably satisfied some obligation is held to nothing further. I prove it: 1° For probability is supported by a grave and prudent judgment; therefore whoever has probably satisfied an obligation does that which suffices in a prudent judgment for fulfilling the precept. But neither does equity allow that more be exacted than what is prudently believed sufficient for fulfilling the precept; nor is a prudent and equitable legislator deservedly judged to will anything more. Therefore.

2° Any exaction beyond that which probably suffices for fulfilling the precept has against itself the probability of this prudent judgment. But an exaction which has against itself a probable judgment becomes, as to this, an uncertain obligation or law, which cannot have the force of obliging. Therefore.

3° From absurdity. For if for a certain obligation you likewise demand a certain satisfaction, the precept cannot be said to be fulfilled not only through a probable or more probable satisfaction, but not even through a most probable satisfaction; for there always remains room to reply that the obligation is certain, but the satisfaction is uncertain or less certain. But this leads by a straight way to condemned Tutiorism. Hence also Billuart[1] and others, although they held Probabiliorism, nevertheless judged that it suffices if you probably satisfy the law. Therefore.

Resp. I. If a single or solitary probability is present (n. 52 under 3°), or a presumption that someone has satisfied, we gladly concede. Recall what was said in n. 67, 1°, b).

II. If there is probability on both sides, as the objection supposes, I deny. Therefore to the 1st and 2nd I retort the argument.

1° Probability is supported by a grave and prudent judgment; therefore whoever probably does not satisfy an obligation does that which, in a prudent judgment, does not suffice for fulfilling the precept. But equity demands that that be exacted which is prudently believed to be required for fulfilling the precept, and a prudent and equitable legislator is deservedly judged to will this. Therefore.

2° The exaction of that which is probably required for fulfilling the precept has for itself the probability of this prudent judgment. But an exaction which has for itself a probable judgment becomes, as to this, a prudent exaction and therefore has the force of obliging. Therefore.

No one fails to see that miserable arguments of this kind, by which someone could prove contradictories with the same right, are of no weight at all, since they utterly elide one another. Thus this manner of arguing could be likened to that poisonous serpent which devoured itself with a monstrous draught, so that nothing remained except the tail. Moreover, it is clear that the aforesaid arguments rest on no other foundation than that false principle of many Probabilists: "He who acts probably acts prudently."

To the 3rd, I deny the consequence. If the satisfaction is notably more probable, it is morally certain, as we showed in nn. 71-73; consequently there is not even the least danger of condemned Tutiorism, but we constantly remain within the bounds of moderate Probabilism. Moreover, that doctrine which the objection attacks is the doctrine of St. Alphonsus, and also of Billuart;[1] if it led by a straight way to condemned Tutiorism, it would itself have to be condemned, and for that reason the Holy See would have erred when it declared the doctrine of St. Alphonsus immune from every censure. Therefore the objection is exploded from absurdity. - I add that the arguments brought forward by the adversaries rather lead by a straight way to Laxism, since they tend to form the ultimate dictate of conscience from doubt.

Obj. V. St. Alphonsus, teaching that a law only doubtful with respect to cessation still obliges, fights with himself; for in not a few practical resolutions he deflects from that principle. Therefore.

Since the refutation of this objection would demand a more extended discourse than the limits of this compendium allow, we send the reader to the Vindiciae, P. I, C. IV, § II.

COROLLARIES.

96. ○ 1st. St. Alphonsus rightly and deservedly charged simple Probabilism with Laxism and denied that it could licitly be brought into practice. See n. 73, § end. For it neglects the rules of prudence (n. 93), and contrary to the dictate of reason is led in judging by affection alone toward liberty (ibid.), which is proper to laxists.

2nd. The Equi-probabilism of St. Alphonsus differs from simple Probabilism in a threefold way:

a) As to the degree of probability. See n. 71.[1]

b) As to the manner of proceeding. - For Equi-probabilism requires a comparison of opinions in one doubting, which simple Probabilism thinks neither necessary nor possible.[2] Besides, in order to apply the reflex principles legitimately, the former inquires whether the doubt is strict or broad; the latter cares only about the probability of the proposition considered in itself, not about its relative probability.[3] Cf. n. 71 under 2°.

c) As to the principles themselves. - For Equi-probabilism utterly rejects the principles which are called probabilistic; but Probabilism does not utterly reject them. Those principles are: "He who acts probably acts prudently," and "When either opinion is probable, man suspends judgment concerning the safer opinion, and relying on the probability of the benign opinion, he acts."[4] The former in every matter and in every strict doubt, whether it favors law or liberty, admits the principle: In doubt the condition of the possessor is better. The latter, outside the matter of justice, admits this either not at all, or only in negative doubt.[4] The former proclaims this distinguished axiom: A doubtful law does not oblige. The latter uses this broader and ambiguous rule: There is no obligation unless it is certainly established.[5] The former in broad doubt follows the principle: The more likely must be held, and this in favor both of liberty and of law. The latter rejects that principle where the rights of law against liberty are dealt with.[6]

3rd. The rule of Equi-probabilism handed down by St. Alphonsus excels all others - in rectitude, prudence, facility, and authority.

1. In rectitude, as is established from the things proved from n. 71-81.
2. In prudence; for on one side it blocks the way against excessive affection toward liberty, since it does not allow us to act unless the relative value of the opinions has first been weighed, namely, the reasons of each opinion being weighed, or at least some grave doctor, who has weighed them rightly,[1] for example St. Alphonsus, having been consulted; but on the other side it prevents scruples. For Equi-probabilism does not demand that strict equiprobability of each opinion, which is rare and more rarely perceived without any hesitation of mind, and which would bring the intellect into straits. On the contrary, it teaches that almost equal probability suffices, which admits an excess of probability that is not notable, or not certainly apparent. It certainly requires diligence and consideration in the theologian; but whenever, after reasonable investigation has been made, the intellect does not clearly perceive the greater probability of the safer opinion, and that as certain, liberty remains entire.
3. In facility, since it demands only two things from one doubting: one, that he see which possesses, law or liberty; the other, that unless the opinion favoring one part is evidently more probable, he yield the palm to the part which possesses.

Nor should you say that it is easier to judge concerning the valid and grave probability of some opinion than concerning the excess of probability of the opposite, and therefore that the rule of common Probabilism is easier. For before you embrace some opinion, either you consider it alone, or you compare it with its contradictory. If the first, you sin by acting imprudently, similar to a judge who adjudges the case to one part, and indeed to the one friendly to himself, while the other has not been heard. - If the second, there is no reason why you should boast of an easier rule, as is plain in itself.

Note. - As to practice, the disciple of St. Alphonsus hesitates less in untying difficulties than many others; for, according to the response of the Sacred Penitentiary, he will not be disturbed if he follows the opinions of the Saint, even with the weighing of reasons neglected. And "would that all," as the illustrious De Wit[2] pleasantly writes, "with highest zeal strove to have the moral doctrine of St. Alphonsus, and the practical doctrine of a confessor, plainly understood and faithfully to apply it. Holy Mother Church would by no means complain that among these there would not be found

faithful dispensers of the mysteries of God; on the contrary, she would declare joyfully: Among these I find no one whom I ought to disturb."

4. In authority, as has been shown more than sufficiently on p. lxxxiii sq.

Thus with Kenrick[1] we conclude: "Well and happily St. Alphonsus vindicated the moderate use of probable opinions; since he shone forth with zeal for the salvation of souls, and with long experience, and with very extensive reading of authors, there is no reason that those who follow so great a leader should be more anxious."

Notes to n. 96 - note sequence 1. (1) De Sacram. Poenit. dissert. 7, art. 2, § 4. Notes to n. 96 - note sequence 2. (1) De act. hum. dissert. 6, art. 4. Notes to n. 96 - note sequence 3. (1) Vind. Ed. 2nd, T. I, p. 481-484, n. 70-77. (2) Ib. p. 484-491, n. 78-97. (3) Ib. p. 491-496, n. 98-106. (4) Ib. p. 498-502, n. 114-124. (5) Ib. p. 496-498, n. 108-113. (6) Ib. p. 502 sq., n. 125 sq. Notes to n. 96 - note sequence 4. (1) Diss. a. 1757 (alias 1763), n. LXXXVI, vers. med. (2) De studio et usu Th. Mor. S. Alph. p. 106. Notes to n. 96 - note sequence 5. (1) Tr. II, 33.

TREATISE ON LAWS

Law is the external and remote rule of human acts, just as conscience, or the practical dictate of reason, is the internal and proximate rule of the same acts. We must treat 1° of laws in general, 2° of the principal species of laws.

FIRST PART: ON LAWS IN GENERAL

We shall speak of the nature of law - of the author - of the object and subject - of promulgation and acceptance - of obligation - of interpretation - of dispensation and cessation.

CHAPTER I: ON THE NATURE AND PROPERTIES OF LAW

97. ○ Definition. Law is defined by St. Thomas:[1] "A certain ordinance of reason" (stable) "for the common good, promulgated by him who has care of the community."

It is called: 1) an ordinance, that is, a prescription, and in this law differs from counsel; 2) stable, because law is not extinguished with the legislator; 3) of reason, that is, according to right reason; otherwise it would not be worthy of man, as being deficient from rectitude. Hence law must be possible, honest, just. See n. 100, 1°, 2°, 4°; 4) for the common good, for example, the preservation of society, public peace, the coercion of crimes, the extinction of lawsuits, and similar things. Namely, the common good is the direct and immediate end of law; but a particular good is (at least generally or ordinarily) the end of a precept, although mediately and indirectly law tends to the private good of each one, and a precept tends to the common good, insofar namely as both the common good of all redounds to the good of individuals, and conversely; 5) by him who has care of the community; for since to make laws is an act of jurisdiction, they cannot be made except by him who possesses such authority, or by the superior of the community; 6) promulgated, because promulgation pertains to the nature of law, or at least is its necessary condition; otherwise law would be constituted in vain, since what in no way becomes known cannot be fulfilled.

Notes to n. 97. (1) 1. 2, q. 90, a. 4.

98. ○ Hence a multiple distinction intervenes between law and precept, although they are everywhere used indistinctly, as when we call the divine laws handed down to Moses on the mountain the precepts of the Decalogue. They differ namely:

1° By reason of the end, because the end of law is the common good; of a precept, the private good, in the sense however declared above.

2° By reason of the one commanding; for law is made by a public person for the whole community; but a precept is made by a person who indeed is superior, but either a private person over private persons, as by a master over a servant; or even a public person, but acting with private and singular persons, as a Prince with some one of his subjects, or with some particular assembly.

3° By reason of the subject; for law is extended even to future persons; a precept, on the contrary, comprehends only those present. The reason is that law is made for the community, which always endures, although its members are changed; hence it is clear that future persons also are obliged by law, namely as soon as they begin to be parts of the community. But since a precept adheres to a singularly determined person, when the person is extinguished, the precept also must be extinguished.

4° By reason of stability; for law of itself is perpetual, and lives even when the legislator is dead; but a precept expires by the death of the one commanding. This follows from the things said under 3°. Hence if a superior had prohibited some particular person from going out of the diocese without license, when the superior died this prohibition made against him would cease for the future. On the

contrary, if by a general law he had prohibited this to all subjects, even when the superior was dead the law would remain in its first force.

5° By reason of extension; because law, since it is made for a community as such, if that community is local, does not oblige outside its territory; but a precept, since it is given to a person, accompanies him everywhere and adheres firmly to him wherever he has departed. Thus, if a priest has been suspended by his superior, this penalty accompanies him even into another diocese, and he cannot celebrate there. On the contrary, if by a general edict in his Synod a Bishop had prohibited his clergy from entering liquor shops under pain of suspension *latae sententiae*, a cleric who enters them outside his own diocese would not incur this penalty.

99. ○ Division. Law is distinguished:

Into divine or human, according as it has God or man as its immediate author. I say: immediate; for human law, although it is made immediately by man, is nevertheless made by authority from God, communicated either immediately or mediately. L. I, 104 init.

Divine law is subdivided into eternal, natural, and divine positive, of which in their place. Human law, which is also called simply positive, is divided:

1° by reason of origin, into ecclesiastical, which is made by ecclesiastical power, and civil, which is made by civil power.

2° by reason of the mode by which it commands or prohibits: a) into preceptive, which is also called moral by some, and commands or prohibits, without inflicting penalties on transgressors; and penal. The latter either imposes only a penalty, without commanding or prohibiting anything, and is called merely penal or penal without addition, as if it should say: "he who has imported such merchandise will pay a penalty of thirty scuta"; or it imposes a penalty while at the same time commanding or prohibiting something, as if it should say: "the importation of such merchandise is prohibited under a penalty of twenty scuta," and is named mixed penal or even mixed law. b) Into prohibiting, which renders an act illicit only, and invalidating, which renders it invalid (n. 2, 4°). c) Into affirmative and negative (n. 125, IV).

3° By reason of the mode by which it is made, into written and introduced by custom.

100. ○ The properties or conditions of human law, in order that it may oblige, as is clear from the definition of law, are these: namely, it must be possible, honest, useful, just, permanent or stable, and promulgated. - Thus from Dist. 4, cap. 2.

1° Possible, not only physically, but also morally, so that it is not too difficult to observe, and therefore "according to nature, the custom of the country, fitting to place and time." St. Isidore. Otherwise it would not be an ordinance of reason.

2° Honest, namely establishing nothing repugnant to divine right, whether natural or positive. Otherwise it would not be for good, but for evil.

3° Useful, namely to the common good, and that notably: 1° because the common good of the community is the essential and primary end of law; 2° because law is an act of public power, which was instituted for the common good alone.

4° Just, that is, according to the norm of distributive justice, so that some are not burdened more than the others, but burdens are imposed on subjects with equality of proportion, their strengths and faculties being considered; otherwise it does not oblige in conscience.

5° Permanent or stable, so that once it has been made, unless it is abrogated or becomes harmful or useless, it endures as long as the community stands to which it is imposed, or as long as the circumstances persist for which it was made; therefore it must be negatively permanent.

6° Promulgated, because law is a general and public rule of actions, directing and obliging the community. But a rule cannot direct and oblige the community which it rules, unless it has been applied to it through promulgation.

CHAPTER II: ON THE AUTHOR OF LAW OR ON THE LEGISLATOR

101. ○ A legislator is called a Superior in whom there is power, either independent and supreme, or subordinate, of making laws for a community over which he has jurisdiction.

Principles. - I. God alone is the supreme and universal legislator, from whom necessarily the other legislators, whoever they may be, receive all their power, either immediately or mediately. For God is the highest and essential rule of any order whatsoever, and he alone enjoys supreme dominion over rational creatures, of whom he is the principle and the ultimate end. - It is established also from Scripture: By me kings reign, and lawgivers decree just things; by me princes rule, and the powerful decree justice.[1] - There is no power except from God.[2]

II. The Church has power to establish laws which conduce to the end proposed to itself. See the principle proved among the writers of Dogmatic Theology.

III. The civil power can establish laws which conduce to the end of temporal happiness.

It is established 1° from Sacred Scripture: By me kings reign, and lawgivers decree just things.[3] Be subject, whether to the king as preeminent, or to governors as sent by him.[4]

It is established 2° from reason. For law, or an ordinance for the common good, is the necessary means for conserving and promoting the end of the civil Community, or its temporal happiness; therefore the faculty of employing that means, or the power of making laws, must be in him who must have care of the community (n. 100, 3°).

IV. One must always obey legitimate Superiors commanding something by a just law, whether you think that they received authority immediately from God, or through the mediation of the people. - The reason is that in either sentence they are equally placed over society to be governed by God, and therefore they have authority received from him. Hence the controversy whether secular Princes have power from God mediately or immediately is of no moment in practice. (1) p. 484. I said: commanding something by a just law, etc. But a law must be judged just as often as its injustice is not commonly established among learned and upright men, because right order requires that in doubt presumption favor the Superior.

Notes to n. 101. (1) Prov. 8, 15, 16. (2) Rom. 13, 1. (3) Prov. 8, 15. (4) I Petri 2, 13, 14.

102. Questions. - Quaer. 1° Who in the Church have the faculty of establishing laws?

Resp. 1° The Pope, for the whole Church.

2° A general Council, likewise for the whole Church.

3° Bishops for their own dioceses, and Abbots and exempt Prelates for their own territory. Nevertheless, their ordinances are judged to be precepts only, not laws, unless either a) they have been made in a diocesan Synod, or b) indeed outside it, but the chapter having been heard, and also consenting, if the matters concern things which would fall to the prejudice of the chapter or clergy, that is, to the violation of an already acquired right.[1] But where as yet no Chapters exist, as among

us, or where the right of the Chapter has been abrogated by contrary custom, the Bishop is not bound, as is clear in itself, to hear it. Besides, all those things which pertain to the correction of morals or to reforming discipline can be sanctioned even with the Clergy not having been heard, although it is equitable and consonant with right to seek their opinion if the space of time and the reason of deliberating the business permit. Thus the Pref. C. de P. F. to the Bishop of Quebec, Nov. 20, 1792. - But Archbishops and Patriarchs cannot make laws for the dioceses of suffragans, because they are not their Superiors properly so called, although they can settle disputes brought from them to themselves.

But neither Bishop, nor Archbishop, nor Patriarch can give laws or precepts contrary either to the general custom of the whole Church, which has the force of common right, or to laws made by a power superior to himself, since an inferior does not have jurisdiction over a superior.

4° Particular Councils, for the dioceses which they represent. For if Bishops taken separately are able to establish laws for dioceses, likewise also in a Council, whether national or provincial, they will be able to constitute laws for the nation or province. Nevertheless the decrees of Provincial and National Councils must be sent to the Sacred Congregation of the Council of Trent, so that they may be recognized. Thus from ancient law confirmed by Sixtus V in the Bull *Immensa aeterni*. - "Not seldom, however," says Benedict XIV,[2] "has it happened that provincial [councils] . . . are confirmed by apostolic letters." But confirmation of Synods by the Apostolic See can be made in two ways, to be carefully distinguished: namely in common form, or in specific form. Statutes are said to be confirmed in common form when they are not examined one by one, nor approved by the Pontiff by his own motion and from certain knowledge . . . and such confirmation gives those statutes nothing of new right or efficacy. Confirmation is said to be made in specific form when cognizance of the cause is premised, and each statute is diligently weighed, and then, with no condition added, they are confirmed by Apostolic authority with the clause, by his own motion and from certain knowledge. . . . When a statute has been confirmed in specific form, since it has put on the nature of pontifical law, it is lawful for no inferior to derogate from it; indeed, from this confirmation it receives such great force that it prevails over the common right to which it would be contrary. Thus Benedict XIV.[1]

Notes to n. 102. (1) L. I, 104. Coll. H. A. Tr. II, 33. (2) De Syn. Dioec. L. XIII, c. 3, n. 4.

103. ○ Quaer. 2° Can the Cathedral Chapter, while the See is vacant, the Prelates of Regulars, and Abbesses, or Superiors of Nuns, establish laws?

Resp. 1° The Chapter, while the See is vacant, can innovate or abrogate nothing, but must govern the diocese according to existing laws.[2] Nevertheless it could make statutes which would be necessary for the circumstances. In place of the Chapter in this matter among us is the administrator of the diocese.[3]

Resp. 2° Prelates of Regulars are able to establish true laws, whether in a general Congregation of the Order, or in another way within the limits of their jurisdiction according to the proper constitutions of the Order. For they have statutes approved by the Supreme Pontiff, which give this faculty to them.

Resp. 3° Abbesses or Superiors of Nuns cannot make laws properly so called, since they do not have ecclesiastical jurisdiction. They can, however, exact obedience in conscience concerning things prescribed in the rule, or concerning those things which conduce to the progress of the nuns,

according to the rules. For they have the right of commanding both from the vow of obedience emitted by the subjects and from the necessity of discipline which must be preserved in the community.

Note: Concerning the author of civil law it will be treated below.

Notes to n. 103. (1) De Syn. Dioec. L. XIII, c. 5, n. 11. (2) L. I, 104. - Gousset, n. 129. (3) V. Conc. Plen. Balt. II, art. 96-99.

CHAPTER III: ON THE OBJECT AND SUBJECT OF LAW

ARTICLE I: ON THE OBJECT OF LAW

104. Principles. - I. The object of law is all and only acts whose positing or omission can confer upon the common good; for this good is the reason or end of law (n. 100, 3°). Hence:

II. All indifferent acts distributively taken can be the object of law; for since acts of this kind can confer upon the common good, by that very fact they can be commanded or forbidden.

Hence the distinction between those things which are prohibited because they are evil, and those things which are evil because they are prohibited. Moreover, these latter are from the number of acts indifferent in themselves.

Appendix annotation (1), to n. 104. IV. p. 51. col. 1. "It is certain that there is in men a power of making laws; but this power, as regards civil laws, belongs by nature to no one except the community of men, and from this it is transferred into one or into many, by whom the community is ruled." St. Alphonsus, L. I. n. 104. What Busembaum writes, ib. n. 94, with St. Alphonsus not reproving it, agrees. Cf. law 1. Quod principi placuit, Dig. L. I. T. IV. Yet some received it immediately from God, as Saul and David. As regards Bishops, Pius VI writes in a Brief to the Bishop of Mottola, Sept. 16, 1788: "The episcopal dignity as regards order is immediately from God, and as regards jurisdiction from the Apostolic See" (Haine, T. I. p. 55. q. 7), that is, as regards the jurisdiction of this or that see or person (Zaccaria apud Bouix, de Episcopo, P. I. S. I. C. VI. § 1 at the end).

105. Questions. - Quaer. 1° Do heroic acts fall under law?

It must be noted beforehand. Virtues by reason of exercise are distinguished into common and heroic. Common virtues are those which are exercised by men according to that manner which those who profess virtue ordinarily are accustomed to observe. But heroic virtues are those which, the circumstances being considered, beget admiration, include arduousness, and require promptitude,[1] as, for example, if a boy should fast rigorously. This being posited:

Resp., by distinguishing. 1° Divine law, both natural and positive, can oblige to acts of this kind, or even with the risk of life. Thus the Holy Martyrs underwent death, and a most bitter one, not from some supererogation, but from obligation. Thus likewise, even with risk of life, you are bound to administer baptism to an infant in danger of life. For although law must be possible, nevertheless it suffices that it be morally possible, or possible in cases commonly occurring; but the acts about which we are treating are to be posited very rarely, and therefore in the response it is said, can oblige.

2° Human law generally cannot prescribe acts of this kind to the unwilling; for to the end of human law, or to the common good, the positing of them is generally not necessary. I said: a) generally cannot prescribe; for sometimes the positing of them is necessary in order to avoid contempt of God or of religion, or for the common good, and so watch-soldiers cannot desert their post, even when danger of life is imminent, if the republic is going to suffer harm from it. I said: b) to the unwilling, so as not to include laws which are made on the hypothesis of some particular state which someone has voluntarily embraced; and thus the Church prescribes perpetual cloister to nuns.

Notes to n. 105. (1) Ben. XIV, De Serv. Dei, etc., Lib. III, c. 21.

106. ○ Quaer. 2° Can human law prescribe, and likewise prohibit, internal acts?

It must be noted beforehand. An internal act can be prescribed and prohibited both directly, or in itself, as the Schools speak, and indirectly, or by reason of external acts with which it is necessarily joined. But an internal action can be joined with an external one - either as the form constituting the external act itself in its moral being, as, for example, consent in marriage; or as a cause producing its effect, as, for example, the will of killing in voluntary homicide; or as a necessary condition, as, for example, contrition in confession. These things having been premised:

Resp. If the speech is about those internal acts which are necessarily joined with external ones, it is certain that a human legislator can indirectly prescribe and prohibit internal acts, insofar namely as they are joined of themselves with the external acts themselves, either as form, or as cause, or as a necessary condition. For if a human legislator can compel to a valid external act, for example to a valid contract or to a valid confession, he will also be able to oblige to those things which are necessarily joined with that validity, and which, being omitted, the external action would be prescribed in vain.

But if the speech is about those internal acts which are not necessarily joined with external ones, all agree that a civil legislator cannot prescribe or prohibit them; for even without these he obtains his end, namely the tranquillity of the republic, which is easily had if the external acts which are prescribed are posited, and those which are prohibited are omitted.

We said: the civil legislator; for concerning the ecclesiastical one it is disputed. To St. Alphonsus[1] the sentence of St. Thomas[2] and Suarez,[3] who deny, is more probable. For since the Church cannot know merely internal acts, neither can she judicially urge their execution or punish their omission; therefore neither can she prescribe or forbid them. For it belongs to the nature of a true society that the acts which it commands it can know of itself, namely from the nature of the acts themselves, even if sometimes it can be impeded accidentally from such knowledge by some extrinsic cause.

A confessor imposing merely internal acts on a penitent, as, for example, pious aspirations, bears the person not of a human legislator, but of the divine legislator, or, if you prefer, acts as minister of the Sacrament; and therefore he would be objected no less outside the thesis than the Church or a regular prelate when he prescribes meditation to religious.[1] For laws of this kind are not given to the unwilling, or are made on the hypothesis of a state which someone has voluntarily undertaken, or of an action which he posits.

Notes to n. 106 - note sequence 1. (1) L. I, 100. (2) 1. 2, q. 91, a. 4; q. 100, a. 9. (3) De Leg. L. IV, c. 12, 13, n. 14. Notes to n. 106 - note sequence 2. (1) L. I, 100.

107. ○ Quaer. 3° Can human law prescribe hidden external acts?

Resp. Affirmatively. Because it has the power of directing whatever is external. For hidden acts do not differ in their own nature from others; but that they cannot be punished happens accidentally.[1]

108. ○ Quaer. 4° Does law extend itself to past acts?

Resp. Negatively: neither by reason of fault, since there is no prevarication where there was not yet a law; nor by reason of pure penalty, since it is made for the vindication of fault alone; nor by reason of

rescission of acts, except in some case expressed by law. Hence the axiom: "Law does not have retroactive force." - Our Constitution consonantly has in express words: "No . . . ex post facto law shall be passed,"[2] and "No state shall . . . pass any . . . ex post facto law, or law impairing the obligation of contracts."[3]

Notes to n. 108. (1) L. I, 100. (2) Art. I, Sect. IX, 3. (3) Ib. Sect. X, 1, and Kent, Vol. I, n. 407-422.

ARTICLE II: ON THE SUBJECT OF LAW

109. Principles. - I. The subject of law is subjects actually obliged, or to be obliged, by law. I say: obliged or to be obliged; for there are those who deny that infants and the perpetually insane are subject to the natural law, since it has not been promulgated to them, as they lack the use of reason. Those who affirm respond that rational nature, which is in them also, and the natural law cannot be separated from one another, and therefore that they are subject to it in first act. But all agree that it is wicked to provoke them to blasphemies, etc.; and this logically only those can admit who, with St. Alphonsus,[1] affirm that infants and the insane are held by the natural law in first act.

110. ○ II. All and only subjects habitually capable of reason are subject to human law. - The reason of the first is that law cannot be made except for subjects. The reason of the second is that men habitually lacking the use of reason cannot be directed by laws.

From the former part of this principle it follows that infidels, or non-baptized persons, are not obliged by ecclesiastical laws, because they are not yet subjected to the jurisdiction of the Church. Nevertheless they are held to enter the Church, since they are subjected to divine law, in this case the Evangelical law. On the contrary, it follows that heretics, schismatics, and any other baptized persons, even if not Catholics, are held of themselves by ecclesiastical laws, because, although they are rebels, they do not cease to be subjects of the Church.[2] I said: of themselves; because 1° they almost do not know that they are held to those laws, even if perhaps they already know the necessity, that is, the obligation, of entering the Catholic Church; in which case in practice they do not sin; and 2° sometimes circumstances are present, with which concurring the Church must be judged not to will to oblige heretics by its laws, or by some certain law, namely lest they be more and more stained with sins.[3] In a word: it is one thing that the Church can oblige heretics by all its laws, another that she wills to do so. In practice, heretics returning to the bosom of the Church are not to be forced in confession to accuse themselves of not hearing Mass of precept or of not observing the law of fasting.[4]

It likewise follows that excommunicated persons are bound by the laws of the Church, although they have been cast out from the Church; otherwise they would report advantage from their malice. Besides, it rests with them that they be loosed from excommunication.

From the latter part of the principle it is clear that infants and the perpetually insane are not subjects of human law. Therefore it is licit to give them meats to eat on days on which those meats are prohibited by the Church. Yet this is not expedient with little children who before the seventh year begin to have some use of reason, although very imperfect. For it is of the greatest importance that from their earliest years they become accustomed to carry the yoke of the Lord. Nevertheless the

insane for a short time, or those who have many lucid intervals, the drunk, and those sleeping, are subject to law, because they are in the habitual state of the use of reason. Hence it is not licit to give them meats on prohibited days.[1]

111. ○ III. Only men actually using reason can morally violate a law, because, knowledge being lacking, no one can sin.

112. Questions. - Quaer. 1° Are clerics held by civil laws?

Resp. Affirmatively, as to their directive force, excepting however those which are repugnant to ecclesiastical immunity, still in force. For all parts of the political community are obliged by political laws; but clerics are parts of the political community. Therefore.

I said: 1° excepting however those which are repugnant to ecclesiastical immunity. This is distinguished as threefold, namely personal, local, and real.

Personal immunity comprehends the exemption of clerics 1) from the lay forum in causes both civil and criminal;[2] 2) from taxes, to which their goods are not subject, both ecclesiastical goods and goods acquired in any other way whatsoever;[3] 3) from those burdens which are judged base or sordid, as the repair of roads and similar things; 4) from military service, from the reception of soldiers, and other prestations for the sake of military affairs; 5) from tutelage and curatorship, and generally from those things which either do not befit the sanctity of their state, or cannot be combined with the offices annexed to that state.

Local immunity consists especially in two things, namely 1) in the prohibition that in sacred places certain acts be performed, namely profane acts, especially such as more unbecomingly oppose their sanctity;[4] 2) in the right of asylum, by which provision is made that those fleeing to sacred places or religious houses not be drawn out from them, except under certain conditions.[5]

Real immunity, or the immunity of ecclesiastical goods, is from taxes and burdens imposed by secular power. How far this extends, see, if you please, in Craisson.[6]

To ecclesiastical immunity pertain propositions 30, 31, and 32 condemned by Pius IX in the Syllabus. See p. xl.

I said: 2° which are repugnant to ecclesiastical immunity still in force; for the Church can renounce its right as to this or that immunity either expressly, as by a concordat, or tacitly. But tacit renunciation is not easily presumed, since ordinarily it rests on facts posited under compulsion, not voluntarily. Hence:

113. ○ Quaer. 2° What must 1° a Bishop, 2° a Cleric, 3° a civil Official do, lest they seem to injure the right of ecclesiastical immunity, when they are forced to observe laws opposed to the same?

Resp. I. Generally, 1° They are bound to protest against laws of this kind, if, every protestation being omitted, scandal would have to be feared. Nevertheless this is not to be feared where the faithful know that impossibility of acting otherwise is present. 2° One must yield to force, without provoking open violences, which serve only to multiply offenses of God and to inflict injuries on the Church.[1]

Resp. II to the individual points. To the 1st. "Let him believe that he will do more than enough for his office," says Benedict XIV,[2] if he takes care 1° "That the secular prince never arrogate to himself the right of sacred things, that is, that he not . . . involve himself in causes merely spiritual and ecclesiastical." 2° "That a lay judge," or secular power, "not invade also that part of jurisdiction" or immunity "which up to now perseveres intact."

To the 2nd. 1° Unless it is a question of a case in which either danger is in delay, or a contrary custom has already become established, let him recur to the Bishop.

2° "Where a difficulty arises with a man even secular and concerning temporal things, let them not call anyone into law, or voluntarily present themselves when called, unless the matter cannot be settled otherwise."[3]

3° "He despises the honor of the Church and tramples the sacred canons under foot, whoever brings a lawsuit against an ecclesiastical or Religious person . . . concerning a matter of strictly ecclesiastical right . . . before a profane judge,"[4] namely as plaintiff and not simply as defendant.

To the 3rd. Let him act as was said concerning a cleric at the 2nd under 1°; for neither can he act otherwise without grave harm to himself or even to Religion, or without danger of the loss of an office perhaps to be committed to a non-Catholic or wicked Catholic. More concerning a civil official in its own place.

114. ○ Quaer. 3° What immunities can the Church generally use in the Federated States without becoming liable to the penalties of civil laws?

Resp. a) As to personal immunity, clerics are not distinguished from other citizens, except as to tutelage and curatorship in Louisiana.[1] For the rest, in the remaining States no one at all is compelled to this. Thus likewise they are not held to be among the number of jurors ("members of the jury"). b) As to local immunity, only that prohibition of the Sacred Canons by which provision is made that certain acts not be performed in sacred places can be urged; but not the right of asylum. c) As to real immunity, see the things to be said in the Treatise on Right and Justice, n. 620.

115. ○ Quaer. 4° Are children held to ecclesiastical laws as soon as they have attained the use of reason, although they have not yet completed the seventh year?

Resp. The sentence is twofold. Those who affirm rely on principle II (n. 110), according to which every man using reason is by that very fact subject to laws. Those who deny bring this reason, that the Church is judged to attend to those things which commonly occur, which to St. Alphonsus[2] does not seem improbable, except when it is a question of children who have sinned mortally; for these are held to the precept of annual confession, by which all who have arrived at the years of discretion are obliged.

Notes to n. 115. (1) By which he renounced the benefit of a law perhaps to be passed. (2) i.e., unless the law, for example, is unjust.

116. ○ Quaer. 5° Are travelers held by the laws of their own territory?

Resp. Negatively, unless by a fiction of law they are judged still to be in their own territory. The reason is that law, by this very fact that it regards a community, is territorial, and in this it differs

from a precept, because law does not affect persons except through territory (n. 98, 5°); and this has force also concerning a law of common right, when a traveler is staying where it does not flourish. Thus, if in your own territory there is a fast, and on the same day you go to a place where there is not a fast, in the evening you will be able to dine. Likewise, existing in the morning in a place where there is not a fast, you will be able to take breakfast and eat meats, even if about noon you are going to return home, where there is a fast. At home, however, you are certainly bound to abstain from meats, but not from a second or further eating; for the precept of abstinence is divisible, but the precept of one eating only is indivisible.[1] For the same reason, if you are about to leave a place where there is a fast and are going on the same day to arrive at a place where there is not a fast, in the place from which you depart you will be able to take breakfast, but not however to eat meats.[2] Thus also, if in your territory there is a special feast, and you are about to set out to another place where there is not a feast, you will not be held to hear Mass before departure, provided you are going to arrive outside the place where the precept flourishes before that hour at which the last Mass will be celebrated there. The reason is that on one side the precept does not oblige either that you wait, or that from the many Masses which are celebrated you hear some one which is said before the last; but on the other side, once you have arrived outside your territory, you are no longer held by its laws. But if only one Mass is celebrated in your territory, and you are going to depart after it, you are held to hear this Mass.[3]

I said: unless by a fiction of law they are judged still to be in their own territory. Thus a non-resident pastor is judged to offend in his own territory, and incurs the penalties established there against non-residents. (1) p. 478.

Some also except the traveler going out from his own territory for this reason, that he may withdraw himself from the law, because, they say, he would act in fraud of the law; but "his fraud ought to patronize no one," as the adage of law has it. But St. Alphonsus,[4] with others, does not admit this exception; and rightly indeed, since no one seems to act by fraud who uses his own right, as another adage of law has it. But that traveler uses his own right; for the law does not prohibit going out from one's own territory, but only prohibits its precepts from being violated by those who are in the circumference of the law, or in the territory in which it flourishes. Nor does it make to the point that he who leaves the territory with precisely this mind, that he contract marriage clandestinely in a place where the decree of Trent concerning the necessary presence of the parish priest and two witnesses does not flourish, contracts invalidly; or that one cannot be absolved from sins reserved in his own territory, who tends to a place where they are not reserved with this principal end, that he may be absolved from them. For in each case he truly acts in fraud of a law expressly prohibiting this: namely, in the former, in fraud of the Constitution of Urban VIII; in the latter, in fraud of the Constitution of Clement X.

Appendix annotation (Θ), to n. 116. p. 56. col. 1. A fiction of law "is a disposition of law contrary to truth in a possible matter and from a just cause." Reiffenstuel, L. 1. T. II. n. 176. The words: in a possible matter, import possibility not only in fact, but also in law; which others express in this manner: that is, for inducing some juridical effect not repugnant to natural equity. Id. ib.

117. ○ Quaer. 6° By what laws are travelers held in the place in which they are staying?

Resp. I. They are held 1°, as is clear in itself, by the natural law of avoiding scandal; for natural law obliges everywhere. Therefore he would sin who violated the particular law of some place in such

circumstances in which that violation would cause scandal. Thus, for example, a priest would sin who with scandal of the people did not observe a law made for the clergy of the diocese through which he passes.

2° By laws of Common Right, although not flourishing in their own territory; for the reason of the privilege, or legitimate custom, on account of which it does not flourish in their own territory, affects only that territory and persons staying in it through the territory, and therefore ceases when the territory has been left. Hence a New Orleanian at Baltimore on the feast of the Circumcision of the Lord is held to assist at Mass.

3° By the laws of contracts, and this so that confusion may be avoided. Hence that saying: "the place rules the act." Cf. n. 1612, q. 1°.

4° By laws punishing crimes; for the delinquent obtains the forum of the place where he offends. See, however, n. 1667, q. 4°.

5° By laws regarding the advantages of that place. L. I, n. 156 § end. You have an example of this rule in n. 635, 1°.

6° According to St. Alphonsus,[1] by the particular law of the place in which they are staying, if the same particular law flourishes in their own territory. Yet this obtains rather by force of custom than of principles.[2] (1) p. 478.

Resp. II. They are more probably not held by the other laws of the place in which they are staying, because laws do not oblige except subjects, such as travelers are not. For by law no one is subjected to the power of another except by reason either of crime, or of contract, or of domicile or quasi-domicile, or by reason of a thing situated in the territory, or finally in certain cases by reason of origin.

Notes to preceding text - note sequence 1.

1 L. I, 156. | **2** Ibid., 154. | **3** Tarquini, Jur. Eccl. Publ. Instit. n. 64, 65. | **4** Frassinetti, Compendio della Teologia Morale, note 7.

Notes to preceding text - note sequence 2.

1 L. I, 156. | **2** S. Alph. de Privil. n. 19. | **3** Ibid., n. 20. | **4** Craisson, Manuale, n. 4828-4837. | **5** Craisson, n. 4838-4840, and S. Alph. de Priv. n. 25-28. | **6** n. 5288-5291.

Notes to preceding text - note sequence 3.

1 Frassinetti, Comp. della Theol. Mor. n. 136. | **2** De Syn. L. IX, c. 9, n. 12. | **3** Conc. Pl. Balt. II, a. 155. | **4** Ibid. and a. 156.

Notes to preceding text - note sequence 4.

1 Civ. Code of Louisiana, art. 292, ad 7. | **2** L. I, 155. IV, 270, 1012.

Notes to preceding text - note sequence 5.

1 L. I, 157 ad 4. | **2** Ibid. ad 5. | **3** Ibid. ad 6. | **4** Ibid. n. 157.

Notes to preceding text - note sequence 6.

1 L. I, 156. | **2** Bonac. Th. Mor. D. I, q. I, P. III, n. 52. Suarez, de Relig. Tr. II, L. II, c. XIV, n. 15.

Appendix annotation (I), to n. 117. p. 56. col. 2. Therefore it can be asked whether Titius, a Bostonian, contracting marriage at Philadelphia with Bertha before a magistrate, would incur excommunication? For in each diocese those contracting thus are punished with excommunication. According indeed to the sentence of St. Alphonsus he would incur it. But whether he holds his own sentence as certain can be doubted somewhat; for he states it with the addition: "although Sanchez with Diana contradicts this." L. I. 156 § fin. It can be added that censure is not incurred unless the sin was certain. - Yet take care not to confuse this question with that concerning the faculty of a simple confessor as regards absolution from a sin reserved to the Bishop with excommunication, in the case in which, because of ignorance of the censure, the excommunication had not been contracted: concerning this question see n. 1401. q. 2°. R. 2°. Notes to nn. 109-117 - printed sequence 1. 1 The Italian one, namely. | 2 I report the conditions only substantially, translated from Italian into Latin. | 3 That is, with no agreement added by which the debtor renounces the benefit of a law perhaps to be passed.

CHAPTER IV: ON PROMULGATION AND ACCEPTANCE OF LAW

ARTICLE I: ON PROMULGATION OF LAW

Promulgation is the publication of a law, made by legitimate authority, for inducing obligation in subjects.

118. Principles. - I. The public promulgation of a law is necessary that it may oblige. It follows from the definition (n. 97), and the Angelic Doctor[1] proves it from this: that law, as a rule and measure, can be applied to subjects to be ruled by it through promulgation alone (n. 100, 6°). Wherefore, although someone knew that a law had already been established and was soon to be promulgated, nevertheless he would not be held to fulfill it before it had been promulgated; for "laws are instituted when they are promulgated."[2]

II. Promulgation suffices, nor is either the dissemination of the law or knowledge of it required for the value of the law; for if it were otherwise, scarcely any human law endowed with the force of obliging would be had, since there are almost always some to whom knowledge by no means comes, except after a very long time from its promulgation. Wherefore those who invincibly do not know the promulgation of the law are excused from fault by defect of the voluntary (n. 11), but not from defect of the law, which, as promulgated, possesses the force of obliging. But in the external forum the knowledge of a law duly promulgated is generally presumed, both as to the penalties established for its violators and as to the validity or nullity of contracts.

III. From the nature of the thing it suffices that the law be promulgated in some principal city, or in such a place from which it can come to the knowledge of the community, and it obliges immediately once it has been promulgated.

I said: from the nature of the thing; for it is free to the legislator to determine special things both as to the place or places in which it must be promulgated so that it oblige, and as to the time which must elapse after promulgation before it obliges. Hence:

Notes to n. 118. (1) 1. 2, q. 90, a. 4. (2) Dist. IV, c. 3.

119. ○ Quaer. 1° Does it suffice that episcopal laws be promulgated in the episcopal city? - And papal laws at Rome?

Resp. Affirmatively, unless either the Pontiff or the Bishop signifies otherwise, or it is a question of those Pontifical laws which invalidate a contract which by its own nature, that is, unless it were invalidated by legitimate power, would be valid, or which take away jurisdiction, for example, by reservation of cases. The reason is that this suffices so that they can become known to the Christian people. Besides, the mode of promulgation is in the power of the legislator. - Moreover, in practice Bishops will to oblige through promulgation made in the episcopal city, or, if it is a question of laws which regard the clergy alone, in the synod itself;[1] and Pontiffs through that promulgation which is made at Rome. For otherwise the Supreme Pontiffs would in vain place in their Constitutions the clause by which they declare that they intend them, "thus published, to be held by all whom they

concern just as if they had been personally made known or exhibited to each one of them."[2] Consonant is the declaration of the Sacred Penitentiary given on Nov. 8, 1821, to the Archbishop of Naples concerning the Bull *Ecclesiam* of Pius VII against clandestine societies, which sounds thus: "To II. Through the promulgation of the Constitution, which happened at Rome on the Ides of September, it obtained the dignity of law and the force of obliging."

I said: or it is a question of those, etc.; and this on account of inconveniences otherwise going to follow, which the Pontiff must not be presumed to have willed.

120. ○ Quaer. 2° Do Pontifical laws oblige as soon as they have been promulgated?

Resp. Unless the Pontiff has determined otherwise, only so much space of time is required as suffices that knowledge of the law morally come to all, that is, two months. Thus St. Alphonsus[4] against others.

121. ○ Quaer. 3° When do our civil laws begin to oblige?

Resp. Kent:[5] "A statute is to operate from the very day it passes, if the law itself does not establish the time."

Notes to n. 121. (1) Ben. XIV, de Syn. dioec. L. XIII, c. 4, n. 1. (2) L. I, 96. H. A. Tr. II, 8 qq. (3) Apud Scavini, Tom. IV, n. 177. (4) H. A. Tr. II, 8. Th. Mor. L. I, 96. (5) V. I, n. 457, 458.

ARTICLE II: ON ACCEPTANCE OF LAW

122. ○ Acceptance of law is the submission by which subjects, at least as to the greater and sounder part, accept the law formally or virtually.

Principles. - I. Of itself, law as to the force of obliging in no way depends upon the acceptance of the people; for otherwise, together with the power of the Superior, all the authority of laws would collapse, and therefore the subversion of the whole social order would follow. It is established also from proposition 28 condemned by Alexander VII (see p. xiv).

II. Accidentally, sometimes a law not accepted does not oblige, by reason of the tacit or express consent of the Superior, or by reason of a tolerated privilege or custom. It is established from practice in various cases, and from the common consent of theologians.[1]

123. Questions. - Quaer. 1° In what cases does a law not accepted accidentally not oblige?

Resp. 1° If the time which has elapsed from the non-acceptance is sufficient to induce a legitimate contrary custom.

2° If the sounder and greater part does not observe the law, and from the circumstances it is presumed that the prince, since he does not insist on observance nor punish transgressors, does not will to oblige anyone.

3° If the law is contrary to a flourishing custom, very difficult, and moreover the circumstances are of such a kind that, if they had been foreknown by the legislator, he certainly would not have made the law.[2]

The reason is that in all these cases the consent of the legislator is present, at least tacit consent.

124. ○ Quaer. 2° Does a law oblige in doubt whether it has been accepted?

Resp. Affirmatively, because, unless the contrary is established, the fact is presumed which had to be done by law (n. 67, 2°). Except if there is present solitary probability that the law has been abolished or never began.[3]

Quaer. 3° Does a law of the Church which has not been accepted because some civil government prohibits it oblige?

Resp. Affirmatively of itself, because the Church received its power from Christ, not from civil power; and therefore it is altogether independent of it. For to the Church, not to civil power, was it said by Christ: Whatever you shall bind . . . shall be bound, etc.[4]

Quaer. 4° Can Bishops not admit Pontifical laws?

Resp. Negatively. For Bishops, although they are Princes in their own Churches, nevertheless are subject to the Roman Pontiff, the immediate Vicar of Christ on earth, and head and governor of the whole Church. Therefore they must obey him, and thus furnish an example of obedience to their own subjects, by promulgating the pontifical law and procuring its observance in their diocese. Except, however, if grave reasons stand in the way; for then Bishops not only can, but must expose these reasons to the Holy See, and afterwards they will be bound to acquiesce in its definition. - See Benedict XIV.[1]

Notes to n. 124 - note sequence 1. (1) L. I, 138. (2) H. A. Tr. II, 18. Th. Mor. L. I, 139. (3) L. I, 97. L. IV, 112, q. III, § Seconda. (4) Matth. 16, 19. S. Alph. L. I, 138. Notes to n. 124 - note sequence 2. (1) De Syn. l. 9, c. 8.

CHAPTER V: ON THE OBLIGATION OF LAW

We must treat 1° of the force of obligation; 2° of the mode of satisfying the obligation; 3° of the causes excusing from it.

ARTICLE I: ON THE FORCE OF OBLIGATION

125. Principles. - I. Every true law induces obligation, at least to penalty; for in this law differs from counsel, that a subject cannot pass it over with impunity at his own pleasure. - Thus all.

II. Every human law can of itself oblige in conscience before God. The reason is that Superiors have been constituted by God with the power of commanding. Hence: He who resists power resists the ordinance of God. But those who resist acquire damnation for themselves.[2] Thus all.

It is said: can oblige, but not, obliges; the reason is that a law does not oblige beyond the mind of the legislator. Therefore if he intends to oblige under penalty alone, the law of itself will not oblige to fault. And this indeed Doctors commonly hand down as having force both concerning civil laws and concerning canonical laws.

III. Law obliges under grave or under light fault according to the gravity of the matter or of the circumstances, or of the end specially intended by the Superior.

IV. An affirmative law obliges always, but not for always; but a negative law obliges both always and for always, that is, at individual moments. For they differ in this, that (not so much by force of the words as by the direct and primary end) the former commands an act to be posited, the latter to be omitted. But it is impossible for a man always to posit some act, for example, of the love of God; but no impossibility can be alleged of always abstaining from some prohibited act, for example, hatred of God.

V. Divine positive law and human law generally do not oblige with a very grave inconvenience, or with grave harm which is accidentally joined with the observance of the law. It is established from natural and canonical right, from the practice of the Church, and from the consent of all.

Notes to n. 125. (2) Rom. 13, 2.

126. Questions. - Quaer. 1° Can a legislator prescribe under light fault in grave matter, and conversely?

Resp. to the 1st. Affirmatively, at least more probably, because the obligation depends on his will, just as the law itself. - Thus commonly.[1]

Resp. to the 2nd. Negatively, because the proportion between grave obligation and light matter is lacking. Except if the matter is not in every way light, but grave from the end, etc. - Thus commonly.[2]

Quaer. 2° What matter of law must be judged grave or light?

Resp. This must be gathered:

1° From the very words of the law. Thus its obligation is grave if in it it is said: we prescribe under grave fault, or under the indignation of God, or under the threat of divine judgment, or in virtue of holy obedience, or from the whole power.

2° From the matter itself, which will be grave by reason either of quantity, for example, in theft, or of quality, as a consecrated host, or of another circumstance of greater moment.

3° From the end; for if the end of the law is of very great moment, and the law greatly conduces to this end, the matter will be grave, even if that which is prescribed or prohibited is of itself something light. Otherwise, the matter will be judged light. Thus it is grave for one celebrating Mass if he omits to pour a few drops of water into the Chalice. But it will not be grave if on a day of fasting you eat one or another ounce of bread outside the meal.

4° From the gravity of the penalty imposed on transgressors of a mixed law; since penalty is proportioned to fault. It would be, for example, a penalty of perpetual prison; of excommunication, if it is *latae sententiae*. For it must be said otherwise more probably if it is only *ferendae* in matter not grave, since on one side that penalty, which is not incurred immediately, is not so great, and on the other side the matter, which is supposed light, does not of itself carry this. See n. 1662, 2°.

5° From the common judgment of prudent persons and from approved custom, which indeed is the best interpreter of laws.[1]

Notes to n. 126. (1) L. I, 143. (2) Ibid. 141, 142.

127. ○ Quaer. 3° Can human law sometimes impede an obligation, otherwise valid, from being contracted?

Resp. 1° Affirmatively for the external forum. The reason is that sometimes the common good requires this; nor does natural law prohibit that, when the common good demands it, conditions be prescribed by which, if they are not observed, acts otherwise valid are invalidated. Thus civil laws annul testaments destitute of the prescribed solemnities. But cf. n. 915.

Resp. 2° Affirmatively also generally for the internal forum, if it is a question of ecclesiastical law. Thus the Council of Trent invalidates clandestine marriages, otherwise valid from mere natural right.

Resp. 3° As to civil laws and certain ecclesiastical laws which are founded on a presumption of fraud, it is disputed. Those who deny say that those laws are founded on a presumption of fraud alone, and when this is not present, before the sentence of the judge, the act invalidated by law will only be rescindable. Those who affirm say that they are founded not only on the presumption of fraud, but also on the danger of it, which is never not present. Each sentence is probable, but the latter is more probable. Hence, for practice, before the sentence of the judge, the rule of law must be applied: "In doubt the condition of the possessor is better." Thus, for example, someone can retain a thing due from a testament destitute of the solemnities of law until he is despoiled of it by the judge.[2]

128. ○ Quaer. 4° Is the violation of law in a light matter grave because of contempt?

Resp. 1° Affirmatively, if the contempt directly affects the legislator formally as such, because the authority itself from which laws obtain force is contemned, and consequently God himself, from whom authority flows, according to that word of Christ:[3] "He who despises you, despises me."

Resp. 2° Negatively, if the contempt regards either not the legislator himself, but only the matter as light in itself, or indeed the legislator, but not as such, rather as a particular contemptible person, for example, imprudent, vile, idiotic, rude, unlearned. It is also clear in itself that one does not sin gravely if the act by which the precept is contemned is not sufficiently deliberate, but sudden. Hence mortal sin will rarely be present by reason of contempt.[1]

Notes to n. 128. (1) L. I, 144-146. (2) Ibid. 151. IV, 711, 927. (3) Luc. 10, 16.

129. ○ Quaer. 5° Does the application of law, or a sentence, which is founded on a false presumption of fact oblige in conscience?

Resp. 1° Negatively, if the application of the law is founded only on the presumption of a particular fact, of fault, fraud, or damaging; the reason is that if the fact is lacking, by that very fact the whole foundation of the obligation is lacking. Hence if you are condemned to pay money for damages which are falsely thought to have been inflicted by your donkey, you are not obliged to pay, except accidentally, for example, by reason of scandal; but then you can compensate yourself, even after sentence has been given.[2]

Resp. 2° If the law is founded on a presumption of the universal danger of fault, frauds, etc., its application always obliges in conscience, even with every fault excluded; because the common good requires that all be stably obliged. Otherwise evils would not be impeded efficaciously; and otherwise the law intends to forestall the danger of deception, and to render men more cautious. Hence you are held to pay a fine to which you are condemned for damage truly inflicted by your animal, even if that damage happened without your theological fault.[3] - See the things to be said in the Treatise on Right and Justice, n. 753, q. 10°, 775, q. 3°, q. 4°. - Our laws are universally consonant.

Notes to n. 129. (1) L. I, 142. (2) Ibid. 100, 150. (3) Ibid. n. 100.

ARTICLE II: ON THE MODE OF SATISFYING THE OBLIGATION OF LAW

130. Principles. - I. To satisfy any obligation, an intention of doing that which is prescribed is required if the law is affirmative, falling on an action rather than on some effect to be obtained, for example, a law prescribing the hearing of Mass on a feast day. The reason is that a law prescribing an action cannot prescribe anything except a human action, which cannot be posited except in a human mode. - But it is by no means required if the law is either negative, as a law prohibiting servile works on feast days, or indeed affirmative but falling on some effect to be obtained rather than on an action, as a law which demands the payment of a debt or the restitution of another's thing, which one fulfills who pays or restores in drunkenness. The reason is that a negative law intends nothing more than the omission of the work; but an affirmative law about which we are speaking demands nothing more than that the effect be obtained, namely equality of thing to thing.

Hence he cannot be said to have satisfied the precept of hearing Mass who was present at it drunk or sleeping; but indeed he who slept the whole day without food or drink cannot be said to have violated the law of fasting. Thus likewise he does not satisfy the precept who goes to church only that he may feed his eyes, speak with another, await a friend, accompany a mistress going or returning, or hear the music, while he only assists at Mass bodily. The same say of a boy only through fear of

parents, or of anyone else carrying himself to church under compulsion; for these lack the intention of doing what is prescribed. It is otherwise if, although compelled, or principally induced by fear or another motive, they have gone to church and yet assist at Mass in the due manner. For by this very fact that they assist at Mass in this way, they have the intention of doing that which is prescribed. Nevertheless persons of this kind are usually sinning by reason of the contrary evil will, namely, of not assisting if either coercion, or fear, or that other principal motive had not been present.

131. ○ II. The intention of fulfilling the precept, or of acting from the motive of formal obedience, is not required; because the legislator prescribes only the positing or omission of the work.[1]

Hence he satisfies who hears Mass while not knowing that it is prescribed on this day, or who indeed knows the obligation, but intends only here and now to satisfy devotion, with the proposal of hearing another Mass.[2] - Nor does it stand in the way that an act does not operate beyond the intention of the agent; for that has force only in those things which depend on the power of the one operating alone. Hence he does not satisfy who posits a work to be posited by force of a vow, or oath, or sacramental penance, while expressly intending not to satisfy.

Notes to n. 131. (1) L. I, 163. (2) Ibid.

132. ○ III. It is not required that the law be fulfilled from the motive of charity (which is never of precept), or in the state of grace, unless this is prescribed, as in the reception of the Eucharist. The reason is that the work is prescribed, but not the motive. It is established also from proposition 16 of Baius, condemned by Pius V (p. x).

IV. The intention of fulfilling the end of the precept is not required, unless that end precisely of itself is prescribed; because ordinarily the legislator does not prescribe the end, nor does he intend to prescribe it, but only the positing of the act. Hence the axiom: The end of the precept does not fall under the precept. - St. Thomas.[1] In other words: the intention of the legislator concerns two things: concerning one indeed, that which he does not intend to prescribe, but that to which he intends to lead by the precept of law; and this is virtue, which is the end of law. There is another thing concerning which he intends to make a precept; and this is that which, as a means, induces or disposes to virtue. Moreover, it is necessary that satisfaction be made to the latter intention so that the law be fulfilled, not to the former.

133. Questions. - Quaer. 1° Does he satisfy the obligation of a law who sins in fulfilling it?

Resp. Affirmatively, provided the act is honest in itself, and only evil from an extrinsic circumstance, so that the substance of the thing prescribed is posited. The reason is that the precept commands only the substance of the act, but not the mode. Hence he satisfies who during the Mass at which he is present by precept gives consent to a temptation of vain-glory, lust, theft, or any other sin whatsoever. Nevertheless, satisfaction is not made to the precept of Confession or Communion through a sacrilegious Confession or Communion, because then the very substance of the act is infected by sin. It is established also from proposition 14 condemned by Alexander VII (p. xiii). - St. Alphonsus[2] and others commonly against a few.

Notes to n. 133. (1) 1, 2, q. 100, a. 9 ad 2. (2) L. I, 162.

134. ○ Quaer. 2° Can diverse precepts be fulfilled a) by one act; b) by diverse acts posited at the same time?

Resp. to a) Affirmatively, provided 1° by that one act the whole of that is posited which is prescribed through the diverse laws; 2° the mind of the legislator is not otherwise.

It is said: 1° the whole of that be posited, etc. But the whole is judged to be posited if these diverse precepts fall on the same matter and have the same motive, as if the fast of a vigil falls in the Ember Days; otherwise, however, if they fall on diverse matter, or indeed on the same matter, but on account of a diverse motive, as a fast owed from penance and from ecclesiastical law.

It is said: 2° the mind of the legislator is not otherwise, etc. But the mind of the legislator can be gathered from the nature of the prescribed work, from circumstances, from the common sense of pious persons, etc. Thus you cannot hear several Masses imposed on you by the confessor at the same time, while they are celebrated at the same time on several altars, because such is not the presumed intention of the confessor, unless the confessor had regard to the fruit of the Sacrifice.[2] But he who is held to hear Mass on individual days from penance for one month satisfies by hearing one Mass on Sunday, because it is reasonably presumed that the confessor did not will to oblige the penitent to hear two Masses on the same day, unless he expressed this.[3]

Resp. to b) Affirmatively, if those acts are associable, that is, if they can be posited as such as are demanded, because then the whole is posited which is demanded. Thus you can recite the canonical Hours while hearing Mass, or pay the imposed penance, etc.[4]

Notes to n. 134. (1) L. I, 166. (2) H. A. Tr. XVI, 57. (3) H. A. Tr. I, 31. (4) L. I, 166.

135. ○ Quaer. 3° What must be done in the concurrence of two unassociable precepts?

Resp. Other things being equal, the greater must be observed before the lesser, which then ceases to oblige. Hence 1) a negative precept prevails over an affirmative, and therefore it will not be lawful to steal in order to assist the poor; 2) a natural precept prevails over a positive, and a divine over a human, and therefore Mass on a feast must be omitted lest a gravely sick person be deserted; 3) the law of a superior, for example, of the Pope, prevails over the law of an inferior, for example, of a Bishop; 4) ecclesiastical law prevails over civil law; 5) law resting on a stricter virtue, for example justice, prevails over law resting on a less strict virtue, for example charity, and therefore he who cannot both give alms and pay a debt is bound not to give alms. Yet I said: other things being equal; because account must always be taken of other circumstances which perhaps prescribe that the order be inverted, or change the case. Thus one must assist a poor person in extreme necessity before you pay a debt to a creditor not staying in the same necessity.

136. ○ Quaer. 4° Does an obligation cease when satisfaction has not been made to it at the determined time?

Resp. 1° Affirmatively, if the determination of time was made to finish the obligation. Thus, for example, if you did not fast on the day of a vigil, you sinned, but are freed from the law, because the burden is affixed to that day itself.

Resp. 2° Negatively, if the time was determined only for soliciting or urging the obligation. Thus he is not freed from the obligation of receiving Communion who did not satisfy it in Paschal time.[1]

Notes to n. 136. (1) L. IV, 220.

ARTICLE III: ON THE CAUSES EXCUSING FROM LAW

1° On the nature of those things which release from obligation. - 2° On the voluntary positing of causes releasing from obligation.

§ I. On the nature of those things which release from obligation

137. ○ Causes releasing from obligation are either exempting or impeding. The former are those which totally withdraw someone from the dominion of law, for example, if someone withdraws himself outside the place which the law affects. The latter are those which impede, or excuse, a subject remaining under the law from its fulfillment. But these impeding causes are reduced to ignorance and impotence.

Principles. - I. Exempting causes totally free one from the obligation of law; for no one can impose a precept upon a man not subject to himself. Moreover, where some exempting cause is present, he who was subject to the law ceases to be subject to the same law either by reason of the territory from which he is absent, or by reason of privilege. Therefore.

II. Invincible ignorance excuses from law in this sense alone, that its violation is not imputed unto formal fault, as is plain. - But vincible ignorance does not excuse from any fault, since it could, or can, be laid aside by serious diligence.[1]

III. Physical impotence always excuses from observing law, as the very common axiom has it: "No one is held to the impossible." Moral impotence likewise excuses; because the legislator is not judged to urge obligation with an inconvenience which can be considered grave (n. 125. V.). Impotence exempts those not observing the law even from material fault.

Hence grave fear, excluding damage to society or religion, excuses from human law; because human law does not oblige with grave harm. It also sometimes excuses, although with greater difficulty, from a positive divine precept, for example, from the integrity of Confession; indeed even from an affirmative natural precept, for example, of keeping a deposit with danger of life, of which, however, there is then rather no case; for you did not will to oblige yourself to keep the deposit even with danger of life. Yet it never excuses from a negative natural precept, because the object of this is intrinsically evil. Nor should you say that it is licit to steal in extreme necessity; for then it ceases to be theft.[1]

I said: grave fear excuses from human law, excluding damage to society or religion; for this rather than private damage must be avoided; moreover, in each of these cases there enters the natural precept of guarding against damage to society and religion. Thus a soldier keeping watch ought rather to die than, when the enemy is approaching, to be silent (n. 105. 2°). Hence also, if you are directly compelled in contempt or in injury of ecclesiastical power to communicate with one to be avoided, to work on a feast day, to eat forbidden foods on a fast day, you must refuse even with grave damage to yourself, unless by protesting you can avert the contempt. Thus, if an unbelieving or heretical father

of a family should say to his Catholic children: "I will that you eat meats on Friday, and that in contempt of the Pope and the Church," the children would not sin if they replied: "Father, know that we eat meats because you refuse to set other foods before us; for in this case it is licit for us to eat them."

Notes to n. 137 - note sequence 1. (1) S. Alph., L. I, 174. 175. Notes to n. 137 - note sequence 2. (1) L. I, 175 and H. A. Tr. II, 44.

138. ○ Quaer. Is he who is impotent for the whole held to a part?

Resp. Affirmatively, when the matter of the law is divisible, and the end of the precept remains in the individual parts. It is established moreover from proposition 54 condemned by Innocent XI (p. xvii). Therefore it is otherwise if that part is so slight that it conduces in no way to the end of the precept, - or if it is uncertain whether there is power even as to that part of the precept, as, for example, in the sick as to the Breviary, and in the weak and in convalescents as to fasting; for scarcely, or not even scarcely, can it be determined what they can do and how far. Hence, lest they undergo danger of anxiety or notable detriment to health, the benign Mother Church is not to be supposed to will to oblige them even to a part.[1]

Hence 1° He who cannot fast in Lent ought to abstain from meats, if he can. Likewise he who cannot fast on all days is held on the days on which he can without grave inconvenience.

2° If someone lacking a Breviary knows a few things from the Hours by memory, he is not held to recite them; otherwise if he holds in memory a notable part, for example, Vespers or Compline.

3° He who vowed a pious pilgrimage, and cannot complete the whole journey, is not held to begin it, because the end of the precept cannot be obtained.[2]

Notes to n. 138. (1) L. V, 154. (2) H. A. Tr. I, 45.

§ II. On the voluntary positing of causes releasing from obligation

139. ○ Causes releasing from observing the law can be posited either directly or indirectly, namely according as the agent is moved either by the end of withdrawing himself from the obligation of the law, or by another cause, with the impediment to observing the law nevertheless foreseen.

Moreover causes of this kind can be either present, or proximate, or remote, according as the law urges at that very time at which the cause releasing from obligation is posited, or shortly after, or only after a notable interval of time.

Principles. - I. Unless a special prohibition stands in the way, it is always licit to posit EXEMPTING causes, even proximate and present ones, and these directly. We gave the reason at n. 137.

II. It is never licit directly to posit or not to remove IMPEDING causes, even if only remote. The reason is that, so long as someone is subject to the law, he cannot will to infringe it without such a will being a violation of the law itself. Therefore excommunicated persons sin who do not seek absolution precisely for this reason, that, once absolved, they may not be held to Paschal Communion, or those who with this intention go away into a place where they will not be able to communicate in Paschal time.

III. Indeed it will not be licit even indirectly to posit or not to remove proximate or present impeding causes (which in morals are equated), unless a proportionate necessity is present from elsewhere; otherwise every law would be eluded. Thus he sins who gives himself over to sleep or sets out on a journey at the time when Mass is to be heard, or a little before, - or who on a fast day without just cause assumes some labor by which he is rendered impotent for fasting, - or the excommunicated person who does not seek absolution so that he may be able to satisfy the precept of Paschal Communion, - or he who, Paschal time having begun, does not communicate before he goes away into a place where he will not be able to communicate. Tailors and shoemakers likewise sin who on the day before a feast day do not prepare necessary garments and shoes, if they can do this without grave inconvenience.

IV. But more probably it is licit, even without reason, indirectly to posit remote impeding causes. The reason is that the legislator is not judged to will to restrict liberty so much. For it would be too grave a burden if everyone, long before the obligation of the law, were bound to abandon all works incompatible with that obligation, and to await the time of obligation.

But when a cause is to be judged as impeding proximately, and when only remotely, can scarcely, or not even scarcely, be established by some general norm. And indeed that which precedes the time of fulfilling the precept by the space of several days is usually held to impede remotely; but there must always be kept before the eyes both the mind of the legislator and the gravity of the matter prescribed, and also the judgment of prudent men and the practice of the good. L. I, 152.

CHAPTER VI: ON THE INTERPRETATION OF LAW AND EPIKEIA

§ I. On the interpretation of law

140. Definition. - Interpretation is the definition of the sense which certain more obscure words have in a law. I said: more obscure; for where the words of a law are clear, there can be no place, as is plain of itself, for interpretation properly so called, but only for epikeia.

141. ○ Division. I. By reason of the cause by which it is made, it is either 1° authentic, which is also called juridical and authoritative, and is made either by the legislator (or his superior or successor), for all subjects, or by a judge between litigating parties, - or 2° usual, which exists from legitimate custom, - or 3° doctrinal, which is made by learned men. Thus authentically the Pope, or the Congregations deputed by him for this, interpret all ecclesiastical laws; - the Bishop his own statutes or those of his predecessors; - the legislative assemblies among us civil laws, and the judge doubtful cases. You have an example of the usual in the quantity of food which by custom is permitted on a fast day for the evening collation; but of the doctrinal in the opinions of Canonists and Moralists concerning the sense of various ecclesiastical laws.

142. ○ II. By reason of the mode in which it is made, it is 1° strict or broad, according as it is made strictly according to the natural propriety of the words, or broadly according to a more benign sense; 2° simple or comprehensive, namely when the sense declared does not depart from the proper and customarily received signification of the words, or extensive, when beyond that which the words properly and according to the common sense taken denote, it concedes, prohibits, dispenses, etc. You have an example of strict and at the same time comprehensive interpretation, if by the word father is understood that one alone from whom someone proximately descends by birth; but broad and extensive, if in favorable matters also the grandfather. - The sign of comprehensive interpretation is generally the word we declare; of extensive, we decree.[1]

Notes to n. 142. (1) Barbosa, Dict. usufreq. Dict. 79. 80.

143. Principles. - I. Authentic and usual interpretation has the force of law, since it is made either by the legislator himself, or by his authority, if it is given by a judge, or by his consent, if the discussion is about usual interpretation.

II. Authentic interpretation which is made by the legislator or his superior or successor obliges all subjects; that which is made by a judge obliges of itself only the litigating parties. I said: of itself only the litigating parties; for it can happen that as doctrinal it also obliges others.

III. Authentic extensive interpretation has no force unless it is legitimately promulgated; for by the very fact that it is not contained in the words of the law, it is a certain new law, and therefore must be promulgated in the manner of laws. But comprehensive interpretation, since it is not a new law, does not need promulgation, unless it is made by a successor or superior. I say: unless, etc.; for since the

mind of the legislator is not as clearly known to these as to the legislator himself, they must recur to arguments and interpretations in order to investigate it; and these, since they introduce, as it were, a new law, need new promulgation.[1]

IV. Doctrinal interpretation is worth only as much as the reasons alleged by the Doctors. Cf. what was said at n. 55.

Notes to n. 143. (1) L. I, 200, and Law VII, de public. in rem actione.

144. Rules of doctrinal interpretation.

A. The words of the law are to be accepted according to their proper and customarily received signification, unless something absurd or unjust would follow from this. For since law ought to be clear, the legislator is to be presumed to speak in that sense which the words have from the common acceptance of men. Thus the law by which those who have laid violent hands on a cleric are excommunicated is deservedly judged to include also those who have struck him with the foot.

B. A law speaking generally includes all proper significations, or "where the law does not distinguish, neither ought we to distinguish," except if, as was said just now, something absurd or unjust would follow unless a distinction were made.

C. In doubt concerning the true sense, attention must be paid to the mind of the legislator, to the end of the law, and to antecedent or consequent circumstances. But the end of the law is ordinarily discerned from the proemium of the law itself.

D. A penal and odious law is to be strictly interpreted in doubt; but a favorable law broadly. Hence the axiom: Favors are to be amplified and odious things restricted. Thus, if the penalty of excommunication is laid against a homicide, it will not affect him who inflicted a grave wound, although with the intention of killing, if death in fact did not follow. But a law granting the faithful intercourse with those who have not been excommunicated by name is explained most broadly.

E. In law it is not licit to argue from an equal case, indeed not even from the stronger case; for not the reason of the law, but the will of the legislator made known to the subjects, has the force of law. Hence this: The reason of the law is not law. Thus a suspension which by diocesan statute is threatened against clerics guilty of drunkenness does not affect those who have violated chastity, although the offense is graver, - and an excommunication brought against members of a secret society cannot be extended to those who have conspired for the death of an innocent man.

145. ○ Make exception, if not only the same, but the same and adequate reason at once runs in the equal case, so that if the law were not extended to the equal case, the legislator would have to be accused of injustice or imprudence; for then that rule of law has force: where there is the same reason, there the same disposition of law runs. But this happens:

1° In correlatives, for example, between bridegroom and bride; hence since the bride is freed from the obligation of betrothal because of the long absence of the bridegroom, the bridegroom is likewise freed because of the absence of the bride.

2° In things equated, as eggs and milk foods are with respect to the law of fasting.[1]

3° In connected things. Thus, for example, since a testament is by its nature revocable, to those to whom the law permits making a testament, it also permits revoking it.

4° In things contained. Wherefore he who can make a testament can also make a legacy.

What has been said has no force concerning penal law. St. Alph., L. IV, 473.

On the interpretation of laws cf. Kent.[2]

Notes to n. 145. (1) L. I, 200. (2) Vol. I, n. 460 sq.

§ II. On Epikeia (Ἐπιείκεια)

146. ○ Epikeia is a benign, but equitable, interpretation of law, by which the law is not judged to extend itself to some case, although not excepted in the words of the law, since it is prudently believed either that the legislator did not foresee it or did not will to comprehend it under the law. Therefore it differs from interpretation properly so called, because the latter supposes words to be more obscure, the former clear.

One kind is authentic or public, which is made by the legislator himself, of which you have an example in the celebrated declaration of Benedict XIV on doubts respecting marriages in the Federated Provinces of Belgium,[3] - another is doctrinal or private.

In order that there be place for epikeia, it is necessary that the law, if it had to be observed, would become harmful or too burdensome. Harmful: thus, for example, if a law forbids carrying arms, I shall be able to carry them, if I must go out and I am about to meet my enemy seeking me unto death. Too burdensome: hence although positive divine law forbade the loaves of proposition to be given to laymen, the High Priest rightly judged that he could give them to David, failing from weariness.

Quaer. Does epikeia have place if the Superior can easily be asked?

Resp. Affirmatively, if observance of the law would become harmful [n. 165. 2)]; otherwise in other cases. (K) p. 478.[1]

Notes to n. 146 - note sequence 1. (3) Conc. Pl. Balt. II, p. 314. Notes to n. 146 - note sequence 2. (1) S. Th. 2, 2, q. 120, art. 1. Appendix annotation (K), to n. 146. Query. p. 65. col. 2. You ask why in the use of epikeia, outside the case in which observance of the law would become harmful, the Superior must be approached, if he can easily be approached, but not in interpreting law? I respond, because, as I hand down in n. 140, there is place for interpretation where the words of the law are more obscure, but for epikeia where they are clear. Therefore, positing the case in which the more obscure words of the law admit with equal probability both the stricter and the milder signification, without consulting the Superior you will apply the principles of Probabilism; but if it were not lawful to apply these in this way, it would follow that Probabilism could not be reduced to practice, while the Superior can easily be asked about the sense of the more obscure words of the law. - But the matter stands otherwise in epikeia, since from what is equitable and good it conjectures the mind of the legislator contrary to his clear words. See St. Thomas, 1. 2. q. 96. a. 6 ad 2.

CHAPTER VII: ON DISPENSATION FROM LAW

147. ○ Definition. Dispensation is a relaxation from the obligation of a law, made by one who has legitimate authority, for some case in which the law otherwise would oblige.

It is said: 1° relaxation from the obligation of a law. Therefore it differs a) from a privilege, which does not necessarily exempt from law, since privileges beyond law are given; b) from a license, by which the obligation of law is not relaxed, as in dispensation, but only a condition is posited, which having been posited, the law no longer has place: thus a Bishop can with cause give license for entering monasteries of nuns, yet of himself he cannot dispense from this law.

It is said: 2° for some case in which the law otherwise would oblige. Hence it differs a) from abrogation and cessation of a law, by which a law ceases to oblige for all, or ceases to be a law; b) from being excused from a law and being dispensed from it; for the cause on account of which I can be dispensed from a law is not required to be of such a kind that by its own force the law ceases to oblige, which they call being excused from the law; otherwise dispensation would effect nothing, and would be a simple declaration. Thus he who is gravely sick is said to be excused from fasting; but he who experiences some inconvenience in fasting, but not so grave that by this very fact he is excused from fasting, will sometimes be able to be dispensed from it.

148. ○ Division. Dispensation can be:

1° Licit or illicit, according as it is made with just cause or not.

2° Valid or invalid, according as it either exempts from the observation of the law or does not exempt.

3° Absolute or pure, or conditioned or with a burden, according as it is given simply or with a condition added.

4° Subreptitious or obreptitious, according as in the petition something that must be manifested is kept silent, or on the contrary something false is asserted.

5° Total or partial, according as it frees one from the whole law or from a part of the same.

6° Express or tacit, according as it is granted either in express words, or is deduced from some fact.

7° Necessary or free, according as in law, such a cause existing, it is decreed that it is to be granted by the superior, or is left to his judgment.

We must treat 1° of the power of dispensing; 2° of the causes required for dispensing; 3° of the cessation of dispensation.

ARTICLE I: ON THE POWER OF DISPENSING

Preliminary matters. - That the things to be said may be rightly understood, it is helpful here to premise certain things concerning ecclesiastical jurisdiction, which is the foundation of the power of dispensing.

149. ○ Ecclesiastical jurisdiction is defined: the power of governing subjects in order to eternal life.

It is divided: 1° Into jurisdiction of the internal forum and of the external forum.

Jurisdiction of the internal forum is that which primarily and directly is referred to the private utility of each one of the faithful. - It is subdivided into jurisdiction of the penitential forum, which can be exercised only within the tribunal of penance, and into jurisdiction of the internal extra-penitential forum, which can be exercised outside it, when, for example, a superior dispenses in a vow, etc.

Jurisdiction of the external forum is that which primarily and directly regards the public utility of the body of the faithful: as, to make laws, to decide controversies concerning doctrine or discipline, and similar things.

2° Into universal, which is restricted by no limit, neither as to persons, nor as to places, nor as to matters: such was the jurisdiction of the Apostles, and now such is the jurisdiction of the Supreme Pontiff, - and particular, which is restricted in one of those three ways, namely either as to persons, or as to places, or as to matters.

3° Into voluntary and contentious, or into extrajudicial and judicial. Voluntary, which is also called extrajudicial, is that which a superior can exercise even toward the unwilling, without the forms prescribed by law for judgments. - But contentious or judicial is that which is exercised according to the forms prescribed by law for judgments.

Contentious jurisdiction cannot be exercised by a Prelate outside his territory either licitly or validly, because such exercise cannot be made without judicial solemnity.[1] - But voluntary jurisdiction can be exercised even outside the territory, unless the ministry of episcopal order requires that it be exercised within the diocese, as happens in Pontificals.

4° Into ordinary and delegated. Ordinary is called that which belongs to someone by his own right, by reason of his office or dignity, from law, custom, or privilege having the force of law: such is the jurisdiction of the Pastor, Penitentiary, Bishop, Chapter, Abbot, Supreme Pontiff in the whole Church, Legate, etc. Those who possess ordinary jurisdiction in the external forum are Ordinaries; by which name are called not only Bishops, but also their Vicars General, and Prelates who in certain places exercise quasi-episcopal jurisdiction. But by the said name Pastors are not designated, because they do not have jurisdiction in the external forum.[2]

Delegated jurisdiction is that which someone does not have by his own right, that is, not by reason of his office or dignity, from law, custom, or privilege having the force of law, but only through the commission of another; yet this commission can be given not only by man, but also by law, according as the power of absolving in the article of death is reputed to have been given from custom to all priests.

Delegated jurisdiction is of a twofold kind, one particular, another for the universality of causes. Particular is that by which one or another cause is committed. But it is for the universality of causes when all causes, or at least a certain genus of causes, are committed under one collective name, although the delegation is restricted either as to time or as to places.

One delegated for the universality of causes is called a quasi-Ordinary, and can subdelegate, not indeed his whole jurisdiction, but one or another cause. It is otherwise with one delegated for a particular cause, who cannot subdelegate unless he has been delegated by the Supreme Prince,[1] and he has not chosen in the delegate the industry of the person, as will be said at n. 150.

Someone can be delegated either by man or by law: he is delegated by man who receives his delegation immediately from the Ordinary, or from another having the faculty of delegating. He is delegated by law who has delegated jurisdiction from the commission of common law, or even from custom. You have examples in Trent.[2]

5° Into immediate and mediate. Immediate jurisdiction is that which can be exercised generally and independently of the case of necessity. The Supreme Pontiff in the whole Church, the Bishop in his diocese, the Pastor in his parish possess immediate jurisdiction. But mediate jurisdiction is that which cannot be exercised except in certain cases determined by law: such is the power of Archbishops over the subjects of suffragans.

I said: over the subjects; for one must speak otherwise of the suffragan Bishops themselves, over whom the Metropolitan has immediate jurisdiction.

Notes to n. 149. (1) C. Ut animarum, 2, de Const. in 6°. (2) Trid. Sess. 24, c. 1, de Rf. Matrim.

150. Questions. - Quaer. 1° Who can delegate?

Resp. 1° Generally, whoever has ordinary power.[3]

2° As to delegates, they are either delegated by the Pope, or by others. If someone has been delegated by the Pope or by the Sacred Congregations, he can subdelegate. Make exception a) unless there is a presumption that the industry of the delegate himself has been chosen by the prince or by the Pope.[4] But when the industry of the person is judged to have been chosen, Monacelli explains thus:[6] "1° When, by reason of confidence, it is committed to another; 2° when conscience is burdened and the proper name is expressed; 3° when the rendering of counsel is required in a certain act at a certain time; 4° when an undetermined business is mandated; 5° when the delegate was given at the instance of a party; 6° when the matter is about a thing and controversy which regards the talent and expertise of the man." 7° according to Bouix, if in the rescript it is said: by himself, or personally. Make exception b) unless the delegated faculty is a bare ministry, or simple execution, as when power of dispensing in marriages or other things is given to the Vicar General. Yet even in this case the Vicar can subdelegate the inquiry and the reception of witnesses as to the question: whether the prayers rest upon truth.[2] (S) p. 485.

As to those delegated by others than the Pope or the Sacred Congregations, if they are delegated for the universality of causes, they themselves can delegate according to the very common opinion, provided the delegation has been made as by office, or jurisdiction is delegated to someone in perpetuity as a privilege annexed to his office or dignity.[3]

But if they are particular delegates, or delegates only for certain causes, they cannot subdelegate unless it has been conceded to them by the one delegating.[5]

Neither an ordinary superior nor delegates for the universality of causes, who are held as Quasi-Ordinaries, can, without consulting the Prince, commit their whole jurisdiction to another, because,

as Reiffenstuel says[4] when speaking of an ordinary Judge: "An inferior judge, without the prince, cannot by his own authority constitute another ordinary Judge in his place."

Notes to n. 150 - note sequence 1. (1) C. Cum causam, 62, de Appell. (2) Sess. 5, c. 1; Sess. 6, c. 2, de Rf. etc. (3) More. ff. de Jurisd. and rule of law 68 in 6°. (4) C. Pastoralis, 28, de Off. Jud. Deleg. (6) Anal. Jur. Pont. 3d Series, col. 863. Notes to n. 150 - note sequence 2. (2) Law, 1, § Ab eo, ff. Quis et a quo, and Sanchez, de Matrim. Lib. 3, disp. 81, n° 2. St. Alph. qu. rec. retr. IV. (3) C. Cum causam, 62, de Appell. (5) C. Licet, 7, de Procur. in 6°. Appendix annotation (5), to n. 150. p. 67. col. 2. If some series of faculties is delegated by the Holy See to Bishops, and of these some are permitted to be subdelegated, the other faculties of the same series, whose subdelegation is not expressly permitted, cannot be subdelegated. You have examples in the extraordinary faculties C, [p. LXXII, LXXIII](/manuals/konings/iii-faculties#h3). - Likewise, if certain faculties are permitted to be subdelegated to certain persons, they cannot be subdelegated to others besides these. Let the extraordinary faculties D, [p. LXXIII. n. 8](/manuals/konings/iii-faculties#h4), and E, [p. LXXIV. LXXV](/manuals/konings/iii-faculties#h5). § fin., be an example. - The reason of each resolution must be sought from that well-known principle: "The inclusion of one" (of some faculties or persons) "is the exclusion of another" (of the other faculties or persons). It is true indeed that one delegated for the universality of causes can subdelegate; but this principle is not so absolute that it can be applied even when its application is excluded: but it is excluded, at least implicitly, in each hypothesis which we have set forth. Cf. T. II. p. 427 (44).

151. ○ Quaer. 2° In how many ways can delegated jurisdiction cease?

Resp. 1° By renunciation of the delegate, accepted by the superior.[5]

2° By revocation of the one delegating, which however does not obtain effect unless it is notified to the delegate.[6]

3° When the number of cases for which the delegation was made has been exhausted, as in Fac. E, p. lxxiv, although the time has not yet elapsed.

4° By lapse of the determined time,[7] or when the business for which it was given is finished. (A) p. 478.

5° By the death of the delegate, if the delegation was personal; or by loss of office or dignity, if it was real; for delegation is in the manner of a privilege. But a real privilege, or one annexed to an office, passes to successors in the office; but a personal privilege, just as it follows the person, although he has lost the office, so also is extinguished with the person, although someone succeeds him in the office.

I say: although he has lost the office. Suppose, for example, that a pastor has received the personal privilege of blessing rosaries with application of indulgences, - although he ceases to be a pastor by making profession in some religious institute, he will not lose the privilege.

But whether the delegation was personal or real must be discerned: a) from the words which the one delegating used. Thus it will be real if it is said: We delegate to the See of Baltimore, or to you and your successors; but personal if the one delegating used these or similar words: to you, in whose prudence in managing affairs of this kind we greatly trust; b) from the subject matter. Thus from practice a delegation made to a pastor for absolving from certain reserved cases is judged personal, even in an indefinite mode; likewise faculties conceded by the Holy See for a time to Bishops for dispensing in certain impediments, and a transitory delegation made by the Pope to a Bishop for some particular business; c) if neither from the words, nor from the subject matter, can something be certainly defined, it will be held as real if only the dignity is expressed, as to the Archbishop of New York; personal if only the name (or, according to Sanchez,[1] the name and at the same time the

dignity) of the delegate is expressed, as if it had been said: to John N. N., or even to John N. N., Archbishop of Baltimore.

6° By death or any removal of the one delegating. But in this case a distinction must be made between the contentious and the gracious forum. In the first, delegated jurisdiction expires if, the matter still being intact, the one delegating departs from life or in some other way loses his office.[2] But the matter ceases to be intact by citation, as is more commonly held,[3] or at least by the joining of issue. - In the second, it does not expire by death or change of the one delegating,[4] if the delegation given to someone must be held as a grace already made, unless it was conceded with the clause: "until it shall please us," or "at our judgment or good pleasure," and the matter is still intact. But in the clauses: until it is revoked; at our revocation; at the judgment of the Apostolic See, or of the Bishop; until I shall will, that force is not present. - But if it is to be held as a grace to be made, the matter being intact, jurisdiction ceases by death or change of the one delegating. (M) p. 479.

Delegation, however, is held as a grace already made whenever it is given to someone for indeterminate persons;[2] because in this way to have the power of conferring grace on others is a true prerogative. But if the person in whose favor the jurisdiction is to be exercised is determined, then the jurisdiction must indeed still be judged a grace already made if the delegate must be held as a necessary executor, as happens when a dispensation over an impediment of marriage is obtained from the Holy See; for the grace has then been made to him with whom dispensation is to be made; hence the delegation then does not cease by the death of the Pontiff. - But if the delegate is not a necessary executor, namely if he can impart or deny the grace at his judgment to the determined person, then the delegation is not a grace already made, but rather one to be made, and, the matter being intact, ceases by the death or change of the one delegating.

A matter of the gracious forum is held intact if the delegate has not yet begun to exercise the first act, as if he has not yet called the parties to inquire concerning the truth of the prayers.

Notes to n. 151 - note sequence 1. (4) Lib. 1, tit. 29, n° 56. (5) C. Licet, 7, de Procur. in 6°. (6) C. Audita, 4, de Restit. Spol. (7) Although the number has not yet been exhausted. S. C. de P. F. Notes to n. 151 - note sequence 2. (1) De Matr. Lib. 8, disp. 27, n. 20. (2) C. Licet, 30, de Off. Jud. Deleg. (3) C. Relatum, 19, eod. tit. (4) C. Si gratiose, 5, de Rescriptis in 6°, and rule 16 of law in 6°. Notes to n. 151 - note sequence 3. (2) C. Si cui, 36, de Praebend. in 6°. Appendix annotation (Λ), to n. 151. 4°. p. 67. col. 2. To the doubt of the Vicar Apostolic of Western Tonkin, whether after the time for which faculties (of the formulas) are granted has elapsed, they still avail in the case in which, without his fault, their prorogation has been delayed, the S. C. de Propaganda Fide, Jan. 16, 1797, replied that they avail until the obtaining of a new prorogation. Collect. p. 25. n. 40. - The same Congregation, April 2, 1740, with the Most Holy approving, declared that the time of the same faculties is to be computed from the day of reception, not of concession. Ib. n. 39. Appendix annotation (M), to n. 151. 6°. p. 68. col. 2. Citation (verbal, namely) is an act proceeding from the command of the judge, by whose order someone is called into judgment, by words or letters, for the sake of trying a right. Joinder of issue is a legitimate act by which the plaintiff before the judge proposes his petition, but the defendant denies that he will yield to the petition, taking upon himself the judgment and the lawsuit.

152. ○ Quaer. 3° If the Bishop is delegated, is the Vicar General also judged delegated, and vice versa?

Resp. 1° Negatively, since in delegated causes they do not make one tribunal, unless the one delegating uses the words: We commit to the Ordinary; for under the name Ordinary come all those who, like the Vicar General, have ordinary jurisdiction.

With these things premised, let these be the points concerning the power of dispensing.

153. Principles. - I. The legislator can dispense: 1° in his own laws, because he has as much power for loosing as he has for binding; 2° in the laws of his predecessors, because power either is from him, or at least is subordinated to him.

Hence a) the Pope can dispense in every ecclesiastical law, both universal and particular; indeed also in those Apostolic Constitutions which it is established were issued by the Apostles themselves, inasmuch as they were Presidents of the Church. Such are those which regard the Lenten fast, the observance of Sunday, and similar things. See L. I, 188.

b) The Bishop dispenses in all diocesan statutes, unless however the statute either has been confirmed by the Pope in specific form (n. 102. 4°), or has passed into a contract, which is not dissolved unless with the prior consent of him whose interest it is.

c) Our legislative assemblies in their respective laws.

Notes to nn. 153-161. (2) L. I, 190. (4) De Syn. L. XIII, c. 5, n. 8 sq. (5) L. I, 190 and H. A. Tr. II, 69.

154. ○ II. An inferior cannot dispense in the laws of his Superior, unless from delegated power. The reason is that an inferior does not have jurisdiction over the law of his superior. - Thus all.

It is said: unless from delegated power. By force of this power the Bishop dispenses:

A) as delegated by law in the general laws of the Church:

1° If in the law itself, made by the Pope or by an Ecumenical Council, this faculty is expressly conceded to Bishops, or (excepting the power of dispensing, about which the discussion is in Trent, Sess. 24, c. 5, de Ref. Matr.) it is said in it that dispensation can be made in it: for these words, lest they be superfluous, ought to be understood not of the Pope, but of Bishops alone; since, for the Pope to be able to dispense, it is not necessary that this be expressed in the law.

2° If necessity urges (under which in morals also comes great utility), and there is danger in delay; for the Supreme Pontiff is deservedly judged then to concede the faculty.

3° If there is a custom that the Bishop dispense in this or that universal law; for as custom introduces law, so also it grants right (in the case, the right of jurisdiction).

4° If it is doubted whether the case needs dispensation: for then the Doctors commonly say that the Bishop can declare that dispensation is not necessary, or that it can be imparted by him for caution and for the quiet of souls.

5° With individuals only, and in particular cases alone, as to those things which frequently occur; as in vows not reserved, in fasting, abstinence, observance of feasts, the Divine Office, and similar things; for it cannot be presumed that the Supreme Pontiffs wished to impose upon the faithful that burden, too grave, that for businesses of this kind, which are accustomed to occur so frequently, they should recur to him.

I said: with individuals; for the Bishop cannot relax the law of a superior by some general manner, except in the cases of which in 2°. 3°. 4°.

B) Besides, Bishops are accustomed to be endowed by the Holy See for a definite time with special faculties, by force of which they can dispense also in other things than in the aforesaid. See those which are accustomed to be conceded to our Bishops at p. lxx sq.

155. ○ III. Since dispensation is an act of jurisdiction, which can be exercised only upon subjects, it is plain that those alone can be dispensed who are subject to the one dispensing.

Hence travelers, according to the opinion which St. Alphonsus[2] calls very common and to which he subscribes, cannot be dispensed by a Bishop not their own in vows and the other things which we alleged at n. 154. 5°. Yet the contrary is sufficiently probable to the Saint as to travelers arriving at another place as at the end of a journey. Indeed, and for any travelers whatsoever I would say this today, because the consent of their Ordinaries is prudently presumed. But it is certain a) that vagi can be dispensed by the Bishop in whose diocese they here and now are; otherwise they would have no one by whom they could be dispensed; b) that the legislator and those who have obtained a universal faculty of dispensing with others can dispense also with themselves; for the power of dispensing pertains to voluntary jurisdiction, which someone can exercise even upon himself.

Notes to n. 155. (2) L. I, 183 and Bouix, De Episc. p. V, c. VIII.

156. ○ IV. Whether, when, and how a delegated faculty of dispensing 1) can be subdelegated; 2) ceases, is to be concluded from those things which we said above concerning the subdelegation and cessation of delegated jurisdiction (n. 150. 151).

157. ○ V. The power of dispensing, even delegated power, given as a grace already made (n. 151. 6°), since it is favorable, is to be interpreted broadly; but the dispensation itself, since it is odious and as it were a wound inflicted on the law, from whose obligation it frees, is to be interpreted strictly, unless it is necessary (n. 148. 7°), or given of one's own motion, or inserted in the Body of Law, or conceded to a community, or for the common good; for then it is held as a favor.

158. Questions. - Quaer. 1° Can the Pope - since an inferior does not have jurisdiction over the law of a superior - dispense in divine law?

Resp. He can dispense from a just cause in those things in which divine right arises from the human will, as in vows and in oaths. Whether in the rest, from a most grave cause, he can truly dispense, or only declare that divine right then ceases, is controverted. The negative opinion is more probable to St. Alphonsus; although to him it is also very probable that the Pope can declare that in some particular case divine law does not oblige.[1]

159. ○ Quaer. 2° Can the Bishop in his diocese dispense from laws made in a Provincial or National Council?

Resp. Affirmatively, provided there is no question of laws whose dispensation the Council has specially reserved to itself. Thus St. Alphonsus[2] and Benedict XIV[4] against others. The reason alleged by St. Alphonsus is that this is greatly expedient for the good of the faithful; for on the one hand there can be cases in which a dispensation of this kind is useful, indeed necessary; but on the other it

seems equitable that Bishops then have the faculty of dispensing in decrees of this kind, so that another Provincial Council need not be awaited, or recourse made to the Apostolic See. Make exception if the Council was confirmed in specific form, in which case he will be able to dispense only in those cases in which he can do this in Pontifical law (n. 154).

160. ○ Quaer. 3° Can pastors validly dispense in some matters?

Resp. By ordinary law, by reason of custom, they can dispense with subjects, for particular cases, in fasts, in abstinence, in works prohibited on a feast day, and other things of this kind, which occur frequently and need prompt dispensation, so that recourse to the Bishop is not easy.[5] Our priests are accustomed to have broader faculties from the Bishops; but let each one consult the letters of his jurisdiction.

Notes to n. 160. (1) L. I, 187. 194. (2) L. I, 189 and H. A. Tr. II, 56.

161. ○ Quaer. 4° Can Bishops subdelegate beyond the time for which the Holy See delegated them the faculties of dispensing or other faculties which they are accustomed to obtain from the Holy See, with the power of communicating them to suitable priests laboring in their diocese?

Resp. Negatively, speaking speculatively; for no one can transfer more right to another than he himself has. Otherwise, as indeed it seems to me, if the matter is considered practically; for since Bishops are accustomed to obtain these faculties again from the Holy See before the time for which they were conceded has elapsed, they are known to concede them anew by the act of their will by this very fact, that they had conceded them before, for example, until revocation.

ARTICLE II: ON THE CAUSES REQUIRED FOR DISPENSING

162. Principles. - I. For the liceity of a dispensation some cause is always required. The reason is that otherwise the Superior will not be a faithful dispenser, or he will be imprudent.[1] Therefore he sins who in such a case petitions for dispensation; for he induces the dispenser to an illicit thing, and therefore sins in petitioning by the same kind of sin by which the legislator sins in conceding.

II. But for validity no cause is required on the part of the one conceding, if he dispenses in his own law or in the law of an inferior. The reason is that in this case the Superior can simply repeal the law; otherwise, however, if he dispenses in the law of his Superior, because he is not presumed to have power of dispensing rashly.

III. For validity, on the part of the petitioner, it is required that there be no essential obreption or subreption in the petition, that is, when there is kept silent what necessarily had to be expressed (see, for example, n. 1625, q. 2°), or there is expressed what necessarily ought to have been kept silent,[2] for example, a false final cause (ibid. q. 1°). - Hence:

1° A dispensation is invalid whenever an error has crept into the petition concerning the motive cause, or concerning the very object of the dispensation, whether this happened by the fault of the speaker or of another, or even from mere inadvertence; if, for example, you put in the petition an

impediment of affinity for an impediment of consanguinity, or the 3rd degree for the 2nd; yet otherwise if you put the 2nd for the 3rd, because a lesser grace is contained in the greater of the same genus. - It is valid if, the final cause subsisting, only the impulsive cause is false. An impulsive cause falsely alleged, in bad faith, invalidates "as a penalty of perversity,"[1] and therefore only after the sentence of a judge. Hence, T. I, p. 88, q. 89.

2° The dispensation is valid if an error has crept into the rescript of the Superior, for example, by the carelessness of the secretary, because it supervenes upon a concession already made.

3° The dispensation is valid if the cause, although not subsisting at the time of the petition, subsists at the time of concession, provided the dispensation is in gracious form (§ III after n. 1622), or also in commissary form (ibid.) and the matter is about a grace to be made (n. 151. 6°): but if about a grace already made (ibid.), it must subsist both when the commission is given and when execution is mandated. Id. ib. q. 90.

4° The dispensation is valid, although several false causes, even motive ones, have been set forth together with true and sufficient causes; because where some true motive cause is present, a sufficient foundation for dispensation is supplied.

5° The dispensation is valid in doubt whether a cause that is obreptitious or subreptitious is final or impulsive; true or false; sufficient or insufficient; for in doubt one must stand for the value of the act.

6° A dispensation granted by a Superior is valid, although it had already been denied by an inferior, and no mention was made of this denial. - Indeed, it is probably valid even if, denied by a Superior, it is granted by an inferior; because the power of the inferior is not restricted by the denial of the Superior unless the latter expressly restricted it.[2]

7° A dispensation obtained for someone unaware or even unwilling is valid when necessity demands this. - But those things which are obtained from the Penitentiary are not valid unless they have been petitioned either by the confessor, or by the penitent, or by blood relatives up to the 4th degree.

Notes to n. 162. (1) S. Thom. 1, 2, q. 97, a. 4. (2) L. I, 185. Notes to nn. 162-163. (1) L. V, 18. (2) L. IV, 251.

163. Questions. - Quaer. 1° What are the just causes for dispensing from law?

Resp. Three are commonly assigned: 1) piety: thus he is dispensed from servile works on a feast who applies himself to labors pertaining to divine worship; 2) utility: thus he is dispensed from a simple vow of chastity who is placed in great danger of violating it; 3) difficulty: thus he is dispensed from fasting who cannot observe it without a sufficiently grave inconvenience.

Quaer. 2° Does a Superior dispensing without cause in a grave matter sin GRAVELY?

Resp. 1° Negatively, probably, of itself, as to the legislator; because, prescinding from scandal or the damage of others, there does not appear in this so great a disorder.[1]

Resp. 2° Affirmatively as to an inferior, because he is not judged to have been delegated to dispense except for a just cause: and therefore, if he does otherwise, he gravely abuses the power conceded to him.[2]

Quaer. 3° Is it licit to use a tacit or presumed dispensation?

Resp. to the 1st Affirmatively, provided it can prudently be gathered from some sign.

Resp. to the 2nd Negatively, because the Superior ought to know that concerning which there is question; nevertheless a license can be presumed,[3] if from conjectures there exists a certainly probable consent of the Superior (n. 1163. R. to the 2nd).

Quaer. 4° Is it licit to petition for, or to concede, a dispensation in doubt whether the cause is sufficient?

Resp. to the 1st Affirmatively, because it does not pertain to subjects to judge concerning the sufficiency of the cause, but only sincerely to set forth the matter to the Superior.[4]

To the 2nd Affirmatively likewise. The reason is that otherwise the burden imposed upon Superiors would become intolerable, and both the one dispensing and the petitioners would be exposed to innumerable scruples.[5]

Quaer. 5° What in doubt whether the case needs dispensation?

Resp. 1° A dispensation is not required in a doubt, whether positive or negative, whether the case is comprehended under the law, as is plain from what was said on Probabilism; for the extension of the law to that case remains uncertain. Make exception for a positive doubt concerning the existence of a diriment impediment of marriage, since in ecclesiastical impediments alone, which are doubtful by a doubt of law, the Church is presumed to supply (n. 60. I.).[1]

2° But in doubt whether the cause is sufficient for excusing from the law without dispensation, a distinction must be made. Namely, in a positive doubt (n. 48. under 1) a dispensation is to be petitioned (n. 66. 2°), unless at the same time there is a doubt whether perhaps the observance of the law would gravely harm (n. 67. 1°. c). - But in a doubt founding an opinion only singularly probable for liberty, it is not to be petitioned (n. 66. 2°).

Quaer. 6° Is a dispensation extorted by fear valid?

Resp. Affirmatively, provided a cause for dispensing exists, nor is it established that in the Superior the intention of dispensing was altogether lacking, and besides any other cause of nullity is absent.

Quaer. 7° Is a dispensation valid which is given in good faith, when the cause that was thought to be present and sufficient is nevertheless not really so?

Resp. If there is question of a dispensation given by an inferior, St. Alphonsus, speaking of dispensation in vows,[2] follows the opinion of those who deny it, and this on account of the certain principle that an inferior invalidly dispenses without sufficient cause (n. 162. II.). But this reason has force also as to human laws. Yet the one dispensed can acquiesce in the dispensation as long as he is not certain of the non-existence or insufficiency of the cause.

Notes to n. 163 - note sequence 1. (1) Decr. L. I, T. III, c. 20. (2) L. I, 182. 185. - Suarez, de Leg. L. 6, c. 22, and Lacroix, n. 811. (3) L. I, 186 under 10. Notes to n. 163 - note sequence 2. (1) L. I, 178. (2) L. I, 180. (3) L. I, 187. (4) L. I, 168 under 8. (5) L. I, 178.

ARTICLE III: ON THE CESSATION OF DISPENSATION

Dispensation can cease in multiple ways, namely 1° by cessation of the cause; 2° by revocation; 3° by renunciation.

164. Principles. - I. By cessation of the cause a dispensation ceases (but not a commutation, L. I, 195), if there has ceased: 1) the final cause, and not only the impulsive; and this 2) totally; 3) certainly; and 4) before the dispensation has obtained effect. But if it has already obtained effect, one granted absolutely does not cease; otherwise if under an express or tacit condition: if the cause endures.[3]

The principle is proved and explained.

It is said: if there has ceased: 1) the final cause and not only the impulsive; for the former, not the latter, is the reason of the dispensation.

It is said: 2) totally. For then the prayers do not rest on truth in any way. It is otherwise if the motive cause ceases only in part, because the cause of dispensation still remains. Hence a dispensation from fasting conceded because of infirmity ceases when you have fully recovered; otherwise, if the infirmity remains in part.[1] Hence likewise, if the final cause, for example, of dispensing in an impediment of marriage is the legitimation of offspring and the reparation of scandal or damage; - if the offspring dies, or the fetus has been miscarried, the dispensation is still sustained for repairing scandal or damage.

It is said: 3) certainly. For in doubt one must stand for the dispensation, which possesses.

It is said: 4) before the dispensation, etc. For he to whom the execution of the letters is committed cannot satisfy his office except under the tacit condition: if the prayers rest upon truth; which condition demands that the final cause persist at the time at which the dispensation obtains execution. Titius, for example, petitions for a dispensation from an impediment of consanguinity, setting forth as the sole final and total cause the legitimation of offspring already begotten from a blood relative; he obtains the dispensation, and the dispensatory letters have already been dispatched; but before the letters are given to execution by the delegate (or before the dispensation has been fulminated), the offspring dies: - the dispensation ceases.

It is added: But if it has already obtained effect, etc. But according to St. Alphonsus[2] an absolute dispensation is one which is given because of a cause of itself perpetual, such as, for example, in a dispensation over irregularity the poverty of parents, lack of ministers, uprightness of morals is judged to be; otherwise it is held as conditioned, such as infirmity is commonly judged to be, because of which one is dispensed from fasting, abstinence, the Divine Office. (Z) p. 484.

II. Dispensation altogether ceases by the express revocation of the Superior, because obligation or release from obligation depends on the will of the Superior. Yet revocation without just cause would be illicit. - But it does not cease because of revocation by an inferior without just cause, because the faculty of revoking is not in his arbitrary power.[3]

III. Renunciation must be accepted by the Superior, because he alone can again bind one loosed from the law. But a delegate cannot accept it; for, once the dispensation has been given, he has ceased to be Superior. - A dispensation does not cease by non-use or by contrary use, for example, by fasting or by not marrying the affine, if you were dispensed in fasting, affinity. L. I, 198.

Notes to n. 164 - note sequence 1. (3) L. I, 196; H. A. Tr. II, 66. Notes to n. 164 - note sequence 2. (1) L. I, 196; H. A. Tr. II, 66. (2) L. I, 196. (3) L. I, 197. Appendix annotation (2), to n. 164. p. 72. col. 2. There are those who explain the matter in this way. If the dispensation is concerning an individual matter, which namely consists in one act concerning some

impediment of Marriage or irregularity, it does not cease: because the impediment has already been removed. Otherwise, if it is concerning a divisible and successive matter, for instance concerning the precept of fasting, of the divine office. Haine, T. I. p. 89. q. 90.

CHAPTER VIII: ON THE CESSATION OF LAW

165. ○ Law can cease in various ways.

1° By abrogation or derogation, according as it is abolished altogether or only in part: for just as the Superior can make a law, so he can either remove or restrict the same. But each can happen in a threefold way. a) By revocation of the legislator or superior, which however, in order to be licit, requires a just cause. b) By legitimate desuetude or contrary custom, about which below. c) By a later universal law contrary to a prior law likewise universal, and insofar as it is contrary to the same. We have said: likewise universal; for it is established in law that a special law is not derogated by a general one, unless either specific mention of that law is made, or it is otherwise established that such is the mind of the legislator, or it is said: no custom standing in the way, n. 187. 1°.

2° By the cessation of the adequate motive cause, or of the total end, on account of which it was made, with respect to the whole community; for when the cause of the law ceases, the legislator cannot reasonably urge it any longer.

I say: 1) adequately, or the total end; wherefore if prayer has been commanded for obtaining peace, when peace has been obtained, you will abstain from reciting the prayer without any declaration of the Superior; but if prayer for whatever necessity was commanded both for obtaining peace and for driving away an epidemic, when peace has been obtained, but the epidemic is still raging, the obligation of reciting it will not cease.

I say: 2) with respect to the whole community; for it is otherwise if it ceases only in a particular case, or with respect to some persons; for then a distinction must be made. For either it ceases contrarily, namely it is rendered harmful or at least very difficult, as when on a fast day someone has only meats for eating, and it does not oblige; or it ceases only privatively, that is, for that particular case or that person it becomes useless, or no longer conduces to the end which it intends. And in this case to St. Alphonsus,[1] although he admits the opposite is held by many grave Doctors, the more common opinion is more pleasing, which denies that the law ordinarily ceases, since scarcely ever is there not present the danger of hallucination, by which each one in his own cause can easily be deceived. Hence then the law is equated to a law founded on a presumption of law, which always obliges (n. 129. 2°). Hence betrothed persons are not exempted from the proclamation of banns, even if they prudently judge that no impediment of marriage underlies.

I said: denies that law ORDINARILY ceases; for although rarely, yet sometimes, namely if this can be clearly gathered from the mind of the legislator, it will cease, even if the end of the law ceases only privatively.

If there is present a solitary probability (n. 52. 3°. n. 69. 2°) that the law has been abrogated or deleted by contrary custom, or that its end has adequately ceased, you will be able to resolve for liberty.[2]

Notes to n. 165. (1) L. I, 199; H. A. Tr. II, 69; col. L. IV, 846. (2) L. IV, 112, § Secunda. Ib. 290 in fine.

PART SECOND: ON THE PRINCIPAL SPECIES OF LAWS

We must treat 1° of natural and divine law; 2° of ecclesiastical and civil law; 3° of penal and irritating law; 4° of unwritten law, or custom; 5° of favorable law.

CHAPTER I: ON NATURAL AND DIVINE LAW

ARTICLE I: ON NATURAL LAW

166. ○ Natural law is the divine will, manifested by natural light, prescribing those things which are necessary for preserving right order.

Hence natural law is nothing other than eternal law intimated to rational nature through natural light, whether habitually through right reason, or actually through its dictate.

The object of natural law is everything which so agrees or disagrees with rational nature that it must necessarily be prescribed or forbidden by the Founder of that nature: namely, it embraces all those things which are conformable to eternal law. - Hence natural law is concerned 1° with the first principles of morals, for example, good is to be done; evil is to be avoided; do not do to another what you do not wish to be done to you; 2° with the secondary principles of morals, or the immediate conclusions of the first principles, such as generally are the precepts of the Decalogue; 3° with mediate, or more remote, conclusions.

167. Questions. - Quaer. 1° Can the object of the law of nature sometimes be ignored?

Resp. 1° The primary principles of morals can be ignored by no one. - 2° Likewise proximate conclusions, so that in these invincible ignorance cannot be given, except in children or the rude and for a brief time, or unless some circumstance apparently making the act honorable is added. - 3° But remote conclusions can be ignored, and often are ignored. Hence concerning these so many controversies among the Doctors are still agitated.[1]

Quaer. 2° Can invincible ignorance be given concerning the malice of depraved desires in him who knows the malice of the act?

Resp. Negatively, at least as to efficacious desires. The reason is that to will what is evil, and indeed known as such, is to will what is known to displease God, and therefore is to will to displease him.

Quaer. 3° Is natural law mutable?

Resp. Negatively, and cases which seem contrary are of such a kind that either their matter is withdrawn from natural law by the will of God, or natural law does not obtain.

I said: 1) in which either their matter, etc. Namely, a twofold order of things must be distinguished. One is so founded in the very natures of things that not even God can change it, unless he were said to be able to deny himself. Therefore blasphemy, perjury, etc., cannot fail to be evil, and God would deny himself if he inverted this order. But the other order is one which, by reason of the dominion which belongs to God over all creatures, lies subject to divine power; and therefore, since it is not absolutely necessary, God can change it. Hence, since God is Lord both of the life and rights of man, and of all creatures which he has conceded to men for use, he can dispose concerning the life, rights, and things of men by taking away, transferring, etc., as it pleases him; therefore every malice will cease in taking away the life or goods of someone, if God has given this right and power to another.

And this indeed is what some say: by the will of God it happens that matter is withdrawn from natural law. In this way matter was withdrawn from natural law when God commanded Abraham to sacrifice his son, or conceded to the Hebrews the spoils of the Egyptians, or gave them the precept of exterminating all the Canaanites. Say the same if a judge condemns a guilty person to supreme punishment; for he does this from power given to him by God; or if ecclesiastical power dispenses in a vow or oath; for it does this in the place of God (n. 158).

I said: 2) or natural law does not obtain. Thus a secret is to be kept by the law of nature, which nevertheless must be revealed if, when it is kept, grave damage threatens an innocent person or the republic; for the law of nature prescribes that a secret be kept only in that case in which it can be kept without grave damage to an innocent person or to the republic. Thus also the obligation of fraternal correction does not obtain where no fruit is hoped from it.

Notes to n. 167. (1) L. I, 8. 170. S. Th. De malo, q. 3, a. 8, c.

ARTICLE II: ON POSITIVE DIVINE LAW

168. ○ Positive divine law is twofold, namely old and new.

I. The old law, or law of the Old Testament, contained precepts of a threefold kind.

1° Moral precepts, which regarded moral rectitude, and established that which had already been prescribed by natural law. Such are the precepts of the Decalogue.

2° Ceremonial precepts, which were referred to the worship of God, and established ceremonies and sacrifices.

3° Judicial precepts, which pertained to political and economic administration, or to the right government of the people.

The old law was abrogated by Christ, as being "set until the seed should come, to whom he had promised," as the Apostle says.[1] Therefore only that part of the old law which regarded morals was preserved and confirmed in the new law.

II. The new or evangelical law, which is called the law of grace, or of liberty, or the New Testament, contains documents of a threefold kind, namely 1° moral precepts concerning virtues, especially the theological virtues; 2° ceremonial precepts concerning the Sacraments and the Sacrifice of the Mass; 3° mere counsels, but worthy of a great reward.

The new law differs from the old law especially in the following: 1° The old was shadow and figure; the new is light and truth; - 2° The old was a law of fear; but the new is a law of grace and love.

The old law is called imperfect, not indeed in itself, but relative to the more perfect. For it was perfect in itself, since it had God as author, and through it God attained the end which he had set before himself.

The new law was made for all, and therefore obliges all to whom it is known. For thus Christ says: "Going therefore teach all nations, baptizing them in the name of the Father," etc. ". . . teaching them to observe all things whatsoever I have commanded you."[1]

Notes to n. 168 - note sequence 1. (1) Galat. 3. 19. Notes to n. 168 - note sequence 2. (1) Matth. 28. 19. 20.

CHAPTER II: ON ECCLESIASTICAL AND CIVIL LAW

ARTICLE I: ON ECCLESIASTICAL LAW

169. ○ Ecclesiastical law is said to be that which is made by ecclesiastical power for the right government of the Church and the eternal salvation of souls.

The collection of various ecclesiastical laws is called Canon Law; but a threefold collection of these laws is distinguished: ancient, new, newest, and from this comes the division of Canon Law into ancient, new, newest. Yet of ancient law, which extends from the age of the Apostles up to the twelfth century, almost no account is had today; for the laws of that age are contained, for the most part, inserted in more recent Law. Therefore either the discussion is about new Law, which extends from the twelfth century up to Trent; or about newest Law, which extends from Trent up to our age. The first is contained in the Body of Canon Law; the second in Trent itself, in the Bulls, Briefs, and Rescripts of Pontiffs issued after the Body of Law was closed; likewise in the Declarations of the Roman Congregations and in the Rules of the Apostolic Chancery.

170. ○ The Body of Canon Law consists of six parts, constituting three volumes. They are: the Decretum of Gratian, the Decretals, the Sixth, the Clementines, the Extravagants of John XXII, and the Common Extravagants.

I. The first volume contains the Decretum collected by Gratian, a Benedictine monk, and published in the year 1151 under the title: Concordance of Discordant Canons. The work is distributed into three parts, of which the first treats of ecclesiastical persons, the second of actions or of the matter and form of judgments, and the third of sacred things.

The first part is divided into one hundred and one distinctions, which are subdivided into chapters or canons. Thus it is usually indicated: cap. Jejunium 7, dist. 76; or also dist. 76, cap. 7.

The second part is divided into thirty-six causes; but causes are divided into questions, and questions into chapters. It is cited in the following manner: cap. Qui viderit 13, quest. 5, causa 32; or caus. 32, qu. 5, c. 13. - The treatise de Poenitentia, having seven distinctions, is cited thus, for example: cap. Mensuram 86, dist. 1, de Poenitentia; or de Poenitentia, dist. 1, c. 86.

The third part consists of five distinctions, which are divided into various chapters. They are cited: cap. Est unitas 49, dist. 4, de Consecrat.; or: de Consecrat. dist. 4, c. 49. For this part treats of the consecration of Churches, altars, etc.

II. The second volume contains the Decretals omitted by Gratian, or issued after him, collected by St. Raymond of Pennafort, of the Order of Preachers, by command of Gregory IX, and published in the year 1230. It is divided into five books, which have titles and chapters; but they are cited in this manner: cap. Pervenit 28, de Appellationibus, or Decretal. lib. 2, tit. 28, c. 28. A chapter indicated in this latter way is much more easily found.

III. The third volume contains the book called the Sixth, the Clementines, and the Extravagants both of John XXII and the Common ones.

The Sixth, or sixth book of the Decretals, is so called because it is added to the five books of the Decretals of Gregory IX, and contains the Decretals issued from Gregory IX up to Boniface VIII. It appeared in the year 1298 by the authority of Boniface VIII: it is divided into five books, which also have titles and chapters. It is cited in the same way, but there is added: in Sexto, or apud Bonifacium.

The Clementines, so called from Clement V, who ordered them to be collected after the Council of Vienne, over which he presided in the year 1311, are Constitutions issued by Clement himself or by the Council of Vienne. John XXII promulgated them in the year 1317, in five books, which no less than the Decretals and the Sixth consist of titles and chapters. They are likewise cited in the same way, but there is added: in Clementinis.

The Extravagants of John XXII are Constitutions which he issued in the earlier years of his pontificate. They are so called because they wander outside the Body of Law collected thus far. They are usually indicated thus: Extrav. Joannis XXII, tit. 4, c. 1.

The Common Extravagants, so called because they were issued by John XXII and by several other Pontiffs, are themselves divided into five books, which have chapters with titles. But these are ordinarily cited in this way: cap. Vas electionis, de Haereticis; Extravag. communib., or Extrav. comm. lib. 5, de Haereticis, c. 2.

Gregory XIII took care that the whole Body of Canon Law, diligently emended, be published at Rome by the Bull "Cum pro munere pastorali." But it is certain that the seventh book of the Decretals and the Institutions of Lancellotti, which are found placed at the end of Canon Law, do not have force, since they are private collections, endowed with no Pontifical confirmation. Likewise the Decretum of Gratian, although emended several times by the care of the Roman Pontiffs, and although it is everywhere cited, nevertheless "it has been received among all," says Benedict XIV himself, "that whatever is contained in it has as much authority as it would have had of itself if it had never been inserted in the Collection of Gratian."[1] But the remaining parts of Canon Law oblige, unless they have been abrogated by contrary law or by legitimate custom. (N) p. 479.

The laws of newest Law have not yet been collected into a Body of Law.

Notes to n. 170. (1) De Syn. Dioec. L. VII, c. 15, n. 6. Appendix annotation (N), to n. 170. at the end, p. 76. col. 2. Yet De Angelis judges that the force of authentic collection must be denied to the Extravagants, whether of John XXII or the Common ones, Prel. Jur. Can. T. I. P. I. p. 14. Nevertheless he affirms that they have universal force of obliging, since all their Chapters have it; which, however, others deny. See Zeitschrift für kath. Theol., Innsbruck, 1880. p. 526.

171. Questions. - Quaer. 1° What must be held 1) concerning the Rules of Law; 2) concerning the titles of the Decretals; 3) concerning the superscriptions and summaries of chapters; 4) concerning the glosses and notes which are found in the Body of Law?

Resp. to 1). Under the title de Regulis Juris, at the end of Book V of the Decretals, and at the end of the Sixth of the Decretals, certain general sentences are inserted, which briefly contain established law concerning diverse matters having the same reason. Let this be an example: "Every thing is dissolved by the same causes by which it is born," which declares concerning various obligations that they cease by the same causes by which they are introduced, and can be applied, for example, both to a law, which is dissolved by the same efficient cause, namely the legislator, by whom it was born, for instance if he dispenses in it or abrogates it, - and to contracts, which, just as they exist by mutual

consent, are also dissolved by mutual consent. - They have the force of law as to cases not excepted. Thus from the Rule of Law just cited the contract of marriage is excepted, which, although it is born from mutual consent, nevertheless is not dissolved by the same. Hence the axiom: There is no rule without exception. Those exceptions are called fallacies by the Doctors, and they become known either from the nature of the thing, or from the law itself, or from general custom.

Resp. to 2). The titles of the Decretals, like the Rules of Law, are authentic in the authentic books, since they are from the legislator himself; but they do not have the force of law, or of a Rule of Law, unless they refer a complete sense, such as, for example: "That, issue not having been joined, one not proceed to witnesses," etc.; "Lest, the See being vacant, anything be innovated." Since the titles of the Decretals were originally written in red letters, and briefly present the matter of the chapters which are contained under them and which were written in black character, the axiom prevailed: "from the red to the black the inference has force"; and the contrary: "from the black to the red the inference does not have force," or what is said in the title is said in the individual chapters which are contained under it; but many things are said in the chapters which are not said in the title under which they are placed.

Resp. to 3). Superscriptions are those words which indicate whence the text of the chapter was taken, or to whom it is directed. In the authentic books they are authentic, and from these a valid argument is deduced. - Summaries are words by which private doctors summarized the chapters; they are not authentic, but serve for the convenience of readers.

Resp. to 4). A gloss is a fuller explanation of the canons made by authors; but a note is a briefer illustration or addition of citations. Neither has authentic force, but only doctrinal force.

172. ○ Quaer. 2° What are the principal Roman Congregations, and what are their various offices?

Resp. The principal ones are:

1° The Congregation of the Council (of Trent), or of Cardinals. It consists entirely of Cardinals, who are called interpreters of the Fathers of the Sacred Council of Trent, and one of whom is distinguished by the title Prefect of the Congregation. Pius IV had first instituted it for the observance of the Council; afterward, moved by the necessities of affairs, Sixtus V endowed it also with the power of interpreting decrees of the Council which pertain to the reform of morals or discipline and seem doubtful.

2° The Congregation of Bishops and Regulars. It too wholly coalesces from Cardinals. As the name indicates, it undertakes two things to be treated: namely those things which regard the good administration of the dioceses of the whole Catholic world, and those things which pertain to controversies and lawsuits of Regulars of both sexes, to be known and decided according to the Sacred Canons.

3° The Congregation de Propaganda Fide. It was instituted by Gregory XV by the Constitution Inscrutabili, January 22, 1622.

Its office is to distribute the lands to be evangelized among various missionaries, and to send them there with very ample faculties; to propose some of them to the Supreme Pontiff that they be created

Bishops, or only Vicars or Prefects Apostolic; to decree concerning various affairs which sometimes arise between missionaries of various Orders and the Ordinaries of places. -

Moreover it resolves questions, or cases of conscience, which are proposed by missionaries, and sends to them instructions, ordinances, etc., according as the good administration of affairs demands. (E) p. 479.

Urban VIII added to it a College or special Seminary under the same name of Propaganda Fide, in which youths of various infidel or heretical nations are educated, who then spread the faith in their regions.

By his Apostolic Letters of January 6, 1862, Pius IX divided the Congregation de Propaganda into two parts: one for the Latin rite, and the other for the Oriental rite.

4° The Congregation of Sacred Rites. Besides Cardinals, it also consists of Consultors, Prelates or Regulars. It defines and orders the Sacred Liturgy and those things which pertain to it. The examination of causes of Beatification and Canonization of Saints is also commemorated among its offices.

5° The Congregation of the Index, instituted by St. Pius V. In it Cardinals and several other learned men have a place. It exercises one office, but of great moment for the good of society both ecclesiastical and civil: namely it takes care of books which are published, lest through them anything against Religion and good morals be propagated among Christians. Those which it judges harmful to the faithful it accurately notes, forbids, and refers into the Index, which therefore is called the Index of prohibited books, so that the faithful may abstain from reading them as from poisonous pastures. Yet sometimes books are prohibited both by the Congregation of the Holy Office and by the Pontiff himself through particular Briefs and dogmatic Constitutions, especially if they savor of heresy.

6° The Congregation of the Holy Office, or of the Sacred Universal Inquisition. It is called Supreme, and consists both of Cardinals and of Prelates and Theologians.

It belongs to it to take cognizance of heresy, and also of suspicion of heresy, or of other irreligious things. It was instituted by Paul III, and confirmed by Sixtus V.

7° The Congregation of Indulgences and Relics. It has the faculty and office of resolving all difficulties and doubts concerning Sacred Relics and Indulgences. It consists of a number of Cardinals to be determined by the Supreme Pontiff, and of other Prelates and Theologians.

8° The Congregation of Immunity, which coalesces from Cardinals and a few others. It inspects and takes cognizance of causes concerning ecclesiastical Immunity, whether real, personal, or local.

Besides the Congregations there are also sacred tribunals, both gracious and contentious. We mention one gracious tribunal, the Sacred Penitentiary, since the rest scarcely pertain to our matters and circumstances. But the Penitentiary is a tribunal instituted for imparting certain graces in the internal forum. Its office is to grant faculties of absolving from sins and censures reserved to the Pope, dispensations in vows and irregularities, and also generally in occult impediments of marriage, as will be said more fully in its place. To it also belongs to solve practical doubts, or to resolve difficulties which are proposed to it.

Appendix annotation (Ξ), to n. 172. 3°. p. 77. col. 2. On Sept. 19, 1671, by mandate of the Most Holy (Clement X), it was enjoined that whenever resolutions of doubts made by the S. C. of the Holy Office and Propaganda Fide are sent to

missionaries and the other ministers of the S. C. de Propaganda Fide, they are not sent as definitions, but as simple instructions by which in occurring doubts they can and must be governed. - Collect. Const. etc. ad usum Soc. Miss. ad exteros, p. 3. n. 5.

173. ○ Quaer. 3° What force do the Declarations and Decrees of the Sacred Congregations have?

Resp. 1° Looking at the source from which they are derived, they have the same force as if they had immediately proceeded from the Roman Pontiff; provided however they are authentic, that is, subscribed by the Prefect and Secretary of the respective Congregation and furnished with the seal of the same.

2° They have that force even if they are not explicitly confirmed by the Supreme Pontiff.

3° Yet they are not infallible unless they are confirmed by the Supreme Pontiff, and by him speaking ex Cathedra.

The 1st is proved. For they are given by commission of Apostolic authority. - The 2nd from the same reason, and besides from the Response of the Sacred Congregation of Rites, May 23, 1846. - The 3rd: for infallibility is not delegable, since it is personal and proper to the Roman Pontiff.

Quaer. 4° Do the Declarations and Decrees of the Sacred Congregations always have universal force?

Resp. 1° Affirmatively, if either they are issued by the Sacred Congregations as universal; or, by removing the ambiguity of law, they comprehensively interpret the sense of a universal law. The reason is plain of itself from what was said in this number under question 3.

Resp. 2° Negatively, if they are given in cases altogether particular, on account of special adjuncts of things or singular conditions of place, which is to be gathered from the exposition of the case and from the fact. This is plain from the Response of the Sacred Congregation of Rites, April 8, 1854. But whether particular responses of this kind must necessarily be extended to similar cases is disputed probably on both sides;[1] but it is certain that they generally have doctrinal force in altogether similar cases, since they are responses of men most versed in those matters.[2]

Quaer. 5° Must Declarations and Decrees having universal force be promulgated in order to oblige?

Resp. Affirmatively, if they are extensive; negatively, if they are comprehensive. The reason is plain from what was said at n. 143. III. But they are judged sufficiently promulgated if they have already been universally spread in the Church either by the use of many years, or by the report of authors commonly referring them.[3]

Quaer. 6° Is there some authentic collection of the Declarations and Decrees of the Sacred Congregations?

Resp. Affirmatively, namely of the Sacred Congregation of Rites (Gardell.), of the Council (Thesaur. Resol.), of Indulgences (Prinzip.).

Quaer. 7° Whence does it happen that some responses of the Sacred Congregations seem sometimes to contradict themselves?

Resp. This is accustomed to happen for a threefold cause. For in them there was question either of singular cases, which had to be resolved differently on account of diverse circumstances of places and

things; or of doubtful questions not yet discussed, to which, if an immediate response must be given, the Congregations usually adhere to the more common opinion, not decisively, but doctrinally;[1] or of decisions, as they call them, a posteriori - not a priori - which are given not according to strict law and considered nakedly, but with account had of that special case, and then the decision is usually given with some addition, for example, affirmatively or negatively, as in the case, as it lies, etc.

Notes to n. 173 - note sequence 1. (1) L. I, 106. (2) H. A. Tr. II, 34. (3) Id. Quest. II, among the Recent Retractions. Notes to n. 173 - note sequence 2. (1) Ben. XIV, de Syn. L. VI, c. VI, n. 4; Perrone, de Matr. Christ. L. II, S. II, c. 3, a. 1, Tom. II, p. 468 sq.

174. ° Quaer. 8° What is the sense of certain clauses which often occur in the responses of the Sacred Congregations?

Resp. Especially the following are accustomed to occur.

a) Dilata, that is, the response is deferred, so that the matter may be subjected to maturer examination, as being of difficult solution.

b) Affirmative et amplius, - Negative et amplius, that is, when the matter has been discussed enough and more than enough in the Sacred Congregation, and has been decided as it lies by full votes, such a question is no longer admitted.

c) Nihil, that is, the petition is not admitted, as unsuitable.

d) Relatum or Lectum, that is, when the request had been reported or read in the Sacred Congregation, it was not admitted.

e) Reponatur, or no response is given, but the petition is placed in the Archives of the Sacred Congregation.

f) Detur decretum generale. This obtains when there is question of a grave matter which is neglected by many.

g) Spectare ad Episcopum, or Orator adeat Episcopum, namely that he himself provide according to canonical ordinances, not according to his own whim.

h) Non congruere, - Non expedire, that is, the Congregation does not think it fitting that what is asked be conceded; therefore it does not will to grant the sought grace, nor is it granted.

i) Orator rem deferat ad Ordinarium et ejus judicio se dirigat, or the thing requested is not conceded by the Sacred Penitentiary, but is remitted to the Ordinary, so that, if he has the faculty, he may provide for the matter according to his prudence; otherwise he should either obtain the faculty, or, if he judges that this is not expedient, he should enjoin what must be enjoined.

j) In decretis, - In decisis, or the prayers, not heard and repeated by the petitioner, are not to be heard.

k) Ad mentem, or besides the solution of the doubt something else is observed or declared by the Sacred Congregation, which, if it is secret, is manifested only to those to whom the response is directed; otherwise it is added to writings publicly drawn up with these words: the sense is, etc.

l) Facto verbo cum Sanctissimo, or: Ad Dominum Secretarium cum Sanctissimo, or that the Congregation does not have the faculty of granting the grace, and therefore the Secretary is ordered

to refer the Rescript of the Sacred Congregation to the Supreme Pontiff, who is accustomed to approve the judgment of the Congregation and to grant the grace.

m) Providebitur in casibus particularibus, or that the case which was proposed generically and indeterminately must be proposed determinately.

n) Gaudeat impetratis, or the petitioner ought to be content with the grace obtained, and the extension of the same, or another which is newly requested, is not conceded.

o) Sanctissimus annuit pro gratia, arbitrio et conscientiae Episcopi, or the grace has been conceded and nothing is lacking for it to have full effect except execution, which the delegate cannot deny unless perhaps there underlies a canonical cause, not set forth to the Holy See, which by law impedes it. (O) p. 479.

Appendix annotation (O), to n. 174. p. 79. col. 2. It is useful to add also certain other formulas which the Holy Congregations use. A cause is said to be argued while preserving the order of law, when the parties appoint procurators, and the cause is discussed by chosen advocates. Otherwise it is said to be treated economically. By summary of prayers: this indicates that it is not a question of some doubt from the graver ones or of a contentious cause (for if it is a question of these, the formula is used: let it be placed on the sheet); but only of prayers exhibited to the Holy See, or of the manner in which the prayers deserve to be heard. Let him consult approved authors. There are not lacking those who always would wish in their doubts an authentic response from authority; as if the laws of moral prudence were lacking, or these did not suffice for acting rightly. To these such a response is usually given.

175. ○ Quaer. 9° What concerning Bulls, Briefs, and Pontifical Rescripts?

Resp. 1° Bulls are certain Constitutions of the Roman Pontiffs, regarding, for the most part, weightier business, and formerly written in Teutonic character, now in Latin, on parchment. They are called Bulls from the leaden seal adhering by small cords. But today, with certain exceptions, a seal of red color is impressed on the paper, bearing the images of the Apostles Peter and Paul, with the inscription of the name of the reigning Pontiff drawn around. Acta, T. XI, p. 465.

They receive various names from various objects. Some are gracious, which contain a free conferral. - Others of justice, which regard the administration of justice. - Others consistorial, which are dispatched in Consistory. - Others half-bulls, which are brought forth by a Pontiff not yet consecrated, and do not show his name on the seal. Bulls are cited by the words with which they begin; Bullaria are called collections of Bulls.

2° Briefs are certain Constitutions of the Roman Pontiffs for matters, for the most part, of lesser weight. They are dispatched through the Secretary of Briefs, written on white and thin parchment in Latin and in a polished character. They have a seal of red pigment, bearing the image of St. Peter exercising the fishing, and therefore they are said to be dispatched under the Ring of the Fisherman.

3° Rescripts are called the responses of Pontiffs to requests. There are two kinds of them. Some are issued in the manner of familiar letters, which the Supreme Pontiffs are accustomed to give either when they are asked by those with whom they have a particular relation of friendship, or when they are asked for counsel as learned and pious men; and no force of obliging is present in them, as they proceed more from courtesy of soul than from true authority. - Others are issued in the manner of Decrees by the Pontiffs as successors of St. Peter and Pastors and Teachers of the universal Church; and therefore the greatest force is present in them, since through them pontifical right and supreme jurisdiction are exercised.

176. ○ Quaer. 10° Do pontifical Letters and responses not inserted in the Body of Law have the force of law?

Resp. Affirmatively, if their authenticity is established, and, in the case in which according to what was said at n. 143. III they need promulgation, they have been sufficiently promulgated, namely if they are published in that way in which laws are accustomed to be published, or if from the usage and sense of the universal Church they have already been held for many centuries as authentic and sufficiently promulgated.[1]

Notes to n. 176. (1) L. I, 106, and H. A. Tr. II, 34.

ARTICLE II: ON CIVIL LAW

177. ○ As individual nations or political communities, so also our Federated States have their own laws, by which they are governed.

Of these, a) some proceed from Congress; b) others from the legislative assemblies of the individual States (Legislature); c) others from municipal colleges (city councils); d) others pertain to common law (the common law); e) others to statute law (the statute law); f) others to Roman law (the civil law).

It is helpful to note a few things concerning each.

To a). Congress makes laws concerning affairs committed to itself by the consent and covenant of all the States. What these are, see, if you wish, in Kent[1] and in the Constitution of the United States.[2]

To b). Any one of the Federated States is in the manner of a nation, and must be called an independent Republic (Commonwealth), enjoying supreme power of making laws, which power is restricted only by those laws which Congress makes concerning affairs committed to itself by the consent and covenant of all the States.

To c). Municipal colleges can make laws according to the Charter by which the municipality was constituted.

To d). They call common law (the common law) "those principles, usages and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature."[3]

To e). Statute law (the statute law) "is the express written will of the legislature."[4]

To f). Roman law, which our jurists are accustomed to call "the civil law," today, as such, has retained the force of law in almost no region. - It is contained in the celebrated Code, or Body of Civil Law, issued by command of Justinian. This volume is distributed into four parts.

In the 1st part are the Institutes of Justinian, which, as rudiments and elements for novices of Civil Law, are contained in four books.

In the 2nd part are the Digest or Pandects, which are distributed into 50 books.

In the 3rd part is the Code, called of repeated reading, divided into 12 books.

In the 4th part are contained 68 Authentics or Novels, which are designated by numerical order.

Most States (which generally these are, see Kent[5]) follow common law, insofar as it was in force before liberty was attained (July 4, 1776), and statute law established before that time by the legislative assembly of England, excepting however those dispositions of each of these laws which are repugnant either to the condition of the region, or to the laws of Congress or of the individual States.

In what sense Louisiana uses Roman law, indeed also French and Spanish law, see, if you wish, in Kent.[1] Moreover in all the States judges are accustomed to decide causes brought before them according to Roman Law only when they cannot decide them according to written laws and common law, as being silent concerning them.

Notes to n. 177. (1) Vol. I, 236 sq. (2) Sect. VIII. X. Amend. art. I. X. XIII. XIV. XV. (3) Kent, Vol. I, n. 472, p. 514. (4) Ib. n. 447, p. 484. (5) Ib. n. 472. 473, p. 515. 516.

CHAPTER III: ON PENAL AND IRRITATING LAW

ARTICLE I: ON PENAL LAW

178. ○ A penal law is that which does not oblige to an act or to an omission except under a temporal penalty, that is, to accepting the penalty as just.

Principles. - I. There cannot be a purely penal law which in no way obliges in conscience, because every precept of a Superior ought to oblige in some way; otherwise it would not be a true precept.

II. But there can be a merely penal law, obliging in conscience to one of two things, namely either to fulfilling the law, or, if the law has been violated, to undergoing the penalty. The reason is 1° because for the essence of law it suffices that it impose some obligation in conscience, nor is it necessary that the obligation determinately regard an act or omission; 2° because law does not have force except from the will of the legislator; but the legislator can oblige to the penalty alone, if this suffices for procuring the common good.[2]

But the question whether some merely penal laws are given can by no means be resolved speculatively, since they can be given here and not elsewhere. Therefore only learned and experienced persons in their own region or nation can judge concerning this.

Yet perhaps someone would not undeservedly contend that today in most regions all civil laws are merely penal, and therefore that their violation is done generally without sin, unless by violating them you at the same time violate divine or ecclesiastical law; for this is the most sad condition of our age almost everywhere among nations, that legislative assemblies, as such, not only do not care about binding conscience, but, worse than pagans, do not even acknowledge God, the author of every obligation, and establish all authority of making laws in the sum of number.[1]

Nor should you say: 1) that law obliges in conscience by its own force, for this is false; for just now with St. Alphonsus[2] we said that it has no force except from the will of the legislator.

2. That the common good demands that it oblige in conscience. For where the common good demands this, by violating it you will at the same time violate the divine natural law forbidding you to harm the common good; therefore I added: "unless by violating them," etc.

3. That this principle is subversive of the social order; for I do not approve it when I mention it, or I do not praise the legislator acting in this way, but from the fact of the legislator not binding conscience, I conclude that it is not bound. Cf. Acta.[3] (J) p. 484.

Notes to n. 178. (1) Vol. I, 473, p. 516. 517 b). (2) L. I, 145. Appendix annotation (3), to n. 178. p. 81. col. 2. Therefore civil law obliges in conscience even in a case in which by the will of the legislator it is reputed merely penal: 1°. "If the rights of citizens among themselves are defined by law, which otherwise would be uncertain" [for example, many of those things which occur between neighbors (n. 685)], "Blackstone holds ... that conscience is bound." Kenrick, Tr. VI. 20. 2°. If "it prohibits things which are evil in themselves, or commands that those things be observed which are prescribed by divine law; ... since from a higher law, whether natural, or divine" positive, "the obligation is derived, which is fortified by the added civil sanction." Kenrick, l. c. Concerning other civil laws undoubtedly obliging in conscience, treatment will be made in its own place. To this belongs the distinction between natural and civil obligation. Civil obligation is called that which

rests on mere civil law, and it can be called civil obligation, provided that by this name the bond of conscience is not excluded, supposing that the legislator wished to bind conscience; for example, the obligation of the owner toward the owner of a neighboring estate, insofar as it exists not from the nature of the thing itself, for instance from the position of the estate, nor from agreement, but from law alone (n. 681. 1°). An obligation is called natural and civil when civil law protects the obligation of natural law, for example by establishing penalties against bigamy, or by attributing an action, that is, the faculty of imploring the office of a judge, to one having a right against another, for example from a note. It can also happen that civil law does not at all care for some natural obligation, for example of paying legal interest, by attributing to the creditor no action against the debtor after some years: this obligation then is called merely natural. That can be named merely civil obligation which is imposed by civil law giving a right or complaint against the prescriptions of divine law, whether natural or positive; for example, the right of petitioning for divorce, or a complaint against the legitimate owner of some thing granted to the possessor of this thing whose bad faith, although truly such, cannot be proved in a legal manner. Civil laws of this kind not only do not bind conscience, but are opposed to the obligation of conscience. Marres, p. 14. n. 11. Here, with Marres, p. 13. n. 10, we note that very often civil law attributes to some party the faculty of petitioning for certain things by juridical action, for example the rescission of a testament invalid by civil law, but not by natural law, without nevertheless intending to oblige the other party, whom a testament of this kind favors, to furnish the same things, to renounce the inheritance, before the sentence of a judge.

179. Questions. - Quaer. 1° How many kinds of penalty are there, - and does a law decreeing a penalty oblige in conscience to undergoing it before sentence?

Resp. to the 1st. 1) One is active, which cannot be given to execution without some act of ours or of another, as imprisonment; another privative, which consists in the mere privation of some thing, as suspension. This again is either conditional,[4] taking something away from someone when the condition [or sometimes the mode (n. 868)] under which it had been conceded has not been observed, or inhabilitating, which takes away the capacity, whether canonical, or civil, or natural, of doing, acquiring, contracting.

2. One is latae sententiae, which is incurred by the fact itself, as the Schools speak, that is, by the perpetration of the crime alone, through the words of the law; another ferendae sententiae, which the law does not inflict, but decrees is to be inflicted by the sentence of a judge.
3. One is not incurred except through a condemnatory sentence of the judge; another not except through a declaratory sentence, namely of the crime; for by it the judge declares that someone has fallen into that crime, on account of which a penalty already established by law is incurred by the fact itself.

Resp. to the 2nd. 1° Negatively, if it is ferendae sententiae, as is plain of itself. 2° If latae sententiae, a distinction must be made. - Negatively, if it is active, and this although in the law it is said: no declaration (of the crime committed) having followed;[1] for this would be too difficult. Make exception if it is either lighter, or is not accustomed to be imposed by the office of a judge, as prayers. - Affirmatively, if it is privative, unless it either deprives of a right acquired, as of an office, or cannot be undergone without infamy. Yet censures, irregularities, and those penalties (for example, that of which we shall treat at n. 1589. III), which by their nature are regularly not imposed by the office of a judge, do not need a declaratory sentence (at least if someone can execute them upon himself without infamy), lest, namely, the law seem useless. No one is held to undergo a temporal penalty which civil law, whether mixed or merely penal, establishes against transgressors, for example, a fine, unless, after the sentence of the judge has been made known to him, it has been demanded.

Notes to n. 179. (1) Syll. prop. 60, p. xlv. (2) L. I, 147. (3) T. VII, p. 219, 220, and Collect. p. 632, n. 1186. (4) It is also called conventional.

180. Quaer. 2° Does ignorance excuse from a penalty brought by law?

Resp. 1° Affirmatively, for the internal forum, if ignorance excuses from fault; but in the external forum it does not excuse, because law is presumed not to be ignored, Reg. Jur. 13 in 6°.

Resp. 2° Negatively, if ignorance does not excuse from fault or is concerned with the penalty alone.[2] For natural reason itself dictates that evil is to be punished according to its nature.

Make exception: 1) if the penalty is disproportionate, namely most grave, exceeding the merit of the crime; 2) if the penalty is some ecclesiastical censure, which he who is not grossly ignorant of it does not incur;[3] 3) if the superior requires knowledge, contumacy, audacity, or temerity for contracting the penalty. For then affected ignorance indeed does not excuse, which in law is equated with knowledge; but gross and supine ignorance nevertheless does.[4] See however n. 1664, q. 3°, compared with n. 1704, q. 7°, R. 2°.

Notes to n. 180. (1) C. Cum secundum, 19, de haeret. in 6°. (2) L. I, 169. (3) Ex c. 2, de Const. in 6°. (4) L. I, 169, and L. VII, 47. 48.

ARTICLE II: ON IRRITATING LAW

181. ○ An irritating law is that which establishes that some act is invalid from the beginning, or is to be invalidated by the sentence of a judge. Hence some laws irritate by the fact itself, but others only after sentence. Some are irritating absolutely, others conditionally, namely if the required conditions are lacking. Moreover some immediately irritate the act itself, as the impediment of marriage on account of clandestinity; others mediately, by rendering the persons themselves incapable, as the impediment of consanguinity.

Principles. - I. Every legislator can establish irritating laws; the reason is that this is required for the common good; otherwise frauds and dangers of human society could not be sufficiently driven away.

II. Laws which establish that acts can be rescinded do not irritate them before the sentence of a judge, as is plain from the terms, and therefore before the same sentence they do not obtain force.

III. But the sentence of a judge irritating must be stood by in all those things which are intrinsically born from irritation, because obedience must be given to the authority commanding.

182. Questions. - Quaer. 1° Does an irritating law oblige in conscience to avoiding the act?

Resp. Affirmatively, if it is at the same time irritating and prohibiting, as are laws establishing impediments of marriage; otherwise, if it is only irritating, because then the end of the law is sufficiently obtained by the irritation of the act alone, as in many civil contracts.

Quaer. 2° Does invincible ignorance impede the effect of irritation?

Resp. Negatively of itself, because ignorance does not supply the defect of a thing essentially required, nor does it remove the grave inconveniences which would follow if the law did not irritate

in every case. Thus a woman violated by an unknown man invalidly marries his brother, notwithstanding invincible ignorance of the impediment of affinity.

Make exception, however, if the law irritates solely for the penalty and odium of the offense; because then it intends to punish malice alone, and therefore, when the cause ceases, the effect also ought to cease.

Quaer. 3° Does an irritating law irritate notwithstanding very grave inconvenience?

Resp. Affirmatively, unless there is question of common damage; the reason is that an irritating law affects the act rather than the person, nor is there question of an obligation of conscience, but of the common good; otherwise men would more easily feign inconveniences for themselves, and the law would lose all its force. Hence a marriage contracted with a blood relative, even from fear of death, without dispensation, would not be valid.

CHAPTER IV: ON UNWRITTEN LAW, OR ON CUSTOM

183. Definition. - Custom is of one kind in fact, and is defined: "The frequency of similar acts of some community." Another is of law, and can be defined: "Right acquired through the frequency of similar acts of some community."

It is said: 1° Frequency, because acts must have been repeated several times according to the judgment of prudent persons.[1]

It is said: 2° Of some community; yet not of just any community, but one which is capable of legislative power for itself, or at least sufficient that a true law can be imposed upon it.

Notes to n. 183. (1) L. I, 107.

184. Division. - Custom 1° is one kind according to law, which either interprets a doubtful law, or confirms a certain law and helps by bringing it into execution. Another is beyond law, which establishes something where law is lacking. Another is against law, which abrogates a law, or does not allow it to oblige when it has not yet been accepted.

2° Into most general, which has force in the whole Christian world; general, which has force in an entire province; and special, which has force only in some city, district, etc.

3° Not indeed a custom of law (since an evil custom cannot make law), - but a custom of fact is divided into good and evil, or rational and irrational. It can happen in two ways that a custom is evil: intrinsically, indeed, when it is against natural or divine law; but extrinsically, when its acts are prohibited by law, or are evil because of an adjoined depraved circumstance which can cease.

A custom evil intrinsically is called an abuse or corruption, and can never pass into law; one evil extrinsically can become good by the removal either of the prohibition, or of the adjoined depraved circumstance.

4° Into a custom not repudiated by law, and a custom abrogated, prohibited, and reprobated by law; which three things are not to be confused. For when a law abrogates a custom, the custom existing before the law is abrogated, but it is not for that reason declared evil or irrational. But when it prohibits, it prohibits also a custom to be introduced in the future, which nevertheless is not for that reason declared evil or irrational. Finally, when the law reprobates, by that very fact the custom is declared evil and irrational.

The clause non obstante quacumque consuetudine is judged abrogating. But the following is prohibiting: We do not will that any custom against this law have force. Finally, the following clauses must be held as reprobating: utterly disapproving that custom; since it must deservedly be judged not so much a custom as a corruption.

185. ◦ Conditions, so that custom may have the force of law, are required, some on the part of the Community, some on the part of the Custom itself, some on the part of the Prince.

I. On the part of the community. - Custom must be introduced by a community upon which at least true law can be imposed, - by the greater part of it, - from certain knowledge, - through public and free acts, not elicited from force or fear, - with the intention of binding itself, if there is question of a custom beyond law, - and with acts not interrupted before the constitution of the custom.

It is said: 1° By a community upon which at least, etc., as we have already said above at n. 183. 2°.

It is said: 2° By the greater part of it; because obligation is introduced by the community, with the prince consenting; but it would not truly be introduced by the community if only the lesser part observed the custom.

It is said: 3° From certain knowledge. Authors commonly require that condition, because the prince does not intend to acquiesce in a custom unless the community wills either to exempt itself from a law, or to impose a law upon itself; but neither can happen where there is error on the part of the community, falsely thinking either that the law against which it acts is not present, or that it is held to a law which it imposes upon itself through custom.

It is said: 4° Through public acts: so that all of the people, or the greater part, can agree in giving consent, and such a custom can be known to the Prince; and therefore the acts ought to be public, at least by notoriety of fact.[1]

It is said: 5° Through free acts, etc. Because otherwise the superior is not judged to consent; for he cannot be presumed to will subjects to be compelled by unjust fear to impose upon themselves obligations to which they are not held, or to exempt themselves from obligations by which they are justly bound.

It is said: 6° With the intention of binding itself, etc. For if the people act from mere devotion, the custom will not have the force of law: as, for example, the custom of receiving ashes at the beginning of Lent, etc. - In doubt whether the custom was introduced from mere devotion, or also from the will of binding itself, it must be presumed that it was rather from devotion; likewise in doubt whether under grave or light obligation, whether unto fault or unto penalty, the more benign part is to be held. The mind of binding itself is known from circumstances, namely if the custom is constantly observed and with no slight inconvenience, for example, the custom of fasting on the vigil of Pentecost; if transgressors are punished, etc.[2]

It is said: 7° And . . . not interrupted. The opinion is common: because otherwise the custom would not have been legitimately prescribed.

But a custom that has been interrupted, even by one contrary act, posited by the people from certain knowledge, - or by punishment inflicted by the superior, - must be begun anew.

But if it has already been completed and confirmed, it is not revoked by one act of the people acting against it, at least if the custom was beyond law. But if it was against law, see below what is to be said concerning the abrogation of custom by a contrary custom.

II. On the part of the custom itself. - Custom ought to be good and rational.[3] - The reason is that the object of law ought to be good and useful to the community, which it would not be if the custom were not rational or good.

Moreover a custom must be held good and rational when its object is such that it could have been the object of a just law. Hence it ought not to be opposed to natural or divine right, nor to be reprobated by canon law, nor to furnish license or occasion of sinning, nor to be harmful to the common utility, nor to break the nerve of ecclesiastical discipline.

Hence a custom would not have force, 1° of observing no interdicts or excommunications, or of not subjecting oneself to the visitation of the Bishop; because in this way the nerve of ecclesiastical discipline would be broken.[1]

2° Of not accepting decrees of the Supreme Pontiff unless they have first been approved by the Bishops, even in a case in which the Supreme Pontiff prescribes otherwise; because such a custom breaks the nerve of ecclesiastical discipline, and is opposed to the ordinance established by Christ.

3° That Legates of the Holy See not be received, because it is against ecclesiastical liberty.[2]

III. On the part of the prince. - On this part it is required that the Supreme Pontiff consent, if there is question of the common laws of the Church: for custom is law; therefore it ought to flow from the same source as laws; and therefore from the Supreme Pontiff, when there is question of the common laws of the Church.

The Supreme Pontiff can consent in a threefold way: expressly, tacitly, and legally.

1° Express consent is sufficiently understood, and concerning it no difficulty can be raised.

2° Tacit consent has place when the Pontiff, seeing the custom, does not contradict it, although he could conveniently do so. For then he is deservedly presumed to consent, if the custom is rational. In the same hypothesis, if it is doubted whether the custom is rational, it can legitimately be concluded that it is rational from the fact that the Pontiff is silent. For if he judged it irrational, he would certainly contradict it, since from the hypothesis he can easily contradict it. But if the Pontiff lacks the convenience of protesting, then it cannot be concluded that he is therefore silent because he acquiesces in the custom against the law: since the reason for his silence is perhaps fear of a greater detriment arising from his protest, as, for example, of schism on the part of the people, or of persecution on the part of the civil power. In this case, therefore, custom does not prescribe against the law, since the legislator must be judged to will that his law be observed when it cannot legitimately be presumed that he consents to its abrogation. Yet then it can deservedly be presumed that the Pontiff consents that the obligation of the law be suspended until he can freely manifest his mind.

3° Legal or general consent is so called because it is furnished through that general law by which all rational and legitimately prescribed customs are approved: hence for such consent it is not required that the Pontiff know the custom.[1] - But to St. Alphonsus[2] the opinion is probable which teaches that even a custom which is against law is legitimately prescribed in ten years, and that good faith is not required for this.

Notes to n. 185 - note sequence 1. (1) Suarez, de Leg. L. 7, c. 10, n. 5. (2) L. I, 107. IV. (3) C. Cum tanto, 11, de Consuetud. Notes to n. 185 - note sequence 2. (1) C. Cum inter, 5, de Consuet., and c. Irrefragabili, 13, de Offic. Jud. Ordin. (2) Extrav. c. Super gentes, 1, de Consuet., and Brief of Pius VI, Super Nuntiaturis.

186. Force of custom. - 1° It interprets law, and indeed authentically, if it has been legitimately prescribed; otherwise only conjecturally.

2° It introduces law.

3° It abrogates law. But it can abrogate it either totally, or only as to the penalty; indeed only as to the obligation, while the penalty remains, provided the penalty does not necessarily suppose fault, such as, for example, a censure would be.

4° It irritates acts done to the contrary.[3]

But whether custom can abrogate a law which prohibits a custom to be introduced in the future? The question is controverted, as will soon be seen.

187. Abrogation of custom. - It can happen either by a supervening law; or by an earlier law by which a custom is prohibited before it has arisen; or by a contrary custom.

1° By a supervening law. A later universal law necessarily abrogates the universal custom of the Church contrary to itself, even if it is immemorial and although it makes no mention of it: otherwise, as is plain, the law would be rendered useless.[4]

For particular customs which are not immemorial, or centenary, derogation is sufficiently made by the general clause: no custom standing in the way; for that clause is not required in order that the general customs of the Church be abolished; therefore it would be useless if it did not derogate local customs. This is the common opinion.

Yet Bishops, says St. Alphonsus,[1] through their laws "abrogate any particular custom whatsoever; because they are presumed to have full knowledge of the customs of their dioceses."

For the abrogation of particular immemorial customs, special mention is required, for example, by the clause: even immemorial. The reason is that a custom of this kind is in the manner of a title, indeed, as Fagnanus says, than which no better title can be alleged in the whole world; and it always has the force of a privilege conceded by the prince. Thus commonly against some. Make exception 1° if the law declared contrary customs irrational; 2° if the reason of the law militates equally against immemorial customs and against others; 3° if the legislator abrogates all contrary things, excepting one case.

2° By an earlier law, by which a custom is prohibited before it has arisen. It is disputed whether a custom can prevail against such a prohibiting law. The 1st opinion denies it, because otherwise a prohibiting clause of this kind would have been added uselessly; the 2nd opinion affirms it, because from cap. Cum tanto,[2] for a legitimate custom it is required only that it be rational and legitimately prescribed; but from the fact that the custom has been prohibited, it is not therefore always to be reputed irrational, as we have already said above at n. 184. 4°. - To the opposite reason it is answered that the said clause is not added uselessly: both because from it in doubt it can be concluded that the custom is irrational; and because through it the prince signifies that he does not tacitly consent to a custom of this kind, although it is known by him; and therefore in this case long prescription is required, etc. - Suarez[3] and St. Alphonsus[4] embrace this latter opinion as more probable.

3° As to the abrogation of custom by another contrary custom, it is certain that it can happen, and in this case, if there is question of a custom beyond law, ten years suffice; but if there is question of a custom against law, many Doctors again require ten years, and say that that time suffices, because in this case there is a return to law, and therefore there is no acting against law.

But it seems to suffice that the greater part of the community no longer observe the custom against law, because the Pontiff must deservedly be presumed not to have consented to such a custom except with this restriction: until the people, whom I do not wish to displease, shall so desire.

188. Questions. - Quaer. 1° What concerning a custom contrary to the Tridentine decrees on Reformation?

Resp. It is disputed whether sometimes it is legitimate.[1] The following observation of the periodical pleases us: "Acta ex iis, quae apud S. Sedem," etc.[2] Not long after Trent, among Canonists the saying began to gain force: against Trent no custom is admitted. This saying, which did not have a grave foundation from the beginning, was deservedly dismissed by the Sacred Congregation of the Council. I said: it did not have a grave foundation; for that general clause was neither added to the decrees by the Tridentine Fathers, nor explicitly by some Constitution of the Roman Pontiff. Yet it was very often repeated by various authors up to our times; nevertheless this saying in the course of centuries little by little lost its truth; and in fact we now see that many customs have prevailed against Trent which are not reputed irrational, especially on account of the circumstances of places. But no one will wonder, since there is question of disciplinary laws, which of their nature admit rational customs; for they are liable to change. Nor does it matter if perhaps they carry before themselves the clause: any contrary custom in the future excluded; the force of this clause can be no other than to render the custom contrary to the new law more difficult, and to stir up the particular vigilance of authority, lest an adverse custom prevail. But we have solemn examples in the Decretals themselves concerning this change introduced through customs. Cf. L. V, 15, § Ita respectu.

Notes to nn. 188-189 - note sequence 1. (1) L. I, 109. (2) Decr. L. 1, T. IV, c. 11. (3) De Leg. L. 7, c. 19, n. 20. 21. (4) L. I, 108. Notes to nn. 188-189 - note sequence 2. (1) Bouix, de Principiis, p. 381 et seq. (2) Craisson, Elem. Jur. Can. n. 109. (4) T. IV, p. 142.

189. ○ Quaer. 2° What concerning the customs of this region?

Resp. "To ecclesiastical laws," says Kenrick,[4] "in this region many things are accustomed to be done by no means consonant, and we scarcely dare to say whether they have attained the force of custom. But it is probable that many things have arisen from Pontifical indult, or from faculties conceded to Bishops, necessity also compelling; and therefore they seem able to be retained until it shall seem otherwise to Prelates or to the Apostolic See. . . . But in very many other things there is that discrepancy of morals which removes, or weakens, custom: and therefore, although we do not condemn those who follow received usages, until the authority of Prelates shall have abolished them, nevertheless we judge that they are strongly to be commended who, setting aside the contrary usages of certain provinces, insofar as the circumstances of things allow, imitate in all things the discipline of the universal Church, and especially of the Roman Church."

On custom against the Rubrics see n. 1336.

Notes to n. 189. (1) L. I, 107. (2) Ib. III, and n. 139. (3) Bouix, de Princ. p. 361. (4) C. 1, de Constit. in 6°, and Suarez, de Leg. L. 7, c. 20, n. 7. 8.

CHAPTER V: ON FAVORABLE LAW, OR ON PRIVILEGE

190. Definition. - It is a private law conceding something special against or beyond law. It is called a private law, not indeed with respect to the privileged person, upon whom no law is imposed, indeed a grace is conferred; but with respect to the community, upon which the obligation is imposed of not impeding the use of the privilege.

Notes to nn. 190-196. (1) Ib. 16. 17, where exceptions. (2) 40 years. Schmalzg., L. V, T. 33, n. 196. (3) C. 6, de Priv.

191. ○ It is divided 1° into real and personal. A real privilege is said to be one which is directly conceded to some thing, office, or condition distinct from the person, for example, to a certain altar, so that a plenary indulgence, applicable to the dead, may be obtained by the celebrant on it; likewise to a Bishop as such, or to his See or Office, or to some community. - A personal privilege is that which is immediately given to a person by reason of himself, as the privilege conceded to a certain confessor of absolving from reserved cases.

2° Into gracious and remunerative, according as it is conceded without any respect to the merits of the privileged person or of others, for example, of parents, or on account of them.

3° Into conventional and pure, according as it is obtained with some agreement intervening, or with none intervening.

4° Into perpetual and temporal.

5° Into a privilege against law and beyond law, according as through it derogation is made from some law or not. Thus exemption from the jurisdiction of the Ordinary is a privilege against law.

192. Principles. - I. A privilege is acquired - either by concession of one having power, - or by legitimate custom, if concerning a community, - or by prescription, if there is question of a private person.

193. ○ II. It must be interpreted 1° so that it be neither useless nor burdensome to the privileged person; 2° authentically or doctrinally according to the norm of law (n. 141); 3° broadly or strictly, according as it is favorable or odious (n. 144. D). But a privilege is called odious if it derogates from common law, or from statutes which are not contrary to common law, or from customs, or if it yields to the detriment of others; otherwise favorable. But an odious privilege is equated with a favorable one and must be interpreted broadly if either a) it is inserted in the Body of Law; or b) it is real, for on account of its perpetuity it is judged to be inserted in the Body of Law; or c) it was conceded with the clause: from certain knowledge, or of one's own motion; or d) it is a privilege of absolving, dispensing, or communicating to others; or e) it was conceded to some order, convent, community, or for another pious cause; for privileges conceded to communities are all presumed to be remunerative of services rendered, and for that reason all are held as favorable.[2]

194. ○ III. No one of himself is held to use his own privilege; sometimes however by accident, namely if by not using it you would bring grave damage upon the common good or upon your neighbor, or if by using it you can easily remove an impediment to observing a precept. Hence Bishops, Clerics, and Regulars are held to use the privileges conceded to their state, if by not using them they would bring detriment upon their state. Likewise, having the faculty of absolving from reserved cases, you are held to absolve a sinner having reserved sins, already confessed and rightly disposed, or to hear him when placed in grave necessity. Similarly, a priest having the faculty of celebrating in any decent place whatsoever is held to celebrate outside a church if he can do so conveniently and decently, and otherwise he cannot satisfy the precept of hearing Mass.[3]

195. ○ IV. Privileged persons are held to show to local Ordinaries their privilege or a trustworthy copy of it: 1) although they have not been required, and before they can use them, if there is question of privileges with the clause: the Ordinaries of places having been informed, or of new indulgences to be published; 2) when required, yet without meanwhile being able to be interdicted from the use of the privilege, if there is question of a privilege of exemption of some religious institute, where it would not be sufficiently notorious.

196. ○ V. A privilege ceases 1° generally in the same way as delegated jurisdiction (n. 151). Yet those things do not cease by renunciation which are conceded not so much to the person as to a condition or state; hence a religious cannot renounce the privilege of exemption. - Revocation also occurs through a new law, although there is no revocatory clause, when otherwise the new law cannot obtain its effect; for the law ought not to be said to have been established uselessly. But for revocation there ordinarily suffices the general clause: notwithstanding privileges, unless they are of justice, inserted in the Body of Law, or otherwise qualified. But if the revocation is said to have been made from certain knowledge, of one's own motion, from the fullness of power, or if the mind of the legislator is certainly established, then any privilege whatsoever is revoked, except onerous ones, namely those conceded because of a price paid by the privileged person, or because of a burden imposed upon him.[1] - 2° By cessation of the final cause in the manner of dispensation (n. 164). - 3° By a condition, under which it was conceded, not having been observed. - 4° When the number of cases for which it was given has been exhausted. - 5° By non-use through a space of time sufficient for prescription,[2] if the privilege is odious, and the occasion of using it has offered itself; - because in this case there is judged to be a tacit renunciation of it. If it is not odious, it is not lost by prescription; because there is no one who has a right of moving a complaint concerning it. - We said: and the occasion of using it has offered itself; for otherwise the privilege is not lost. Thus he who has not used the privilege of drawing water from another's land into his own land, because the spring dried up, will not be able to be said to have lost the privilege.[3] - 6° By a use formally contrary to the privilege, if the privilege is odious, on account namely of presumed renunciation of the privilege; thus he who has the privilege of not paying tithes, and nevertheless knowingly and freely pays them, loses the privilege. But if it is not odious, for the contrary reason he does not lose it: thus he

who has the privilege of not fasting during the time of Lent and nevertheless fasts, does not lose his privilege; because fasting is presumed to be done only from devotion, not from the will of renouncing the privilege. - 7° By abuse; because he deserves to lose a privilege who abuses it. Yet for this there is required the sentence of a judge (because it is a penalty), unless the privilege was given under the condition of losing it by the very fact of abuse.

What has been said concerning the cessation of an odious privilege by non-use and by contrary use has force for the external forum alone. St. Alph., de Priv. n. 14.

Notes to n. 196. (1) Suarez, de Leg. L. VIII, c. VII, n. 8. (2) St. Alph., de Priv. n. 6-8. (3) Ib. n. 3.

TREATISE ON SINS

We must treat 1° of sins in general, 2° in particular.

PART FIRST: ON SINS IN GENERAL, OR ON THE NATURE, GRAVITY, AND DISTINCTION OF SINS

CHAPTER I: ON THE NATURE OF SIN

197. Definition. - Sin is: A free transgression of any law obliging in conscience.

It is said: 1) free, or it ought to be in the power of the will of the agent to posit the act or not to posit it (n. 9).

It is said: 2) of law; for where there is no law, neither is there prevarication.

It is said: 3) obliging in conscience, or one to which nothing is lacking of those things which pertain to the essence of law (n. 100).

198. Division. - It is divided into original, concerning which in speculative theology, and personal. Personal sin is committed by the proper and physical will of the sinner, and

It is subdivided into actual, which is the sinful action itself, for example, blasphemy here and now uttered, and habitual, which is the stain of the soul adhering from actual sin and deforming it until it is deleted by penance; but each is either mortal or venial, according as it dissolves friendship with God or does not dissolve it.

Actual sin is 1° of commission or omission, according as it occurs by the positing of a prohibited act, or by omission of a prescribed act.

2° Against God, neighbor, or oneself, according as it specially and immediately is repugnant to God, or is opposed to duties by which a man can be bound toward any others whatsoever, or is opposed to the obligations which each one has toward himself.

3° Of malice, or ignorance, or infirmity, according as it is committed either from mere malice, or from vincible ignorance, or from mere frailty.

4° Formal, when the law is freely and knowingly violated; material, when the transgression of the law is wholly involuntary.

199. Principles. - I. For formal sin, besides the objective malice of the act, there is required advertence of mind and consent of will. And 1° indeed advertence of mind to the malice is required, because the malice of sin cannot be the object of the will unless it is known in some way by the help of the intellect: for there is no desire for what is unknown; 2° consent is required on the part of the will; for sin is perfected by the will, according to that saying of Matthew:[1] For from the heart come forth evil thoughts, adulteries, etc.

II. For actual sin there is necessarily required either actual advertence, or a neglect of advertence voluntary either directly or indirectly. For it is repugnant that a man sin unless in some way either here and now, or in the cause, at least confusedly, he advert to the sin. For nothing is willed unless it has been foreknown.

But a directly voluntary neglect of advertence is had, for example, in him who, as St. Thomas says,[2] "studiously wills not to know some things, so that he may sin more freely"; and likewise in him who neglects to advert either altogether or sufficiently, while he adverts, at least confusedly, that he either

ought to advert, or ought not to apply that advertence which the matter to be done deserves. - But neglect of advertence will be indirectly voluntary in him who either deliberately wills to follow some passion, or does not retract a depraved habit, or, as the same St. Thomas says,[1] "on account of labor or on account of other occupations neglects to learn that through which he would be withdrawn from sin." Therefore there are imputed to fault in these also either "every depraved effect connected with such a passion," or "evil acts which proceed from an evil habit," or sins caused from that ignorance, although actually they do not advert to these while they follow, provided nevertheless they had foreseen them at least confusedly.[2] Cf. n. 5. 7.

Resolves. - 1° Vincible ignorance concerning some precept is a sin, and in a grave matter can be grave, if the negligence was notable: the reason is that every law obliges first to knowledge of itself, and therefore the precept is violated not only by an act opposed to it, but also by voluntary ignorance of it.

2° Evil acts have that malice which is apprehended. Hence if a thought occurs concerning such a malice, or one specifically such, this is truly contracted through an act of the will.

3° A sin foreseen in the cause, and then, the act having been morally interrupted, advertently committed, will be numerically twofold, namely 1° voluntary in the cause, 2° in itself.

4° If ignorance culpable in the beginning becomes invincible, the evil act is not a sin in itself, but the reason of sin must be taken from the cause alone. Moreover it will become invincible if no thought any longer occurs concerning past negligence or concerning actual ignorance, because then proximate and expedient power for dispelling the ignorance is lacking. Ignorance also becomes invincible if a doubt arising about it cannot be dispelled.

5° Those blinded and accustomed to sin, although on account of a defect of clearer knowledge then perhaps they sometimes sin less gravely in act than others, nevertheless are not excused, because a state of this kind, where there is no care of amendment, is voluntary and culpable in them.

6° A defect of sufficient advertence is only with difficulty to be admitted in those accustomed to sin and generally in those who operate according to their passions,[3] because at least confusedly they advert to the malice of sin.

Notes to n. 199 - note sequence 1. (1) 15. 19. (2) 1, 2, q. 76, a. 3. Notes to n. 199 - note sequence 2. (1) 1, 2, q. 76, a. 3. (2) L. II, 4; H. A. Tr. III, 27-31; and cf. Vind. p. 910, ad 14 and 15, Ed. 2a, T. II, p. 569. XIV. XV. (3) L. II, 4.

CHAPTER II: ON THE GRAVITY OF SIN, ESPECIALLY ON MORTAL AND VENIAL SIN

200. Definitions. - The gravity of sin is the quantity or measure of malice, by which sin is more or less offensive to God, and therefore worthy of greater or lesser punishment.

Mortal sin is a transgression of a law gravely obliging, or a grave offense against God, depriving of divine friendship and sanctifying grace, and rendering the sinner worthy of eternal punishment.

Venial sin is a slight offense against God, which neither deprives of divine friendship, nor of sanctifying grace, nor therefore excludes from eternal beatitude.

Certain sins are mortal from their whole genus, when their object or matter, whatever it may finally be, always contains grave disorder, as happens in lust, blasphemy, perjury, heresy, etc. - They are called mortal from their genus (not whole) when their matter, remaining in the same species, can be grave although it can also be light, of which kind are sins against justice. - But sins are called venial from their genus when, considering the matter or nature of the object, they do not admit grave guilt, and therefore so long as they remain within their own species, that is, another species mortal from its genus does not accede, they cannot be mortal.

201. Questions. - Quaer. 1° Whence is the greater or lesser gravity of sins to be taken?

Resp. It is to be taken generally 1° from the object, end, and circumstances, according as they are more or less repugnant to rational nature or to law; 2° from the duration of the evil act, or from its intensity; 3° from greater or lesser advertence to the malice of the act, or from the diverse degree of consent furnished to the depraved act; 4° from the excellence of the virtues or precepts to which the sins are opposed; 5° from the various modes in which virtues or laws are violated.

Quaer. 2° What is required for sin to be formally mortal?

Resp. There are required 1) grave matter either in itself, or at least in the apprehension of the intellect; - 2) full advertence to the grave malice of the act; - 3) full consent of the will in the prevarication.

And so 1° grave matter is required; for otherwise mortal sin would not be distinguished from venial by reason of the matter, since light matter of itself cannot dissolve a man from divine friendship.

2° Full advertence and full consent are also required, because, since through mortal sin a man recedes totally from God in order to adhere to creatures, this cannot happen unless the sinner deliberately prefers the object of sin to God, and so constitutes his ultimate end in a creature. Moreover, it is altogether foreign to divine goodness to hand a man over to eternal damnation either because of a light transgression, or because of an act not perfectly free and voluntary. - Thus all.[1]

Moreover advertence is judged full and sufficient if an explicit, or at least implicit, thought of mortal malice precedes the consent or sinful act. And this indeed can happen even in a single instant through a simple judgment concerning the malice, without the mind reflecting several times upon

itself by a special act; yet true and full deliberation of the mind, and full adhesion to the depraved object, are always required.

Quaer. 3° What is required for venial sin?

Resp. For venial sin there are required and suffice some advertence, however slight, to the malice of the act, and some consent of the will, however imperfect: these indeed are required, because if these are removed there can be no knowledge and volition of evil, and therefore no sin; but they suffice because, these being posited, knowledge and volition of evil, which are necessary for constituting sin, are had in some way.

Notes to nn. 201-206. (1) L. II, 52. (2) L. VI, 476.

202. ○ Quaer. 4° How can sins be known as mortal by reason of matter?

Resp. A threefold rule is assigned.

First Rule. - Recourse must be had to Sacred Scripture. For what things are grave or what are light are to be weighed not by human but by divine judgment, says St. Augustine.[2] Moreover those things must be judged mortal which in Sacred Scripture are declared worthy of death, or to exclude from the kingdom of heaven; or which are announced with the particle: woe, which surely denotes truly grave deformity. Thus the Apostle[3] says concerning the works of the flesh: Which are fornication, uncleanness, immodesty, luxury . . . I foretell to you, as I have foretold, that those who do such things shall not obtain the kingdom of God. - Recall also the long series of mortal sins which the Apostle enumerates.[1]

Second Rule. - Recourse must be had to the Church, or to the definitions of the Supreme Pontiffs, to the Decrees of General Councils, etc., in which many things are declared mortal, or only venial. For the Church is the pillar of truth, and therefore from her doctrine the rule and measure of morals must be taken.

Third Rule. - Recourse must be had to the Holy Fathers, to the Doctors of the Church, and also to the common doctrine of Theologians. For the Holy Fathers and Doctors were placed by God in the midst of the Church as burning lamps for driving away the darkness of error, and for illuminating the faithful in the way of truth. But Theologians know better than others how to interpret the testimonies of Scripture and the Fathers and the Decrees of the Church, and to compare cases not defined with defined cases, things not declared with things declared, and to deduce fitting conclusions from parity or similarity. Therefore those things which are held by them unanimously as mortal must be judged as such; for the consensus of the Doctors is an indication of truth.

Notes to n. 202. (1) L. II, 5. 6. 53. (2) Ench. c. 78. (3) Gal. 5. 19-21.

203. ○ When the preceding rules are lacking, it is very difficult to determine when sin is grave or light. But generally the following are judged grave:

1° All sins which are directly against God, or some perfection of his. Likewise all sins which turn to the grave prejudice of the human race, as are the various species of lust.

2° All sins which are gravely repugnant to an end of great moment intended by law, as the omission of fasting, Mass, annual Confession, Paschal Communion, etc.

3° All sins by which one's neighbor is gravely injured in the goods of life, reputation, fortune, etc., as homicide, detraction very harmful to one's neighbor, notable theft, etc.

Moreover the limits between mortal and venial sin can very often in no way be determined, as is established from innumerable controversies of the Doctors on this matter. But mortal sin must not be asserted unless it is certainly established, as St. Alphonsus rightly notes.[2]

Notes to n. 203. (1) I Cor. 6. 9. 10. (2) L. I, 89; L. VI, 604. 605.

204. ○ Quaer. 5° How does sin mortal from its genus become venial, and vice versa?

Resp. 1° Sin mortal from its genus can become venial in four ways, namely by reason 1° of smallness of matter; - 2° of imperfect advertence; - 3° of imperfect consent; - 4° of erroneous conscience. - Thus St. Thomas[1] and St. Alphonsus.[2]

Resp. 2° But sin venial from its genus can become mortal 1° by reason of erroneous conscience; - 2° by reason of scandal; - 3° by reason of a depraved end gravely evil; - 4° by reason of formal contempt of law, or of the authority commanding; 5° by reason of a depraved affection for a thing otherwise lightly evil, so that someone is prepared even to transgress a gravely obliging precept; - 6° by reason of danger or proximate occasion of falling into mortal sin. - Thus all.

205. ○ Quaer. 6° Does he sin gravely who PROPOSES to commit all venial sins, and to avoid only mortal sins?

Resp. Negatively, more probably, speaking of itself, because such a proposal of itself conduces only remotely to mortal sin. I said: speaking of itself, or excluding contempt and proximate danger of falling into mortal sin, with account had of past experience.[3]

Quaer. 7° Is it a grave sin to expose oneself without cause to danger of falling probably into mortal sin?

Resp. Affirmatively, as is plain of itself. See what was said at n. 87. I.

206. ○ Quaer. 8° Does he sin gravely who without sufficient cause posits an action from which he will suffer base motions?

Resp. He does not sin gravely if 1) the action is not of itself and gravely influencing toward depraved effects; 2) he does not intend them; 3) proximate danger of consenting in depraved delight is absent (n. 8).

Quaer. 9° Does he sin gravely who deliberates about furnishing consent to a gravely illicit thing, if finally he does not consent?

Resp. The solution of the question depends on the quality of the deliberation. For if this is imperfect, namely if it is only a certain hesitation, or an omission of resistance from torpor, sloth, or negligence, the sin will not exceed venial. - Lacroix. But if the deliberation is full, it will be mortal sin, because the will shows itself prepared to place God after sin. - Lacroix.[5]

Quaer. 10° Can venial sins multiplied effect a mortal sin?

Resp. Distinguish. Negatively of themselves, or by force of multiplication, because the individual sins remain in an inferior theological species; Affirmatively by reason of the coalescing matter, as, for example, in theft.

Notes to n. 206. (1) 1, 2, q. 88, a. 1. 2. 6. (2) L. II, 54-56. (3) L. V, 12. (5) n. 229.

207. Resolves. - In formal sins you will discern venial from mortal:

1° From the gravity of matter [n. 201, q. 2°. 1)]; from the degree of advertence; from the nature of the act, insofar as, if full advertence is present, perfect consent is never lacking in sins of commission of work or speech; but it can be lacking in sins of heart or of omission.

2° Where it is not clear that some sin is mortal, the confessor ought not to be hasty in judging that it is in fact grave both objectively and subjectively, because in doubt one must stand for the smallest part, or at least the matter is to be left to divine judgment.[1] Cf. n. 695, R. 2°.

3° In doubt concerning perfect consent you will judge in favor of the penitent, 1) if he is of a timorous conscience and habitually prepared to die rather than offend God; 2) if, adverting more fully to the temptation, he was terrified and immediately repelled it; 3) if he does not know whether, waking or sleeping, whether fully master of himself, he did or willed something evil.[2] Cf. n. 1363, q. 2°.

The confessor does not satisfy his office if he applies no care to remove the penitent from the frequency of venial sins, especially of those which are committed with full advertence. For he who strives not at all to avoid venial sins usually gradually falls at last into some mortal sin. (A) p. 485.

Appendix annotation (4), to n. 207. p. 92. col. 2. It is pleasing here to add certain things concerning the causes and effects of sins. 1°. God cannot be the author of sin, since sin is adverse to Him. It is of faith. Trent, Sess. 6, Can. 6. 2°. The immediate cause of sin is the human will. The mediate causes are either extrinsic, namely the devil (1 Pet. V. 8) and the world, that is, perverse men who try to draw one another and the just to evil, both by word and example and by force and fear; or intrinsic, namely ignorance, that is, lack of consideration concerning motives which could avert a man from sin, such as concerning the baseness and penalties of sin, etc. (Jer. XII. 11), and concupiscence, which is threefold: of the flesh, of the eyes, and pride of life, that is, the inordinate appetite of things which delight the flesh, of riches, and of honors. 3°. The effects of sin are stain, the privation of the brightness of the soul, and indeed total from mortal sin, partial from venial; and the liability of punishment. One sin per se cannot be the punishment of another, because sin proceeds from the free will of man; but it can be, and very often is, per accidens, insofar as God, in punishment of sin, withdraws helps, deprived of which man voluntarily falls into other sins, as happened to the gentiles, concerning whom Rom. 1. 26. 27. Likewise venial sins dispose to mortal sins.

CHAPTER III: ON THE DISTINCTION OF SINS

We must treat 1° of specific distinction; 2° of numerical distinction.

ARTICLE I: ON SPECIFIC DISTINCTION

208. Preliminary Note. - Formal sins, of whatever kind they are, all agree in this, that they contain moral malice or repugnance with the eternal law of God. Nevertheless, since the eternal law of God, although one in itself, by order to the rectitudes which it demands and which are specifically distinct, is equivalently diverse and multiple (equivalently, namely, it is one thing insofar as it demands the rectitude of justice, another insofar as it requires the rectitude of charity, religion, etc.); hence also malice, or repugnance with the eternal law, by order to the same specifically distinct rectitudes, becomes wholly diverse and multiple (plainly, for example, the malice of theft will be one thing and the malice of blasphemy another, since theft is repugnant to the eternal law insofar as this demands the rectitude of justice, but blasphemy insofar as it requires the rectitude of religion); and therefore formal sins themselves too can differ altogether among themselves, and in fact do differ, according to the difference or diversity of moral malice contained in them.

From this understand how deservedly in Moral Theology there is treatment of the specific distinction of sins; and this all the more because, from the Council of Trent,[1] there is a strict obligation of divine law to expose, in Sacramental Confession, all mortal sins committed after Baptism according to species and circumstances changing the species.

With this premised, concerning the specific distinction of sins let there be a threefold question. And so:

209. ○ Quaer. 1° What sins differ among themselves in species?

Resp. Those sins differ in species which from the object, circumstances, or end of the one operating have malice or repugnance with the eternal law specifically diverse.

It is said: 1° which from the object, circumstances, or end of the one operating; because these three constitute the principles of morality, that is, the sources from which human acts take their goodness or malice, and the specific diversity of the same goodness or malice; as will be explained more broadly in the following number.

It is said: 2° specifically diverse repugnance; because repugnance diverse only in this sense, that it is notably greater or lesser, does not render sins distinct in species, as St. Thomas expressly teaches:[2] "more and less do not diversify species. . . . Hence to take another's thing in great or in small quantity does not diversify the species of sin. . . . Just as that which differs in whiteness according to more and less does not differ according to the species of color." - Indeed, greater repugnance, where it transfers sin from venial to mortal, is said to cause a theological or demeritory species, namely insofar as venial sin does not merit privation of grace and glory, as does mortal sin; but, a theological difference of this kind, which is taken according to guilt, as the Angelic Doctor observes,[1] cannot be a difference

constituting diversity of moral species, about which we are treating here; for guilt, or penalty, as an effect follows fault, already constituted in its moral species.

Note. - Therefore, in order to know the specific distinction of sins, it is necessary accurately to know their specific repugnance with the eternal law. But since that repugnance, in so multiple a variety of sins, not rarely lies hidden rather obscurely, hence of itself:

Notes to n. 209 - note sequence 1. (1) Sess. 14, de Poenitentia, c. 5 and can. 7. (2) 1, 2, q. 18, a. 11. Notes to n. 209 - note sequence 2. (1) 1, 2, q. 72, a. 5.

210. ○ Quaer. 2° Whence can specifically diverse repugnance be discerned, and consequently the specific distinction of sins in particular?

Resp. For the solution of this question we assign four rules, commonly received by Theologians, and to each of them we add certain practical resolutions.

First Rule. - Sins which are repugnant to diverse virtues are distinguished in species; for just as any virtue has special and proper goodness, so also the sin repugnant to it has special and proper malice.

Resolves. - Therefore the following are distinguished in species: heresy, despair, hatred of God, perjury, fornication, theft, lying, etc.; because these sins are repugnant to diverse virtues, namely heresy to faith, despair to hope, hatred of God to charity, perjury to religion, fornication to chastity, theft to justice, lying to veracity.

211. Second Rule. - Sins which are repugnant indeed to the same virtue, but in a contrary mode, namely one by excess and the other by defect, are distinguished in species; for contrariety, as St. Thomas notes from the Philosopher,[2] "is a difference according to form," and therefore "contraries differ according to species." Nor does it matter that contraries are opposed to the same virtue, which is in the middle between them; for virtue has some likeness to one of the extremes, as between fortitude and daring, between prodigality and liberality; but between the extreme vices there is every kind of unlikeness.

Resolves. - Therefore the following are distinguished in species: despair and presumption, which are indeed repugnant to the same virtue of hope, but in a contrary mode, namely despair by defect, presumption by excess; likewise avarice and prodigality, which are opposed to the same virtue of liberality, but prodigality by excess, avarice by defect; similarly flattery and excessive harshness, of which the first by excess, the other by defect, departs from the same virtue of affability; - likewise sloth in learning due knowledge, which by defect, and excessive curiosity, which by excess, is repugnant to the same virtue of studiousness.

212. Third Rule. - Sins which are repugnant indeed to the same virtue and even in the same mode, for example by defect, but under a diverse respect, that is, according to various specifically distinct goods which are contained under the same virtue, are distinguished in species; for one and the same virtue, respectively to the diverse goods which it contains under itself, can have diverse rectitudes, and so, for example, one and the same virtue of justice obtains a wholly diverse rectitude according as it protects goods of fortune, or goods of reputation, or goods of life, etc.; since these goods themselves are specifically diverse in moral estimation. Therefore

sins also, although opposed to the same virtue in the same mode, nevertheless respectively to the diverse rectitudes of this virtue can have diverse malices.

Resolves. - a) Therefore the following are distinguished in species: theft, rapine, detraction, contumely, homicide, all of which indeed in the same mode are repugnant to the same virtue of justice, but under a diverse reason; theft namely insofar as that virtue protects goods of fortune; rapine, insofar as it protects goods or inviolability of the person; detraction, insofar as it protects the good of reputation; contumely, insofar as it protects the good of honor; homicide, insofar as it protects the good of life. - b) Likewise local, real, and personal sacrilege differ in species, although they are opposed to the same virtue of religion in the same mode; for a sacred thing, a sacred person, and a sacred place are goods specifically diverse in moral estimation. - c) Thus also violation of ecclesiastical fasting by the eating of meat is distinguished in species from violation of the same fast by multiple refection; because the former violation is repugnant to the virtue of temperance insofar as it moderates the quality of food; but the latter, insofar as it moderates the quantity of food. - Finally from the third rule it can still be deduced that sins of commission and sins of omission are indeed not always, but for the most part, distinct in species, although they depart from the same virtue in the same mode; for ordinarily they injure diverse goods or offices of the same virtue. And so heresy (a sin of commission) and omission of a prescribed act of faith (a sin of omission) differ in species; despair and omission of an act of hope; hatred of God and omission of an act of charity.

Note. - When the diversity of goods of some virtue is sufficient so that by reason of this sins are judged distinct in species, must be sought both from the nature of the individual goods and from the common judgment of Theologians.

213. Fourth Rule. - Sins which are repugnant to several laws made from a diverse formal motive are distinguished in species; for since laws made from a diverse formal motive have for their end a diverse honesty of virtue, therefore the sins opposed to them have diverse malice in species. - Yet where sins are repugnant indeed to several laws, but laws made from the same formal motive, they are not distinguished in species; for several laws made from the same formal motive, and therefore diverse only from the number of legislators, according to common estimation morally constitute only one law.

Resolves. - a) Therefore one omitting Mass on a feast day which is also Sunday does not for that reason commit two sins distinct in species; because the hearing of Mass is prescribed by each law from the same formal motive of religion. The same must be said of one not fasting on some vigil which falls on a day of the Ember Days of Lent; because that threefold law of fasting was again made from the same formal motive of temperance. Likewise one must establish this concerning him who violates a vow or oath repeated several times; or even concerning him who commits homicide or theft, although each of these is repugnant to several laws, namely to the law of nature, to positive divine law, to ecclesiastical law, and to civil law; for these diverse laws prohibit homicide or theft from the same formal motive of justice, and therefore they are morally judged as one law.

b) On the contrary, he who on Saturday is held to fast from a vow, from the precept of the confessor, and from ecclesiastical law, if he does not fast, commits three sins distinct in species: the first against religion by force of the vow, the second against the virtue of penance by force of the precept of the

confessor, and the third against temperance by force of ecclesiastical law; for this threefold precept of the vow, the confessor, and the Church was made from the diverse formal motive of the said virtues.

Note. - To discern rightly whether laws, several in number, were made from the same or from a diverse formal motive, before all else one must inquire what is proximately and immediately intended by the author of the individual laws; for that very thing is the formal motive - the form or soul - of the law. Thus, indeed, laws several in number are only numerically or formally diverse, according as the same or diverse honesty of virtue was proximately and immediately intended by their author. But of itself it is licit to presume (unless something else is established from the context of the law, circumstances, or interpretation) that the legislator proximately and immediately intends that very thing which is called the intrinsic motive of the law, or the end of the work, that is, that very thing to which the matter of the law, with attention to the circumstances, tends of its own nature; just as, for example, a fast imposed by the confessor after sins have been heard, with attention to this circumstance, by its own nature pertains to the virtue of penance; a natural fast before Holy Communion to the virtue of religion; an ecclesiastical fast to the virtue of temperance. . . . Hence the intrinsic motive of the law, or the end of the work, of itself is judged to coincide with the formal motive of the law. And therefore, if some other motive is added to the law which is called extrinsic, or the extrinsic end of the one operating, for example, if the legislator expresses that he was also moved to make the law from the motive of another honesty, to which namely the matter of the law can indeed be referred in some way, but nevertheless does not tend of its own nature; that extrinsic motive is judged secondary and remote only, but not immediate and formal, provided that from the context of the law, etc., the contrary is not established. Let the example here be the law of fasting of Ember Days, and the law of fasting on the vigil of the Assumption of the Blessed Virgin Mary. Each law has the same intrinsic motive (namely the honesty of temperance), and therefore the same formal motive; for although the Church was also moved to make the first law from the extrinsic motive of obtaining worthy Ministers from God, and to make the other from the extrinsic motive of honoring the Blessed Virgin Mary, nevertheless we rightly judge that the same formal motive remains for each law; because those extrinsic motives of themselves are only secondary and remote, nor has the Church anywhere signified that she prescribed the aforesaid fasts immediately and proximately from those motives, or wills them to be observed from them.

Note. - Nevertheless transgressors of such laws can by accident contract a new specific malice by reason of scandal or by reason of a depraved end or affection, for example, if they violate them from contempt of their extrinsic motive, of the priesthood, of the Blessed Virgin Mary, etc., from grave acedia, etc. The same should be observed in the resolutions of the following number.

214. ○ But as regards precepts strictly so called (cf. n. 97. 98), namely: precepts which parents impose on children, or masters on their domestics; all these are regularly judged to be imposed not from a diverse, but from the same formal motive of obedience, although their matters of themselves regard diverse virtues, for instance: if a parent prescribes for a son attendance at school, prayer, hearing Mass, etc. Hence children, by transgressing the precepts of parents, indeed sin several times against obedience; but of themselves they do not commit sins distinct in species, and therefore of themselves they also are not held in Confession to declare in precisely what matter they were disobedient to parents. - The same ordinarily seems to have to be judged concerning the ordinances of

Regular Superiors, who, according to Reuter,[1] are not accustomed to command religious subject to themselves except from the same formal motive of obedience. Likewise you will regularly resolve the same concerning vows, which are as it were particular precepts imposed on oneself by the one vowing from the same formal motive of religion, so that one breaking two vows, for example, one of fasting and the other of praying the rosary, would not commit sins distinct in species, and therefore in Confession would satisfy by saying: "twice I broke a vow in grave matter." Make exception for a vow of observing a law.

Notes to n. 214. (1) Tom. I, n. 346. Notes to nn. 214-215. (2) 1, 2, q. 72, a. 8.

215. ○ Quaer. 3° Can several sins distinct in species be found in one and the same act?

Resp. Since one and the same act physically, both from the object and from circumstances and the end of the one operating, can be repugnant to diverse virtues, or to the same virtue in a contrary mode or under a diverse respect, or even to several formally diverse laws; hence it is manifest of itself that in one and the same act there can be found several sins distinct in species, or several malices specifically diverse. And so, for example, the killing of a cleric in a church is a threefold sin distinct in species: one against justice, and two others against religion, namely according to the two diverse goods of this virtue which are violated: the sacred place and the sacred person. - Likewise he commits four sins distinct in species who, bound by a vow of chastity, sins with a married blood relative; because he violates four diverse virtues, namely justice, piety, religion, and chastity. Let the things handed down before in the Treatise on Human Acts be recalled here as to the individual principles of morality.

ARTICLE II: ON THE NUMERICAL DISTINCTION OF SINS

216. Preliminary Note. - The dissertation now to be undertaken on the numerical distinction of sins claims for itself no less attention than the inquiry of the preceding article on their specific distinction; since, from the Council of Trent,[1] all and each mortal sins committed after Baptism, of which memory is had after diligent examination of conscience, must be declared in Sacramental Confession, not only according to species, but also according to number. - But sins are said to be distinct according to number, or numerically distinct, if they are several in number, for example two homicides, three thefts, etc.; and hence the whole argument of the present article can be reduced to this one general question: When must sins be judged to be several in number? or, what comes to the same thing: whence must their numerical distinction be sought? Yet observe that in this question the discussion concerns only sins diverse in number alone, that is, sins of the same species which are several in number; for if the discussion concerns sins distinct in species, it is of itself clear that they are also distinct in number; for things which differ in species by that very fact are not one, but several, and therefore numerically diverse.

This being noted beforehand, concerning the numerical distinction of sins of the same species let there be three sections.

§ I. Whence The Numerical Distinction Of Sins Of The Same Species Is To Be Sought.

217. ○ According to the mind of St. Alphonsus,[2] this distinction is to be taken from a twofold root, namely 1° from the multiplicity of acts of the same species which do not coalesce into one act of sin, and 2° from the multiplicity of objects of the same species which do not coalesce into one object; and therefore, with the same Saint as guide, these two general principles can rightly be established.

Principles. - I. Several acts of the same species, which do not coalesce into one act of sin, constitute as many sins as there are acts.

II. One act, having several objects of the same species which do not coalesce into one object, contains as many sins as there are objects.

That these principles may be better understood and made accommodated to practical use, in the two following sections we shall investigate: 1° with respect to the first principle, when several acts must be judged not to coalesce into one act of sin; 2° with respect to the second principle, when several objects must be judged not to coalesce into one object.

§ II. Which Acts Do Not Coalesce Into One Act.

Notes to n. 217. (1) Sess. 14, c. 5, and can. 7. (2) L. II. 36. Notes to nn. 217-218 - note sequence 1. (1) L. II. 50. (2) L. VI. 617. Resp. I. (3) L. VI. 35. Notes to nn. 217-218 - note sequence 2. (1) L. II. 37. (2) Ib. 39. (3) Ib. 40.

218. ○ The following are judged not to coalesce: a) acts which are disparate among themselves, and b) acts between which there intervenes a moral interruption.

Point I. On Disparate Acts.

Those acts are called disparate which do not concur as means, beginnings, or complements toward the same work to be consummated in its own species. Wherefore:

1° Among themselves all acts complete in themselves, that is, consummated in their own species, are disparate.

2° Likewise preliminary acts, that is, not consummated, which are posited without the intention of arriving at the consummated act, are judged to be disparate from the consummated act, if the latter afterwards follows, with the will changed and increased.

3° Similarly acts not consummated, which indeed are posited with the intention of arriving at the consummated act, but by accident do not attain to it, are again rightly held as disparate from this act, intended to be consummated but by accident not consummated.

4° On the contrary, as often as such acts not consummated are posited with the intention of arriving at the same consummated work, and actually attain to this also, so often they are not disparate from the consummated work, but coalesce with it into one act of sin, provided nevertheless that between them there does not intervene a moral interruption, concerning which below in the second Point.

219. Resolves from 1°. - Therefore two fornications, two homicides, etc., are disparate acts, and therefore numerically two sins, because individual fornications, individual homicides, are complete acts. Hence acts of this sort, complete or consummated in their own species, must always be set forth in Sacramental Confession according to their number, even if perhaps they proceed from the same intention or from the same impulse of the will; for instance, if someone

from the same impulse of the will successively kills several persons, or from the same heat of lust fornicates several times, etc. Likewise if a priest in the state of mortal sin celebrates three Masses successively on the day of the Nativity of the Lord; for individual Celebrations, in moral estimation, are acts complete in themselves, and therefore disparate among themselves. Likewise, from the truer opinion of St. Alphonsus and one whose opposite must wholly be denied,[1] if a priest, in mortal sin, successively absolves several persons; because individual absolutions are individual Sacraments, and therefore actions disparate among themselves. Yet the same Saint thinks otherwise[2] concerning a priest who, in the state of mortal sin, in one successive course distributes Holy Communion to several persons. Indeed such a priest, in distributing the Most Holy Eucharist, according to the opinion which Alphonsus defends against Lugo, sins mortally by the sin of sacrilege, but does not commit numerically several sins, because such a distribution, made to several in one course, is judged in moral estimation to be one action, one banquet, although it consists of many guests, and therefore the individual distributions, in the case, will not be actions disparate among themselves.

220. Resolves from 2°. - Therefore obscene words, touches, kisses, etc., had with another person, without the intention of arriving at the consummated act of lust, for instance at fornication, are acts disparate from the fornication itself, if this afterwards follows because lust has been increased; and therefore kisses of this sort, etc., separately from the fornication afterwards following, must be declared in Confession. Likewise grave woundings inflicted on someone, without the will of killing him, are disparate from the killing itself, if afterwards it happens because anger has become more inflamed; and as such they must be explained in Confession. Cf. St. Alphonsus.[3]

Note. - If you ask here whether those very acts not consummated, as kisses, etc., in the first case, and woundings in the second case, are also disparate among themselves mutually, so that in Confession it is necessary to say how many times they took place? I answer affirmatively; because these acts, as is supposed, are by no means ordered from the intention of the sinner to the consummated act, but are done solely on account of their own delectation; and hence it is the common opinion of the Doctors that in Confession it must be declared how many times. - Nevertheless one exception must be admitted, namely: if these acts proceed from the same impulse, even with a certain brief interval; for then they can morally be estimated as one continued act, and therefore then it will suffice that in confession there be simply set forth what was done, for example: I acted dishonestly with another person by touches and kisses; I injured my neighbor by gravely wounding him. - The same you will rightly judge concerning locutions which, while remaining in the same matter and person, are uttered several times in one course from the same vehemence of affection, and thus morally become as it were one continued locution; for instance, if someone in the same matter, from the same impulse, several times curses the same person, several times blasphemes or perjures himself, etc.

221. Resolves from 3°. - Therefore depraved conversations, touches, kisses, etc., had with another person from the intention of arriving at the consummated act of fornication, are disparate from this very intended fornication, if by accident it is not consummated, and consequently must be opened separately from it in Confession. - Wherefore St. Alphonsus rightly notes altogether[1] that, separately from the intended sin, as sins numerically distinct from it, there must be

explained the acts not consummated which were posited as means toward consummating the sin, if afterwards the sin is not consummated, as Viva teaches, asserting that the common opinion so holds. And this not only if the aforesaid acts are evil of themselves, as touches and dishonest conversations are; but also, according to a very probable opinion, if they are indifferent of themselves, as to take the road, prepare arms for homicide, etc.: "because then the sin does not remain merely internal, but is externalized in those actions, which all become evil, since they are informed by the malice of the depraved end."

Note. - If here again you ask whether these acts not consummated, in the supposed case, are also disparate among themselves mutually, and as such must be declared in Confession according to the number of each? I answer negatively; because from the intention of the sinner they are ordered to the same work to be consummated in its own species; and hence for confession it will suffice that, separately from the intended sin, you say: I posited several acts for the purpose of committing this or that sin, which I nevertheless did not consummate. So St. Alphonsus.[2]

222. Resolves from 4°. - Depraved conversations, touches, kisses, etc., had with another person from the intention of fornicating, and actually also attaining to fornication, are not disparate from the fornication itself, and therefore do not constitute new sins, but morally coalesce into one complete work, one numerically consummated sin; because according to the common course such acts are as a certain introduction, a proximate disposition, a remote inchoation, or complement of the consummated work itself. Wherefore there is no obligation of explaining them separately in Confession; but it will suffice if it is said: I committed fornication with such and such a person; since actions preceding this are understood from common occurrence. So St. Alphonsus[3] with the common opinion. - Moreover let it be well noted that actions of this sort preceding, as also complacency concerning fornication consummated, when they are had immediately after the fornication and are by no means intended toward a new fornication, probably are not new sins to be explained in Confession; because then they seem to be employed as a complement of the obtained fornication.

Point II. On Acts Morally Interrupted.

223. ○ Acts in the same species of evil, and conversant about the same object, are called morally interrupted when between them there intervenes a breaking off of the evil will, so that the subsequent acts proceed from a new decree of the will. - But that it may be determined more accurately in which acts moral interruption actually has place, with attention to the distinction between internal and external acts:

Quaer. 1° When are INTERNAL ACTS morally interrupted?

Resp. They are morally interrupted:

1° If the first will is expressly revoked by a contrary will; for this prevents the posterior act from being able to be called a continuation of the prior, since in reality it proceeds from a new decree of the will. Hence, if you take complacency in an evil delectation, and then elicit an act of displeasure; or if you will to kill your enemy, and then retract that will by putting away the hatred, or also by an act of

charity toward the enemy; if afterwards you return to the evil will, you commit a new sin, numerically distinct from the prior one.

2° If the first will is virtually or tacitly revoked, namely by voluntary advertence to matters with which the evil will is incompatible; or even by taking up a state incompatible with the first evil will. Thus St. Alphonsus,[1] after the common opinion, teaches. Hence he who turns his soul to pious thought, for example by attending to a sermon, by reciting prayers, etc., tacitly revokes the preceding evil will, and therefore, if afterwards he resumes that evil will, he sins anew. Likewise he who resolves to steal something, and in the meantime, before the execution of the theft, becomes gravely ill, so that during the time of the infirmity he is incapable of carrying out the theft; if afterwards, after recovering health, he returns to the same purpose, he commits a new sin, because through such impotence the first purpose was morally interrupted.

3° If the first will ceases naturally, that is, through a cessation not freely chosen, but caused by natural distraction, inadvertence, or oblivion, lasting for a more or less notable time according to the nature of the diverse acts. But, concerning this third mode of moral interruption, Theologians greatly disagree. Some think that internal acts are not morally interrupted at all by natural cessation alone, at least ordinary cessation, for instance by common distractions, by sleep, etc. Others on the contrary opine that any internal acts whatever are morally interrupted by any natural cessation whatever, even ordinary. But among these St. Alphonsus held a middle way; his opinion, safe in practice, seems capable of being explained briefly thus:

Notes to n. 223. (1) L. II. 40.

224. Opinion of St. Alphonsus. - In this controversy concerning the moral interruption of internal acts through natural cessation, first, according to the holy Doctor, a distinction must be made between merely internal sins, that is, those which either are wholly consummated internally in their own species, as hatred, heresy, envy (sins of the heart strictly so called), or at least are committed internally only, without effectively tending to an external sin, as morose delectation and inefficacious desire; - and sins not merely internal, that is, those which effectively tend to an external sin of mouth or deed, as an efficacious desire or purpose of blaspheming or stealing. But after this distinction has been premised, according to the mind of the same holy Doctor one may establish thus:

A. Merely internal sins are morally interrupted by natural cessation, even ordinary cessation, for instance by common distractions, by sleep, etc., so that they are numerically distinct as often as they are repeated after such cessation. - Yet here attention must be given to the vehemence of the affection by which the will is borne into the object; for the given resolution is understood with this limitation: unless several acts of this sort proceed from the same vehemence of affection, or from the same impulse of passion; for then they constitute only one sin, even if a certain brief distraction intervenes between the acts. - From these things it is inferred, for Confession, that he who recalls that he took delight many times in the same object, and especially if this happened on the same day, must say how many times he yielded to this evil will, if he can remember this, at least confusedly; that is, if he is able to estimate how often the evil will, either not interrupted or interrupted and then reassumed, lasted through a notable time. But if he cannot - as ordinarily happens, when the depraved disposition was long-lasting - let him say through how much time he persevered in that disposition

and whether the interruptions were notably rare or frequent.[1] Cf. nevertheless n. 1424, Principle III, 1°, c), § Some Doctors.

B. Sins not merely internal, namely efficacious desires or firm evil purposes concerning an external sin of mouth or deed, more probably are not morally interrupted by ordinary natural cessation alone, whether by common distractions or sleep; but only by the intervention of a long time, which long time, ordinarily speaking, is judged by the holy Doctor to be present as often as more than two or at most three days intervene between the purposes, since such force does not seem to be present in one single act of the will that it can efficaciously endure beyond that time. Therefore, if the penitent has persevered beyond two or three days in an evil purpose, in Confession he must explain the time, saying for example: for the whole month or week I remained in the purpose of stealing, which I renewed about so many times before the consummation of the theft; so that thus the number of internal sins concerning external sins may be understood by the confessor.[2] Yet it must carefully be observed here whether perhaps by force of the evil purpose some external effect has already been produced, conducing to the consummated external sin; for then the first purpose is judged not to be morally interrupted, but to persevere, so long as that external effect lasts; and hence the aforesaid resolution - that an evil purpose is morally interrupted by the intervention of a long time - must be received with this limitation: unless nevertheless the efficacy of the first purpose virtually perseveres in some external effect; for then the evil purposes, through whatever time they last, constitute one sin only. Hence, if someone proposes to kill a man, and therefore prepares arms, takes the road, and finally kills him, he commits one sin in number, although he sought him for many days, and meanwhile also thought about other things, renewed the purpose a hundred times, etc. Similarly, if someone proposes not to restore another's property, and remains in this purpose - even for a year - he commits one sin only; because in the very retention of the other's property the efficacy of the first purpose virtually perseveres. Yet where the thief becomes incapable of restoring, and afterwards again becomes capable and does not restore, he commits a new sin; because during the time of that incapacity there is nothing in which the efficacy of the first purpose virtually persevered.

225. ○ Quaer. 2° When are EXTERNAL SINS morally interrupted?

Resp. There is no need here for discourse about external sins which are disparate, which of themselves are morally disjoined and therefore numerically distinct, as was explained more broadly in Point I, n. 218 sqq. Hence the question proposed in this sense is to be understood of external sins which, according to themselves, are not disparate, for example kisses or touches which of themselves and from the intention of the agent tend and attain to fornication. But external sins of this sort are morally interrupted in three cases, namely:

1° When between them there intervenes an express or tacit revocation of the evil purpose; concerning which case see the things handed down before at n. 223.

2° When between them there intervenes a simple cessation of the evil purpose beyond two or three days, without some external effect having been produced in which the purpose is judged morally to persevere; concerning which case see the notes above at n. 224, B.

3° They are still morally interrupted, or, to speak more accurately, in a certain broader sense they become disparate and numerically several, when between them, even while the same purpose remains physically, there intervenes such an interval of time that the external acts themselves can no

longer be called concatenated, that is, so that the preceding act is no longer the proximate disposition or as it were an inchoation of the subsequent act, although it remotely tends to it. But when such concatenation, because of an interval of time, is actually absent must be judged from the nature and circumstances of the acts themselves, especially with regard to common sense and the natural estimation of men. - Generally I would think it can be said: that it is rather easily lacking in sins of the mouth, especially if they are done from levity or custom, for instance in curses, blasphemies, perjuries, not uttered from the same impulse; - and then that it is lacking in sins of deed when the intervening delay of time is in no way customarily apprehended as brief. But if commonly it is apprehended as brief, sins of deed, notwithstanding such interval of time, still seem to be concatenated and morally united. - Hence I resolve: a) He who, from the intention of stealing a heap of wheat, which he cannot carry off wholly at one time, repeatedly on the same night steals part, commits one sin only; but he who from the same intention on alternate nights does this, seems to commit as many sins as there are acts. L. II. 44 at the beginning. b) Youths sin by several sins who, from the intention of fornicating, at times notably distant according to common sense, approach another person, with libidinous acts, and thus finally arrive at fornication; because those external acts, in the case, are no longer concatenated, since they are not the proximate disposition or a certain quasi-inchoation of the subsequent fornicary intercourse. On the contrary, they would sin by one sin only if, in the same morally continuous approach, some delay intervened between the libidinous acts, for example because of conversation with a third person. c) Similarly, if someone, laboring servilely on Sunday, wishes to rest a little and therefore is occupied by sleep; but then, awakened, begins again to work, he commits one sin only. - Likewise he sins by one sin who interrupts the eating of meat on a fast day for a little while, for example to receive a guest, etc.

§ III. Which Objects Of The Same Species Do Not Coalesce Into One Object.

226. ○ Several objects in the same species of evil, about which one and the same act is conversant, are judged not to coalesce when one object is not part of another, or, in other words, when those several objects do not constitute, as parts, one total object. Such especially are: the lives of several men, whether of body or of soul; - and the honors, reputations, or temporal goods of several men, unless perhaps they are possessed by common dominion.

Resolves with St. Alphonsus.[1] Therefore he commits sins several in number: 1° Who by one act kills several men; or gives scandal to several; or affects several with contumely. 2° Who in one discourse detracts from several, even of the same family or community; except perhaps, according to Dens, in the case where the reputation were proper to some community precisely as such; as if someone should unjustly say of some monastery that regular discipline is not observed in it. 3° Who by one act imprecates some evil on several; or also steals from several, unless nevertheless the goods carried off by theft are possessed by those several with common dominion, for instance by reason of undivided inheritance, by reason of community, etc. 4° Who by one act desires to commit several fornications, whether with diverse persons or with the same one. - From these things the resolution for other similar cases will easily be clear.

227. Questions. - Quaer. 1° Does he who detracts from someone before several commit as many sins as there are persons among whom the other is defamed?

Resp. Probably he does not commit several sins of detraction; because he does not seem to injure several objects or rights, since the right to reputation, which chiefly consists in the opinion of the multitude, is one and not multiple, both among all and among individuals. Hence by reason of such detraction it will suffice that in confession it be said: I detracted from someone before several.[2] Nevertheless the same detractor, in the case, commits several sins of scandal; and by reason of this, the number of persons must be set forth.[3]

Quaer. 2° Does he who in one discourse detracts from another in distinct matters, saying for example that he is unjust, lustful, and a man without religion, commit as many sins as the matters are diverse?

Resp. More probably affirmatively, at least of itself; because such a detractor violates a multiple right to diverse reputations which do not coalesce into one reputation; for he who has been defamed in one crime is not for that reason defamed in another. Yet by accident detraction of this sort not rarely constitutes one sin only, namely: when the circumstances in which those diverse insults are uttered are such that the hearers easily understand them to be uttered from anger, and therefore do not attribute faith to them. Hence women of the lower class and common people who, quarreling together, from the same impulse load one another with diverse contumelies, commit one sin only. Indeed those quarreling in this way, for the most part, are excused from mortal sin, unless perhaps they reproach the adversary with some particular fact.[1]

Quaer. 3° What must be said concerning him who by one continuous act wishes diverse evils to another, as infamy, poverty, etc.?

Resp. According to a sufficiently probable opinion, he commits one sin in species and number, as often as, as more frequently happens, those evils are apprehended under the reason of evil in general. But otherwise, if the will is borne advertently to wishing those diverse evils to him, as they are distinct; and otherwise also a fortiori, if he desires actually to inflict those diverse evils on another.[2]

Quaer. 4° Of how many sins is he guilty who by one act denies several articles of faith?

Resp. Of one only; because the formal object of faith is not multiple, but one, namely: the veracity of God revealing; and hence he who denies several articles of faith is no more an unbeliever than he who denies one.[3]

Notes to n. 227 - note sequence 1. (1) L. II. 46. (2) Ib. 49. (3) Prax. Conf. n. 45. Notes to n. 227 - note sequence 2. (1) L. II. 48. (2) Ib. 50, q. 5. (3) Ib. 50, q. 4.

PART SECOND: ON SINS IN SPECIES

The discussion must be 1° on internal sins; 2° on capital sins.

CHAPTER I: ON INTERNAL SINS

228. ○ A threefold class of them is distinguished, namely:

1° Morose delectation, or free complacency in an evil thing exhibited through the imagination as present, without desire.

2° Joy, or deliberate complacency in a past evil thing, or in an evil work performed either by oneself or by another.

3° Desire, or an act of the will wishing for an evil thing. It is called efficacious if there is an intention or absolute purpose of executing it; otherwise it is called inefficacious.

But what the malice of these is, and what species, hold in these few things:

I. Desire, even inefficacious, is truly a sin, and assumes the species both of the object and of the circumstances.

And 1° it is truly a sin. This is established from the precept: Thou shalt not covet, which must be understood generally and indefinitely of the prohibition of any depraved affection. Moreover every desire of a prohibited thing is repugnant to right reason: for it is shameful and dishonest to desire, namely to propose to oneself either absolutely or conditionally to execute, what it is not licit to execute.

2° It assumes the species of its object. For any desire whatever regards the external act as to be mandated to execution, either absolutely, if the desire is efficacious, or at least hypothetically, if it is inefficacious; necessarily therefore it is borne into that act according to all the conditions and circumstances which affect it, whether they are necessarily prerequired for it, or inseparably accompany it, or follow from it of their own accord. This is established also from the words of Christ:[2] He who shall have looked at a woman to lust after her, has already committed adultery with her in his heart. But to commit adultery in Scripture is everywhere understood of adultery. Therefore ...

3° It also assumes the species of the circumstances of the object. This is clear from the reason just brought under 2°. Hence in confession, for example, of the desire of fornicating, the circumstances of consanguinity, affinity, the bond of matrimony, or a vow of chastity, which affect the desired person, must be declared.

Notes to nn. 228-235 - note sequence 1. (2) 9, 10. (3) 15, 26. Notes to nn. 228-235 - note sequence 2. (1) L. II. 20. Vind. P. II, q. II. (2) 1, 2, q. 74, a. 8. S. Alph. L. II. 17. Notes to nn. 228-235 - note sequence 3. (1) 2, dist. 24, q. 3, a. 1; and Quodlib. 4, a. 21. (2) Trid. Sess. 5, Can. 5. Notes to nn. 228-235 - note sequence 4. (1) L. II. 6-9. Reuter, Th. Mor. P. 2, n. 206.

229. ○ II. Joy likewise is a sin, and indeed of the same species as the evil action about which it is conversant, and similarly assumes the species of the circumstances annexed to it, no otherwise than desire itself.

The reason is because joy, as we said above, is the approval of past evil; therefore this embraces the sinful act as it existed in itself, namely clothed with its circumstances. Therefore it also assumes the whole malice of these. - Hence he who takes complacency in the recollection of past sins and approves them must in confession explain the object of this complacency and the circumstances changing the species, just as if he had sinned anew by deed.

Boasting concerning a sin committed, sorrow over evil not performed, and also sadness over good accomplished are to be referred back to joy.

230. ○ III. Morose delectation 1° is certainly a sin; 2° it also certainly varies in gravity and species according to the variety of objects exhibited to the mind.

The reason for the first is because it is repugnant to rational nature and to divine law for the will to have as pleasing that which is discordant from right reason and displeases God. Moreover deliberate delectation concerning an evil object indicates affection toward it; but affection toward an evil object is evil affection, as is clear. Therefore ... Hence Osee:[2] They became abominable like those things which they loved. And Proverbs:[3] Evil thoughts are an abomination to the Lord.

The reason for the second is because whoever is delighted concerning an object evil in itself approves it and adheres to it by his affection. Therefore in the very degree and species in which the object is evil, in the same entirely will the delectation concerning it be evil. Therefore ... St. Thomas[1] and St. Alphonsus.[2]

Does it also assume the malice of the circumstances of the object? Negatively, very probably, theoretically speaking. The reason is because simple delectation does not tend into the object as to be posited, but rests in it as represented by the intellect. But the intellect abstracts from other properties of the object besides that which moves delectation. In practice, however, the opposite opinion is very pleasing to St. Alphonsus,[3] namely because of the proximate danger of depraved desire. Yet if you foresee that the penitent will be induced with difficulty to open the circumstances of the object thought upon, because of the speculative probability of the former opinion you will prudently abstain from troublesome questions. Thus with Billuart, Scavini, T. I, n. 923.

231. Questions. - Quaer. 1° ON DESIRE. Is it licit to desire evil under a condition, if it would be licit?

Resp. Distinguish. Affirmatively of itself if the appended condition removes the whole malice of the thing; the reason is because such an affection involves no disorder either in itself or in the object, from which through the condition the malice is wholly excluded. But negatively in the other hypothesis; the reason is because such an affection tends into an evil object, and indeed absolutely, since the condition does not remove the malice from the object, even as represented, and therefore the whole malice of the object is poured back into the act of the will. And indeed there are certain objects concerning which a condition, however appended, cannot remove the malice. For things which are intrinsically evil cannot be changed, and therefore a condition would be appended uselessly, since to choose such things of itself would be to desire that the law and order of nature be changed.[4]

Nevertheless he would probably have to be excused from grave sin who by such a desire certainly would not will that what is intrinsically evil should become licit, but would only disclose what he would will in another condition of things. - St. Alphonsus[5] with others. Besides, no one fails to see how dangerous desires of this sort are, even if the appended condition removed the whole malice, especially in things prohibited by natural law, yet licit in some case or state; for example, I would kill my enemy, if God commanded; I would take a wife, if I were not a priest or bound by vow; I would gladly marry Caia, if I did not have a wife; which desires Cajetan rightly calls foolish and diabolical temptations; because, although such a desire is licit, nevertheless the present delectation concerning that object is illicit, which in venereal matters will easily be found joined with desire. Indeed other conditional desires concerning things prohibited by positive law alone must also be dissuaded, because for the most part they are idle, and sometimes they can labor under some inordinate affection.

Hence the confessor must prohibit betrothed persons from lingering in the desire of intercourse to be had in future matrimony; for "great" is "the danger of present delectation, which is evil when the condition which gives honorable character to that object is absent." Yet often betrothed persons and widowers are in good faith, not thinking it to be mortal to be delighted concerning a licit object, as intercourse in matrimony is; and therefore the confessor will prudently be silent about mortal sin, unless he should see pollution to follow from that complacency.

232. ○ Quaer. 2° ON JOY. Is it licit to rejoice 1) concerning the evil act itself because of the good effect following from it; 2) concerning the good effect of an evil act?

Resp. to the 1st: Negatively, and this (provided the reason for the prohibition of the act is not to be sought precisely from advertence alone, as for example in a lie) even though it was materially evil only. The reason is because then the act was evil from the object. This is also clear from proposition 15 among those condemned by Innocent XI (p. XV), in which the discussion is evidently of an act materially evil only, of parricide committed in drunkenness.

Hence they sin who are delighted concerning the eating of meat, or the breaking of fast, from ignorance or oblivion, even involuntary, or concerning nocturnal pollution not purely natural, that is, proceeding also from some cause other than from nature discharging itself; for example, from base phantasms presented to the imagination of the sleeper, or from touches wholly involuntary.[2]

Resp. to the 2nd: Affirmatively, provided there is absent a probable danger of formal sin; for in this case you do not rejoice concerning evil. Yet I said: provided it is absent, etc. The reason is because, as was said at n. 87, I, without a sufficient cause it is licit for no one to expose himself to such danger. Therefore it will be licit, speaking of itself, or setting aside that danger, to rejoice concerning the discharge caused by pollution, even voluntary, or concerning the obtaining of an inheritance from homicide.[1] - Each response is valid also concerning desire and delectation.

233. ○ Quaer. 3° ON DELECTATION. Is it licit to be delighted concerning 1) the thought of an evil thing; 2) the mode?

Resp. to the 1st: Affirmatively, provided there is absent a proximate danger of delectation concerning the evil thing itself, as St. Thomas[2] explains in the following words: "Someone thinking about

fornication can be delighted in two ways: in one way concerning the thought itself, in another way concerning the fornication itself thought of; ... but the thought itself according to itself is not a mortal sin; indeed sometimes it is only venial, for instance when someone thinks uselessly about it; but sometimes it is wholly without sin, for instance when someone usefully thinks about it, as when he wills to preach or dispute about it," etc. - But the danger of delectation concerning the evil thing itself in practice must be measured from the mode of thinking, - from the quality of the person thinking, - from the matter thought upon, - from the cause on account of which it is thought upon. Thus, if someone reads a less honorable book, these things must be considered: the mode in which he reads, for example eagerly; - the quality of the reader, perhaps prone to venery; - the book which is read, for example obscene by design; - the cause of reading, namely whether it is sufficient that he expose himself to the probable danger of delectation concerning the evil thing itself.

Resp. to the 2nd: Affirmatively, provided 1) the mode is not evil of itself, and 2) the danger of which we have just spoken is absent. The matter is clear of itself. Thus he does not sin who laughs at the mode in which a drunk man proceeds with his foot wavering because of wine; because the mode of itself is not evil. On the contrary, he sins who is delighted concerning the frauds and lies which he used to seduce a girl, because those frauds and lies are evil. - But because of the danger of delectation concerning the evil thing, those can easily sin who, for example, frequently and willingly hear certain base things which do not seem to be narrated except to show the ingenious mode in which they were done; for if the conversation concerned honest actions, even if done more ingeniously, they would for the most part perceive much less delectation.

Notes to n. 233. (1) L. II. 18. (2) Matth. 5, 28.

234. ○ Quaer. 4° Whether and when does he sin who does not resist the motions of concupiscence?

Resp. By concupiscence in this place we do not understand a passion of the sensitive appetite, indifferent to good or evil, insofar as it is considered as diminishing or even altogether removing the voluntary (n. 12-14), but the tinder of depraved desires, or propensity to evil, residing not only in the inferior appetite but also in the superior. Concerning the motions of this concupiscence hold these things:

Principles. - I. However much the soul may be struck by the stimuli of the depraved tinder, there will never be any stain of sin, unless the will in some way either consents to them, or does not impede them when it can and ought to impede them. Common and certain. - See St. Thomas.[1]

II. Motions of the will which are first-first, namely those which precede any deliberation of reason whatever and are elicited before attention is given to the object's agreement with the rule of morals, are wholly without fault. The reason is because insofar as they precede deliberation of reason and advertence to moral malice, they are neither voluntary nor free, and consequently are free from formal sin. Thus all Theologians.

III. Motions of the will which are second-first, namely those which follow upon some use of reason, yet are elicited with only slight, obscure, and imperfect advertence to the rule of morals, in any matter, even grave, are only venial sin. The reason is because acts of this sort are imperfectly free and

only semi-deliberate; and so on account of the imperfection of the act they are excused from grave fault. Thus likewise the common opinion of Theologians.

Resolves. - 1° Motions, however depraved, so long as they displease the will, even after advertence to the rule of morals, are free from all fault.[2]

2° One who bears himself negatively, that is, neither consenting nor resisting, when the danger of consent is absent, sins lightly; otherwise, in grave matter and when a just cause of bearing himself negatively is lacking, gravely. Hence:

a. In vehement motions, which greatly allure the consent of the will to grave sin, because, for example, venereal delectation is added, it is illicit to bear oneself negatively or indifferently, but there is required a positive act of resistance or at least of displeasure, and this under grave obligation; since with the same obligation by which one is held to avoid sin itself, one is also held to avoid the danger of it. Direct resistance is nevertheless not necessary; but indirect resistance suffices, and indeed is more advisable, namely by turning the mind to other things; nor is material resistance necessary, for example by pressing excited parts over the clothing, although that can be useful. But prayer will be best. - Resistance that is positive indeed, but tepid, excuses from mortal sin, but not from venial.

b. In carnal motions with which there is not joined a proximate danger of consent, to bear oneself negatively is not free from venial sin, since we are held to take care lest the appetite disturb reason even lightly, or entice to sin, even only remotely. - But light motions are better resisted by contempt.

c. There is no sin in bearing oneself negatively, if a just cause is present, as if you have experienced that the motions are increased by positive resistance or anxious solicitude or reflex thought; or the motions arise from an action necessary or useful, for example from hearing confessions, from reading base matters useful to be known, from a touch necessary for healing, and similar things.[1]

Notes to n. 234 - note sequence 1. (1) 1, 2, q. 74, a. 8. (2) L. II. 15. L. IV. 475. (3) Ib. (4) L. II. 13 and H. A. Tr. III. 50. (5) H. A. ib. Notes to n. 234 - note sequence 2. (1) H. A. Tr. III. 51. (2) L. II. 20. L. IV. 480.

235. ○ Quaer. 5° What is to be done with a penitent accusing himself of some depraved thought?

Resp. Lest you waste time uselessly and through questions annoying to you and the penitent, or even dangerous, do not inquire about the species or number unless first it is sufficiently certain to you concerning consent. But that you may recognize this, he must be asked whether he noticed that it was a sin; and if he answers that he detested it as soon as he knew it was base, he must be judged entirely immune from sin. - If he answers that for some time he had some confused knowledge of the malice and adhered to it, but without fully attending to its gravity, then indeed he is easily to be excused from grave sin, but not from venial. But if he does not know how to extricate himself from these questions, ordinarily it must be presumed that he did not consent, or at least that full consent or perfect advertence was lacking, especially if he is of timorous conscience. On the contrary, he who is accustomed to sins or abhors them little is, in doubt, presumed to have consented; for in doubt a prudent presumption is sought from things commonly occurring. - But commonly it happens that a pious man does not consent without knowing that he is really consenting to sin; while a depraved man does not resist sin without a struggle, which indeed removes doubt concerning consent or dissent.

He who doubts whether he did something while awake or sleeping, in possession of himself or not, is judged not to have sufficiently adverted nor consented; for he who is awake sufficiently perceives himself to be awake.

If there is a defect of age, that is, before the completed seventh year, at least perfect advertence and full consent are not presumed, unless malice certainly supplies for age (yet see n. 548, q. 1° and n. 1344, 7°). Finally, the mere continuation of a depraved thought is not an indication of consent; since both temptation and resistance can be long-lasting.

CHAPTER II: ON CAPITAL SINS

236. ○ Sins are called capital because they are as it were the heads, or sources, of other sins. Hence they should be called vices rather than properly sins, if they are considered in general.

Seven are numbered, namely: 1° Pride; - 2° Avarice; - 3° Lust; - 4° Envy; - 5° Anger; - 6° Sloth; - 7° Gluttony. - The reason for this number seven from St. Thomas[1] is this. Man can either pursue or flee that which is good according to itself in a mode discordant from reason. Goods, such according to themselves, which man can pursue in a mode discordant from reason, or inordinately, are - either honor and glory, and such pursuit is called pride; - or the preservation of the individual through food and drink, and the inordinate pursuit of this is called gluttony; - or the preservation of the species through acts destined for the propagation of the human race, and the inordinate use of these acts is lust; - or riches, and the inordinate appetite of these is avarice. The good which one can flee in a mode discordant from reason is - either one's own good, and thus sloth has place; - or the good of another, and there is either envy, which through sadness, or anger, which through the appetite of vengeance, is inimical to another's good.

The virtues opposed to the capital vices are: humility, liberality, chastity, benignity, meekness, devotion or diligent piety, temperance.

The things which follow I have taken partly from Haine,[1] partly from St. Alphonsus.[2]

Notes to n. 236 - note sequence 1. (1) 1, 2, q. 84, a. 4, c.; In 2 Sent., D. 42, q. 1, a. 3, c.; De malo, q. 8, a. 1, c. Notes to n. 236 - note sequence 2. (1) Op. cit. T. I, p. 120 sq. (2) Lib. II, n. 65 sq. (3) S. Th. 1, 2, q. 87, a. 2; 2, 2, q. 132 and 162. Notes to n. 236 - note sequence 3. (1) S. Th. 1, 2, q. 84, a. 1 and 2, 2, q. 118.

I. On Pride.[3]

236. ○ Pride is the inordinate appetite of one's own excellence. I say: inordinate; for to will to excel is a meritorious act, if you will it in a due mode and for a due end, for example for the glory of God, the salvation of the neighbor, etc. It is either perfect, by which someone so raises himself in spirit that he refuses to be subject to God and Superiors, or so conducts himself as if he had his things not from God, but from himself or at least from his own merits; and it is a most grave sin, but rarely occurs. Or it is imperfect, by which someone, while preserving subjection to God and Superiors and excluding that mode of conducting himself, esteems himself more than is just; and this of itself is venial, as an excess in an indifferent thing, unless grave contempt of the neighbor is added, for example through contumely, defamation, or damage in goods of fortune.

The daughters are:

1° Ambition, that is, the appetite of an honor not due, for example of an office for which you are unworthy; or of one greater than is due, as of an office for which you are not sufficiently worthy; or indeed of one due, but to be acquired by an undue mode, end, or means, for example through simony.

2° Vain glory, or the inordinate appetite of human estimation, which, if it is sought by words, is called boasting or vain and foolish preaching of oneself; if by deeds, ostentation; if by the undertaking of a work exceeding one's powers, presumption; if by false and fictitious signs, hypocrisy. These of themselves and ordinarily are venial. I say: of themselves, because by accident it will be mortal: - boasting from an evil end; by reason of grave damage to the neighbor; if it concerns a mortally evil thing, the evil species of which thing it also assumes when it is done with internal complacency or joy concerning that thing (n. 229); - ostentation, for example through new opinions, if these notably corrupt morals, etc.; - presumption, by reason of grave damage to the neighbor, as if without due skill you presume to take up the office of physician, confessor, etc.; - hypocrisy, if it is done with grave injury or contempt of God or the neighbor.

3° Pertinacity, by which someone clings excessively to his own judgment, being unwilling to believe one who understands better.

4° Contention, which is an inordinate contrariety of words.

5° Discord, which is a contrariety of wills concerning a good in which from charity we ought to agree.

6° Disobedience, ingratitude, etc. The sins set forth under 3°, 4°, 5°, 6° are grave according to the reason of the mode and end. Thus it will be mortal - pertinacity, if you pertinaciously adhere to an error of great moment, or if it is joined with the danger of grave damage to the neighbor; - contention, if with a spirit of contradicting you quarrel concerning a truth pertaining to the Faith, or to the salvation of soul or body.

II. On Avarice.[1]

237. ○ Avarice is the immoderate appetite of riches, that is, not of money only, but of all things which can be valued by money. Of itself, or insofar as it is opposed to liberality alone, it is venial, as an excess in a thing otherwise indifferent and licit; by accident it is very often mortal, namely 1° when it is gravely repugnant to charity toward God, for instance if a man inordinately adheres to riches in such a way that he places his whole affection in them, more solicitous about conserving money than grace; 2° when it is gravely repugnant to charity or justice toward the neighbor, for example by not paying debts or by delaying their payment, by not succoring the necessity of the neighbor.

Prodigality, which is opposed to avarice and consists in defect of preserving and excess of expending, of itself is venial; by accident it is mortal, as if you create poverty for your children and wife, if you render yourself incapable of paying debts, etc.

The daughters of avarice are: hardness of heart toward the wretched, by which it happens that one does not have compassion on the poor, rebukes them, exacts debts too harshly when the debtor is not solvent, etc.; oppression of the poor; unrest of mind, that is, a vehement and inordinate application of the mind to acquiring or preserving riches, with empty and vain fear lest they not be acquired or lest they be lost; fraud, for example in contracts; violence; treachery or deception against faith pledged or owed; theft; and very many other things.

III. On Lust.

238. ○ Lust will be treated in the Treatise on the Sixth Precept.

Notes to n. 238. (1) S. Th. 2, 2, q. 36.

IV. On Envy.[1]

239. ○ Envy is sadness concerning the good of the neighbor insofar as it is apprehended as diminishing one's own excellence; as if you should grieve that someone equal to you, or not much unequal, grows in honor or riches, as though through this something should fall away from you. Hence, if someone is saddened concerning the goods of the neighbor from another motive, it will not be envy.

Hence it differs: 1° From indignation, by which someone is saddened concerning the good of another insofar as he is prudently believed unworthy of such good. It is good if it is conceived on account of God or the common good, which is believed to be injured by the unworthy man; yet it can be evil, as if it concerns goods insofar as they come from God to sinners. 2° From fear, by which you are saddened concerning the good of another because from it you fear some evil to yourself or to another innocent person. This, when evil affection and aversion concerning the person are excluded, is not illicit. Thus we are licitly saddened concerning the power of the impious insofar as, abusing it, they are harmful; thus I prudently grieve that he has been elevated to office who, as my enemy, will now more easily be able to harm me, because such sadness is not so much concerning the neighbor's good as concerning the evil following from it. 3° From zeal or emulation, by which you are saddened concerning the good of the neighbor, not because it is a good to him, but because the good which he has is lacking to you. This of itself is good. Thus, when evil affection concerning the person is excluded, which nevertheless easily intervenes, you are licitly saddened that another has taken from you the office or girl desired in Matrimony. Thus students or those learning an art, when they see the progress of others, rightly are saddened concerning their own defect, by which they themselves are stirred to better things. Similarly the craftsman, seeing his neighbor feed his family well by his industry, rightly grieves that he himself cannot prosper so. Thus finally the merchant or innkeeper, seeing buyers or guests turn aside to a neighbor, licitly grieves concerning that concourse, not insofar as it is profitable to the neighbor, but insofar as it is his own detriment and loss of profit, which otherwise he would justly have had. 4° From hatred, by which you are saddened concerning the good of the neighbor from displeasure with the neighbor himself.

Envy from its kind is mortal, because it is directly opposed to charity toward the neighbor; often it is venial, both from imperfection of the act and from smallness of matter.

The daughters are: 1° hatred (n. 281); 2° whispering (n. 516); 3° detraction (ibid.); 4° joy in the adversities of the neighbor; 5° affliction in his prosperity.

Notes to n. 239. (1) S. Th. 2, 2, q. 158; 1, 2, q. 46, 47, 48.

V. On Anger.[1]

240. ○ Anger is the inordinate appetite of vengeance or quasi-vengeance. It is said: inordinate; for anger can be without sin, for example when someone becomes angry so that reason may execute justice more strongly; when vengeance is sought only that the other may be corrected, others frightened, the decorum of justice preserved, etc. But from St. Thomas

it becomes inordinate in two ways: 1° on the part of the mode of becoming angry, if interiorly you grow hot beyond what reason dictates, or exteriorly make anger too manifest by signs, although just vengeance is sought; 2° on the part of the object, if you seek unjust vengeance, vengeance greater than is just, or indeed just vengeance but to be inflicted outside the order of law, or not for the due end but from hatred, to satisfy a malevolent affection. - There is added: or quasi-vengeance; because when a man is angry with inanimate things, for example an artisan from anger breaks or throws away an instrument, a writer a pen, it is not properly vengeance; yet it is anger, namely on the part of the mode, which of itself is only venial; by accident it is sometimes mortal, if for example notable damage is caused to his own health or that of another, if it breaks out into blasphemies or curses. The second inordination, namely on the part of the object, is from its kind mortal, because it is directly opposed to charity.

The daughters are: indignation and swelling of mind, while anger remains in the heart. Indignation in this place is an inordinate affection arising from this, that someone thinks himself treated unworthily by someone; and it is commonly a venial fault, but none if it is not inordinate, that is, if it proceeds from a just judgment of reason; but mortal if it grows even to deliberate hatred or grave contempt of the person. Swelling of mind is present when someone devises diverse ways of vengeance and with those thoughts swells his soul: how great a sin it is must be judged from the quality of the vengeance which is devised. - Clamor, when the angry man raises his voice, pouring forth many things inordinately and confusedly, is of itself venial. Contumely (n. 533), blasphemy, malediction or imprecation, when it breaks out in the mouth. That a malediction be grave three things are required, namely that the evil imprecated - be grave, - truly be wished, - be wished with perfect deliberation. Quarrels, fights, wounding, when it goes out into deed. Quarrels, if they do not exceed measure, as also small fights, are venial; otherwise if they advance to seditions, wounds, slaughters. And these are commonly sins on the part of the one beginning the quarrel; for the other can defend himself with the moderation of blameless defense (n. 467, II).

Notes to n. 240. (1) S. Th. 2, 2, q. 35.

VI. On Sloth.[1]

241. ○ Sloth, or weariness of soul, from St. Thomas can be used in two ways. 1° Generally, for every remission of the soul in working well in the exercise of the virtues, on account of the labor joined with this exercise; and taken thus it is not a special vice, but general, because every vice flees the good of the opposite virtue. 2° Specially, for weariness concerning a spiritual good, for example concerning divine friendship apprehended as evil because of the difficulty joined to obtaining and preserving it through laborious exercises of the virtues and flight from illicit pleasures, whence it happens that one does not care for that friendship.

General sloth is venial of itself; as if you are saddened concerning Mass because in cold weather one must rise, yet you hear it, although with some displeasure. I said: of itself; because if the weariness remains in the sensitive appetite alone and the will tries to resist, it is a meritorious act. But it is mortal if acts gravely obliging are therefore omitted, for example from weariness you omit Mass of precept; but it is not a sin distinct from the neglect of Mass, nor consequently to be expressed in

Confession. - Special sloth is of itself a most grave sin, unless imperfection of the act excuses, because it is specially repugnant to charity toward God and turns away from God.

The daughters are: 1° malice, by which someone has hatred for spiritual goods according to themselves, as if it displeased him to have acted well; or he contemns the benefit of God, as if he desired not to have been born, to be a brute, etc.; and it is of itself mortal; 2° rancor, by which those who induce one to spiritual things are distasteful to him; this, when hatred and other things are excluded, is only venial; 3° pusillanimity, by which someone shrinks from undertaking something difficult, and, when another mortal transgression is excluded, is only venial; 4° despair of obtaining beatitude, and this is mortal; 5° torpor in the observance of precepts, which is venial if things gravely obliging are performed coldly, but mortal if they are not fulfilled; 6° wandering of the mind, by which someone in the exercise of spiritual things wanders about other matters: of itself it is venial; mortal if it is notable and attention is required under mortal sin, as during sacrificing (n. 1334, 13°). It is free from all fault if someone does not so much intend to pray, as to occupy himself with a pious exercise by reciting the words of prayers; because he prays not formally but materially only, for example when someone working with his hands recites prayers or sings psalms, not with the intention of praying, but of avoiding vain thoughts or recreating himself.

Notes to n. 241. (1) S. Th. 2, 2, q. 148 and 150.

VII. On Gluttony.[1]

242. ○ Gluttony is the inordinate appetite of food or drink.

This vice is committed chiefly in five modes: 1° if you eat before the time; 2° if too exquisite things; 3° if more than is just; 4° if voraciously; 5° if things prepared with greater industry. These are contained in the following verse:

Prepropere, laute, nimis, ardenter, studiose.

It is a venial sin from its kind. But it becomes grave if it gravely harms health, or if it renders someone unfit for offices. He sins who eats or drinks to satiety on account of pleasure alone, as is established from proposition 8 condemned by Innocent XI, p. XV; yet of itself it does not exceed venial sin. - Thus commonly.

The daughters of gluttony are drunkenness, concerning which presently more fully; dullness of mind; scurrility; much-speaking; and uncleanness of any kind.

Remedies: to consider the worst effects of gluttony as to body and soul; - to mortify the flesh especially in the refreshment of the body; - frequently to recall death, or the corruption of the body soon to come.

APPENDIX: ON DRUNKENNESS

243. ○ Drunkenness is the immoderate use of drink up to the unnatural privation of reason. - Thus commonly.[1]

Perfect drunkenness, namely reaching even to the privation of reason, is a grave sin of itself. This is established 1° from reason; for voluntarily to deprive oneself of the use of reason, by disturbing it in a violent and unnatural mode, at least without a grave cause, is without any doubt gravely repugnant to rational nature. For man thus casts himself down to the state of brutes and defiles the image of God in himself.[2]

This is established 2° from Sacred Scripture:[3] Nor drunkards ... will possess the kingdom of God. - And Isaiah:[4] Woe to you who rise in the morning to pursue drunkenness. ... Moreover the particle woe in Sacred Scripture denotes a most grave evil.

But more probably drunkenness is of itself only a venial sin if it is imperfect. I say: of itself; because very often by accident it is mortal, namely by reason either 1) of scandal, which for example a priest would give, even if he were imperfectly drunk only once, or a father of a family if often; or 2) of the depraved end intended, as if someone should drink to excite in himself more vehement lust; or 3) of damage to be brought upon health or family; or 4) of grave sadness caused to wife, children, or parents; or 5) of other sins of which drunkenness is the voluntary cause, as we shall say presently at n. 245, q. 5°.

Notes to n. 243. (1) L. II. 74. (2) Ib. 75. (3) 1 Cor. 6, 10. (4) 5, 11.

244. Questions. - Quaer. 1° What are the signs of perfect drunkenness?

Resp. The following are adduced, namely: 1° not knowing how to distinguish good from evil; 2° not remembering words said or deeds done in drunkenness; 3° doing things altogether unusual, which namely would never otherwise be done with a sound mind, ... etc. - But certain signs are not: hesitation of the tongue, staggering of the feet, the sight of objects doubled, or of objects turning themselves in a circle.[1]

Quaer. 2° Is it licit to make oneself drunk for expelling illness?

Resp. The affirmative opinion of St. Alphonsus[2] seems sufficiently probable, indeed more probable, in the case in which the drink is taken and is suitable for opposing the cause of the illness; for then privation of reason, as happening by accident and indirectly, can licitly be permitted, just as it is licit for a mother to take a drug directly tending to preserve her own life, although the expulsion of the fetus happens indirectly (n. 474, II). Hence it will be licit for you to take a notable amount of generous wine, for example of Champagne, to expel cholera once heat has been restored to the viscera, although you foresee that from it you are to be made drunk; or of the drink called "Whiskey," that the poison introduced by the bite of a serpent may be opposed. St. Thomas[3] adds that a drink necessary for health cannot be called immoderate.

Omitting the question whether drunkenness is licit for undergoing a surgical operation, which today scarcely pertains to practice, since other easier means are available for that end, concerning these

means:

Quaer. 3° Is the use of opium, ether, chloroform, and similar things licit for this end?

Resp. Affirmatively, since the primary power of these is soporific or sedative of the nerves, not intoxicating. Yet dangers must be avoided.

245. ○ Quaer. 4° Is it licit to induce someone to drunkenness, that he may be turned away from a greater evil?

Resp. St. Alphonsus:[4] "The affirmative opinion seems sufficiently probable (not improbable, H. A. Tr. VIII, 7) to me and to other learned men consulted by me, whether the drunkenness be material or formal, because of the reason that it is licit to induce another to a lesser evil, that he may be prevented from a greater one."

Quaer. 5° Are all evils done in drunkenness imputable?

Resp. 1° Negatively, if they were not foreseen, not even in a confused way; because whatever things were not foreseen must be held wholly involuntary.

Resp. 2° Affirmatively, for the opposite reason, if they were foreseen, at least as to evils of deed, whether of commission or of omission.

I said: at least as to evils of deed; for as to evils of the mouth, or words, or even deeds merely contumelious, probably they are not imputable if they are uttered against men, since according to common estimation they are judged to inflict no contumely. Yet otherwise if they are uttered against God, as blasphemies, etc. ... because these things are intrinsically evil, and therefore tend to the contumely of the divine honor; but otherwise, as having been foreseen, they are voluntary in the cause itself. Thus St. Alphonsus, who in H. A. rejects the contrary opinion, while in the Work he does not dare to call it improbable.[1]

Notes to n. 245 - note sequence 1. (1) L. II. 78. (2) Ib. 76. (3) Apud S. Alph. L. II. 76. (4) Ib. 77. Notes to n. 245 - note sequence 2. (1) L. II. 78. H. A. Tr. VIII. 8.

246. Resolves. - 1° They sin gravely who, drinking by day and night, knowingly expose themselves to the danger of drunkenness. Likewise those who by command or counsel induce others to drunkenness; or who provoke to equal draughts when the danger of drunkenness has been foreseen.

2° They sin gravely who, knowing through experience that they are made drunk in these or those associations, nevertheless spend time in them. Likewise those who, while drinking, advert to the danger of drunkenness and nevertheless continue to drink.

3° They also sin gravely who drink so much that drunkenness must follow, although they commit themselves to sleep before they are deprived of senses and reason, because in sleep they do not have proximate power for the use of reason; besides, the thing is evil of itself.

4° Nor are they excused from grave sin who, under pretext of the custom of the fatherland, or of good affection, or of civility, press and as it were necessitate guests to drink even to the danger of drunkenness; otherwise, however, if only more liberal drink is offered and proposed more often, yet in moderate quantity.

5° They do not sin gravely of themselves who are so strong, and so accustomed to wine, that they are never made drunk, even if they drink more largely than others, unless they so exceed temperance that grave detriment of health can rightly be feared (those mighty at drinking).

TREATISE ON VIRTUES

ON VIRTUE IN GENERAL.

Preliminary Matters. - There inheres in the powers (n. 1) a certain quality by which they are inclined to acting in one mode rather than another, whether well or badly.[1] A quality of this sort is called a habit, and is added over and above the power, and completes or perfects this in order to its operation.[2] As far as our matter is concerned, one habit is acquired, another infused; the former is generated from acts multiplied, the latter (we are speaking of the supernatural) exceeds the faculty of human nature and is obtained from immediate divine action, without a natural principle, as the habits of Faith, Hope, Charity, and of all the supernatural virtues. - The chief effects of habits are: 1° Uniformity[3] in the operations of the powers in which they inhere, so that the operations are exercised constantly in the same mode. Thus, for example, the will, by force of the habit of virtue, constantly chooses that which is agreeable to the rule of morals, and for this reason a habit is called a second nature;[4] yet in this sense only, that by a habit the power is inclined to acting in a similar mode, not that it is compelled.[5] 2° Facility in exercising operations, since a habit consists in a certain propensity to acting.[6] 3° Delectability in performing operations, because a habit "renders the operation proper to itself as it were natural" (a second nature), "and consequently delightful, for congruence is the cause of delight."[7] Sanseverino, Comp. Dynam. n. 26-29, 31. - Hence:

247. ○ Virtue is a habit of acting honestly or according to right order.

It is called: 1° A habit, that is, a stable quality or disposition, infused or acquired. For it is not the same thing to be virtuous and to posit an act of virtue, which can be done without a habit. - But that habit is not only dispositive, as for example beauty is, but also, and indeed especially, operative, namely inclining the power to acting honestly.

It is called: 2° of acting honestly or according to right order. But right order, among other things, also demands this, that the mean of virtue be preserved, namely by avoiding defect and excess in the exercise of virtue. But that mean is either of the thing, or of reason. The mean of the thing is so determined and fixed that it is always one and indivisible, and therefore is not varied according to place, time, and person. This must be preserved in commutative justice. Thus, for example, if I owe you 100, I also ought to give you 100, and I fall short of the virtue of justice if I give you only 99 3/4; on the contrary, if I return 110 to you, I will posit an act not only of justice, but also of liberality. - But the mean of reason, which must be preserved in the other virtues, is divisible, and is varied according to place, time, and person, according to the estimation of the prudent; and therefore it is called of reason.

That virtue consists in the mean can indeed rightly be said of all virtues, yet not in the same sense; for there are virtues which, by reason of their object, do not admit a mean, namely the theological virtues, and that moral virtue which is called Religion. For we never pursue God, the object of these virtues, enough or too much by Faith, Hope, Charity, or worship (Religion). Yet these same virtues,

by reason of the circumstances which accompany their acts (by reason of mode, time, place, etc.), are rightly said to consist in the mean. Thus one sins by excess through presumption against Hope, and through superstition against Religion.[1]

Virtues are distinguished in various species, namely:

1° Natural, which are also called human and philosophical; or supernatural, which are also called Christian, according as they tend to perfecting man in order to a natural or supernatural end or happiness.

2° Infused or acquired, according as they are infused by God Himself into the heart, or are acquired by repeated acts of the agent.

3° Theological or moral, according as they immediately regard God, or have for their immediate object the honesty of an action. There are three theological virtues, namely Faith, Hope, Charity. There are four cardinal moral virtues, to which the others are reduced, namely prudence, justice, fortitude, and temperance.

4° Intellectual, which reside in the intellect as in their proximate subject, as Faith and prudence; or appetitive, which reside in the will as in their proximate subject, as the other two theological virtues and the three remaining cardinal virtues.

5° Formed or unformed, according as they are joined or not joined with habitual Charity or sanctifying grace.

Quaer. 1° Whether and in what sense are virtues connected among themselves?

Resp. 1° The theological virtues are connected among themselves in this sense: a) that Charity in this life cannot be without Faith and Hope; for it is infused with these,[2] and when these are lost through infidelity and despair, Charity also is lost; for Charity cannot stand with mortal sin. b) That Hope cannot be without Faith; for "Faith is the substance of things to be hoped for,"[3] that is, their foundation. But Hope can be without Charity; for a sinner who has not yet despaired, although Charity has been lost, nevertheless retains Hope, as is clear from proposition 57 among the condemned Quesnellian propositions: "... there is no Hope in God where there is no Love of God." Likewise Faith can be without Hope and Charity; for even if someone sins by the mortal sin of despair, if he does not become an unbeliever, after Hope has been lost, as also Charity, he retains Faith, because this is lost only by infidelity.[1] Nor say that without Charity true Faith and Hope are not given; for Trent[2] condemns those who say that "when grace has been lost through sin, ... the Faith which remains is not true Faith." For although Charity is the form of Faith and also of Hope, nevertheless it is only an extrinsic form, insofar as it gives them accidental life, or the force of meriting de condigno.[3]

Resp. 2° Natural moral virtues are not necessarily connected with the theological virtues, and are often in heretics and unbelievers, who, although they lack theological virtues, nevertheless are often just, temperate, etc. This is clear from proposition 25, condemned among the Baian propositions (p. X).[4]

Resp. 3° Moral virtues are necessarily connected among themselves if they are perfect, or such as are habits which have all their effects, namely uniformity, facility, delectability. Cf. above the Preliminary Matters. Someone, for example, is just but not liberal: since this man loves money too much, he

would easily inflict injury on the neighbor, or would pay a debt to another only with difficulty (therefore neither easily nor delightfully). - If they are imperfect, they are not necessarily connected, as is clear.[5]

Yet from this, that one who lacks one moral virtue is destitute of the others, it does not follow that he is altogether unequal to acting well; for perfect virtue does not denote the possibility for an act of virtue, but the constancy and facility of operating rightly. Thus even those who do not have the virtue of temperance can nevertheless posit acts of temperance.[6] On the contrary, from the fact that someone has perfect virtue, it does not follow that the acts of all virtues are found in him. "Hence the act of magnanimity does not belong to every virtuous man"; for it suffices if he has "the habit of greatness," or a proximate disposition toward exercising it, in the case in which this, according to his state, would be licit for him.[7]

Note. - Perfect virtue is also called by Ascetics solid, at least in this sense: that by difficulties occurring in the exercise of virtues it is not hindered in its acts.

Quaer. 2° Whether virtues are unequal, or some more perfect than others?

Resp. 1° Virtues, according to their diverse species, are absolutely unequal, that is, with regard to the good to which they are ordered; for that good, according to the diversity or species of the virtues, is greater or less. Wherefore theological virtues, according to their species, are more perfect than moral virtues, because the good to which the former are immediately ordered, namely God, is greater than the good to which the latter are ordered. But among the theological virtues, under this reason Charity is more perfect;[1] among the moral virtues, prudence, "because it is the moderator of the others; and after this, justice, through which man bears himself well not only in himself, but toward another; and after this, fortitude, through which man on account of the good contemns the dangers of death; and after this, temperance, through which man on account of the good contemns the greatest delights of bodily things."[2]

Resp. 2° The same species of virtue, considered in itself, is equal, because "whoever has some virtue," namely perfect virtue, "for instance temperance, has it as to all things to which temperance extends."[3]

Resp. 3° By reason of the subject which participates in virtue, the same species of virtue can be unequal; for virtue consists in the mean, but in reaching this mean "one is better disposed than another, either because of greater habituation, or because of a better disposition of nature, or because of a more perspicacious judgment of reason." Therefore the same virtue can be unequal "either according to diverse times in the same person, or in diverse men."[4]

Quaer. 3° How are virtues acquired?

Resp. Supernatural virtues are acquired through infusion, natural virtues through the exercise of acts. I say: of acts, and not of an act; for through one act a habit is not customarily acquired. I said, not customarily; for it could be acquired if perhaps the act were so intense and lasting that it would be equivalent to several. - I said, supernatural virtues are acquired through infusion; this is not to be understood as if our acts contributed nothing to this; for they contribute by way of preceding dispositions, not however as efficient causes. For God alone is the efficient cause of the acquisition of these virtues; yet, according to His ordinary law, He does not work these virtues in us except either through the Sacraments, as instrumental causes, or with our previous cooperation with His grace;

and this in adults is necessary as a dispositive, or meritorious, cause. Trent clearly explains these things.[1]

If sometimes natural virtues are said to be infused by nature, this is to be understood: a) of a certain inchoative aptitude for virtue, which aptitude is in the intellect, insofar as it knows the good of virtue, and in the will, insofar as it naturally seeks that good; likewise sometimes in the sensitive appetite, insofar as it is naturally subject to reason; likewise at times in the complexion of certain persons, insofar as this in them resists the good of virtue less. b) Of that aptitude alone, not of the perfection of virtues, as is clear even from this, that what is from nature is determined to one thing, while on the contrary perfect virtues bear themselves in diverse ways, according to the diversity both of the matter about which they are conversant and of the circumstances in which they are exercised.[2]

Quaer. 4° How are virtues lost?

Resp. They are lost directly and indirectly. - Directly through acts directly and gravely contrary to them, for example Faith through infidelity; or through long non-use, that is, through lasting negligence in exercising them. In this way both acquired and infused virtues are lost, which St. Thomas explains in this manner:[3] "When someone does not use the habit of virtue for moderating the passions or proper operations, it is necessary that many passions and operations arise outside the mode of virtue, from the inclination of the sensitive appetite and of other things which move exteriorly; whence virtue is corrupted" (lost) "through cessation from act." Indirectly, through the loss of another virtue which is their foundation and principle; and in this way supernatural virtues are lost. Thus, when Faith is lost, Hope is lost; when Charity is lost, all supernatural or infused moral virtues are lost. - I said: supernatural. Hence one sinning mortally, for example by the sin of drunkenness, not only loses the virtue of temperance, but, since Charity, which is lost through any mortal sin whatever, is the foundation of the supernatural virtues, he also loses the supernatural virtues of chastity, humility, etc.; but he would not lose these virtues insofar as they were natural. For natural virtues are not necessarily connected with Charity, as was said in Resp. 2° to Quaer. 1°.

Quaer. 5° How are virtues increased and diminished?

Resp. Since the increase and diminution of virtues signifies nothing other than their greater or lesser perfection, but not an addition or subtraction of them,[1] therefore virtues can be increased only insofar as their acts are exercised more intensely, and diminished insofar as they are exercised more remissly. Yet natural virtues differ from infused virtues in this: that the former can be increased and diminished both as to the intensity of the habit and as to the fervor of the act; the latter, only as to the fervor of the acts, but not as to the intensity of the habit. This is certain if the discussion is of Charity, and it seems it must also be said of the other infused virtues; for although absolutely it is not repugnant for these also to be increased and diminished as to the intensity of the habit, nevertheless in this providence no cause of an increase or diminution of this sort can be assigned. For these virtues are infused together with Charity. Wherefore through mortal sin they are not diminished, but lost; but through venial sin the habit of Charity, or sanctifying grace, is not diminished, as something to which it is not opposed; therefore neither is the habit of the other infused virtues. But since, as has been said, even infused virtues can be diminished as to exercise and fervor of acts, and in this way, as was explained from St. Thomas in Resp. to Quaer. 4°, certain dispositions can be contracted which conduce to their corruption or loss, it is clear that through venial sins, or even through

cessation from the acts of Charity, a certain disposition toward the corruption of Charity can be induced.[2]

If you ask by what means virtues are increased, I answer that both natural and supernatural or infused virtues are increased by the multiplication or frequentation of acts; supernatural virtues principally by the same divine infusion by which they were produced; instrumentally through the Sacraments, especially those of the living; dispositively and meritoriously through good works.

Notes to n. 247 - note sequence 1. (1) S. Th. 1, 2, q. 49, a. 4, c. and ad 3. (2) Id. De Ver., q. 20, a. 2, c.; 1, 2, q. 50, a. 2, ad 3. (3) Id. De Virt., q. 1, a. 1, c. (4) Id. 1, 2, q. 78, a. 2, c. (5) Id. in L. 3, D. 30, q. 1, a. 5, ad 5. (6) Id. De Virt., q. 1, a. 1. (7) Ib. Notes to n. 247 - note sequence 2. (1) S. Th. De Virt., q. 1, a. 19. (2) Trid. S. 6, Cap. 7. (3) Hebr. 11, 1. Notes to n. 247 - note sequence 3. (1) Trid. ib. Cap. 15. (2) Ib. Can. 28. (3) Haine, op. cit. T. I, p. 157, q. 8; p. 158, q. 9. (4) Ib. p. 136, q. 5. (5) S. Th. 1, 2, q. 65, a. 1, c.; De Virt., q. 5, a. 2, ad 4. (6) S. Th. 2, 2, q. 141, a. 1, ad 2, and q. 117, a. 1, ad 3. (7) Ib. q. 129, a. 3, ad 2; De Virt., q. 5, a. 2, ad 3. Notes to n. 247 - note sequence 4. (1) 1 Cor. 13, 13. (2) S. Th. De Virt. Cardin., a. 3, c. (3) S. Th. 1, 2, q. 66, a. 1, c. (4) Ib. Notes to n. 247 - note sequence 5. (1) Sess. 6, cap. 7. (2) S. Th. 1, 2, q. 63, a. 1, c. (3) Ib. q. 53, a. 3, c. Notes to n. 247 - note sequence 6. (1) S. Th. 1, 2, q. 52, a. 2, c. (2) Ib. 2, 2, q. 24, a. 10, c. Notes to n. 247 - note sequence 7. (1) Let the reader forgive the fact that I have placed the treatment of the cardinal virtues and of the gifts of the Holy Spirit before the treatment of the theological virtues, and let him attribute this to the stereotype edition of this book. (2) S. Th. 3, D. 33, q. 2, a. 1, Sol. 1, c.; Qq. disp., De Virt., q. 5, a. 1, c. (3) Ib. 3, D. 33, q. 2, a. 1, Sol. 1, c. Notes to n. 247 - note sequence 8. (1) S. Th. 2, 2, q. 47; q. 50; 3, D. 33, q. 2, a. 5, Sol. 1, c. (2) Ib. 2, 2, q. 47. (3) Ib. 1, 2, q. 57, a. 6, ex a. 3, c. (5) Ib. 2, 2, q. 47, a. 11, c.; q. 48, a. un., c.; q. 50. (6) Ib. q. 48, a. un., c.; q. 49. Notes to n. 247 - note sequence 9. (1) S. Th. 2, 2, q. 51. (2) Ib. q. 53-q. 55. (3) Ib. q. 80, a. 1, ad 3. (4) Ib. in c. (5) Ib. q. 58, a. (6) Ib. q. 123, a. 2, c. Notes to n. 247 - note sequence 10. (1) S. Th. 3, a. and 4, c. (2) Ib. a. 6, c. (3) Ib. q. 128, a. un., c. (4) Ib. (5) Ib. ad 4. (6) Ib. q. 125, 126, 130, 133. (7) Ib. q. 141, a. 3 and 4, c. (8) Ib. q. 146. (9) Ib. q. 149. (10) Ib. q. 151, a. 1-3. (11) Ib. q. 151, a. 4, c. (12) Ib. (13) Ib. q. 144. Notes to n. 247 - note sequence 11. (1) S. Th. q. 145. (2) Ib. q. 143, a. un., c. § Partes autem potentiales. (3) Ib. q. 155. (4) Ib. q. 157, a. 1, c. (5) Ib. q. 160, a. 2, c. (6) Ib. § Sed contra. (7) Ib. q. 161. (8) Ib. q. 166. Notes to n. 247 - note sequence 12. (1) S. Th. q. 168, a. 1, c. (2) Ib. a. 2, c. (3) Ib. q. 169. (4) Ib. q. 159. (5) Ib. q. 167. (6) Ib. q. 168, a. 3, c. (7) Ib. a. 4, c. (8) Ib. q. 169. (9) Ib. 1, 2, q. 68, a. 2, c. and ad 2; 3, q. 7, a. 5, ad 1. (10) 11, 2, 3. (11) Ib. 2, 2, q. 45, a. 4, c. Notes to n. 247 - note sequence 13. (1) S. Th. 2, 2, q. 52, a. 1, ad 1.

ON THE CARDINAL VIRTUES AND THEIR ANNEXED VIRTUES.[1]

The cardinal virtues are opposed to the four wounds of original sin, insofar as these are to be cured through them: namely prudence to ignorance in the intellect; justice to malice in the will; fortitude to weakness in the irascible appetite; temperance to concupiscence in the concupiscible appetite.

In what order of perfection the cardinal virtues follow one another, we have taught from St. Thomas above, p. 109, col. 1, q. 2°, Resp. 1°.

They are called cardinal because on them, as on hinges, the other moral virtues, which for this reason are called adjunct or annexed, are founded;[2] they are also called principal because they are conversant about that which is most important in the matter of moral virtues, and under this reason the remaining ones are called secondary.[3] For all can be reduced to one of the principal virtues, and this in one of these three modes, namely either as subjective parts, or as integral parts, or as potential parts.

Subjective parts are those virtues which are subjected to some cardinal virtue as to a whole as so many species into which it is divided.

Integral parts are those which, although they are not necessary for the being of some cardinal virtue, are nevertheless required for its perfect act, just as, for example, for a perfect house a foundation, walls, and roof are required.

Potential parts are virtues connected indeed with some cardinal virtue, but ordered only to certain secondary acts or matters, in which the reason of some cardinal virtue is not found fully, perfectly, exactly, and which therefore do not equal the whole power of some cardinal virtue, but only some part of it, after the likeness of the soul, which through any one of the powers does not unfold its whole power, but only part of this power. ... These things being premised, hold these few things concerning the individual cardinal virtues and concerning certain annexed virtues.

I. Prudence[1] is a habit of the practical intellect dictating what, considering the circumstances here and now, is to be done as licit, decent, expedient, or is to be fled as illicit, not decent, not expedient.

The material object of prudence is actions here and now to be posited or omitted; the formal object is the truth of the practical intellect, not however the truth of the speculative intellect, because this pertains to science; and therefore, as with right conscience, speculative falsity can indeed underlie prudence, but practical falsity cannot.[2]

The chief acts of prudence are: 1. good counsel or to inquire concerning the means to the end; 2. to judge rightly, namely concerning the means found; 3. to prescribe or command, that is, to execute the things found and judged.[3]

The subjective parts or species of prudence are: private or personal prudence, by which one rules himself; and governing or moderating prudence, by which one rules a community, for instance a family (economic prudence), a city, province, kingdom (political), an army (military).[5]

The quasi-integral parts of prudence are: memory, namely instructed by many experiences which we ourselves have had concerning past affairs or have heard from others; understanding of present things; providence of future things; shrewdness or quick conjecture of a means; docility, by which we willingly receive the counsels of others; circumspection, by which the circumstances of an affair are attended to; caution, by which impediments which can stand in the way of execution are avoided.[6]

The potential parts of prudence are: eubulia, or the habit of inquiring well concerning means (good counsel); synesis, or the habit of judging well concerning means found according to common rules, as sensible persons, or men of good sense, do, as St. Thomas has it; gnome, or the habit of judging well according to higher principles, where common rules fail, as happens in epikeia.[1]

The vices[2] opposed to prudence by defect are precipitation, inconsideration, negligence. The first is contrary to the first act of prudence, the second to the second, the third to the third (see above). By excess the following are opposed to prudence: astuteness, which if committed by words is called deceit, if by deeds fraud; and generally prudence of the flesh, which is described by St. Gregory the Pope in the sixteenth book of the Moralia on chapter XII of Job (see Roman Breviary, Common of Confessors not Pontiffs, Lesson 2 of the second Nocturn, in the place).

II. What justice is, and what its subjective parts are, see n. 580, 581.

The integral parts are more commonly said to be: to render his own right to each one, and to avoid injury of the same.

The potential parts are all moral virtues, namely under the reason of debt of honesty (n. 74, p. 37, col. 1, § Moreover); but more specially religion; piety toward parents, blood relatives, and country; observance, or worship and honor exhibited to Superiors and those constituted in dignity and corresponding to their dignity (obedience is referred to this by St. Thomas[3]); penance; veracity;

gratitude; vindicative justice; affability or friendship, to which by excess flattery is opposed, by defect harshness of conversation; liberality. They are only potential parts, because they fall short of Justice either because they do not render what is equal to the right of another, as the four prior virtues; or because a rigorous and perfect right is lacking in the other, as in the remaining virtues.[4]

The act of justice is to render to each one what is his.[5] What the object of justice is, see in the Treatise on Right and Justice.

III. Fortitude, as a special virtue, is the considered undertaking of dangers and the enduring of labors or evils.[6]

Therefore its remote material object is dangers and evils, especially the gravest; the proximate object is to preserve the mean between daring and fear, which are conversant about those dangers and evils, by moderating the former and restraining the latter.[1]

The acts of this virtue are to undertake (dangers) and to endure (evils); yet the more principal act is to endure, because it is more difficult.[2]

No subjective parts are assigned to it, since it is an indivisible species; for it is conversant about dangers of death to be undergone and the greatest pains to be sustained, which, although some are greater than others, are all of the same species; but more and less do not change the species.[3]

The integral parts are: magnanimity, greatness of soul; magnificence, external execution of great things; patience, so that the soul is not broken by the magnitude of evil; perseverance, lest it be wearied by the duration of the same. The two former are necessary so that the first act, undertaking, may be exercised perfectly; the two latter so that the other act, enduring, may be exercised perfectly.[4]

The potential parts are the same as the integral parts, but insofar as they are conversant about dangers and evils of lesser moment.[5]

The vices opposed to this virtue by excess are timidity, daring, and presumption; by defect, defect of just fear or intrepidity, pusillanimity, and cowardice.[6]

IV. Temperance is the virtue placing the mean of reason in bodily delights, especially those of touch.[7]

Its subjective parts are: abstinence,[8] to which gluttony is opposed; sobriety,[9] to which drunkenness is opposed; chastity,[10] to which lust is opposed; modesty, which nevertheless is not a virtue distinct in species from chastity, and differs from chastity only in this, that the latter is conversant about the act destined for the propagation of the species, the former about its circumstances or "signs,"[11] for instance kisses, touches, looks, etc. It is called modesty from shame, because concerning these acts, even when they are licitly done, an honest soul is especially ashamed. In other words: "modesty pertains to chastity as its special circumstance, although sometimes one is put for the other."[12] How manifold chastity itself is, see n. 482.

The integral parts are shamefacedness, or fear of a base act and of the confusion arising from it,[13] and honesty, or love of spiritual beauty as agreeing with reason.[1]

The potential parts[2] are continence, meekness, and modesty.

Continence is taken here, not generally for the drawing back of the appetite from everything toward which it tends immoderately, nor for the virtue restraining the appetite from libidinous delights, in

which manner it coincides with chastity; but specially for a habit residing in the will, which it so confirms against the impulses of concupiscence, especially against the impulses of delights of touch and principally venereal delights, that however much they swell up, it is not drawn by them into depraved consent. It is a potential part of temperance, because it is not judged perfect temperance, but only half-formed; for indeed it confirms the will against the rebellious motions of the passions, yet does not suffice to prohibit them from rising up immoderately.[3]

Meekness is the virtue moderating anger. But because in anger there are two things, namely the motion of anger and vengeance, this virtue contains two beneath itself: one which moderates the interior motion of anger, and this retains the common name of meekness; but the other, which tempers the external vengeance or penalty to be inflicted because of an injury which has been brought, as much as justice permits, and is called clemency.[4]

Modesty is the virtue by which someone holds a mode consonant with his condition in internal and external motions and exterior apparatus.[5] Hence he is called modest, as though holding measure or standing in measure.[6] It is divided into humility, studiousness, modesty of manners, eutrapely, and modesty of adornment. The two former hold measure in internal motions; for humility so moderates the appetite of excellence that in the affection and love of this excellence it does not exceed its lot;[7] but studiousness restrains the desire of knowing within due limits.[8] - Modesty of manners and eutrapely moderate exterior motions and actions of the body, so namely that they may be done decently and honestly, both in those things which are done seriously and in those which are done in play. If it moderates the exterior motions of the body in those things which are done seriously, for instance gait, voice, laughter, gaze, etc., it is called modesty of manners;[1] but eutrapely, when measure and decorum are preserved in playful words and deeds, for instance in games, jokes, and other things which are done for the sake of relaxing the soul.[2] - Modesty of adornment moderates exterior apparatus, or holds measure in clothing, furnishings, banquets, and other similar things, so namely that both display may be avoided and yet decorum preserved.[3]

Incontinence is opposed to continence.

To meekness by excess is opposed irascibility, by defect softness of soul; to clemency by excess cruelty,[4] by defect excessive lenity.

To humility by excess pride is contrary, by defect excessive self-abjection. To studiousness curiosity is contrary by excess,[5] negligence by defect.

To modesty of manners by defect is opposed crudity or rusticity of manners; by excess, petulance, insolence, affected courtliness. To eutrapely, scurrility by excess,[6] moroseness by defect.[7] To modesty of adornment by defect, neglect of apparatus is opposed; by excess, luxury.[8]

ON THE GIFTS OF THE HOLY SPIRIT.

The Gifts of the Holy Spirit are supernatural habits by which the just man is well disposed toward more excellent acts of the virtues. Hence it is clear how they are distinguished from the virtues which they assist and perfect.[9]

Seven are numbered by Isaiah:[10] of which we hand down here a brief notion.

By the Gift of Wisdom the intellect is assisted and perfected, so that it may consider and as it were taste God, whether in Himself or in His works, as supremely lovable and to be loved. It pertains to Charity.[11]

By the Gift of Science the intellect is illumined for judging rightly and certainly concerning those things which are required and conduce to attaining eternal beatitude, and according to St. Bonaventure it assists Hope; according to St. Thomas, Faith.

By the Gift of Understanding the mind is illumined for penetrating the truths of Faith, and, as is clear, it subserves Faith.

By the Gift of Counsel we are directed "as if by counsel received from God."[1] It assists and perfects prudence.

By the Gift of Piety, from a certain filial affection, we exhibit worship to God as Father. It pertains to justice.

By the Gift of Fortitude we are strengthened against the dangers and difficulties to which our eternal salvation is exposed. It pertains to fortitude.

The Gift of Fear of the Lord effects that we venerate God most profoundly. It assists temperance, according to Psalm 118, 120: Pierce my flesh with thy fear.

The Fruits of the same Holy Spirit differ from the Gifts of the Holy Spirit in this, that the former are good works (not habits, as the gifts are) done through grace, having a peculiar reason of spiritual delight. Twelve are enumerated by the Apostle at Gal. c. 5, 22. - Cf. Muller, Th. Mor. T. I, § 120; St. Th. 1, 2, q. 68; L. 3 Sent. D. 34, q. 1, a. 4.

CHAPTER I: ON FAITH

248. ○ Faith in general is assent on account of the authority of one speaking. More closely to our matter, Faith, insofar as it is a virtue, is defined: a supernatural, infused habit, inclining the intellect to assenting firmly to truths revealed by God and proposed by the Church, on account of the authority of God revealing. But insofar as it is an act, it is called a most firm assent given to things revealed by God on account of the authority of God revealing.[2]

Faith is 1° habitual or actual, according as it is a habit or an act.

2° Explicit or implicit by reason of the object, according as this in itself is expressed and unfolded, or is contained only in another thing. Thus, for example, if you say: I believe in the Most Holy Trinity, you elicit an act of Faith explicit in that mystery. But if you say: I believe all things which the Church teaches are to be believed, you elicit an act of Faith implicit in the individual revealed dogmas.

3° Explicit (formal) or implicit (virtual) by reason of the act, according as it is actually elicited, or by its force flows into actions.

4° Formed or living, or unformed or dead, according as it is joined, or not joined, with sanctifying grace.

The sins opposed to Faith are 1° infidelity, or lack of Faith in men not baptized; 2° heresy, or error in one baptized against a truth of Faith proposed by the Church. - Each is either formal or material, according as the baptized person adheres pertinaciously or not to an error against the Faith, or the non-baptized person is vincibly or invincibly ignorant of the Faith.

The discussion must chiefly concern 1° the necessity, 2° the object of Faith.

Notes to n. 248. (2) L. III. 1. Notes to nn. 248-253 - note sequence 1. (1) Tr. XIII. 33. (2) Ib. (3) L. III. 16, ad 12. Notes to nn. 248-253 - note sequence 2. (1) Rev. Theol. T. III, p. 303. (2) Kenr. Tr. XIII. 33. (3) Apud Kenr. Tr. XIII. 33. (4) Ib. 34. (5) a. 400. Notes to nn. 248-253 - note sequence 3. (1) Tr. XIII. 38. (2) Apud Scav. L. II, n. 1017, q. 5. (3) Kenr. Tr. XIII. 35. Notes to nn. 248-253 - note sequence 4. (1) Decr. L. V, T. II, c. 2 in 6°. Cfr. Luise, Codex Can. Eccl. n. 295. Notes to nn. 248-253 - note sequence 5. (1) Kenr. Tr. XIII. 39. (2) Matth. 10, 23. (3) Kenr. Tr. XIII. 30.

ARTICLE I: ON THE NECESSITY OF FAITH

I. As To The Internal Act.

249. ○ I. The internal act of Faith is necessary for all adults for justification by necessity of means. This is established from the Epistle to the Hebrews,[1] where the Apostle says: Without Faith it is impossible to please God. For he who approaches God must believe that He is, and that He is a rewarder to those who seek Him. - And from the Council of Trent:[2] "without faith justification has never happened to anyone."

II. It is also necessary at some time in life by necessity of precept. This is established from Sacred Scripture. For it is said in the First Epistle of John:[3] This is His commandment, that we believe in the

name of His Son Jesus Christ. Likewise from condemned propositions, namely the 1st by Alexander VII (p. XIII), and the 16th and 17th by Innocent XI (p. XV).

250. Questions. - Quaer. 1° When does the precept of eliciting Faith urge?

Resp. 1° It urges of itself: 1° after the use of reason, once the obligation of the precept has been sufficiently known; 2° likewise when the truth of our Faith has been sufficiently proposed to an adult unbeliever; 3° in the article of death, for tending more proximately to God; 4° several times in life, at least once in a year.[4]

Resp. 2° It urges by accident: 1° when a grave temptation urges which cannot otherwise be overcome; 2° when a precept must be fulfilled which cannot be fulfilled without faith. Thus contrition cannot be elicited unless an act of faith precedes or accompanies it; 3° after a fall into heresy, or after Faith has been denied, because the injury inflicted on the First Truth must be repaired by a contrary act.

Quaer. 2° Are explicit acts required for fulfilling the precept of Faith?

Resp. In those who have already learned and believed the truths to be held by faith, implicit acts generally suffice. Hence he satisfies the precept who devoutly hears Mass, adores the Crucifix, prays, forms the sign of the Cross, receives the Sacraments, etc. - Thus commonly.[1]

Notes to n. 250. (1) Heb. 11, 6. (2) Sess. 6, c. 7. (3) 3, 23. (4) L. III. 7. H. A. Tr. IV, 13.

II. As To The External Act.

251. ○ I. There is a negative precept prohibiting the denial of the true Faith and the profession of a false one. For to deny the Faith is to deny God Himself. Hence Christ[2] says: He who shall deny me before men, I also will deny him before my Father, who is in heaven.

II. There is also an affirmative precept obliging sometimes to confess the Faith even with danger to life. For the honor of Christ sometimes requires that the faithful despise even life for confessing Him. This is established from the words of Christ Himself:[3] Everyone who shall confess me before men, I also will confess him before my Father who is in heaven. And:[4] He who shall be ashamed of me and of my words, the Son of man will be ashamed of him when He shall come in His majesty. Likewise the Apostle:[5] With the heart one believes unto justice, but with the mouth confession is made unto salvation.

The precept of confessing the Faith outwardly obliges by the law of nature as often as otherwise the honor due to God, or the spiritual utility of others, would be withdrawn in a notable way, either contrarily or privatively. Contrarily: as if, by omitting confession of Faith, God would be affected by great injury, or contempt of Religion, or scandal, or the perversion of others would follow. Privatively: if namely a great honor toward God, or a great utility for others, would cease. - The reason is because the charity which we owe to God or to the neighbor demands this. - St. Thomas,[6] St. Alphonsus.[7]

Notes to n. 251. (1) L. III. 7. H. A. Tr. IV, 13. (2) Matth. 10, 33. (3) Matth. 10, 32. (4) Luc. 9, 26. (5) Rom. 10, 10. (6) 2, 2, q. 3, a. 2. (7) L. III. 11.

252. Questions. - Quaer. 1° Is it ever licit to dissemble the Faith?

Resp. 1° It is never licit to simulate a false faith, because this would be the same as outwardly denying the true one, which is intrinsically evil. - But this is openly established from the words of Christ just cited.

Resp. 2° It is licit for a grave cause to dissemble or hide the true Faith, when the danger of scandal is excluded. The reason is because the precept of confessing the Faith does not always urge.[1]

Quaer. 2° Can one who is questioned concerning the Faith use ambiguous words?

Resp. 1° Negatively, when evasion or silence is equivalent to denial, or to shame or fear which in those circumstances necessarily detract from the honor of God or the utility of the neighbor. For then the conditions set forth in the preceding number have place. This is confirmed from the constant practice of the Church and the common doctrine of the Fathers.[2]

Resp. 2° Affirmatively, when no scandal is created for those present, and no denial of Faith, or fear, or shame appears; because then there is no obligation of confessing the Faith.[3]

253. ○ Quaer. 3° Is it licit to use the signs or garments of unbelievers?

Resp. 1° Affirmatively, if they are garments or signs proper to some region, although this whole region be unbelieving; because these of themselves are not referred to Religion.

Resp. 2° But if they are garments and signs of Religion, a subdistinction must be made. More probably still affirmatively, if it is done for a grave cause, and the garments are not solely or primarily distinctive of the sect from the sect, because then their primary use is for covering the body, and only secondary for distinguishing the sect. - But otherwise, if the garments or signs are solely or primarily instituted for professing the sect, as are the garments and ornaments which priests use in the exercise of their functions.[4]

Notes to n. 253. (1) L. III. 12. (2) Ib. 13. (3) Ib. (4) Salm. Tr. 21, c. 2, n. 110.

254. Resolves. - A. From principle I.

1° Someone sins gravely against Faith if, even only externally, he bends the knee before an idol, or exhibits other signs of false Religion, for example if he were to receive the heretical supper; - if in this region he contracted marriage before a heretical minister, since this person among us is not a witness civilly necessary, and so cannot be approached except insofar as he is a sacred minister; - if clothed in the garments of the Quakers, or even not clothed in them, for nowadays the Quakers themselves scarcely wear distinctive garments, he were silently to consider in their assembly, like the others, as though meditating; - if he were to go to the places in which those are received who profess the so-called conversion in the assemblies of Presbyterians, Methodists, or others, and among the others were to sit or bend the knees, as though about to pray; - if, asked whether he is a Romanist or Papist, he were to answer that he is not, unless nevertheless from the accompanying circumstances it can easily be gathered that he denies it because of those terms as invidious and full of contumely. The same today, after the Syllabus and the Decrees of the Vatican Council, seems to have to be said if someone should deny that he is an Ultramontane.

2° He does not sin against Faith who visits the temples of heretics or unbelievers from mere curiosity, yet with scandal, danger of perversion, or a law forbidding this excluded. - Likewise he who is

present at a wedding banquet, since this does not pertain to Faith, or, without participating in the rite, at the burial of heretics, since this is done for the sake of civil honor. Kenrick[1] with others says the same concerning those standing by the celebration of nuptials contracted before a heretical preacher, since this for the most part is not estimated as approval of a heretical rite, but as an indication of respect toward the spouses. But whether the same can be said of those who on this occasion perform the office of bridesmen, I leave to wiser men to decide; much in this matter must be attributed to the common estimation prevailing among the people; for what, with no participation at all in the rite of heretics, is judged only a civil respect, cannot be held as profession of false religion. But where a Catholic enters nuptials before a minister, it is not fitting, says the same Kenrick,[2] for Catholics, especially parents and those more closely joined by blood, to approve this by their presence. Yet this resolution of the very celebrated Theologian seems a little milder; indeed we judge that this not only is not fitting, but generally is not licit (see below, n. 308), at least for parents and those who are held from office to disapprove this.

3° It is licit for servants to carry infants to be baptized and to hold them on the arm while they are baptized by a minister; for this is held as pertaining to service, and not as fellowship in worship.[3] Say the same of attendance at a baptism of this sort and a fortiori at a baptismal banquet, where that attendance is judged civil respect. For the Declaration of Pius VI, namely that it is illicit to be present at baptism conferred by intruders, that is, Frenchmen, cannot be said certainly to comprehend our case. For the attendance of which Pius VI treats, considering the special circumstances then obtaining, could not fail to be, or at least be judged, an approval of those very intruders; but in our case no approval of the minister is commonly apprehended. A case similar to the case to which the declaration of Pius VI pertains would be if there were a question of attendance at baptism conferred by some German so-called Old Catholic.

"But absolutely it is not licit, neither by oneself nor through others, to perform the office of sponsor in Baptisms which are administered by heretics to the children of heretics," the S. Congregation of the Office responded on Thursday, May 10, 1770,[1] and Kenrick teaches this.[2]

4° Paul V, by Brief of September 22, 1606,[3] declared to the English that it is not licit to obey the law prescribing to Catholics, even under most grave penalties, that they go to the temples of heretics, frequent their assemblies, and be present at their sermons. But now on the ships of our Government, as also in forts and other public places for the most part, in certain workhouses and prisons, all are compelled to attend prayers and a sermon, those who refuse being beaten. Therefore it is asked whether for Catholics in this region, where it is provided by laws that the secular power should usurp no right of involving itself in sacred matters, it is licit to provide attendance of this sort?

Resp. Since this attendance is demanded on account of order rather than favor toward the sect, and no one is compelled actually to furnish worship, the case must be said to be different from that of which the cited Brief speaks; and those are to be excused who, to avoid punishment or from some other sufficiently grave cause, present themselves, provided nevertheless that otherwise they openly profess the Catholic faith and avoid every fellowship in worship.[4] Yet the matter is by no means free from danger, namely of perversion. Cf. Second Plenary Council of Baltimore.[5]

5° "To bend the knees with heretics praying," says Kenrick,[1] "whether publicly or privately, does not seem to be a denial of faith; for it is understood to be done for the sake of humanity," provided, I would add, that this is done only on some occasions. Moreover Kenrick himself adds: "Besides, the

custom must altogether be disapproved; for it favors heresy, and has danger of perversion and bad example. Therefore it is by no means to be permitted to servants whom masters are accustomed to press to this." I resolve the same concerning a servant who would be ordered to read aloud Protestant bibles to a blind or sick master. "But they can," Kenrick continues, "drive their masters to the temples of heretics, or accompany the daughter or wife of their masters to them, for the sake of protection, without taking part in their rites." I would say the same is licit for a Catholic husband with respect to a heretical wife, as is commonly accustomed to be done in rural places, without Catholics being scandalized by it.

6° As regards those who in Protestant temples give an address, or in mixed assemblies, in which a minister presides or even pours forth prayers, give a speech, or are otherwise present, distinguish in about this way.

Either a) there is a question of a priest about to preach in a temple of the sects, and then the following response of the S. Penitentiary must be attended to; when asked whether Catholic Missionaries and priests, requested by schismatics, could preach in their churches, in the year 1674 it resolved: "Either they are invited to the effect that the Catholic truth be preached there indefinitely and also against the errors of those same schismatics, and then affirmatively; or only that a sermon be made concerning virtues and vices which commonly must be embraced and avoided both by Catholics and by non-Catholics, and negatively."[2] From this response applied to our regions I conclude that a priest is not to be blamed who, although not invited, indeed even asking this permission, in some place where a Catholic church or another suitable place, for example a courthouse, is lacking, would announce Catholic truth in the temple of sectarians. Outside this case it is better to abstain, so that every appearance of fellowship in matters of religion may be avoided, and lest the faithful go to the churches of sects for any cause whatever.[3]

Or b) there is a question of a layman who is going to give an address in the same churches of sects concerning temperance, liberty, or other things of this sort, according to the custom of this region. This certainly must be vehemently dissuaded, especially if non-Catholics on that occasion are also going to speak; for in matters of this sort they are scarcely not accustomed to run beyond just limits and to mix in very many things contrary to faith, to which the Catholic speaker either will contradict or will not. - If the former, the matter will have the appearance of a public disputation concerning faith, which is forbidden to a layman.[1] A layman besides will scarcely fail to enter the danger of not rightly answering objections. - If the latter, the silence of the Catholic will easily be held in place of approval, or certainly will harm religion as though it cannot be defended.

Or c) there is a question of an address to be given either in a church of the sects or in a profane place or under the open sky, with a minister presiding, or at least about to pour forth prayers before or after the address. If the former, it will scarcely be licit for a Catholic to give an address, since in circumstances of this sort he would seem in some way to enter into a society of religion; if the latter, it will be licit when, for example, an address is to be given on the occasion of a national feast or of some civil solemnity, as, for example, the dedication of a new municipal courthouse, or the anniversary of some battle at the graves of those slain, although a minister at the request of others pours forth prayers; for in those circumstances he who performs his part by giving an address is not judged to enter into fellowship of religion; otherwise speakers in legislative assemblies would also have to be blamed, for at the beginning of individual sessions a minister is accustomed to pour forth

prayers. What has been said concerning those who in this latter case give an address, resolve the same concerning those present, whether they are individuals or, when there is a question of some national feast or civil solemnity, Catholic societies; for those societies, even in the case in which they are present with insignia or banners which exhibit the image of the Saint under whose invocation they exist, are present only civilly.

7° Those who sing publicly outside temples, or at least outside every occasion and appearance of worship, as is accustomed to happen in a concert of many persons, do not seem to sin against faith, even if certain hymns concerning sacred matters have Protestant authors, provided nevertheless that they have nothing adverse to faith; for in those circumstances they are referred only to the delight of the ears. But they would sin if they furnished their work so that money to be collected from it should yield to Protestant uses.[1]

8° He does not sin against Faith who, passing through places of heretics, from fear of grave danger, eats meat on a day of abstinence, lest he be recognized as a Catholic; because this of itself is not a sign of heresy. Otherwise, however, if he ate meat, even from fear of death, impelled to this in hatred of the Faith.

9° Nor does he sin against Faith who flees in time of persecution; indeed, generally flight is in some way prescribed, as is clear from the words of Christ:[2] But when they shall persecute you in this city, flee into another. But this especially holds if someone's safety is necessary for the utility of the faithful, or someone fears a fall.

255. Resolves. - B. From principle II.

1° This proposition (18th) was indeed rightly condemned by Innocent XI: "If someone is questioned by public authority, I counsel him frankly to confess the Faith as glorious to God and the Faith; to be silent I do not condemn as sinful of itself." Yet from this you would not rightly conclude that always and everywhere one must answer public authority questioning concerning faith. For since he who is questioned by a judge contrary to the order of law, although otherwise legitimate, is held by no obligation of answering; and our laws will that no account of the religion or faith of citizens be had, no response is owed of itself to a question of this sort. Much more can someone be unwilling to satisfy the curiosity of private persons.[3]

It is said: of itself, and to curiosity. For an answer certainly is owed if, according to the principle enunciated above, the honor due to God or the spiritual utility of the neighbor would be notably diminished or even cease by not answering, by evading, or by equivocating; as, for example, if taciturnity, evasion, or equivocation were, or seemed to those present, a denial of faith, or yielded to contempt of faith or to grave scandal.

2° Although faith must sometimes be professed publicly, nevertheless public controversy with heretics concerning matters of faith is prohibited by the Decree of the S. Congregation of the Council dated March 6, 1625, except with the permission of the Supreme Pontiff. But whether this decree is in living observance, as they say, among us, can rightly be doubted. Besides, in a case of necessity and when there is danger in delay, the Ordinary of the place, according to the things said at n. 154, 2°, will be able to concede this license.

Note. - Other resolutions connected with the precept of faith, see n. 313 sqq., where cooperation in the sacred rites of heretics is discussed.

ARTICLE II: ON THE OBJECT OF FAITH

256. ○ The formal object of Faith, or the reason on account of which one believes, is the authority of God speaking, as endowed with infinite wisdom and veracity.

But the material object, of which alone the discussion here treats, consists of the things to be known and believed by necessity both of means (which being omitted, even inculpably, salvation is not obtained) and of precept.

§ I. On The Things Necessarily To Be Known And Believed By Necessity Of Means.

257. ○ It is certain that two things are to be known and believed by necessity of means: 1° that God is: He who approaches God must believe that He is;[1] - 2° that He is a rewarder: He must believe that He is, and that He is a rewarder to those who seek Him.[2] - But whether other things must be believed explicitly by necessity of means for salvation is controverted; hence concerning them:

258. Questions. - Quaer. 1° Is explicit Faith in the mystery of the Most Holy Trinity and of the Incarnation required by necessity of means?

Resp. There is given a twofold probable opinion.

The first opinion affirms altogether. The reason is:

1° As to the Incarnation, because salvation is not given except through Christ; therefore that means must necessarily be explicitly known and believed.

2° As to the Most Holy Trinity, because Faith in this mystery is the foundation of our salvation; for Baptism, which is the Sacrament of Faith, must be conferred in the name of the Father, etc. ... But what is the foundation of salvation ought to be the primary object of Faith, and therefore to be believed according to itself and explicitly. - Thus Collet, Antoine.[3] - Concerning this opinion St. Alphonsus[4] says that it is more common and seems more probable.

The second opinion, which also seems sufficiently probable to St. Alphonsus,[4] denies. The reason is because before Christ implicit Faith in these mysteries sufficed; therefore even after His coming it ought to suffice. For Christ did not change the means. - Thus Suarez,[5] Lugo.[6] Nor does the proposition condemned by Innocent XI under n. 64 stand in the way, they say; it sounds thus: A man is capable of absolution however much he labors under ignorance of the mysteries of the Most Holy Trinity and the Incarnation of Our Lord Jesus Christ. It does not stand in the way, they say; for it could rightly be condemned by reason of the first part, in which it is asserted that a man is capable of absolution however much he generally labors under ignorance of the mysteries of Faith. See p. XVII.

There are those who think that each opinion can be reconciled in this way. They teach, namely, that explicit faith in the mystery of the Most Holy Trinity and the Incarnation now, that is, after the coming of Christ, is required by necessity of means hypothetically, or secundum quid; namely, for all to whom the Gospel has been sufficiently announced and who are not so dull that in no way can they

perceive these mysteries, explicit faith in these mysteries is absolutely necessary by necessity of means; but for those to whom the Gospel has not been preached, implicit faith in them is necessary by necessity of means, which implicit faith they recognize in him who believes that God will save men through means known to Himself; which faith, they say, certainly includes Christ the Redeemer, and consequently the Most Holy Trinity. And with this distinction indeed they say the words of Acts[7] must be understood: In every nation, he who fears Him and works justice is acceptable to Him. With the same distinction employed, there is, they say, no necessity of a miracle for saving observers of the natural law who lack explicit knowledge of these mysteries, nor by any reason will it be possible to say that the condition of the human race after Christ was changed not for the better but for the worse, since before Christ implicit faith in these mysteries sufficed.

Quaer. 2° Can he be absolved who is ignorant of those things which are certainly of necessity of means?

Resp. Negatively. Neither licitly nor validly. Thus all. The reason is because that person, through defect of a means simply necessary, is incapable of justification; therefore he is also incapable of absolution. Otherwise no one can have hope of salvation unless he believes that God is a rewarder.

Notes to n. 258. (1) Heb. 11, 6. (2) Ib. (3) Decal. c. 1, a. 1; C. 1. (4) L. III. 2. (5) De Fide D. 12, sect. 4. (6) De Fide D. 12, n. 91. (7) 10, 35.

259. ○ Quaer. 3° Can one ignorant of the mysteries of the Trinity and Incarnation be absolved?

Resp. 1° He cannot licitly be absolved outside a case of necessity which altogether urges; the reason is because a confessor absolving this person exposes the Sacrament to danger of nullity, as is clear from the preceding Question 1. - Hence the confessor ought either first to instruct the penitent, or dismiss him until he has been sufficiently instructed.[1] Yet observe with St. Alphonsus[2] these words of St. Leonard of Port Maurice: "It is not good counsel to dismiss such ignorant persons, that these things may be taught them by others, because no other fruit will be hoped for except that they so remain ignorant; and therefore it is expedient to teach them briefly the principal aforesaid mysteries, causing at the same time that they elicit with him acts of faith, hope, charity, and contrition, obliging them nevertheless that in the future they have themselves instructed perfectly concerning the other mysteries necessary to be known by necessity of precept."

But if the question concerns penitents of this sort to whom it would be a great embarrassment or offense to be interrogated about these things, it will be fitting for the confessor simply and clearly to propose these mysteries to them, and then to elicit an act of faith with them.

Resp. 2° Speculatively it can be doubted whether he can validly be absolved who is situated in invincible ignorance of these mysteries. The reason is deduced from the things said in the second opinion of the first Question. But in practice confessions performed in good faith with such ignorance will have to be repeated (see the things said at n. 67, 2°). But whether in a case of necessity he can licitly be absolved can be doubted, since the S. Congregation of the Office on May 10, 1703 declared that "a missionary," before he confers Baptism on "an adult, even one dying, who is not altogether incapable," is held to "explain to him the mysteries of Faith which are necessary by necessity of means, such as," it says, "the principal mysteries of the Trinity and Incarnation." Nevertheless in necessity, but under condition, he concerning whom it is doubted whether he

perceives these things and can perceive them must be absolved,[1] as also the dying person who is altogether incapable here and now of perceiving them. But if there is not certainty concerning his present incapacity, and death is not altogether proximate, he will have to be instructed briefly; but if after absolution, conferred without previous instruction because of death which was thought altogether proximate, he survives, after brief instruction he will have to be absolved again.

§ II. On The Things Necessarily To Be Known And Believed By Necessity Of Precept.

Notes to n. 259. (1) L. III. 2. (2) Prax. conf. n. 22.

260. ○ Any faithful person, in order to establish a Christian life, when he has come to the use of reason, besides those things which he must know by necessity of means, is also held, by necessity of precept, explicitly to believe and to know, at least in a rough mode, summarily and as to substance - in such a way indeed that he who did not know them in that mode would sin mortally, unless invincible ignorance or incapacity excused him - 1) the Symbol of the Apostles: as the Christian profession itself demands, because in it is compendiously contained whatever concerning God, concerning Christ, and concerning the Church must chiefly be believed; the practice of the faithful and the Roman Catechism confirm this; - 2) the Lord's Prayer; for this was commanded by Christ and contains all things to be sought from God. They add the Angelic Salutation from the use of the faithful, but under light obligation according to the common opinion; - 3) the Precepts of the Decalogue and of the Church, for that the individual ones may be observed, the individual ones must be known; - 4) the Sacraments especially necessary, as Baptism, Eucharist, and Penance; the others, when one is about to receive them, that he may rightly receive them.

I said: 1° At least in a rough mode, summarily and as to substance, from St. Charles Borromeo;[2] for not all are held under mortal sin to know the aforesaid things by memory, or in that order and with those words by which they are proposed in the Catechism; but as to the Symbol, the precepts of the Decalogue and of the Church, and the Sacraments, it suffices that, when asked, they answer sufficiently to the individual points. - As to the Lord's Prayer it suffices if they know that all good things are to be sought from God; for the Doctors say that not to hold it by memory is only venial, provided when asked they know how to answer in general.

I said: 2° Unless invincible ignorance or incapacity excuses; thus those are excused for whom either a teacher was lacking, or to whom the obligation of learning such things never came into mind, or who are so rude that they can in no way comprehend them or retain them by memory; for there is no obligation of impossible things.

I said: 3° When he has come to the use of reason; for then begins the obligation of learning them, since the obligation begins of directing oneself through them to the ultimate end.

Notes to n. 260. (1) Benger, Past. Theol. III. 504. (2) Instr. ad confessarios and S. Alph. L. III. 3.

261. ○ Quaer. Can those who are ignorant of those things which must be known by necessity of precept be absolved?

Resp. Affirmatively. If they are sorry, in the case in which the ignorance was gravely culpable, with the purpose of learning them, and have not otherwise, after being admonished, neglected to learn them - in which case they are to be treated as recidivists - they can immediately be absolved. If otherwise, let them learn these things first before they are absolved.

ARTICLE III: ON THE VICES OPPOSED TO FAITH

262. ○ Each virtue has vices opposed to itself; therefore Faith also. But vices are opposed to the virtue of faith insofar as they either impede it from being acquired, and this is infidelity; - or extinguish it once acquired, either in part, and this is heresy; - or in whole, and this is apostasy, which is also called perfidy.

§ I. On Infidelity.

263. Definition. - Infidelity, taken generally, is the lack of Faith in a man not baptized. For those are called infidels who have not received the habit of Faith through Baptism.

Division. A threefold infidelity is distinguished, namely positive, negative, and privative.

1° Positive or formal infidelity is the lack of Faith in him to whom it has been sufficiently proposed, and who positively rejects it.

2° Negative or material infidelity is the lack of Faith in him who has never heard anything concerning the true Religion, or to whom revelation indeed has been proposed in some way, yet not yet so sufficiently that he is now held to believe, although perhaps he can be held to inquire.

3° Privative infidelity is the lack of Faith in him who, once the occasion has been given, neglects to procure for himself knowledge of the Faith.

The chief species of infidelity are: Paganism, Judaism, Mohammedanism, and other sects, to which can be joined Deism, Atheism, Pantheism, and Rationalism, which in our times spreads so widely.

264. Principles. - I. Infidelity, both positive or formal, and also privative if, after at least suspicions concerning the necessity of inquiry, gravely culpable negligence has been present in inquiring, is a most grave sin. The reason is because the former explicitly, the latter virtually, contains grave injury and contempt of the First Truth, or the authority of God revealing.

II. But negative or purely material infidelity, in itself, is not a sin, but only a punishment of sin. The reason is because there cannot be sin where there is invincible ignorance. - Moreover this is established from the condemnation of the 68th proposition of Baius, proscribed by Pius V and Gregory XIII. See p. XII. - Yet unbelievers, even negative ones, are most wretched, since they wander far from the way of salvation. Nevertheless, that the way which lies open through baptism of desire is not closed to them, St. Thomas excellently intimates.[1]

§ II. On Heresy.

265. Definition. - Heresy, properly taken, is voluntary and pertinacious error against some truth of Faith proposed by the Church, in him who has received the Faith.[2]

Notes to n. 265. (1) 1, 2, q. 89, a. 6. (2) Dist. 15, c. 2. Decr. L. V, T. VII, c. 7.

266. Division. - Heresy is distinguished:

1° Formal, which is heresy properly so called, or in the strict sense; or material, by which someone adheres to error without pertinacity.

2° Internal, or external or manifested, or purely external, according as it is held internally, or externally only, or in both modes.

3° Occult, or notorious, according as it is known to no one or only to few, or to many.

Apostasy is referred to heresy; it is a total defection from the Christian Faith. Concerning it, as concerning formal heresy, the things to be stated must be said.

267. Principles. - I. Formal Heresy is always a most grave sin, as infidelity itself is. The reason is: 1° Because the virtue of Faith, as being theological, is one of the chief virtues, and therefore a sin directly opposed to it is most grave. 2° Faith is the foundation of justice, without which it is impossible to please God; therefore heresy, by expelling Faith, deprives man of all justice. 3° Because heresy is contempt of the authority of God revealing, and thus directly and immediately against God.

II. Purely material heresy is free from every fault. The reason is clear from its definition: for someone here and now is supposed to err from invincible ignorance; but sin with such ignorance is impossible. Therefore, etc.

268. Questions. - Quaer. 1° What are the signs of material and formal heresy?

Resp. to the first. The following are judged signs of material heresy only: 1° He who is prepared to submit himself to the judgment of the Church when the error is removed. - 2° He who never knew anything true and certain concerning the Faith, and concerning his Religion never doubted. - 3° He who, doubting, strove to know the truth as much as he could.

Resp. to the second. Formal heretics are judged: 1° he who, after the truth has been known, still contradicts the Church; - 2° a sectarian doubting and not inquiring, or turning away his ears through malicious intellect from the motives of authority; - 3° he who by act is so disposed that, even if the truth should occur to his mind, he would nevertheless confirm his soul in the false sect, for the sake of persevering in his own sect. - But if someone with Catholic intention has not so compared his soul, but through affected ignorance, because he would not dare to oppose himself to the authority of the Church in some other matter, and in the meantime wills to be ignorant, so that he may cling without obstacle to his own opinion, he sins indeed, but is not a heretic, since he has the will of believing if the doctrine revealed is sufficiently proposed to him.[1]

Quaer. 2° Is he a formal heretic who doubts concerning some truth which he knows to have been revealed by God and proposed by the Church?

Resp. Affirmatively; because thus doubting is to be uncertain concerning whether God commands one to believe as certain; therefore he equally denies the highest truth of God with him who judges false what God commands to be believed as certain. L. VI. 302.

Notes to n. 268. (1) L. VII. 301, 302.

CHAPTER II: ON HOPE

269. ○ Hope is a supernatural virtue by which, with certain confidence, from the promise of God we expect future beatitude and the means for attaining it.

The primary material object of Hope is God to be possessed, according to that: "I will be thy reward exceeding great." Gen. 15, 1. The secondary material object is all the means necessary for attaining beatitude, as the remission of sins, the grace of God through the merits of Christ, etc.

The formal object is the benignity and fidelity of God in His promises because of the merits of Christ, joined with His omnipotence.[1]

But the acts included in Hope are desire of eternal beatitude, firm confidence of arriving at it, and a soul raised up against occurring difficulties.

The sins opposed to Hope are despair and presumption. The former is a voluntary diffidence of obtaining beatitude and the means necessary for attaining it. - But the latter is a rash expectation of beatitude or of the means for attaining it.

Notes to n. 269. (1) One adhering to propositions marked by a censure below heresy is guilty of grave sin, and indeed: a. according to St. Alphonsus, L. I. 104, of heresy (according to some, of very grave error), if he denies that those propositions deserve such a censure. The reason is because by this very fact he directly denies the infallibility of the Church, which, according to the common opinion, extends also to these censures. b. If a proposition is fixed with a censure other than that of falsity or error, for instance if it was condemned as scandalous, temerarious, or improbable, and he denies that it is false, he is not indeed guilty of heresy (for the falsity of the proposition is not asserted immediately by the Church), but nevertheless of error, since deductively he opposes himself to the infallibility of the Church; for the falsity of the proposition is deduced by a certain inference from the fact that it is scandalous, etc.; for a true proposition cannot produce scandal or lack grave foundation, at least for any circumstance. I say: for any, etc.; for here there is a question of dogmatic censure, not of prudential censure (as in the case of Galileo). Thus Viva, In damn. Quaest. prodr. n. 2, 18-20, cited by St. Alphonsus in the place cited. - Doctrinal responses of the Sacred Congregations concerning a matter not yet declared by the infallible magisterium of the Church, and not confirmed by the Pontiff speaking ex cathedra, do not indeed demand most firm and absolutely irreformable assent, but nevertheless the obedience of the mind, as containing doctrine safe either simply or for the circumstances. Cf. Mazzella, de Virt. n. 508-524.

270. Principles. - I. Hope is required in adults for justification by necessity of means. For man cannot arrive at God, his ultimate end to be attained, unless by his own acts he tends into Him; but this cannot be done without hope. This is also established from the Council of Trent.[1]

II. Hope is necessary also by necessity of precept, since there is a true precept of eliciting acts of Hope at certain times in life. This is established from the 1st proposition condemned by Alexander VII (see p. XIII), and from the common opinion of the Doctors.

But this precept obliges of itself, like the precept of faith: 1) at the beginning of the use of reason, when namely eternal beatitude has been sufficiently proposed as the end to which each one ought to tend; - 2) in danger of death, namely that he may be strengthened against the temptations then accustomed to arise, and may be borne toward God, the ultimate end soon to be attained; 3)

according to St. Alphonsus,[2] at least once in any given year; for it is difficult to persevere for so long a time in grace without an act of hope. Yet virtual hope suffices, just as virtual faith does (n. 248, 3°).

Like the precept of faith, it obliges by accident: 1) when from precept an act of other virtues must be elicited, for example of prayer, which cannot be exercised without an act of hope; 2) when temptation urges, and there is danger of consenting unless hope raises up the soul; 3) when a Christian has fallen into mortal sin and is held to strive toward justification;[3] 4) when he is situated in danger of despair, for hope is a necessary means for overcoming this danger.

271. Questions. - Quaer. 1° In how many ways is the sin of presumption committed?

Resp. Chiefly: 1° if you presume to obtain eternal life by your own powers; 2° if you expect it without labor, from the mercy of God alone.[4]

Quaer. 2° Can there be smallness of matter in sins against Hope?

Resp. 1° Affirmatively as to presumption, although it is grave from its kind.

Resp. 2° Negatively as to despair, unless it is so called improperly, that is, pusillanimity or excessive diffidence concerning oneself. Because of imperfection of the act, it is often venial in sadness and impatience.

Notes to n. 271. (1) Sess. 6, c. 6. (2) H. A. Tr. IV, 18. (3) Trid. Sess. 6, c. 6. (4) L. III. 21.

272. ○ Quaer. 3° Is it a sin against Hope to desire to live perpetually in this world, or on the contrary, from weariness to wish for death?

Resp. to the first: Affirmatively, because he who desires this stops in temporal life as in the ultimate end. - Thus commonly.[1]

Resp. to the second: 1° It is not against Hope of itself, because it is not to withdraw from the ultimate end; 2° nor generally does it exceed venial sin, unless there is express rebellion against the order of divine Providence.

Quaer. 4° Is it presumption 1) because of hope of pardon; 2) with hope of pardon, a) to sin more easily, b) to persevere in sin, c) to repeat sin?

Resp. to the 1st: Affirmatively, if you understand that phrase, because of hope of pardon, in such a way that hope of pardon is the cause why someone sins more easily, or perseveres in sin, or repeats sin. Yet a sin repeated because of hope of pardon must not be confused with a sin repeated precisely for this reason, that it is accused in confession as easily several times as once, although this is a depraved disposition, very injurious to God.

Resp. to the 2nd: Negatively, if you take that phrase, with hope of pardon, in this sense: that hope of pardon to be obtained at some time through proper means only accompanies the sinner while he sins, or perseveres in sin, or repeats sin, without nevertheless being the reason or motive influencing him to sin. Yet men of this sort, if they persevere in sin, are with difficulty excused from grave sin against charity toward themselves, since by the common consent of the Doctors they expose themselves to great danger of damnation.[2]

Notes to n. 272. (1) L. III. 20. (2) Ib. 21.

273. ○ Quaer. 5° What are the remedies of despair?

Resp. The chief ones are the following: 1° consideration of the infinite goodness and mercy of God; - 2° frequent recollection of those men who after very many and most grave sins obtained pardon; - 3° meditation on the parables of the Holy Gospel, especially of the lost sheep; - 4° special devotion toward the Blessed Virgin, refuge of sinners; - 5° confidence in Christ affixed to the cross for us, etc.

274. Practical Rules. - First. Let the confessor inspect from what root especially despair in the penitent arises, so that he can apply fitting remedies according to the diverse cause. - But for the most part it is accustomed to arise proximately from apprehension of certain damnation. Remotely, however: 1° from sloth, by which someone thinks the means of salvation too grave, and therefore is deterred from employing them; 2° from lust or other inveterate sins, which turn the mind away from heavenly things, and because of the difficulty of emendation lead to despair; 3° from melancholy, which inclines to sadness and turns away from confidence, which is accustomed to generate joy of soul; 4° from scruples, by which the soul is cast down and oppressed.

Second. Penitents given to despair are to be governed by the confessor with great circumspection, prudence, and patience, according to the diversity of dispositions and the varied kind of despair. Those must be directed in one way who are driven into despair from malice, or from the weight of sins and a flagitious life; in another way those who are impelled to it from pusillanimity, or from diabolical temptation.

Third. Penitents who exhibit themselves as such are not immediately at first glance to be judged as carried away by despair, especially if they live in a Christian manner. For even devout souls are found who are harassed by almost continual temptations of despair; nor is it easily to be believed that they have sinned, especially gravely, although they think they have furnished consent to those temptations; just as excessive fear concerning the danger of salvation must not be confused with despair properly so called.

CHAPTER III: ON CHARITY

275. ○ Charity is the virtue by which we love God as the highest good on account of Himself, and the neighbor on account of God. - Charity is the most excellent of all virtues, because it attains God in the most perfect mode. Hence:[1] "Now there remain Faith, Hope, Charity, these three; but the greatest of these is Charity."

The formal object of Charity is the divine goodness. But the primary material object is God, the secondary material object is ourselves and the neighbor.[1]

There is distinguished: 1° love of God supremely intensive or appreciative; 2° love of benevolence, which regards the proper good of the beloved; love of friendship, which is mutual love of benevolence; and love of concupiscence, which primarily intends the proper good of the one loving.

The discussion must be: 1° on love of God; 2° on love of the neighbor.

Notes to n. 275. (1) 1 Cor. 13, 13.

ARTICLE I: ON LOVE OF GOD

276. ○ 1° There is a special precept of loving God above all things both by internal affection, through true love of the heart, and also by external work. - This is established from the words of Christ:[2] Thou shalt love the Lord thy God with thy whole heart ... this is the greatest and first commandment.

2° This precept, insofar as it is affirmative, obliges to loving God above all things appreciatively, that is, in such a way that in reality He is preferred to all goods, as is clear from the natural law; but not necessarily intensively, that is, by a more intense sensitive affection than anything else, because the essence of charity does not consist in degrees.

277. Questions. - Quaer. 1° When does the precept of charity urge?

Resp. 1° Of itself: a) at the beginning of the use of reason, or when man has obtained sufficient knowledge of the infinitely good God; b) most probably in the article of death, because then not merely the safe way, that is, attrition with the Sacrament of Penance, but the safest way also is to be chosen; c) several times in life. But how often in life, there is not one opinion of all. The opinion of Cardenas is more pleasing to St. Alphonsus,[3] who teaches that he can with difficulty be excused from mortal sin who defers an act of charity beyond a month; this opinion he thinks must altogether be persuaded as very salutary, since in reality a man can with difficulty live long in a Christian manner, by observing the divine commandments, unless he frequently cherishes and nourishes love toward God; but he will not be able to nourish and cherish it except through acts of charity. Yet Croix notes that all meritorious works exercised from the intention of pleasing God are true acts of love, as almsgiving is. Likewise it suffices if such acts are elicited for fulfilling other precepts, as for confessing; since the precept is fulfilled in exercise, although there is no advertence to it.[1] Indeed as often as those words are uttered from the heart in the Lord's Prayer: hallowed be Thy name; Thy will

be done, acts of perfect charity are sufficiently elicited. Therefore timorous faithful ought in no way to be anxious as to the fulfillment of this precept.[2]

Resp. 2° By accident: a) if there is danger of falling into mortal sin unless an act of charity is elicited, or grave temptation cannot otherwise be overcome; for he who is held to the end is also obliged to the necessary means; - b) when the precept of contrition urges, as if it is necessary for a priest to celebrate when he does not have a supply of a confessor and is conscious to himself of grave sin; for charity is included in the act of perfect contrition.

Quaer. 2° Is the precept of charity satisfied through attrition in the reception of the Sacrament of Penance?

Resp. Negatively, because attrition does not occur principally from love of God, but of oneself, and therefore in it the principal motive of charity is lacking.

Notes to n. 277 - note sequence 1. (1) L. III. 22, 24. (2) Matth. 22, 37, 38. (3) L. III. 8 and H. A. Tr. IV, 13. Notes to n. 277 - note sequence 2. (1) L. III. 8 and H. A. Tr. IV, 13. (2) Cfr. Vind. p. 145 sq. Ed. 2a, T. I, p. XL and 168.

ARTICLE II: ON LOVE OF THE NEIGHBOR

The discussion must be: 1° on the precept of love of the neighbor in itself; 2° on works of charity to be fulfilled from it; 3° on vices opposed to charity toward the neighbor.

§ I. On The Precept Of Love Of The Neighbor In Itself.

1° Toward all in general; 2° toward enemies in particular.

Point I. On The Precept Of Charity Toward All In General.

278. Principles. - I. There is a precept of loving the neighbor with true and internal affection. This is established 1° from the natural law, because also in the neighbor there flourishes the same formal motive of love, namely participated goodness of God; for all men are creatures of God, created to His image and capable of the friendship of God and of eternal beatitude; therefore, just as we must love God, so also we must love the neighbor on account of God. - 2° It is established from Sacred Scripture:[1] "Thou shalt love thy neighbor as thyself." - 3° It is also established from the condemnation of the 10th proposition by Innocent XI (see p. XV).

But he who lives in a Christian manner sufficiently satisfies this precept, as to the internal act, by praying for the neighbor or by reciting the Lord's Prayer. But as to external acts, he satisfies it by succoring the necessities of the neighbor, whether temporal or spiritual, according to the rules to be established below.

II. Some order of charity must be preserved in love of the neighbor; for the objects which charity embraces are not equal; therefore neither are they to be loved equally. But this whole order is placed in this, that we assign to each lovable subject its own fitting place, with regard namely both to goods, to necessity, and to persons.

1. Account must be had of goods, for all goods are not of the same excellence. For this is their order, that the first place be held, and therefore before all things procured, by spiritual goods; the second by intrinsic natural goods, as life, health, integrity of members; the third by

extrinsic natural goods, as reputation and honor; to which riches are to be added in the last place as being of an inferior order. Likewise the common good is to be preferred to the private good.

2. Account must be had of necessity, which can be diverse, whether it is spiritual or temporal. A threefold necessity is distinguished: - extreme, as when someone without the help of another cannot free himself from danger of damnation, or from death or another evil almost equal; - grave, as when someone, unless he is helped by another, can escape the danger of the soul or of the life of the body, or of another grave evil, only with very great difficulty; - common or mediocre, in which someone can provide for himself without great difficulty. In this necessity, in the spiritual order, ordinary sinners are situated, who, if they wished to employ some effort, could rise again from the depraved state. But in the temporal order, beggars are generally in this necessity; for them, according to their condition, life is not held as too burdensome.
3. Account must be had of persons; for the love of diverse persons must be measured according to the diverse reason of excellence and conjunction of the person to be loved.

Notes to nn. 278-280. (1) L. III. 30. (2) Ib. (3) Ib. (4) P. II, q. II.

279. ○ Special rules of the order of effective charity, or of succor, from the common doctrine of Theologians, are these:

First Rule. Each one is held, absolutely speaking and in equal necessity, to love himself more than the neighbor, as to goods of the same order, according to that: well-ordered charity begins from oneself; for "no one is nearer than each one is to himself"; and this moreover is clear from the natural and invincible inclination of all. And therefore: 1) we are held to love our own soul more than the soul of the neighbor; and for this reason it will never be licit to sin either gravely or lightly in order to consult the salvation of another. Yet it will be licit for a just cause to expose oneself to a probable, not certain, danger of sinning. Thus, for example, it is licit for physicians and priests to read and handle dangerous matters; and in the extreme spiritual necessity of the neighbor, for example if otherwise an infant is certainly about to die without baptism, it will be necessary to expose oneself to it. - 2) We are regularly held to prefer our life to the life of the neighbor. I said: regularly; for a private person a) is held to expose life to certain danger for the republic, or for preserving the life of a person altogether necessary for the public good (n. 278, II, 1); b) can from the motive of virtue expose life for the life of another private person. For the order of charity in this case is not injured, since not precisely the life of the neighbor, but the good of virtue, is then preferred to our life.

Second Rule. 1° If the neighbor is in extreme spiritual necessity, he must be succored even with danger to our life; because the eternal life of the neighbor is a more excellent good than our temporal life. Hence you are bound, with danger to your life, to baptize a dying infant. Likewise if you know that someone, existing in mortal sin, is to be killed while asleep or thinking of nothing. Make exception if either a) there is not morally certain hope of saving the neighbor, whence a mother is not held to undergo danger of life so that the offspring may be baptized, when it is uncertain whether the latter will come through to baptism; or b) another is present who can and wills to succor him; or c) a graver evil is feared from it, as if he who exposes life for a brother is necessary for the common good. The reason for these exceptions is clear of itself.

2° If the necessity of the neighbor is temporal, you are not held to very difficult or almost morally impossible means, for example to spending on him an extraordinary sum of money, although you are rich; because although in a necessity of this sort charity obliges even with great inconvenience, nevertheless not with the greatest, even toward yourself.

Third Rule. If the neighbor is in grave necessity, whether spiritual or temporal, no one is held of himself to succor him with grave inconvenience; for when another absolutely can free himself from danger, charity does not seem to oblige us to come to his aid with such great difficulty, since then the neighbor cannot truly be said to be in a case of necessity, as being not ineluctable. I said: 1) of himself; for he would be held even with danger to life who was obliged to this either by reason of office, as Pastors of souls are; - or by reason of a delict, as if someone had taught heresy; - or if that grave necessity is public, because a public grave necessity is accustomed always to be joined with the extreme necessity of certain private persons. Hence if someone spreads heresy somewhere, you are held to impede him with danger to life, if you can do this efficaciously and no one else impedes him. Likewise if in persecution or hostile incursion some people lacked a priest, and otherwise were exposed to grave dangers of sinning, you are likewise held to assist them with danger to life. I said: 2) with grave inconvenience; for each one is held to assist the neighbor constituted in grave necessity with mediocre inconvenience, as the matter itself says.

Fourth Rule. If the neighbor is situated in common necessity, whether spiritual or temporal, he will indeed have to be helped, because love of neighbor demands this; but speaking of itself there cannot be present except a light obligation, for the neighbor himself can rather easily free himself from such necessity, nor is it so burdensome to him.

Fifth Rule. Finally, if a comparison is instituted among diverse persons, in equal necessity we ought to prefer blood relatives, or those joined in some other way, to strangers; because charity does not change the order of nature, but perfects it. - I said: in equal necessity; for since the obligation of succoring the neighbor does not exist except by reason of the necessity in which he is situated, it is clear that the obligation is greater where the necessity is greater. - But among those joined to us, those more closely joined are always to be preferred according to their various degrees, with regard to the necessity and the goods which are owed to such conjunction and in which it is founded. Hence in grave necessity: 1) the wife is to be preferred, because she is one flesh with the man and the principle of children; 2) children, because they are more closely joined, since they proceed from the substance of the parents; 3) parents, who after those named concur toward the fellowship of life and the increase of the republic; 4) brothers, sisters, relatives, domestics, fellow citizens, and fellow soldiers. I said: in grave necessity; for if the necessity is extreme, more probably not the good of families, but of life, must be attended to. Hence then parents are to be preferred to all because of the eminence of the principle; and indeed the father is to be preferred to the mother, as being the more noble principle; then come children, spouse, etc., as above.[4]

Note. - By accident it can happen that one is to be preferred who naturally would have to be placed after another. Thus a good mother, useful to the offspring, can be preferred to a bad father who is harmful to the offspring. Likewise a son necessary to domestic affairs can be preferred to a useless and clamorous wife. This is clear from n. 280, q. 3°, Resp. 1°.

Notes to n. 279. (1) Matth. 22, 39.

280. Questions. - Quaer. 1° Are penitents to be interrogated about due care of the soul or body neglected?

Resp. Negatively, generally speaking. For either there is question of damage of the soul brought upon oneself through faults; and it must no more be expressed than in a sin, for example of theft, the violation of charity or obedience toward God must be expressed. Or there is question of the omission of means by which faults are guarded against; and since this obligation is not distinguished from the obligation of observing precepts, such negligence is sufficiently expressed through confession of the other sins. Lugo.[2] - But if there is question of damage inflicted on life or body, although the obligation of charity toward oneself would seem to have to be distinguished from the obligation which the fifth precept of the Decalogue imposes by reason of the divine dominion over our life and body, nevertheless since the causes of illnesses for the most part are not proximate and immediate, they almost never infer grave guilt, unless nevertheless the illnesses have been certainly foreseen from causes, even remote ones.

Quaer. 2° Is it against Charity to wish death for oneself because of the misfortunes of life?

Resp. 1° Negatively, if it is done from desire of a better life, or of eternal happiness, as is evident.

Resp. 2° Affirmatively, if it is done from weariness of life, or from dejection of soul. Yet those do not sin who desire death when life becomes so burdensome that it is estimated harsher than death itself. - Otherwise, if it is done from any light cause whatever. Yet little women desiring death for themselves because of the smallest troubles are, for the most part, not improbably excused from mortal sin because of defect of advertence and deliberation.[1]

Quaer. 3° Is it against Charity to desire temporal evil for the neighbor, or to rejoice over it, because of a good end?

Resp. 1° Negatively, if the due order of Charity is preserved, that is, if it is done because of a greater good, or because of a lesser evil. Hence this is licit: 1° because of the spiritual good of the neighbor himself; 2° because of the common good, whether spiritual or temporal; 3° because of a good even of several persons, of much greater moment, for example of a family, or even of an innocent person.[2] - Besides, such desires can easily and usefully be changed into more perfect ones.

Resp. 2° Affirmatively, when the order of charity is perverted. Hence a wife cannot desire the death of her husband because she is unjustly treated badly by him, nor the death of her daughter because she cannot marry because of deformity or poverty. This is established from the condemnation of propositions 13, 14, and 15 by Innocent XI.[3] - See p. XV; cf. Vind.[4]

Notes to n. 280. (1) L. III. 27. L. VI. 939, § Sed hic. H. A. Tr. IV. 15. (2) De Poen. D. 7, n. 242, and D. 15, n. 56.

Point II. On The Precept Of Charity Toward Enemies In Particular.

281. Preliminary notes. - 1) By this precept hatred is forbidden. Hatred generally is an act by which someone is badly affected toward another: and this can happen in a twofold way; namely, so that he wills evil to him, which and insofar as it is evil to him, and from displeasure with him (hatred of malevolence or of enmity); or so that he turns away from him as from an evil to himself or to a loved person (hatred of abomination). But the object of abomination is someone either by reason of himself or as simply evil (for example, as a man), and this is

called hatred of abomination of nature; - or only under some respect (for example, as a sinner), while under another respect he remains lovable, and this is called hatred of abomination of quality. Bouq. de Virt. th. n. 507-509.

2. Signs of love are either common or special. Those are called common which are customarily given to others of the same state; yet they are diverse according as certain persons are bound together among themselves by a diverse reason of conjunction. Hence some are common signs, for example among brothers or among pupils of the same monastery or college; others among fellow servants or fellow students; others among fellow citizens or fellow soldiers; others finally, which man owes to any man from charity.

Special signs are those which are shown particularly to certain persons by reason of some conjunction or friendship or familiarity, which is not toward all others otherwise of the same condition. Thus not only among men bound by no other bond besides, but also among fellow members of any community or society or college, it almost happens that someone is more friendly or familiar with one than with another.

282. Principles. - I. Hatred of abomination is not absolutely evil, but can be good. The reason is that it arises from love of oneself or of another, and therefore it is evil only when that love is not ordered. Hence hatred of abomination of nature is gravely evil, and of itself also hatred of abomination of quality, if this quality is good, as if you have someone in hatred because he is pious, just, etc.; but in no way is it evil, but rather praiseworthy, if the quality is evil. This is clear also from Scripture, Ps. 118. 113 and 138. 21; Wis. 14. 9. Yet one must beware lest abomination of the quality degenerate into hatred of the person.

II. Hatred of enmity is absolutely and from its genus mortally evil; for it cannot fail to be a sin to will evil to the neighbor, which and insofar as it is evil to him, and from displeasure with him; nor can it be a light sin if the evil thus willed is grave. This is clear also from 1 John II. 11; III. 14, 15; IV. 20. Bouq. ib., n. 515, 516.

Resolutions. - I. Common signs are owed, of themselves, to enemies, because their denial would be an act of vengeance and a manifestation of hatred, which is opposed to charity, which is owed also to enemies. Hence:

1. It is not licit to exclude enemies from prayers, for example from the Lord's Prayer; indeed one would have to pray specifically for them if this one means alone were available to the offended person for extinguishing hatred.
2. It is not licit to exclude enemies from common alms, from return greeting, from response, from the sale of exposed goods, because these are common signs of love. - Thus commonly.
3. Those sin who do not assist an enemy in necessity, or who do not prevent his grave damage, when they can do so easily.

II. Special signs of love are not owed of themselves to enemies, for example to receive them with hospitality or at a banquet, to visit the sick, to console the sorrowful. For these proceed not from debt, but from liberality. Yet I said: of themselves; for by accident sometimes they are owed, namely

1) if their omission would be scandalous, as if the enemies were Superiors, or had already previously shown such signs to oneself; 2) if grave necessity of the enemy, whether temporal or spiritual, precisely demands them and they can be shown without grave inconvenience; 3) if signs which are customarily enumerated as special, by reason of state or condition or office, are in reality common; as if someone as a physician ought to visit the sick and serve them, or as an innkeeper ought to receive travelers with table and lodging, etc.

III. Not only is an offense to be forgiven to an enemy in such a way that the desire of unjust vengeance is cast away, and common signs of love are not denied; but to one seeking pardon, and furnishing fitting satisfaction for the injury, if any intervened, certain particular signs also of special love, if any were previously accustomed to be given, generally speaking are not altogether to be refused.

Hence those sin who avoid an enemy wishing to be reconciled, especially when he notices this and is gravely affected by it, or who, when invited, refuse to go with him, unless nevertheless they are excused by fear of quarrels, or of new rancor, or by another just cause. Likewise those who refuse pardon, or do not accept suitable satisfaction, or demand a greater one than is fitting, or who bring the matter into court from hatred and vengeance.

283. Questions. - Quaer. 1° Is it licit to wish public punishment for an enemy, and even to seek it?

Resp. Affirmatively, of itself, if every affection of vengeance is absent; but in practice this is dangerous, and easily exposed to delusion, and ordinarily illicit.[1]

Quaer. 2° What order must be observed in making reconciliation?

Resp. 1° He who has offended another ought, of himself, first to employ the means toward reconciliation, as natural equity dictates. I said: of himself; for otherwise one must speak if someone is excused by a legitimate reason, as if the offense was light, or the offended person absent, or he does not care about the deprecation of fault or is not going to accept it, or satisfaction is considered to have been made to him in some other way.

2° If the offense is mutual and equal, he who first offended should first promote reconciliation; but if it is unequal, let him precede who offended more gravely. Besides, absolute rules cannot be assigned, but the circumstances must be considered. Thus, generally speaking, among equals he ought first to greet and speak who passes in the presence of another standing or sitting, or who arrives after others. Add that a more opportune time must sometimes be awaited, and ordinarily reconciliation scarcely turns out well except by means of a friend and prudent man, as Gousset aptly observes.

Quaer. 3° Is there given an obligation of greeting an enemy met on the way?

Resp. Negatively, of itself, because greeting and conversation are not common signs owed to the neighbor. Yet one must speak otherwise if adjuncts of state, condition, or other similar things require that all greet one another indiscriminately, or if there is question of a subject toward his superior.[2]

Quaer. 4° Ought the offender to ask pardon from the injured person?

Resp. Affirmatively, of itself, unless another means or mode of reconciliation more suitable is available, for example by furnishing various offices or benefits, or unless the asking of pardon seems likely to avail nothing for placating the offended person. They make exception also if the offender is

far superior to the offended person, or if the offended person is prudently judged to forgive it. But other means of placating the offended person are not lacking. - Thus commonly. - Lacroix,[3] Tambur., etc.

Quaer. 5° Do parents sin who refuse to a son or daughter, although asking pardon, both conversation and sight, because of a marriage contracted by them against their reasonable will?

Resp. Distinguish. Either they refuse for a long time, and intend to refuse in perpetuity, or for a short time only. - If the former, they sin gravely, as is clear of itself. - If the latter, they do not sin in the case in which they act thus for the amendment of the son or daughter, or as a punishment of the fault, or as an example for the other children. Thus Laymann, Diana, and others apud Varceno.[1]

§ II. On Works Of Mercy.

Works of mercy are some corporal, as to furnish food to the poor, to clothe the naked, etc.; - others spiritual, as to correct those sinning, to teach the ignorant, to console the sorrowful, etc. We shall speak specifically only of two: 1° of almsgiving; 2° of fraternal correction, insofar as they are referred to the precept of Charity.

Notes to n. 283 - note sequence 1. (1) L. III. 29 and Conf. diretto c. 4, n. 9. (2) Ib. 28. (3) L. II. 189. Notes to n. 283 - note sequence 2. (1) Comp. Tr. VIII, p. 308.

Point I. On Almsgiving.

284. ○ Principles. I. There is truly given a precept of giving alms to the needy. This is established 1° from the natural law, that is, from the general law of Charity, by which we are obliged to love the neighbor, and consequently to bring help to him in necessity (n. 278). - It is established 2° from Sacred Scripture: "Defraud not the poor man of alms";[2] and "Depart from me, ye cursed, into everlasting fire ... for I was hungry and you gave me not to eat; I was thirsty and you gave me not to drink."[3]

II. Generally, from St. Thomas,[4] something must be considered on the part of the giver, namely that what is to be spent in alms is superfluous to him; and something on the part of the recipient, namely that he suffers necessity.

III. The superfluous on the part of the giver is distinguished as twofold, namely superfluous to life and to state. Superfluous to life is called that which is not necessary for preserving your life, and the life of others whose care has been entrusted to you. Superfluous to state is that which is not necessary either so that someone, with those whose care has been entrusted to him, may live decently according to the condition of the state in which he here and now is situated, or so that he may render this condition moderately better.

IV. Necessity on the part of the recipient can be threefold, namely extreme, grave, common.

Notes to n. 284. (2) Eccli. 4. 1. (3) Matth. 25, 41, 42. (4) 2. 2. q. 32. a. 5.

285. Rules. - I. In extreme necessity the neighbor must be succored from goods superfluous to life; but from those alone. - From things superfluous to life: since the right order of charity demands that the life of the neighbor prevail over a good of ours far inferior. - From those

alone: since it does not demand that we prefer another's life to our life and that of our own, as would happen if we were to succor him from things necessary to life.

II. In grave and common necessity the neighbor must be succored from goods superfluous to state.

I say: 1° He must be succored; for the precept of almsgiving regards not only extreme necessity - which is very rare - and grave necessity - which is rarer - but also, and indeed especially, common necessity, which is frequent. Thus all.

I say: 2° from goods superfluous to state; for besides things superfluous to life there are no others from which the neighbor may be succored.

III. The quantity of alms: - a) sufficient is that by which the neighbor is sufficiently succored according to the degree of present necessity; - b) strictly prescribed in necessity, 1) whether grave or extreme, cannot be called a great sum of money (n. 279, second Rule under 2°); 2) in common necessity, according to St. Alph., a fiftieth part, or 2%, of surplus revenues. For if individual rich persons spent that quantity on the poor, it would already be sufficient for meeting common necessities.

Therefore rich persons sin who, where the poor are not supported by public stipends, always repel them harshly from themselves, and reserve all surplus things for acquiring a higher state. For otherwise so moderate an alms, which was recounted above, cannot impede an honest ascent to a higher state. - Likewise physicians, advocates, etc., sin who refuse to expend their service freely on the poor, for whom provision is not made by public authority.

286. Questions. - Quaer. 1° Does the precept of almsgiving oblige under grave sin?

Resp. 1° Affirmatively, in extreme or quasi-extreme necessity. Thus all.

Resp. 2° Affirmatively, according to St. Alph.,[1] also in grave necessity, and if there is question of the poor in general, and not of some particular poor man, also in common necessity. The reason is that since in Scripture men are frequently condemned because works of mercy were neglected, the grave obligation of these works is not to be restricted to extreme necessity, or a very rare one, nor to grave necessity, or a rare one. - Yet absolution is not easily to be denied to a rich man harshly repelling from himself all who are situated in common necessity, since rich persons almost always bring forward excusing reasons, which in practice the confessor will not easily be able to reject as empty.[1]

Quaer. 2° To which poor persons must alms be given?

Resp. To the truly poor - yet to those asking - and without excluding strangers or non-Catholics. I say: 1) to the truly poor, but not to those unwilling to labor; for these cannot be said to be pressed by any true necessity. - I say: 2) yet to those asking; namely when they can easily ask. - I say: 3) without excluding strangers or non-Catholics, while preserving, nevertheless, the right order of Charity, and unless in some place there has obtained, for a just cause, a custom or statute of excluding poor strangers from cities, namely so that they may be fed by their own citizens.

Quaer. 3° From which goods ought or can alms be given?

Resp. 1° From one's own goods, of which someone has free administration. I say: 1) from one's own goods. Therefore not from goods liable to restitution; - not with damage to creditors; - not by

children from the proper goods of parents; - not by servants from the goods of masters. - Yet tutors and curators can give from goods committed to them those moderate alms which those whose goods they administer would have to give, since they bear their person. - I say: 2) of which someone has free administration. Hence a wife cannot give extraordinary alms without the consent of the husband, unless from goods wholly her own, of which namely she has both dominion and administration and receives the fruits. Yet she can give ordinary and very common alms from domestic goods according to the custom of wives of her condition.

Resp. 2° From another's goods, when either 1) the poor person is in extreme necessity and you cannot give from your own;[2] or 2) the owner consents or is reasonably presumed to consent. Hence children can bestow very small things, and servants bread and similar things.

Notes to n. 286 - note sequence 1. (1) L. III. n. 31. Notes to n. 286 - note sequence 2. (1) L. II, n. 32. Cf. Vind. P. II, q. IV. Ed. 2a, T. I, pp. XLII, 175. (2) L. II. n. 33.

Point II. On Fraternal Correction.

287. Definition. - Fraternal correction is an admonition by which someone, from charity, endeavors to recall another from sin. It is said: by which someone, from charity; therefore it differs from that which is made from office, which is distinguished as twofold, namely judicial, which is made by public authority and for the common good; the other paternal, which is made by a superior for the private and at the same time public good. That which is made from office obliges only those who discharge that office, namely Bishops, Pastors, Prelates of regulars, Magistrates, Parents, and those who are in their place, and it is to be made only to subjects; - but fraternal correction, like charity from which it proceeds, obliges all and toward all.

288. Principles. - I. There is given a true precept of fraternal correction. This is established 1° from the natural law of Charity, by which we are obliged to remove the evils of the neighbor. - 2° From Sacred Scripture: "Reprove thy neighbor ... lest perhaps he repeat it";[1] and "If thy brother shall sin against thee, go and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother."[2]

II. For the strict obligation of this precept there is required: 1° that the sin of the neighbor, or the proximate danger of sinning, be certainly established. - 2° That the amendment of the neighbor be more probable than his non-amendment. - 3° That there not be another equally suitable person who is believed to be about to correct him. - 4° That the correction can be made without grave inconvenience of the one correcting. - 5° That it be judged necessary for the amendment of the delinquent, and that there is not at least probable hope that he will amend himself of his own accord. Thus commonly.[3]

The first is required, lest you act rashly and inflict injury on the neighbor, for example by lending your ears too easily to some rumor. - But in doubt you are not held to inquire about the sin, since this pertains only to those who are held to correction from office.[4]

The second; for the doubtful man only imprudently puts his hand to a moral action.[5] Hence prudence for the most part counsels that correction be omitted toward those whose character is wholly unknown, lest, receiving the correction with a hostile spirit, they become worse. Make exception,

nevertheless, if either 1) the one to be corrected, who is not in good faith, is situated in danger of death; or 2) there is question of a danger of perversion in faith or morals to be averted from others.

The third; for then there is not present true and absolute necessity.

The fourth; for charity does not oblige with grave inconvenience unless either the neighbor is situated in extreme spiritual necessity, or, supposing that to the obligation of charity in the one correcting there is also added an obligation of justice, as in a Prelate, Pastor, Magistrate toward subjects, in grave necessity. But parents, confessors, masters, husbands, teachers, tutors, curators, although from office (of piety, etc.), nevertheless not from justice, and therefore not with their grave detriment, are held as Prelates, Pastors, Magistrates are. L. II. 40.

The fifth; for since many bear correction with difficulty, it is to be employed only in necessity.

From these things it follows that private persons among themselves are rarely held to correction, at least under grave sin, unless they are joined familiarly among themselves; because rarely are all the required conditions found to be present; more rarely still toward Superiors because of unsuitability. - Likewise often you will not be held to correct detractors, at least under grave sin; for in this matter it is most difficult to establish that correction will be profitable; detractors corrected before others are very easily offended; there is danger lest they increase or confirm the detraction; the hearer for the most part does not know whether what is said is notorious, and in doubt there is no reason why he should condemn the detractor (unless he is a lost man); once detraction has begun, often the neighbor is better consulted if this is allowed to be completed; for if it is explained distinctly, often it is not apprehended as so grave as had been conceived at the beginning. L. IV. 979. 981. Cf. what is to be said n. 524. - I suppose that silence is not equivalent to approbation. - Scrupulous persons likewise are ordinarily excused from the office of fraternal correction.

Notes to n. 288. (1) Eccli. 19. 14. (2) Matth. 18. 15. (3) L. III. 38 sqq. (4) L. IV. 360. Dub. II. (5) L. VI. 616 in fine.

289. Questions. - Quaer. 1° Does the precept of fraternal correction oblige under grave sin?

Resp. Affirmatively, of itself, if the required conditions are present, and there is question of grave matter. Hence he can sin gravely who from vain fear lest the neighbor be offended somewhat, or lest he himself suffer light detriment from it, omits correction in a grave matter, where he thinks it will more probably be profitable. - Yet he sins lightly who from faintheartedness and bashfulness considers himself less suitable for correcting. - St. Thom.,[1] - St. Alph.[2]

But matter in this, as in the other precepts, can be grave either from itself or because of circumstances. Thus, if in some religious Order through venial sins the vigor of discipline seems either to be dissolved or even greatly diminished, the obligation of correction can be grave. Likewise if a son or subject often steals small things, or little by little habituates himself to drinking, to dangerous play, although he does not yet sin gravely.

Quaer. 2° Does the precept of correction have place where someone sins from ignorance?

Resp. 1° Affirmatively, if there is question of vincible ignorance, because this does not excuse from sin.

Resp. 2° But if the ignorance is invincible, there is not so much question of fraternal correction as of warning, by which the neighbor is taught about the truth; since correction is an admonition of a

brother concerning the amendment of faults. But that warning must be made if the sins are against divine law, whether natural or positive; but if against human law, it is disputed on both sides probably whether private persons are obliged to it under grave sin. Yet the affirmative opinion is the more probable and more common according to St. Alphonsus;[3] for that transgression, although material and not intrinsically evil, with the certain law posited, is always evil, and therefore to be impeded through correction. But certainly it must be made by those who from office are held to teach subjects, as prelates, parents, confessors, teachers.

They generally add that, although no fruit is hoped for and the ignorance is invincible, nevertheless admonition must still be made if there is question of things necessary by necessity of means, or of those things which furnish public scandal, lest namely others think that to be licit which is not corrected.

Quaer. 3° What order must be observed in fraternal correction?

Resp. The order assigned by Christ Himself must be observed, unless circumstances suggest otherwise. - Hence 1° Correct secretly: "Rebuke him between thee and him alone." - 2° Before witnesses, if the first admonition does not suffice: "If he will not hear thee, take with thee one or two." - 3° Refer the matter to the Superior: "Tell the Church."

Sometimes that order can and must be inverted, namely: - 1° if the sin is public or soon to be made public; - 2° if it is gravely harmful to another; - 3° if secret admonition is not judged to be profitable; - 4° if it is better to manifest the matter immediately to the Superior, as it is generally better in communities living under a rule, in colleges, seminaries, etc. Nor can members or fellow residents be absolved who do not consent to a denunciation of this sort where there is question of grave damage to the community. Likewise by natural law corrupting priests, who inflict great spiritual damage on the faithful or seem likely to inflict it, must be denounced to ecclesiastical Superiors; - 5° if the delinquent has yielded his right, as happens in various religious Orders.

Quaer. 4° In what manner must fraternal correction be made?

Resp. Fraternal correction must be made with true charity also as to the manner; therefore it ought to be paternal toward inferiors, kindly among equals, and reverential toward Superiors. - Moreover, it is required that time, place, and other adjuncts be suitably chosen. Therefore he does not sin who puts the matter off to another time, when he can correct either more conveniently or equally conveniently, unless perhaps grave danger threatens from delay.

You will resolve: 1° A Superior, by force of knowledge obtained through a simple denunciation made to him as to a father, cannot proceed judicially, because the delict was not manifested to him as to a judge. L. V. 246. Not. III.

2° Those sin who refer to a superior a defect of a subject perfectly amended.[1]

3° Likewise those who refer a delict to mediate superiors while passing over the immediate superior, who can correct by himself and concerning whom there is not probable suspicion that he will not discharge his office, or will not discharge it duly; for the reputation of the neighbor must be consulted.

4° Superiors are held to inquire into the sins of subjects, yet not of some certain subject, unless some peculiar reason moves them to this. - Nor ought they easily to admit spontaneous accusers, and

much less immediately to give faith to them. - A grave obligation likewise falls upon them of not manifesting those by whom they were made more certain about someone's fault, if namely the fault is grave, - or, although it is light, if that manifestation, from another cause, ought to be regarded as a grave delict. - They also sin gravely if, when the common good does not demand it, they manifest to those whose counsel or help in correcting the subject they do not need a grave and occult delict of a subject brought to them.[1] But if the manifestation of the delict alone suffices for asking counsel, they sin if they also manifest the delinquent.

§ III. On Vices Opposed To Charity Toward The Neighbor.

The principal ones are hatred, envy, quarrels, scandal, and cooperation in others' sins.

We shall speak only of the two latter, since the matter has already been treated concerning the others in another place, or is to be discussed under the fifth precept of the Decalogue.

Notes to n. 289 - note sequence 1. (1) 2. 2. q. 33. a. 2. (2) L. III. 37. (3) L. III. 36. Notes to n. 289 - note sequence 2. (1) L. V. 243. 245. q. III. (2) Ib. 244. Notes to n. 289 - note sequence 3. (1) L. V. 247. § fin.

Point I. On Scandal.

Section I. Notion Of Scandal.

290. ○ By the name scandal, Greek rather than Latin, which from its primary signification denotes an obstacle or impediment placed in the way, by which occasion of stumbling and ruin is furnished to one walking ("stumbling-block or stone"), the Sacred Writers, the holy Fathers, and Theologians are accustomed to designate a spiritual obstacle placed before the neighbor in the course of the way of salvation. Hence scandal, accepted in this sense, is rightly defined with St. Thomas[2] as "a word or deed less right, furnishing to another an occasion of spiritual ruin." From this definition it is clear that for scandal there is required:

a) That it be a word or deed, that is, an external speech or action and known to another; for those things which are merely internal or occult cannot furnish occasion of ruin to another, since in no way are they perceived by him. But under the terms word or deed there must also be comprehended an external omission, that is, a not-said where one ought to speak, a not-done where one ought to do; for, as the Angelic Doctor notes,[3] "to act and not to act, when someone ought to act, are reduced to the same genus of act; according as the sin of omission is reduced to a sin of act."

b) That it be a word or deed less right, that is, having some defect of rectitude; which can happen in two ways: 1° when the word or deed according to itself is evil, for example a blasphemous word, a lustful deed; and 2° when it carries before itself the appearance of evil, for example if from dispensation you eat meats on a fast day before persons ignorant of the dispensation. Hence for the notion of scandal it is not necessary that the word or deed be of itself a sin; but it suffices that it have the likeness of sin; "and therefore," says the Angelic Doctor,[1] "it is fittingly called less right, so that both those things which are sins according to themselves and those things which have the appearance of evil may be comprehended." But as to words or deeds which bear no appearance of evil, as being wholly right, it seems one must say: - they never constitute scandal strictly so called, although perhaps another may take occasion of sinning from them; - yet sometimes even such words

or deeds can put on in some way the malice of scandal, and therefore are not undeservedly called scandal broadly so called, or scandal by accident, namely in a case in which, by command of the law of charity, even those words or deeds must be omitted precisely so that the sin of the neighbor may be guarded against.

c) That it furnish to another occasion of spiritual ruin, that is, that it expose another to probable danger of sinning, although nevertheless it is not necessary that the sin of the other actually follow; for scandal of itself is not, nor can be, an efficient cause, but only an occasion of ruin, or, as St. Thomas again says,[2] "nothing can be for man a sufficient cause of sin ... except his own will; and therefore the words or deeds of another man can only be an imperfect cause" (occasion) "inducing in some way to sin." - Therefore it suffices, but also is necessarily required for the essence of scandal, that it be in some way inductive to sin; and hence Busembaum rightly resolves apud St. Alph.:[3] "it is not always scandal if you sin before others; but only when, with attention to the circumstances both of the person acting and of those before whom the act is done, it can probably be feared that through this act those will be drawn to sin who otherwise would not have sinned." Thus, for example, it is not scandal if someone blasphemes or curses the neighbor in the presence of persons, for whom he notices that no probable danger of sinning will arise from it, as can often happen (provided there is not question of matter of the Sixth), and especially then when the person sinning himself is a man of the lowest condition and of bad reputation, or when the persons present are very upright or very depraved. - From these things also you will understand that Dens rightly warns[1] that the opinion of the common people is false, namely that someone is scandalized when, on occasion of an improper word or deed, he is justly indignant; but then he is not scandalized when he applauds or delights in the impropriety of another; since, on the contrary, in the second case he is scandalized, not in the first. And for this reason, as Suarez notes,[2] scandals are often said to be committed which properly are not scandals.

Notes to n. 290 - note sequence 1. (2) 2. 2. q. 43. a. 1. (3) De Veritate q. 15. a. 1, apud Van Egeren. Notes to n. 290 - note sequence 2. (1) 2. 2. q. 43. a. 1. (2) I. c. (3) L. III. 43. Notes to n. 290 - note sequence 3. (1) n. 152. (2) De Char. d. 10. sect. 1. n. 1. Notes to nn. 290-293. (1) De Profess. monast. a. 9, apud Van Egeren. (2) L. III. 46.

291. Division Of Scandal. - Theologians commonly distinguish:

I. Active scandal and passive scandal. Active scandal is that to which the definition handed down and explained above (n. 290) belongs. Passive scandal is the spiritual ruin itself of the scandalized person, or, as it pleases certain Moralists to say, it is the very sin of the neighbor occasioned. But it is established from what was said above that active scandal can exist without passive scandal, just as, on the contrary, it will be established from what is to be said later that passive scandal can sometimes exist without active scandal, for example if there is question of Pharisaic scandal.

II. Division of active scandal. Active scandal is divided into direct (which by another name is called seduction) and indirect.

Direct scandal is when the ruin or sin of the neighbor is intended by the scandalizer. But the sin of the neighbor can be intended in two ways, namely a) precisely so that the neighbor may sin and lose his soul (which is proper to the devil, and occurs more rarely among men, unless perhaps among those given to magical arts or openly impious); or b) so that the sin of the neighbor may serve the proper pleasure of the scandalizer, as happens in the lustful, - or his proper utility, as happens in the

avaricious, thieves, etc. In the first hypothesis direct scandal is called diabolical; in the other it is simply called direct.

Indirect scandal is scandal when the sin of the neighbor is not indeed intended by the scandalizer, but nevertheless is foreseen as probably going to follow from a word or deed posited by him without just cause, and therefore to be omitted lest the sin of the neighbor follow. - But when a word or deed of this sort, even if of itself right, must be considered as posited without just cause and to be omitted under the aforesaid title, will be more accurately explained below. Here you will usefully recall the doctrine on the indirect voluntary, n. 6-8.

III. Division of passive scandal. - Passive scandal is divided by St. Alph.[1] into given and accepted. Given, in the sense of the holy Author, is the sin to the committing of which someone is induced from active scandal; but accepted is the sin which is committed under the pretext of active scandal from pure malice of one's own. - Whatever given scandal is called by the holy Doctor scandal of the little ones, by reason of the weakness or infirmity by which those are considered to labor who allow themselves to be induced to sin through the word or deed of another; for scandal can scarcely fall upon the perfect and constant, according to that:[2] "Much peace have they that love thy law, and to them there is no scandal." Then any accepted scandal is called by St. Alph.[2] Pharisaic scandal, from the Pharisees, who, according to the testimony of Sacred Scripture, in order to destroy Christ feigned that they suffered scandal from His holy words; just as today false Liberals or Revolutionaries, in order to destroy the Vicar of Christ on earth, the Supreme Pontiff Pius IX, feign themselves to be scandalized by his most celebrated Syllabus.

Notes to n. 291 - note sequence 1. (1) L. III. 43 and H. A. Tr. IV. 24. (2) Ps. 118, 165. Notes to n. 291 - note sequence 2. (2) L. III. 43 and H. A. Tr. IV. 24.

292. Malice Of Scandal. - There is not here to be raised a question about the malice of passive scandal, which is nothing other than the very sin of the scandalized person. For it is clear of itself that such a sin has the same malice which it would have if it were committed by one not scandalized; so that the fact of having been scandalized adds to it no new species, indeed not even an aggravating circumstance; unless perhaps there is question of Pharisaic scandal, which can have a new specific malice joined to itself, for example from the fact that the words or deeds of Christ the Lord Himself are sacrilegiously employed as a pretext for sinning with impunity. - Hence in the following there will be discussion only of the malice of active scandal, concerning which let there be a twofold question.

Quaer. 1° How great a sin is active scandal?

Resp. 1° Active scandal is a mortal sin from its genus, since it is gravely opposed to the negative precept of charity: namely, do not harm your neighbor, and much more, do not induce him into sin, which is the gravest of all the damages that can be inflicted on the neighbor. But the guilt of active scandal is the graver:

a) The more the spiritual ruin of the neighbor is intended; and thus, for example, direct scandal is graver than indirect.

b) The more efficaciously active scandal flows into the ruin of the neighbor; and thus, for example, bad example given by clerics and priests regularly tends more efficaciously into the ruin of others

than bad example given by laymen.

c) The graver the spiritual damage of the neighbor which is caused through scandal; and under this reason no scandals are more detestable than those by which innocent souls of tender children are corrupted.

Resp. 2° Yet from a threefold head active scandal can be only a venial sin, namely:

a) From defect of sufficient deliberation, as if someone from negligence lightly culpable does not notice the occasion of mortal sin which is furnished to another by his word or deed.

b) From the lightness of the influence which the scandal exercises upon the grave ruin of the neighbor, as if in speaking or acting you commit some light indiscretion, which regularly, unless a special circumstance intervenes, indeed is accustomed to move the neighbor somewhat, but not so much that it could reasonably have been feared that he would fall from it into mortal sin, into which by accident he has fallen.

c) From smallness of matter, namely if to another there is furnished an occasion of committing only venial sin (which nevertheless is not to him a likely occasion of further grave ruin). And this is true even if that occasion of venial sin is furnished through a word or deed according to itself mortally evil; for the malice of active scandal is not to be measured from the malice of the word or deed which furnishes occasion of sin to another, but from the malice of the sin itself for which occasion is furnished; and hence it can happen that some word or deed according to itself is mortal sin and only venial in the reason of scandal; or the contrary, that some word or deed according to itself is venial and mortal in the reason of scandal. Thus, for example, he who inflicts a grave wound on a neighbor whom he knows will only become lightly angry sins mortally by reason of the injury and venially by reason of scandal; on the contrary, he who strikes a light slap on a neighbor whom he knows is to be moved from it to blasphemies sins venially by reason of the injury and mortally by reason of scandal.

293. ○ Quaer. 2° What kind of sin (that is, of what species) is active scandal?

Resp. Active scandal has at least a twofold specific malice, one against charity and another against that virtue to the injuring of which the neighbor is induced. And this is generally admitted by theologians concerning direct scandal; but concerning indirect scandal they dissent somewhat. Cardinal de Lugo and others fewer in number think that through indirect scandal one indeed sins against charity, but not against another virtue; so that he who indirectly scandalized another would of himself satisfy by saying in Confession: I gave grave scandal to the neighbor, without declaring in what matter. Yet much more common is the opposite opinion, to which St. Alph.[1] wholly subscribes: namely, that through scandal, even indirect, one sins not only against charity but besides against that virtue to the injuring of which the neighbor is induced, so that he who scandalized another either directly or indirectly must declare in Confession in what matter, for example of chastity, justice, etc. The solid reasons of this opinion are:

1° Because the case of indirect scandal seems to be one of the cases to which the axiom must be applied: the evil effect (the sin of the neighbor) foreseen from the cause (in scandal) communicates its malice to the cause itself (the scandal itself).

2° Because any virtue of precept seems to demand from us both that we not injure it ourselves and that we not be either directly or indirectly the cause or occasion why it is injured by others.

We have said: Scandal has at least a twofold malice; for often still more malices, whether in species or in number, it can contain, namely because of the proper sin which is committed by the scandalizer whenever he scandalizes another through a word or deed according to itself already evil, for example through blasphemy, detraction, theft, etc.; - or because of the quality of the person scandalizing, as if scandal is furnished to children by parents, or to parishioners by their pastors; for these are held not only from charity, but also from office, to guard against the ruin of their subjects; - or because of the quality of the scandalized person, as if someone induces a married person or a person bound by a vow of chastity to shameful acts; - or even because of the number of those scandalized, for more probably there are as many sins of scandal as there are persons scandalized.

Note. - The resolution just given concerning the at least twofold malice of active scandal, according to St. Alphonsus,[1] also obtains in the case in which someone furnishes to another the occasion of executing by work a sin for which the other was already prepared and determined, so that for example one seeking fornication from a prostitute prepared for fornicating sins not only against the virtue of chastity, but also against charity. The reason, very powerful to him, is this: that although such a prostitute is in the actual will of sinning, nevertheless by completing that particular sin of fornication in work she certainly brings upon herself a gravely greater ruin; and therefore he who cooperates with her toward consummating this sin in work thereby cooperates toward her gravely greater ruin. But to cooperate toward another's gravely greater ruin is without doubt gravely opposed to charity.

Notes to n. 293 - note sequence 1. (1) L. III. 45, H. A. Tr. IV. 25. Notes to n. 293 - note sequence 2. (1) L. III. 47.

294. Conclusions. - A penitent who is guilty of the mortal sin of scandal must explain in Confession:

1° The very word or deed by which he scandalized another, if namely that word or deed according to itself already is a mortal sin, as blasphemy, grave detraction, perfect drunkenness, etc.

2° The species of grave sin for which he furnished occasion to the neighbor, for example that he furnished to the neighbor an occasion of committing a mortal sin of drunkenness, blasphemy, luxury, theft, etc. And this not only if the scandal was direct, but also, from the much more common opinion proved above n. 293, if it was only indirect; so that this simple accusation never suffices of itself: I gave grave scandal to another, but it must always be added in what species of grave sin.

3° The number of persons whom he induced to grave sin, or foresaw could probably have been induced. "He who sows scandals before others," says Dionysius Carth.,[1] "is worthy of so many and such condemnations as from how many and what sort he is seen." But if a certain number cannot be morally determined, as generally happens, then it suffices to assign a probable number.

4° The quality of himself (for example, that he is a father of a family, teacher, pastor, etc.), and the quality of the scandalized person (for example, that the person is married, related by blood, bound by a vow of chastity, etc.), whenever a quality of this sort is a circumstance changing the species in a grave matter.

But it is asked: In sins against chastity which have an accomplice, for example in the sin of fornication, must it be expressed who first solicited? Or, as others propose this question: must the circumstance of induction to fornication and similar things be explained in Confession?

Resp. Sufficiently probably it is not of itself necessary that in Confession of sins of this sort it be explained who first solicited; because one consenting to the solicitation, by this consent itself, is also guilty of grave scandal, and consequently contracts malices specifically the same as those which the one first soliciting contracts, namely grave malice against chastity and against charity. Therefore it can only be said that the first one soliciting sins more gravely, or that the circumstance of solicitation is only a circumstance aggravating in the same species, which does not pertain to the necessary matter of confession. Cf. St. Alph.[2]

Section II. Principal Classes Of Scandalizers.

295. ○ Confessors regularly ought of themselves to judge especially the following to be guilty of mortal fault of scandal:

1° Those who have a detestable habit of blaspheming, in the presence of persons of any kind, especially younger persons.

2° Those who compose, spread, or publicly sing impure songs or poems.

3° Those who institute and prolong, whether in clear words or in equivocal words (yet sufficiently understood by the hearers), lascivious conversations. See n. 492, II.

4° Those who write or publish depraved books or other perverse writings.

5° Those who sell the aforesaid irreligious or immoral publications indiscriminately to any person, or rent them for reading; or those who in libraries established for lending books expose to the use of all works which commonly ought to be considered as poisoned cups to be removed from the lips of the faithful.

6° Those who introduce into schools a pernicious method of teaching or dangerous little books.

7° Those who hand over to boys or girls books perhaps good in themselves, but treating matter the knowledge of which is reputed of itself an occasion of offense to them, according to their natural innocence and sensibility. Who, for example, would doubt that anatomical and surgical books cannot be handed into the hands of children without scandal!

8° Authors, Actors, and Actresses of Comedies in which neither religion, nor virtue, nor the sanctity of marriage is spared; or of theatrical dances (ballet-dances), in which, by reason of the dress of the dancers, by reason of the obscene manner of the dances, or of lascivious gesticulation, the greatest foulness appears, as often happens in those which are made under the name gallop, polka, waltz. - It is certain, says St. Alphonsus,[1] speaking of immodest spectacles, that those representing or composing notably impure comedies are in no way free from grave sin of scandal; nor can gain, however great, excuse them. - But whether and to what extent the spectators of such comedies (who ordinarily stain themselves with several internal sins) are also guilty of grave scandal must be resolved from the principles to be established later concerning cooperation. Authors of dances which are called "round dances" are commonly guilty of grave scandal, as manifestly follows from that grave

admonition which is contained in the Pastoral Letters which the Fathers of the Second Plenary Council of Baltimore[2] gave in the vernacular tongue to the clergy and people committed to them: "We consider it to be our duty to warn our people against ... those fashionable dances, which, as at present carried on, are revolting to every feeling of delicacy and propriety, and are fraught with the greatest danger to morals." Cooperation in these dances is treated below. - As to the modern gatherings of boys and girls which are held under the name children's balls, I indeed would not wish to precipitate a judgment, although, relying on testimonies not to be despised, I would almost dare sometimes to compare them to a whirlwind destroying the rising roses of innocence.[1] Therefore let parents see to it that they do not cause one of these little ones to be scandalized! - But concerning those gatherings of diverse sex which are called masked balls, there is scarcely need to say a word; since no one fails to understand that by their character they are for the most part full of danger and scandalous. Those festivities also are often to be called scandalous which are commonly called "Pic-Nics," "Excursions," "Fairs," "in which" (these are the words of the Fathers of the Second Plenary Council of Baltimore in the same pastoral letters[2]), "as too often conducted, the name of charity is made to cover up a multitude of sins." Wherefore the Fathers proceed: "We forbid all Catholics from having anything to do with them, except when managed in accordance with the regulations of the Ordinary, and under the immediate supervision of their respective Pastors."

9° Painters, Sculptors, and Photographers who, eagerly seizing upon the thesis too much sung today: le chaste c'est le nu ("nakedness is chastity"), exhibit statues or images truly obscene and commonly incentive to lust, for example images in which those parts of the body appear naked (I do not say of an infant, but of an older person), which modesty everywhere among peoples demands to be veiled, and which therefore are called shameful parts. Indeed, generally speaking, we concede that artificial things often move less than natural ones, and therefore that grave scandal can more easily be given through natural nakedness than through artificial; but with the common body of Theologians we altogether deny that the nakedness, although artificial, of the aforesaid parts moves so little that it can be excused from grave scandal. What we have said here about painters, etc., "I think the same," says St. Alph.,[1] "must be said about those who retain such images at home" (Gousset[2] adds: in museums or gardens) "exposed to the sight of all." And at this time we affirm the same especially of those who circulate wholly immodest photographic cards, especially those which are to be viewed by means of a stereoscope. - Note, however, that in the preceding there is not question of the case in which something obscene must be painted, for example for the assistance of anatomical and obstetrical science.

10° Fabricators of female adornment or dress (milliners, hair-dressers), who in their shops show to the eyes of passers-by samples so adorned and dressed that they are gravely offensive, by which namely women are represented in a manner wholly immodest and greatly provocative to lasciviousness.

11° Women or girls adorning themselves in such a way, as often happens in solemn dinners and evening gatherings (soirées). But here one must distinguish between adornment that of itself greatly excites to lasciviousness - such as enormous uncovering of the breasts or their translucent covering is judged to be - and adornment indeed immodest, but not of itself so lascivious, as perhaps is, for example, the uncovering of those parts more modest. Those assuming adornment of the first kind are not to be excused from grave sin of scandal. But those assuming adornment of the second kind are

also not excused from mortal scandal if they introduce the use of such clothing where it is not in force; but if they follow a custom already introduced, certainly not in the least to be praised, indeed severely to be rebuked, yet they are not of themselves to be condemned of mortal sin, provided they intend nothing evil. For customary things, provided they are not altogether lascivious of themselves, are not accustomed to move passion so notably.

To be noted. - What we have observed in the last place about custom once introduced as to clothing not altogether lascivious, seems in some measure to have to be said also as to other matters, not simply obscene, for example as to comedies or equestrian games (circus), not notably impure. Hence I would indeed strive to dissuade from those comedies, etc., and, if it could be done, to root them out; but I would not dare in these provinces, where there is in force no special prohibition or Ecclesiastical censure concerning this matter, as elsewhere there is, to teach publicly that actors and actresses in those equestrian games also or comedies, which are made in a manner not to be praised, yet usual and not irreligious or gravely impure, are of themselves guilty of mortal scandal, and therefore unworthy of the Sacraments unless they abandon their office. Therefore let the pastor and confessor judge concerning individual cases, with account taken of the nature of the representations, of the usage of the places where they are made, and of the persons commonly attending; and regularly let him disapprove their office, but not condemn it as mortal unless this is sufficiently established. - We say the same a fortiori of simple lay spectators of such representations. Meanwhile we carefully warn here that in the preceding we have treated only of grave scandal to others; for if a question is instituted about the proximate occasion in which perhaps the actors themselves, etc., or spectators are situated, it will often happen that abstinence from their office or their attendance, which cannot be imposed upon the same under grave fault by title of grave scandal, nevertheless must be imposed under grave fault by title of their own proximate occasion; concerning which n. 1444, Resp. 2°, 3), will speak more broadly.

12° Finally, we still generally assign as guilty of scandal of themselves: a) clerics who, by retaining at home a person suspected by the people, furnish occasion for sins of detraction, calumny, and contempt of the clerical state; cf. Counc. Trent;[1] and the same must be said of a husband as to a maid-servant suspected by his wife not without reason; b) married women who, by admitting their handsome lovers to familiar conversations, are an offense to their husbands and to others, as experience teaches; c) parents who permit to their daughters conversations in the evening and in hidden places with betrothed men and lovers; and the same must be said of superiors as to servants and other domestics.

Notes to n. 295 - note sequence 1. (1) L. IV. 428. (2) p. CXXI. Cf. art. 472 of the same Council. Notes to n. 295 - note sequence 2. (1) Van Egeren. (2) p. CXXI and art. 396. Notes to n. 295 - note sequence 3. (1) H. A. Tr. IX. 8. (2) n. 644. Notes to n. 295 - note sequence 4. (1) Sess. 25. c. 14. de Ref.

Section III. What Things Must Be Omitted So That Passive Scandal Or The Ruin Of The Neighbor May Be Avoided?

296. Preliminary note. - 1° We are not treating here of omitting direct active scandal, the malice of which is of itself manifest to anyone; but only of those things which are to be omitted under the fault of indirect active scandal, the description of which see above n. 291.

2° Mindful of the Apostolic word:[1] "giving no offense to any man," and at the same time of the exhortation of the divine Master Himself:[2] "Let them alone; they are blind"; Moralists commonly resolve: it is never licit to give the neighbor scandal, even indirect; but sometimes it can be licit simply to permit that the neighbor, beyond our intention, take scandal. But when someone morally must be judged, whether in a strict or in a certain broader sense, to give scandal; and when he can be judged licitly to permit the taking of scandal: this depends totally on this: whether by the law of charity he is held or not held to omit some word or deed precisely so that the ruin of the neighbor may be avoided. In the first hypothesis namely, he must be judged, in whatever sense finally, to give scandal; in the second hypothesis he can be judged licitly to permit the scandal of the neighbor. Hence of itself there arises the general question proposed in the title of this Section, the solution of which we now approach by parts, by positing four special questions, of which the first will regard things less right, the second indifferent things, the third spiritual goods, the fourth temporal goods.

297. First Question. - Must things less right always be omitted by the law of charity because of passive scandal of the neighbor foreseen from them?

Resp. Affirmatively, without any exception, if the things less right are already evil of themselves; indeed, speaking of itself, affirmatively also if they carry before themselves only the appearance of evil, as is established from the words of the Apostle:[3] "from all appearance of evil refrain yourselves." Cf. 1 Corinthians,[4] where the Apostle thus addresses those who reclined in an idol's temple (which was not evil of itself, yet had the appearance of evil for the weak): "Take heed lest perhaps this liberty of yours become an offense to the weak." To this also pertains the very well-known heroic example of the venerable old man Eleazar.[5]

We have said: speaking of itself; for by accident it can be licit to do before others what bears the appearance of evil, namely if you have a legitimate reason of necessity or great utility, and at the same time you take care that, as far as lies in you, you remove the occasion of ruin by teaching, for example, those present (unless from circumstances they already sufficiently recognize it) that you can act licitly, that you can licitly eat meats on a fast day because you are excused from the precept of fasting because of a dispensation, etc. For where after these things scandal still arises or persists, it is generally rightly considered as purely accepted scandal, which from the law of charity (apart from the gravest or extreme necessity of the neighbor) we are not held to avoid with grave inconvenience of our own; unless perhaps at the same time there was question of such damage, for example of a community, of faith, or of religion, that it would have to be guarded against before one's own private damage.

Notes to n. 297. (1) 2 Cor. 6. 3. (2) Matth. 15. 14. (3) 1 Thess. 5. 22. (4) 1 Cor. 8. 9. (5) 2 Mach. 6.

298. Second Question. - From the law of charity must indifferent things be omitted from which the neighbor is thought to be about to accept scandal?

Resp. Affirmatively, as often as they can be omitted without notable inconvenience; because from charity we are held to impede the ruin of the neighbor when we easily can, for example by abstaining from an action not very useful, or by deferring it, or by explaining our manner of acting, etc. But on the contrary, negatively, as often as they cannot be omitted without such inconvenience; because then charity ceases to oblige. Here, however, one ought to notice with St. Alph.[1] that, other things being

equal, a greater inconvenience is required the graver or the more certain the sin of the neighbor which is feared, or the more numerous are those to be scandalized; likewise a greater one is required so that scandal of the little ones may licitly be permitted than Pharisaic scandal, which for the most part, when a reasonable cause stands, is to be cared about little, unless perhaps fruit is hoped for from some easy delay, or unless the evil to be feared from it is far more notable than the good which will be obtained through our indifferent works. Besides, this still deserves to be noted: scandal of the little ones, persisting after admonition made to the little ones, can easily be equated to Pharisaic scandal.

From the given response, by way of example, it will be licit to resolve: Therefore a woman is not held to put aside decent adornment (which she assumes because it is fitting to her state, or to please her husband, or that she may find a spouse) because of the scandal of some indeterminate man; for this is to be reputed too grave for her. But if a woman foresees that some determinate man will fall from it into mortal sin, then for one or another time, if it could be done conveniently, she ought to lessen her adornment or abstain from the sight of such a man, but not for a long time, since this again would be too difficult. But if a woman of this sort, although she does not intend the ruin of such a man, nevertheless led by mere vanity, presents herself to his sight on purpose, she could not be excused from grave sin of scandal, just as she also would not be excused if she were to seek some place which she would not approach unless she knew that a shameful lover was there. Cf. St. Alph.[1] The following resolution, which occurs apud several Authors, can also be referred to this place: A woman or girl is held, when she knows certainly that some man sins gravely when she sits in his sight in church, to choose another place, if she conveniently can. - But from these resolutions, proposed by way of example, it will be licit to judge prudently about other similar cases, with account taken of the response given above.

Notes to n. 298. (1) L. III. 49.

299. Third Question. - To avoid the scandal of the neighbor, must spiritual goods sometimes be omitted by the law of charity?

Resp. Works good of themselves (under which are understood also omissions good of themselves) are either of counsel or of precept:

a) As to good works which are of mere counsel, the same thing must be established, preserving proportion, which we established in the preceding question about omitting indifferent works.

b) As to good works of precept one must say: they are never to be omitted because of scandal, whether Pharisaic or of the little ones, as often as they are absolutely necessary to salvation, as reception of Baptism before death, - or as often as they are prescribed from the law of nature, here and now urging, and not ceasing because of changed circumstances; for evils are not to be done, even venial ones, that good things may come. But where there is question of works prescribed from positive law alone, especially human law, for example of hearing Mass on Sunday, this distinction must be made: such works generally must not be omitted because of Pharisaic scandal; but whether they sometimes must be omitted because of scandal of the little ones is a question controverted among Authors, concerning which see St. Alph.[2] The opinion which seems practically able to be safely counseled holds: such works can more advisably and licitly be omitted because of scandal of

the little ones, at least sometimes, but regularly they need not necessarily be omitted. - Therefore the confessor in the cases here supposed should proceed by persuading. See L. IV. 331.

Notes to n. 299. (1) L. III. 53. (2) L. III. 51.

300. Fourth Question. - Are temporal goods to be abandoned to avoid scandal?

Resp. Either there is question of temporal goods proper to us, or of another's goods committed to our care:

a) If the former: indeed they can licitly be abandoned, but ordinarily speaking they need not necessarily be abandoned to avoid scandal; for the law of charity does not oblige with so great an inconvenience. Hence you are not held, for example, to pay more than is equitable to some laborer, even if you foresee that he, notwithstanding your admonition about the justice of the payment, is going to blaspheme; because that inconvenience, although light in itself, can occur often, and thus in the whole complex becomes grave. Similarly also a Pastor of himself is not held to remit the stole fees owed to him, although the parishioner, sufficiently conscious of his obligation, breaks forth into various slanders, etc.; for from this a grave inconvenience would happen not only to the pastor himself, but also to his successors.

b) If the latter: they cannot even licitly be abandoned, unless from the consent of the owner, at least reasonably presumed. Cf. St. Alph.,[1] where special warnings are also given to Prelates about ecclesiastical goods committed to their administration.

Notes to n. 300. (1) L. III. 52.

Section IV. Reparation Of Active Scandal.

301. ◦ From the same law of charity by which we are prohibited from giving scandal to another, we are also commanded to remove or repair scandal once given, in the best way in which it can be done. But for this it is required that the scandalizer, having henceforth omitted the active scandal once given, should besides, as far as he morally can, try to remove its further evil influence, if namely such influence is still reasonably to be feared, as often happens where there is question, for example, of the scandal of a Superior toward subjects, or of scandal given to another through an evil command, an unjust counsel, the spread of a perverse book, and similar things. But by what ways a further effect of this sort can and must be removed, and therefore scandal repaired, must altogether be judged from the circumstances of the diverse cases, and generally it is established rather easily, provided especially that attention is paid to the special character of the scandal given and its publicity, and to the quality of the person scandalizing and the person scandalized.

Thus, for example, he who gave scandal to others through unjust counsels still efficacious will have to render them inefficacious, as far as he can, through diligent revocation, to be made known to the same persons either by himself or by another. A father of a family who scandalized the domestics ordinarily, for repairing the scandal (if it is still judged efficacious), will have to be obliged to manifest to those same domestics his displeasure over his bad example, and to exhort them paternally not to follow it in the future. A bad Author who through heretical, immoral, or defamatory

writings incited others to sinning will be held, as far as he can, to retract these through new writings. A concubinarian, usurer, or other sinner of this kind who gave public scandal will also have to be constrained to its public reparation, for example that publicly, having first abandoned his wicked commerce or business, he approach the Sacraments with devotion.

As to other ordinary scandals, we think one must say: more commonly, for such scandals a special reparation, at least under grave sin, cannot be imposed; both because often they scarcely have any persisting efficacy, and also because, although they remain efficacious, often nevertheless morally they cannot be repaired otherwise with fruit (and no one is held to what is useless) except by that general reparation which is contained in the very cessation from scandal, in the furnishing of good example, in prayer for the scandalized person, and similar things. With prudence as guide, judge in this matter, and impose an obligation on no one unless it is sufficiently established.

Note. - To the reparation of scandal there also pertains the obligation of procuring that the scandalized person be recalled to penance or true conversion. Nevertheless this obligation generally of itself does not seem to urge under mortal sin, except in the case in which the scandalized person, because of ignorance or some other cause, does not have in his power the means of penance; for if he has them and does not wish to use them, then he must impute his impenitence to his own malice and not to another. Thus Scavini.[1]

Notes to n. 301. (1) Tom. II. n. 692.

Point II. On Cooperation In The Sin Of Another.

Section I. Notion And Division Of Cooperation.

302. ○ Cooperation differs from scandal, as it is an influence into the will of another, in that it is a concurrence toward the evil action of another principally acting. It is said: principally acting. For the cooperation about which the discussion is here is not to be confounded with immediate participation; because those thus participating in the evil action of another, for example of theft, homicide, etc., are equally principal authors of the same guilt, and for this reason are called by Theologians concurring causes. But such concurrence, or cooperation, can be furnished in nine ways, contained in the following little verse, and to be explained more broadly in the Treatise on Justice:

Command, counsel, consent, flatterer, recourse,
Participant, silent one, one not preventing, one not manifesting.

In the first six ways concurrence is furnished positively, that is, by positing an action influencing the sin of another; in the last three ways concurrence is made negatively, that is, by omitting an act by which another's sin can and must be impeded (or, to use an expression too celebrated today, by not intervening). - Yet do not wonder if in the following there seems to be discussion almost exclusively of the positive ways of cooperating; for the negative ways, morally and with proportion preserved, are reduced to the positive according to that saying of the Angelic Doctor, already related before: "to act and not to act, when someone ought to act, are reduced to the same genus of act; according as the sin of omission is reduced to a sin of act." - Besides, concerning negative cooperation, as much as is needed, there will be special discussion in the Treatise on Justice, n. 773 sqq.

303. ○ In the present treatment a twofold cooperation must be carefully distinguished: namely formal and material.

Formal cooperation is that which truly concurs toward the very evil will of another, namely by consenting to it, or by intending the sin; and this happens a) when to another, whether by word or deed, assistance is furnished which from its own nature is determined to evil; and b) when to another, whether by word or deed, assistance is furnished which at least from the intention of the cooperator is determined to evil, that is, is posited for this end, that another may be helped in sinning. - Hence formal cooperation always supposes in the cooperator some consent into the sin of another, if not by reason of the end which the cooperator expressly intends (the end of the agent), then at least by reason of the work furnished, which from its character tends into evil (the end of the work).

Material cooperation is that which concurs only toward the evil action of another; and this through assistance at least indifferent of itself, which namely neither from its character (from the end of the work), nor from the intention of the cooperator (from the end of the agent), is determined to evil; but is determined to evil only by the principal agent. Practically, cooperation of this sort for the most part consists in the furnishing of some matter, occasion, or means indifferent of itself, which another can use without sin, although, from his own malice, beyond the intention of the cooperator, he is in reality going to abuse them for sinning. Hence material cooperation does not of itself flow into the very evil will of another, nor does it include of itself any consent in his sin, as formal cooperation does; and therefore I would have thought that generally it can rightly be said: cooperation in the sins of others is formal or material according as, with attention to the end of the agent who concurs, and to the end of the work by which he concurs, the cooperation does, or does not, of itself involve some consent in the sin of the one principally acting. Cf. Vind.[1]

Notes to n. 303. (1) P. II, q. V, art. 1.

Section II. Morality Of Formal Cooperation.

304. Principle. - It is never licit to cooperate formally in another's sin. For formal cooperation is always intrinsically evil, or, as St. Alph.[2] says, cannot be without sin; since, besides the fact that it truly is the moral cause of another's sin, by that very fact it contains in itself some approbation of another's sin, or at least implicit consent. But any formal cooperation has at least a twofold malice, namely one against charity, and another against that virtue toward whose violation it cooperates. Let the things handed down before concerning the malice of scandal n. 293 be applied here.

Wherefore it is never licit for anyone to excite another, whether by command, counsel, prayers, or flatteries, to doing something which on the part of the very act is evil, and therefore cannot be done by another without sin, for example to invite a priest, notary, or judge to something contrary to his office; nor will it ever be licit to indicate to another, prepared to sin, the opportunity, utility, delectability, etc., of the delict. For such cooperations are openly formal, as exciting or strengthening the very evil will of another. Likewise, it will in no way be licit to furnish to one wishing to sin services which from their character are nothing but means of sin as such; of which sort would be, for example, the service of a servant seeking a concubine for his master, or writing in place of a

concubinarian master, or carrying letters - I do not say letters only signifying courtesy,[1] but amorous and impure ones; for such service from its nature fosters impure love and an evil will, nor is it by nature apt to produce any other effect of itself. In doubt letters are to be held as impure, when there is certainty about the impure love.[2]

Notes to n. 304 - note sequence 1. (2) L. III. 63. Notes to n. 304 - note sequence 2. (1) For these, however, besides the reason of servitude, a just cause is required. (2) L. III. 59, 67.

305. ○ Quaer. 1° Is it licit to counsel a lesser evil in order to avoid a greater?

Resp. Some deny that this is licit; because, as it seems to them, to counsel even a lesser evil is in reality to counsel evil; but to counsel evil is always illicit. But several others with St. Alphonsus are of the opinion that it is more probably licit to counsel the lesser evil in order toward the same person, in the case in which the other is already certainly determined to execute a greater evil; because, as St. Alph. rightly observes, one counseling, in such a case, the lesser evil does not properly counsel evil, but good, namely the choice of the lesser evil before the greater evil. Hence to a man already determined to kill another, I will licitly be able to counsel that he rather steal something from him, rather strike him, or make himself drunk. - We have said: in order toward the same person; for it would not be licit to counsel a lesser evil in order toward another person in particular; for example, to one wishing to do evil to Titius, I will not licitly be able to counsel that he do a lesser evil to Caius; for then the one counseling would be the sole and whole cause of the damage of a third party. Make exception, however, if in the case Caius is held from charity to suffer this lesser evil in order to impede the extreme necessity of Titius. L. III. 57. L. IV. 566. § fin.

Quaer. 2° Is it sometimes licit purposely to offer to another an occasion of sin?

Resp. The affirmative opinion seems sufficiently probable, provided this is done from a right end and a just cause. Thus, for example, it would be licit deliberately to place money on a table before a suspected servant, so that he, having been caught in the delict of theft, could be corrected or impeded from new delicts. For in such a case there is not present a true induction to sin, or formal cooperation; but by positing a work indifferent of itself from a right end, the sin of another is merely permitted because of a just cause. In other words: in the case there is present only material cooperation, which is furnished from a right end and a just cause, and therefore is altogether licit, as will be clear from what now follows.

Section III. Morality Of Material Cooperation.

306. ○ Apart from the case in which there would be given a special obligation to impede the sin of the neighbor, concerning which case it will be said below, concerning the morality of material cooperation it will be licit to establish thus:

Principles. - I. It is licit to cooperate materially in another's sin, provided these two conditions are verified:

a) That the cooperation truly is only material, that is, consists in assistance good according to itself or at least indifferent, and posited without a depraved intention.

b) That there exists a just cause of necessity or utility rendering that cooperation honorable.

The reason for this Principle is: because, as St. Alph.[1] notes, when you furnish an action good or indifferent of itself, and another wishes to abuse it for sinning, you indeed are not held because of this abuse to abstain from your action, except from charity. But if there exists a just cause for not abstaining from your action, charity does not oblige. Therefore, by positing your indifferent action with a just cause, you do not sin; but you simply and licitly permit the sin of another, which then morally can in no way be judged to proceed from your action, but solely from the malice of him who abuses your action. Let the things noted above in n. 296 sqq. be recalled here, concerning those things which must be omitted to avoid the ruin of the neighbor. To these is added the common sense of men, even of those who think piously and Christianly. And indeed, unless the principle just handed down were true, no Christian could exercise any art or profession; all commerce among men would be removed, and an unbearable yoke would be imposed upon mortals.

II. It is illicit to cooperate in another's sin, even only materially, whenever a just cause of cooperation is lacking. - The reason is: because such cooperation directly conflicts with the precept of charity, by which we are held, if we conveniently can, not to promote the sin of another, but to impede it; and moreover such cooperation of itself is judged to include consent, at least indirect, in another's sin, so that it is deservedly equated with formal cooperation, and consequently contracts at least a twofold malice: one against charity, the other against the virtue which is injured by the neighbor. See again n. 293, where the malice of scandal is treated.

Notes to n. 306. (1) L. III. 68.

307. ○ But it is asked: What cause is just and sufficient for cooperating materially licitly?

Resp. Generally speaking, a just and sufficient cause is such necessity or utility as is reasonably judged to compensate the evil effect (that is, one harmful to the neighbor) of the cooperation; or, as St. Alph.[1] says, one which is proportionate 1) to the gravity of the sin of the other and 2) to the proximity of the concurrence which is furnished toward the execution of the sin. But precisely how great a necessity or utility of this sort must be in any concrete case cannot be determined by one rule; but it is left to be determined by the judgment of prudent persons, whom, nevertheless, in passing judgment about this matter it is necessary carefully to consider:

That a graver cause of necessity or utility is required:

a) The graver the sin is toward which one materially concurs; for in order that there be proportion between two things, the more one increases, the more the other also ought to increase. Thus, for example, a greater necessity will certainly be needed so that it may be licit materially to cooperate in homicide than in theft.

b) The more probable it is that the other, if you do not cooperate, will not sin. Thus, for example, a graver cause is required so that you licitly minister matter of sinning to another, if, with you not ministering it, the sin could scarcely be committed, than if, with you not ministering, the sin would nevertheless easily be committed, for example because others will not be lacking who are going to minister the matter.

c) The more proximately the cooperation touches the sin; and thus, for example, a greater reason is demanded so that you licitly make for another an instrument of sinning than that you licitly sell to him the material for making the instrument.

d) The less right the cooperator has for acting; and thus, for example, greater utility is required so that you licitly seek a sacrament from a bad foreign priest than from your own bad pastor.

e) The more the sin toward which one concurs is pernicious to a third party; and hence a graver cause of cooperating is required when the sin of another is against justice, to the damage of a third party, than if it is against another virtue. Likewise graver if the scandal of a third party is foreseen from the sin of another, than if such scandal is not to be feared.

Notes to n. 307. (1) L. III. 68.

308. To be noted. - When approaching the question about the morality of material cooperation, we previously excepted, n. 306, the case in which there would be given a special obligation to impede the sin of another. Hence, lest the solution of this question remain incomplete, it will help now to indicate briefly: 1° when this case is present, and 2° for what reason we previously excepted this case.

To the first. This case is present as often as someone is obliged not only from the precept of charity, as any other person is, but besides (and therefore more strictly) by force of his office, or by force of a special law more severely prohibiting this or that action, to ward off the evil which could be assisted by his cooperation. Parents, for example, are specially held by force of their office to ward off the sins of children; pastors, the sins of parishioners; civil magistrates, sins harmful to society or citizens, etc. Thus also merchants sometimes are held by special law not to sell certain dangerous weapons, poisonous potions, etc.

To the second. The aforesaid case was excepted, however, not for this reason, that material cooperation in the hypothesis of such a special obligation is indicated always and absolutely illicit; but only for this reason, that you may notice that the morality of material cooperation in that case cannot be judged solely according to the common rules of cooperation, considered only insofar as it conflicts with charity. For it is certain that, for the liceity of material cooperation, in the aforesaid hypothesis, a greater cause of necessity is required than for the liceity of cooperation in the hypothesis in which the cooperator is held to impede another's sin from charity alone. Where there is a twofold obligation, there it is necessary that the excusing cause be morally twofold. Hence it can happen that it is licit for a private person to concur materially, for example, in theft, and it is not licit for public ministers, parents of the thief, etc.; and this again is left to be judged by the judgment of prudent persons, according to the condition of the circumstances.

Conclusion From The Three Preceding Sections.

The theory of cooperation therefore, having been explained, is reduced to those things which follow.

1° Cooperation, properly speaking, is not to be confounded with scandal, nor with immediate participation.

2° Formal cooperation is not synonymous with illicit cooperation, since all formal cooperation is indeed illicit, but not conversely.

3° The illicitness of cooperation can arise from a threefold head, namely both a) from the object, b) from the end, and c) from the precept of charity, unless a sufficient reason excuses from this; but

liceity arises only from an integral cause, that is, from the concurrence of three conditions, which are: 1) an object good or at least indifferent; 2) an honest end; 3) a just and proportionate cause.

But the whole theory of cooperation is contained under three heads, for the same number of principles on which it rests, and these are: 1) the distinction between acts objectively good or indifferent, and acts intrinsically evil; 2) the distinction between the end of the work and the end of the agent; 3) the axiom that charity does not oblige with grave inconvenience.

Section IV. Practical Resolutions Concerning Cooperation, Especially Material Cooperation.

309. ○ In moral matters, and especially in those which concern cooperation, one thing is the office of science, another the office of prudence. To science indeed pertains this: to establish general principles, for example, formal cooperation consists in this ... and is always illicit; material cooperation consists in this ... and is licit because of a just cause, etc. But to prudence especially it pertains to judge whether and to what extent those principles are to be applied to particular cases, and cases scarcely ever entirely equal, for example whether this cooperation, in this concrete case, is to be called formal or material, and, if material, whether here and now a just cause of cooperation is present or not. Wherefore, for deciding various cases of cooperation, the science of moral principles does not suffice; but besides there is required moral prudence or dexterity, by which we may be able to consider individual cases with a right practical eye, as they say, and to subject them to the principles of science. But for acquiring this prudence or dexterity, the exercise seems most useful which, with certain concrete cases proposed, indicates by what reason those cases have been judged and solved by more distinguished Casuists; and therefore we shall now institute such an exercise, yet with one admonition still premised, namely, that practical moral resolutions of this sort often cannot be determined after the manner of a mathematical decision, but only after the manner of a decision more or less morally definite according to commonly occurring things. Nor will this seem strange if you notice how great the variety often is among cases, even those similar at first appearance, and a variety involved in darkness; and besides how limited our prudence often is, how uncertain our providence!

First Resolution.

On The Cooperation Of Innkeepers.

310. a) Toward violation of the law of abstinence. - It is not licit of itself for innkeepers on a prohibited day to serve meats on their own initiative, that is, to guests not asking for this; because it would be true cooperation in another's sin without a just cause. But it seems licit, at least in those places where such usage is in force (today almost universal), that innkeepers serve meats to travelers or generally to those who frequent their inns, provided they themselves ask for meats, and their request is not made in contempt of Religion. Indeed those innkeepers in whose inn a common table (table d'hote) is customarily prepared, at which guests arriving in a body sit and eat, or who await travelers arriving by public carriages or by railway at a determined hour, taught by experience that many are going to ask for meats or

broth from meats, can licitly have such foods ready, to be placed before those asking, or even set a table with licit and illicit foods, offer them, mark them on the bill, so that each may choose what has pleased him. The reason is: both because among so many there can be not a few who have a reason excusing them from the law of abstinence, and it would be too great an inconvenience indeed if individuals had to be interrogated about the proper causes for eating meats; and because in the present state of things it is impossible, at least in many places, to exercise the office of innkeeper otherwise. - As regards those who have a few boarders with them, with a price accepted by individual weeks (boarding-housekeepers), these ought not easily, on a forbidden day, to place meats before those boarders, even asking for them, at least if they are Catholics; for since the law of abstinence can more easily be observed in a private house than in a public inn, hence also in a private house a just reason of cooperating in the violation of the same law occurs with more difficulty. Yet they are more easily excused when they place before them other foods besides meats, morning and evening on days of fast; for they can have an excuse from the rigor of the fast because of grave labor or health not firm; therefore the matter is safely permitted to the consciences of individuals. - Thus Kenrick.[1]

b) Toward drunkenness. Innkeepers are held to deny wine or other strong liquors to a man whom they have certainly known to be about to become drunk, unless they have a grave reason for acting otherwise. But they are judged to have a grave reason of this sort when from denial graver evils are to be feared, for example blasphemies or grave quarrels; or also when from denial any grave proper damage is to be feared, for example if otherwise they would be notably harmed by diminution of guests. Cf. St. Alph.[2]

c) Toward luxury. Innkeepers are guilty of very grave sin and unworthy of absolution who furnish secret rooms for lust; or who conduct at their place dances or dances altogether impure and lascivious, concerning which there has been discussion before n. 295 under 8°.

d) Toward harmful reading. Owners of taverns (saloons, taverns, hotels) cannot expose for reading those newspapers which evidently and ordinarily are opposed to Religion or morals, even if guests cease to flow to them on that account. Yet commonly there is present a sufficient reason for admitting those newspapers which treat of merely political matters. Nor do they seem held to reject some newspaper because sometimes it contains something less right by reason of Faith, provided that generally it is not opposed to Religion.

e) Toward violation of the Lord's Day. It is asked namely: What about innkeepers selling drinks on Sundays in this region?

Resp. 1° They are to be excused, at least from mortal sin, who sell them to one or another person who is not going to abuse them, whether they drink those things when buying in their house, or even in the tavern itself; for neither does the civil law, prohibiting entrance to taverns on Sundays in most States, bind the conscience so far.

Resp. 2° The Second Plenary Council of Baltimore[1] warns pastors of souls that they "keep away from the Sacraments innkeepers who foster the excesses of drinkers, especially on Sundays." But they scarcely fail to foster them who, giving hidden entrance to their tavern, detain drinking Catholics there for a long time during the time of Masses, or allow them to remain.

Second Resolution.

On The Cooperation Of Servants.

311. ○ a) Toward violation of the law of abstinence. It is not licit for servants to prepare and serve meats to a Catholic master on a forbidden day from the sole reason of servitude; but only because of notable detriment. Cf. St. Alph.,[2] where it is observed that servants, in doubt, can presume that the master has a cause excusing from the law of abstinence.

We have said: to a Catholic master; for if there is question of heretical masters, I would have thought one must say for these regions that here regularly there is present a sufficient reason for not disturbing servants who minister to the same prohibited foods.

b) Toward lust. Here we distinguish three kinds of services, namely: services which of themselves are determined to foulness; services indifferent of themselves which nevertheless concur proximately; - and services indifferent of themselves which concur only remotely toward the foulness of the master.

Services of the first kind are excused by no reason, since they constitute true formal cooperation (see above n. 304). And therefore servants are never allowed, by letters written in their own name, or by words, to invite a woman to commit crime with the master; nor does it ever seem licit for them to accompany the master to a place of foulness, if the master is rendered more courageous from this very accompaniment. - Likewise, according to St. Alph.,[1] it is never licit for a servant to carry amorous letters (n. 304) to the concubine of the master, or to carry little gifts and food to a prostitute; because this service also seems to the holy Doctor to be of itself determined to evil, and therefore formal cooperation.

Services of the second kind cannot be excused from the sole reason of servitude, but only from another cause added, which is either very grave or grave according to the exigency of diverse cases. Wherefore, from the mind of St. Alph.,[2] the sole reason of servitude does not suffice; but besides there is required at least fear of grave damage, so that a servant can licitly accompany a master (who is here supposed not to be rendered more courageous from the accompaniment) to a place of foulness, and await him returning; or so that he can licitly bring a concubine (who is here supposed not to be invited by the servant) by carriage to the house of the concubinarian master. Indeed, a very grave cause, and namely fear of death, would be required so that a servant could licitly help a master by carrying a ladder, or by putting his shoulders beneath, or by violently opening the door, when the master wishes to ascend to ravish a virgin. Thus St. Alph.,[3] where there is also found a scandalous proposition pertaining to this, condemned by Innocent XI, the 51st (see p. XVII).

Services of the third kind will be able to be excused for one and another time from the sole reason of servitude. And hence, for example, it will be licit for a servant, in the customary manner, to open the common door to a concubine, if, with him not opening it, there is another who will open. Cf. St. Alph.[4] But there will scarcely be need to observe that a servant of this sort, if many times he is compelled to such services, must be earnestly warned that he leave the service.

Quaer. What about public drivers conveying others for payment to a brothel?

Resp. The question seems to have to be resolved according to those things which we said about servants furnishing services of the second kind. Wherefore they will be able to be excused, provided

1) a cause, at least grave, is present, that is, founded fear of grave damage, for example lest, if he refuses, he be dismissed by his master ("employer") and not easily find another; 2) he does not display his service for leading anyone more securely or more secretly, or as one ignorant where the brothel is.

Notes to n. 311 - note sequence 1. (1) Tr. XIII. 148. (2) L. III. 60. Notes to n. 311 - note sequence 2. (1) n. 469. (2) L. III. 68. Notes to n. 311 - note sequence 3. (1) L. III. 64, 65, 67. Cf. Vind. P. II, q. VII. (2) L. III. 64. Cf. Vind. P. II, q. V. (3) L. III. 66. (4) I. c. Notes to n. 311 - note sequence 4. (1) L. III. 71. Cf. Vind. P. II, q. VIII.

Third Resolution.

On The Cooperation Of Workers And Merchants.

312. Toward the abuse of material which they make and sell. - Since evil is not to be presumed without reason, hence it seems altogether licit that workers and merchants, by the sole title of commerce, make and sell their wares to any buyer, provided 1° these wares are indifferent things, which can easily have a good use, although perhaps many in general abuse them, for example strong liquors, ale, playing cards, paints, etc.; and provided 2° in the very purchase or circumstances the evil intention of the buyer does not appear.

I say: 1° provided these wares are indifferent things; for it is clear of itself that the making and sale of those things is illicit which of themselves are determined to evil and have no good use, for example the making and sale of an idol for pagans, a theatrical garment manifestly impure, female adornment of itself obscene, etc. To this also pertains the resolution apud St. Alph.,[1] about the sale of poison (which from its nature principally tends to an evil effect), namely: it is not licit to sell poisons except to those who are thought to be going to use them well, for example for the making of colors or of medicine. Hence the sale of poison which serves only for the killing of a man is simply evil. -

I say: 2° provided that in the very purchase or circumstances the evil intention of the buyer does not appear; for if such evil intention in the buyer appears in reality, the very making and sale of merchandise, even indifferent, would be proximate cooperation, which does not seem excused unless perhaps a grave and proportionate cause of cooperation occurs. And thus, for example, it will not be licit to sell ornaments to a girl who is going to abuse them, unless otherwise the seller would suffer a notable inconvenience.[1]

Fourth Resolution.

On The Cooperation Of Catholics.

313. A. Toward the sacred rites of heretics. I understand heretics in this place in the broader sense, that is, even the non-baptized, as Quakers and very many others in these provinces, who glory in the Christian name while professing several errors against the doctrine of faith.

Principle I. - To concur in the sacred rites of heretics is plainly illicit as often as concurrence of this sort can deservedly be judged of itself to contain true communication in sacred things, or at least tacit approbation of the same. Hence that illicit concurrence has place especially in these cases:

1. If someone in the temples of heretics were to discharge the office of organist, sacristan, singer, or even, although not discharging these offices, in their religious assemblies only once or twice were to play organs or other musical instruments, move the bellows, sing metrical hymns, or compose them to be sung, answer the minister, or, which is in the likeness of invitation, ring the bell for the sermon.[2] For these involve either communication in their sacred rites or formal cooperation in them. - It is said: in their religious assemblies; for in their temples, apart from every occasion of worship, and for profane ends, to play organs or other musical instruments, or to sing metrical hymns which have nothing contrary to the faith, or to compose them to be sung, cannot of itself be called illicit. - I said: for profane ends; for these things would be illicit if the money to be collected from them were to be spent for Protestant uses.

As regards the ringing of the bell, Kenrick[3] observes that a Catholic who has charge of a court or public hall, in which, according to the custom of this region, leave is given to ministers of any religion to preach, is excused if he simply permits the bell to be rung for any of the sectarians, since it is not in his power to impede this.

2. "Those who contribute money," or merchandise, food, etc., to amusements (fairs, etc.), "so that the money to be collected from them" may pass "into Protestant uses, favor false worship"; likewise those who "give as a gift a piece of land on which" Protestant temples "are to be erected," or "who rent buildings to them for the sake of worship. But those do not sin who sell land, making no agreement about its use, although they know that on it buildings of sects are to be erected; for scarcely could they without grave ill will add the condition that they not be erected, and otherwise they could not impede their erection in the vicinity."[1]

But those who contribute money, merchandise, or similar things which are requested for Protestant uses, not indeed so that they may pass into those uses, but so that they may guard themselves from grave damage thence to arise, because, if they refuse these things, their shops are to be deserted by Protestants, I do not dare to condemn, since this cooperation does not seem formal; otherwise the Sacred Penitentiary, having been asked whether it is licit for Catholics to contribute money for building a heretical temple, could not have responded (C. 1822): "Affirmatively." It added indeed: "but only for freeing themselves and their temples from that inconvenient and scandalous simultaneity with Protestants" [n. 1329, q. 3° under 4)]; but by this addition the Sacred Penitentiary perhaps wished only to warn the faithful that in this precise case (for about this alone it was asked), nothing else renders the cooperation licit than that very cause of removing simultaneity. - Nevertheless, apart from good faith, those are not free from fault who contribute something into Protestant uses because Protestants otherwise will contribute nothing in collections, etc., whose proceeds pass into Catholic uses; for the cause is manifestly insufficient.

3. The Response about not calling a minister to non-Catholic sick persons, related on p. XLIX, was given with the addition: "according to what has been set forth, it is not licit." Hence the editor of the work "Casus conscientiae, etc. Auctore P. Gury S. J.," 1st ed. in Germany, p. 62, col. 2, concludes that the rule does not simply exclude exceptions because of circumstances, and that in particular cases the Ordinaries of places are to be consulted. But of itself it is clear:

Resp. The Sacred Congregation does not include the case in which from denial greater evils would threaten, as the despair of the sick man, clamors against the Church, blasphemies, scandal of others, etc. - Yet from the Response it must be inferred:

a) It is not licit for a physician to propose to a sick person in danger, or to his relatives, that they call the minister of the sect. Yet he ought to warn the sick man of the danger in which he is situated.[1]

b) It is not licit to invite a minister to perform his rites at the funeral of your deceased Protestant relative; but Catholics whose Protestant parents have died are to be excused if they commit the care of the funeral to relatives, although they foresee that they are going to call a minister; for they can scarcely avoid this without very grave offense, and besides they hold themselves passively.

314. Principle II. - It does not seem absolutely illicit to concur in the sacred rites of heretics in a manner so remote and in such circumstances of things that this concurrence is not held by public opinion as communication in their sacred rites or as approbation of them. Collect. p. 533. n. 1105 under 1. 2. - Hence:

1° In our parts, where heretics live intermixed with Catholics, from the opinion of St. Alph.[1] and Collect. p. 523, n. 1089 ad 1, it will be licit for workers, for the sake of pay, to restore or even build the temples of heretics, provided this is not demanded in hatred or contempt of the Catholic Religion; for on the one hand that restoration or building in these places is in no way esteemed as communication in their sacred rites or as approbation of them, and on the other hand it only remotely concurs toward false worship, sometimes to be exercised in such a temple. But whether what we here resolve for workers can of itself also be applied to architects is a question which it is licit for us to remit to the judgment of more prudent persons. Indeed we think that they too are not to be condemned in this region, although perhaps not undeservedly these words of the Apostle[2] would be repeated to them: "What shall I say to you? Do I praise you? In this I praise you not." Thus Van Egeren.

What I say about the temples of heretics cannot be applied to the temples of false deities. Namely, Father Philippus de Carboneano[3] relates that by decrees of the Sacred Inquisition in the years 1626 and 1669 it was defined that in no way is it licit for Catholics, nor can it be permitted or tolerated by any cause or motive, that they lend work to building, restoring, or sweeping temples which are dedicated to false deities or authors of false sects, or to cleaning their walls and pavements. Make exception where these things are not held as protestative acts of worship (Collect. p. 528. n. 1097). Yet to open and close the doors of temples, even of heretics, is not licit.

2° Those are not judged to sin here who contribute money or work for the relief of the poor, the sick, and orphans in buildings which are governed by Protestants; but care must be taken lest this turn to the detriment of faith, through the unjust zeal of the sects for perverting Catholics who are admitted in those buildings.[1]

3° Whether it is licit for Catholics, for the use of heretics, to make, sell, and set up organs, a pulpit, communion table, chalice, is a graver question. I am of the opinion that this concurrence commonly is not received as communication in sacred rites or as approbation of them, and therefore that the condition posited in Principle II is preserved.

4° The question is still graver whether it is licit to make, sell, and procure altars and sacerdotal vestments for Ritualists. I indeed know that some very learned Bishop of Holland did not condemn a Catholic selling sacerdotal vestments to Jansenists; but between these and those there intervenes this difference: that Ritualists, since they are not true priests, by celebrating their sacred rites both commit idolatry themselves, and are the cause that it is committed by others. Cooperation moreover seems to be formal, since Ritualists cannot use those things well; and, even given that it is only material, a sufficient cause for licitly cooperating in so great a crime as idolatry scarcely seems able to be given in the case.

315. ○ B. Toward the printing or dissemination or propagation of heretical books, written expressly for attacking and weakening the Catholic Faith.

Here we distinguish a twofold class of workers laboring in a print shop. For some are more proximate cooperators, among whom we count those who set the type, who place the paper upon the type, who press the press, who direct the printing, and who correct the printed sheets so that they may come forth corrected; and likewise those who, according to the custom of this region, report to the editors of newspapers about heretical sermons. - But others are more remote cooperators, such as those are judged to be who prepare ink or paper, arrange books already printed, or exercise other ministries pertaining only remotely to the printing, of which sort, if I am not mistaken, several now occur especially in those print shops where the work of printing is carried out by the movements of elaborate machines.

But as books written expressly for attacking the Catholic Faith are to be held: 1° Bibles of the sects. 2° The Book of Common Prayer. 3° Hymnals of Sectarians (Hymn-books). 4° Confessions of faith published by the sects. 5° Any other books or pamphlets of sectarians written for defending heresy, among which also sermons. 6° Journals and newspapers which evidently and ordinarily are opposed to religion. These things having been premised:

Notes to nn. 315-317 - note sequence 1. (1) Kenr. Tr. VIII, n. 169. (2) 1 Cor. 11, 22. (3) Apud Kenr. Tr. XIII, 36. Notes to nn. 315-317 - note sequence 2. (1) Apud Kenr. Tr. XIII, n. 39. Notes to nn. 315-317 - note sequence 3. (1) L. II. Tr. III, c. XIII, n. 5. (2) Tr. XIII, 157. (3) P. I, n. 285. Notes to nn. 315-317 - note sequence 4. (1) Tr. XIII, 157.

316. ○ 1° We think cooperators of the first class, especially those who set type or direct the printing, cannot be excused, unless perhaps in the case of very grave detriment otherwise to be undergone, with contempt of Religion nevertheless excluded, and only for a brief time; for example if the son of a heretical printer is converted to the Catholic Faith, and he cannot desert his father so quickly without very grave detriment to himself. Thus at least Laymann[1] thinks, alleging this reason of his opinion, not to be despised: to set in type a heretical writing of itself is not absolutely evil, if it is done merely materially and without a depraved end; nor does ecclesiastical law, generally prohibiting this severely, seem to oblige in so great a necessity.

I say: especially those who set type, etc.; for I would have thought it licit for a grave cause that workers in a print shop, where books of every kind, and among others also books of the aforesaid sort, come forth, simply place paper upon the type or press the press, not knowing what is the argument of the work to be printed. Cf. Kenrick.[2]

2° Cooperators of the second class, according to several, as Gury[3] testifies, will be able to be excused from a grave cause; provided nevertheless (I would add) that they do not labor in a print shop principally erected for evil. For Catholics cannot, as Kenrick[1] carefully warns, for any reason be occupied about Protestant print shops which are expressly opposed to the Catholic Religion.

3° Cooperators, whether of the first or of the second class, in the printing of books which are not comprehended under those of which n. 315 treats, but incidentally contain errors, seem today in our regions to be excused, provided nevertheless there is not question of books expressly obscene (concerning which the question is not here), nor can those workers easily find a printer who prints only harmless books. For on the one hand those books are prohibited by those Rules of the Index which in this region scarcely oblige universally, either because they cannot be observed, or because they were never received or observed; but on the other hand, if cooperation of this sort for a just cause were not licit, Catholics in these provinces could scarcely furnish their work in print shops; for Catholic or wholly harmless ones are very few. I add that by the common opinion, even of the timorous, cooperators are generally not condemned thus.

Notes to n. 316 - note sequence 1. (2) Kenr. Tr. XIII, n. 36, 37. (3) Ib. n. 145. Notes to n. 316 - note sequence 2. (1) Kenr. Tr. XIII, n. 37, 39.

317. ○ As to cooperation toward the dissemination or propagation of heretical books, these things seem to have to be established.

a) It is not licit indiscriminately to sell to all, expose for sale, give as a gift, lend, or procure the books of which n. 315 treats.

b) The sole reason of servitude seems to excuse those who are occupied about sending newspapers to those who have subscribed their name to them; for public postmen also are thus excused.

c) He who subscribes his name to a depraved newspaper so that he may propagate it cooperates formally; - otherwise materially, yet, unless he has a sufficient cause, illicitly cooperates with it.

Fifth Resolution.

On The Cooperation Of Citizens.

318. ○ Toward the unjust occupation of their country. If a foreign enemy, with the legitimate Prince expelled, has unjustly occupied the country, citizens will licitly be able to remain under the unjust invader and, with him compelling, to pay tributes or furnish other services indifferent of themselves, which nevertheless do not pass into the greater oppression of the Prince, but, on the contrary, from his presumed consent are done for preventing graver damages and dangers, for example confiscation of goods, expulsion from the country, etc.

Similarly Officials licitly retain their offices with the intention of impeding a greater evil and of more easily restoring the legitimate government. But if perhaps they were compelled to exact unjust tributes, they could generally reasonably presume that the prince and citizens willingly consent that they exact them, namely by this title: lest something worse happen, for example lest, with his own

officials dismissed because of refusal, worse ones be substituted by the enemies. See Laymann,[1] Sporer,[2] and n. 466, q. 2°; likewise n. 1717. S. Alphon. L. PP. 714.

Sixth Resolution.

On The Cooperation Of Those Inviting Others.

319. ○ To furnish something which they will not furnish without sin. The solution of this difficulty depends on the distinction between works which of themselves, that is, on the part of the act itself, are sinful, and works according to themselves indifferent, which will become sinful from the mere choice of the agent. Namely, it is illicit to invite another to the furnishing of a work already evil of itself, because such invitation would be true formal cooperation, as was said before n. 304. But, supposing a just cause, it will be licit to invite another to furnish a work which from his mere malice will become evil. Hence from a grave cause you will licitly seek:

a) An oath from one going to perjure himself.[3] b) A loan from a usurer.[4] c) The administration of a Sacrament from a sacrilegious priest, especially a pastor.[5] d) The dissolution of a spell from a magician who, knowing the licit mode of dissolution, nevertheless is going to use an illicit one.[6] e) The rendering of the debt, licit on the part of the act, from a spouse going to sin because of his or her own pleasure.[7] But these cases and several others pertaining here will be more accurately weighed in the course of Moral Theology in the place proper to each matter.

Notes to n. 319. (1) L. II. Tr. III, c. XIII, n. 5. (2) Tom. II. Tr. V. 105, apud Van Egeren. (3) Sporer ib. 77. (4) Ib. (5) L. III. 79. (6) L. IV. 51. (7) L. VI. 943.

Certain Resolutions Which Could Not Conveniently Be Placed Under The Earlier Titles.

320. ○ 1. It is not licit to cooperate in immodest dances, as is clear of itself, whether by music, or by renting halls or rooms. Yet the reason of grave damage will excuse a musician who does not produce sounds of this sort, which uniquely pertain to an immodest manner of dancing; for in this case those dances are immodest from the malice of the dancers alone. Thus, with a better opinion preserved, I think.

2. "In cities in which, for the sake of avoiding a greater evil, it is permitted" for prostitutes "to live, it is licit to rent a house to them, especially if other tenants are lacking, unless nevertheless the prostitutes gravely harm honest neighbors, or because of the location" of the dwelling "give greater occasion to sins."[1] *

It is asked. Does this resolution of St. Alphonsus also hold for this region, where universally, with one or another city excepted, brothel houses are prohibited by law?

I am of the opinion that one must respond affirmatively if there is question of cities in which that law is customarily neglected with impunity, or in which houses of this sort are tolerated. For it is the same thing, at least practically, as if they were permitted. Kenrick also seems to think thus.[2]

3. Those who in Newspapers or in a sheet posted in taverns, public inns, or elsewhere, announce or carry things to be announced which by their nature tend to the detriment of Faith or morals, as, for example, a heretical sermon or speech to be held, books per se harmful, immodest dances, impure spectacles, if they knowingly do this, seem unable to be excused from formal cooperation. But as to harmful books, I would distinguish between those which are expressly obscene, and heretical ones; for the latter, that is, heretical ones, as practice bears, will be able to be announced in those periodicals which are written for this end, that learned persons may know what works are daily published.

4. Concerning those cooperating in injustice, this will be treated in the Treatise on Right and Justice, n. 759 sqq.

Notes to n. 320. (1) L. III. 70. (2) Tr. XIII. 146.

Certain General Practical Warnings Concerning Cooperation.

321. ○ 1° In doubt counsel is to be sought, if there is question of a grave and public matter and time permits. And so let the faithful approach priests; these, Bishops; but Bishops, all thinking the same thing, should prescribe a norm in timely fashion, even seeking a Pontifical oracle if there is need.

2° In judging the liceity or illicitness of material cooperation, or, as St. Alphonsus speaks, H. A. Tr. IV. 32, "for judging when a cause is just and proportionate, above all let it be observed for a rule what Doctors say, because, since this depends on the estimation of prudent persons" (such as Doctors are judged to be), "the more common opinion in this matter will also be the more probable."

3° If, with diligence applied, doubt remains, liberty is not to be favored if the reason of scandal stands in the way, or also, what sometimes is more to be feared, danger of perversion, of formal sin, etc.

4° Often in this matter good faith will excuse. **

- To this belongs the question of renting a house or part of a house to persons going to lead a libidinous life in it, for example concubinarians. This question, if it is restricted to cooperation alone, seems to have to be resolved, with proportion preserved, in the same way as that concerning prostitutes. I say: if it is restricted to cooperation alone; for the reason of scandal, especially in the country, will easily be able to render the renting illicit.

** A distinction must also be made between cooperation, although only material, in an action by which the common good, whether of the Church or of the State, is put in danger in its very being, and in an action by which only the useful things of the Church or of the State are affected by damage. The former is licit for no cause, since no cause can be thought proportionate to so great an evil, namely of a whole people or of human society (Example n. 137, p. 62, col. 2, § Dari, at the beginning). But the latter, for a proportionate cause, will be able to be licit (Example n. 773. III).

TREATISE ON THE PRECEPTS OF THE DECALOGUE

As the Symbol is the epitome of things to be believed, so the Decalogue is the epitome of things to be done. For it comprehends the ten precepts handed down by God to Moses on Mount Sinai, in which all the duties of man which the natural law prescribes are contained more or less openly. The first three immediately regard God, the remaining ones are referred to the neighbor.

ON THE FIRST PRECEPT OF THE DECALOGUE.

I am the Lord thy God.... Thou shalt not have strange gods.[1]

This precept, insofar as it is affirmative, prescribes in the first place the acts of Religion, by which the worship owed to the Divinity is rendered; insofar as it is negative, it prohibits vices opposed to Religion.

CHAPTER I: ON THE ACTS OF THE VIRTUE OF RELIGION

ARTICLE I: ON THE ACTS OF THE VIRTUE OF RELIGION IN GENERAL, OR ON WORSHIP

322. ◦ Acts of the virtue of religion come under the general name of worship.

But worship is defined: the complex of those acts by which we bear witness to the infinite excellence of God, and show service to Him.

Division. - A. By reason of mode: 1) it is internal or external, insofar as it is shown either by internal powers of the soul or by external powers of the body. Writers of Speculative Theology show that both are owed to God.

2. External worship is either private or public, according as it is shown in the name and authority of the Church and in the form prescribed by her, or not. Therefore that worship will be private to which one of these conditions is lacking. Thus, for example, a layman reciting the Divine Office shows only private worship, because, although he observes the form prescribed by the Church, nevertheless he does not act in the name and authority of the Church; nor will it cease to be private, although all the laymen of some whole parish publicly in the church commonly recite prayers approved by the Church. On the contrary, it will be public, although a subdeacon recites the Divine Office privately; for the former do not act in the name of the Church, although they act publicly; but the latter acts both in the name of the Church and in the form prescribed by her, although he acts privately. - Public worship is also, and indeed properly, called liturgical.

Notes to nn. 322-328 - note sequence 1. (1) B. Auctorem Fidei, prop. 69, [p. XXXVI](/manuals/konings/o-propositions-of-the-diocesan-synod-of-pistoia-condemned#h22), and Ben. XIV, Brief Sollicitudini nostrae, a. 1745. (2) Cf. Trid. S. 25, de Invocat. etc. (3) Reg. Jur. 51 in 6°. (4) L. III, Decr. T. XLIX, c. 1; likewise in 6°, L. III, T. XXIII, c. 2. (5) Pius IX to Arch. Leopol. 17 Mar. 1862. (6) Conc. Pl. Balt. II, n. 194. Notes to nn. 322-328 - note sequence 2. (1) Trid. Sess. 21, c. 7. (2) C. 39, D. 1, de Cons. (3) Gardell. in S. R. C. n. 4588. De Herdt, T. I, n. 33.

323. ◦ The form prescribed by the Church:

1. Comprehends two things, namely words (for example, of prayers) by which, and rite (for example, extension of the hands) by which worship is to be shown.
2. It has either a natural or a symbolic sense. Thus, for example, the corporal and pall, according to the Pontifical de Consec. corporal., symbolically signify the clean linen cloth concerning which in Matthew.
3. It must not be posited as merely external, or outside every connection with internal worship.
4. It is worthy of the highest veneration.[2]
5. It must be sought from the liturgical books and from the decrees of the Sacred Congregation of Rites.

Notes to n. 323. (1) Exod. 20. 2, 3. (2) See Benger, Compend. der Pastor. Theol., n. 787.

324. ○ Liturgical words 1) are either from God, as the forms of the Sacraments, the most holy Name of Jesus, Lessons from Sacred Scripture in the Breviary and Mass, Psalms and Canticles; - or from the Church, as Collects, Hymns, the Doxology, Lessons of the Breviary, shorter Prayers.

2. They must not be pronounced in the vernacular tongue.[1]

3. They must be pronounced and sung in the mode prescribed by the Church.[2]

A liturgical action or rite, like words, is either from Christ the Lord, as the essential rite of the Sacrifice of the Mass - which action must be called by excellence - and the proximate matter of the Sacraments; or from the Church, as the Sign of the Cross; the use of candles, incense, blessed water; various gestures, as genuflection, inclination of the head, etc.

325. ○ B. By reason of the object which is worshiped, worship is 1) of latria or of dulia; 2) direct or relative.

The worship of latria is the same as adoration strictly taken (worship), or honor shown to God because of His highest excellence and supreme dominion. The worship of dulia (veneration) is shown to Saints and Angels. This again is distinguished as twofold, namely hyperdulia, which is rendered to the Blessed Virgin Mary alone, and simple dulia, which is rendered to other Saints and Angels.

Note. - Among the Saints, Cornelius a Lapide[3] contends not undeservedly that the worship of dulia, highest after the Blessed Virgin Mary, is owed to St. Joseph; and 150 of the Fathers of the Vatican Council requested from the Sacred Congregation of Rites that this be decreed for the Spouse of the Blessed Virgin Mary. Thus far, however, it has not been decreed.

Direct worship, which is also called absolute, is that which is shown to someone because of the gifts with which he is endowed; such is rendered not only to God, but also to the Saints. For these truly possess excellent gifts on account of which they are to be honored. Relative worship is rendered to certain things because of the relation which they have to God or to the Saints; thus the cross, the image of Christ, the images and relics of the Saints are worshiped.

Notes to n. 325. (1) Trid. Sess. 22. c. 8 and Can. 9. Prop. 86 condemned of Quesnel, [p. XXVI](/manuals/konings/m-propositions-of-paschasius-quesnel-condemned-by-clement#p25). Bull Auctorem Fidei, prop. 33, [p. XXIX](/manuals/konings/o-propositions-of-the-diocesan-synod-of-pistoia-condemned#h8). (2) See Benger, Compend. der Pastor. Theol., n. 795-804. (3) Comm. in Matth. I. 16.

326. ○ Concerning the worship of the Saints these things are to be held.

I. By divine law only acts of dulia are to be shown to them.

II. By ecclesiastical law these acts are to be shown according to the laws of the Church, the principal of which are the following.

A. Let public worship not be shown to them before it is established by the judgment of the Church that such worship can be shown to them, or before they have been beatified or canonized by her. That this would thereafter be done by the Supreme Pontiff alone was established by Alexander III in the

twelfth century; but Urban VIII prescribed the rules according to which it ought to be done today. The sum of these rules is this. Men who depart from this life with a reputation of sanctity are called Servants of God, and without any permission of ecclesiastical power they can be called so. Private worship can be shown to these. The Ordinaries of those dioceses in which the Servant of God dwelt longer, or did greater things for God, inquire into the reputation of sanctity. When this inquiry, which comes under the name of the Ordinary Process, has been duly performed, the cause is referred to the Holy See; if it is admitted by the latter, the Apostolic Process is said to be introduced, and from then the title Venerable Servant of God is assigned to the Servant of God. The principal end of the Apostolic Process is to inquire whether it is established concerning the theological and cardinal virtues, and the virtues annexed to them, of the Venerable Servant of God N. N. in a heroic degree, and concerning two miracles; if these are established, Beatification follows through the Supreme Pontiff himself. Public worship can be shown to those beatified, yet restricted, both as to the kingdoms, provinces, dioceses, or Orders in which, and as to the mode in which, it is permitted by decrees, whether general - especially those of Alexander VII, dated 27 Sept. 1659 - or special. Beatification, after two other miracles have been approved, if nothing stands in the way, is followed by Canonization, by which the restrictions placed upon the public worship of those Beatified are removed. The Process described thus far is called formal; but equivalent is that by which the worship shown to some Servant of God from immemorial time is confirmed by the Holy See.

327. ○ B. Concerning the public worship of Relics these things especially are to be noted.

1. By Relics of Saints and Blessed are understood: a) in the stricter sense, their bodies and even the smallest parts of the body, likewise oil or another liquid sometimes flowing from them; b) in the broader sense, all things which the Saints used in life, as garments, books, etc.; likewise instruments of punishments and mortifications; c) in the broadest sense, all things which have touched either the body, or the sepulcher, or other Relics of a Saint; likewise oil from a lamp hung before the sepulcher, and dust from the place where they are preserved.

2. From the Relics of Saints the Relics of the Lord must be carefully distinguished, that is, drops of the Blood of Christ; instruments of His passion, as thorns from the Crown, nails, lance, etc. To these, as to Relics of the Most Holy Cross, at least more distinguished worship must be shown. As specifically regards a particle from the wood of the Most Holy Cross, these things are to be observed: a) The practice of separating it from Relics of Saints is right.[1] b) If it has been exposed in the principal place above the altar, those passing before it ought to bend one knee before it, and Mass before it is to be celebrated as before the enclosed Sacrament; but if it is enclosed in a case, those passing before it incline the head.[2] c) Where immemorial usage carries this, it can be carried processionally under a baldachin, with two thurifers incensing, and with head uncovered; and d) after the procession or exposition, before it is placed away, the Officiant standing incenses it with three swings; then, having assumed the humeral veil and made a genuflection of one knee, he blesses the people with it, saying nothing.[3]

3. Distinguished Relics of Saints are the whole body of a Saint or a great part of the same, namely the head, arm, or leg, but these whole, that is, consisting of the two principal bones (not, however, the bones of the thigh),[4] or that part of the body in which a Martyr suffered, provided it is whole and not small.[5]

4. Relics of Saints are to be venerated not only with religious worship, or worship commanded by the virtue of religion - as are the bodies of those dying in communion with the Church - but also with sacred worship;[6] yet not public worship, unless their authenticity has been approved by the Ordinary of the place where they are to be worshiped,[7] and this although they have already been recognized at Rome or by another Bishop; for it belongs to the Ordinary to see that no fraud creeps in and to inspect whether they have truly been approved at Rome.[8]

5. Relics must be preserved: a) any Relics whatever outside the tabernacle; b) distinguished Relics near the high altar or in another conspicuous place of the church, but not in private houses or among laymen, unless there is question of great princes or principal prelates of the Church.

6. Relics are not to be exposed: a) above the tabernacle in which the most august Sacrament is preserved, in such a way that the tabernacle serves as a base for them;[1] b) before the little door of the same tabernacle, or in another manner by which simple persons can be induced to adore Relics for the Blessed Sacrament; c) outside a case, unless, beyond the lamp, two lights continually burn on the altar;[2] d) unless the one exposing them (and replacing them) is vested with surplice and also stole,[3] and, if he blesses the people with the relics, also with the humeral veil. But the blessing must be done without chant, saying nothing, after the Relics have been incensed with a double swing, with incense not blessed; e) with the Blessed Sacrament on the same altar.

7. In processions the relics of canonized Saints can be carried, but a) not under a baldachin; b) with head uncovered (yet the Bishop with miter); c) not in the procession of the Blessed Sacrament, unless by force of an Indult or custom.

8. Of a Saint whose distinguished Relic is had, the Office can be made and Mass celebrated, provided he is found in the Roman Martyrology.

Notes to n. 327. (1) S. C. Rel. 22 Feb. 1847 apud Prinz. Deer. Auth. n. 589 and Acta T. II, p. 557. (2) S. C. Rit. 7 May 1746 in una Varsav. and 18 Feb. 1843 in Cenoman. n. 4181, 4956. (3) S. R. C. 23 May 1835, 12 Jul. 1704, 26 Aug. 1752, n. 4227, 4743. (4) S. C. Indulg. 12 Jun. 1822. Prinz. n. CDXXX. (5) S. R. C. 3 Jun. 1617, 18 Jan. 1631, n. 539, 892. (6) S. Alph. Diss. de maledictione mortuorum. (7) L. III, Decr. T. XLV, c. 2. Trid. S. 25, de Invoc. etc. (8) Sixtus V, C. Dominus and S. R. C. 19 Oct. 1591.

328. ◦ C. Concerning the worship of images hold these things.

1. Among images representing the same object, some can be worshiped more specially: a) those blessed; b) those which at the same time are Relics, as the image of the Blessed Virgin Mary which is said to have been painted by St. Luke; c) those illustrious by miracles,[4] and copies of them, as is clear from the practice of the Church.

2. It is not licit to expose in churches images: a) of Servants of God not yet canonized or beatified, especially with rays or signs of sanctity.[5] But Beatified persons are to be painted with rays only; canonized persons, however, with a diadem around the head; b) furnishing occasion of false dogma and of error dangerous to the uneducated, of which sort, nevertheless, the images of the Most Holy Trinity generally are not;[1] c) unusual ones, unless they have been approved by the Bishop; d) painted or adorned with provocative beauty, or in which something

profane or immodest appears; e) unless every superstition, base gain, and whatever is disordered or accommodated perversely and tumultuously is avoided.[2]

3. Images are worshiped in the same way as Relics, except that a blessing is not given with them, nor is an Office made or Mass celebrated of them, unless they have been specially conceded. They are not carried in a procession with the Blessed Sacrament, outside the case of an Indult or custom.

Notes to n. 328. (1) S. R. C. 31 Mar. 1821, n. 4578. (2) S. R. C. 22 Jan. 1701, n. 3575. (3) De Herdt, Lit. T. 2, n. 194. (4) Cf. B. Auctorem Fidei, prop. 70, [p. XXXVI](/manuals/konings/o-propositions-of-the-diocesan-synod-of-pistoia-condemned#h22). (5) Urb. VIII, C. Celestis Jerusalem.

329. On veneration owed to places and things, whether sacred or religious.

Principles. - I. Places and things become sacred either by consecration, or by a blessing not simply invocative, but constitutive or consecrative, concerning which n. 1247, I. What places and things are to be consecrated or blessed, and by what reason they are polluted or execrated, see ibid., V, and n. 1329, q. 4°, q. 5°.

II. They ought to be 1) agreeable to liturgical prescriptions; 2) if it can be done, precious; or 3) at least decent and clean.

III. They are to be treated reverently, in a sense both negative and positive. 1) Negatively, so that they serve neither for superstitious, nor for indecent, nor, if there is question of things sacred by blessing, as above, for profane uses.[3]

a) Hence it is not licit in churches, after they have been consecrated or even only blessed, to conduct secular judgments, secular[4] or political[5] meetings, or, among us, for laymen[6] to speak to the people without permission of the Ordinary; to have rooms above their lateral chapels, in which daily celebration occurs, for living or sleeping; indeed private oratories also ought to be free from all domestic uses.

b) Those things which can no longer serve the use for which they are destined must be withdrawn from it in a decent manner. Thus 1° the place of a ruined church which can in no way be repaired can be converted to profane, indeed, but not sordid uses; yet with a cross erected there,[1] which erection of a cross, if it cannot be done without danger of sacrilege, almost to be feared among non-Catholics among us, is to be omitted; 2° each year the Sacred Oils are to be burned (and the ashes thrown into the sacrarium); likewise vestments after they have been worn out, unless nevertheless they are used for making or repairing other things;[2] 3° baptismal water on Holy Saturday and on the Vigil of Pentecost, after new water has been blessed, is to be poured into the sacrarium; 4° chalice and paten can be newly gilded and repaired by laymen without permission of the Bishop.[3]

2. Positively, or holy things in a holy manner; concerning which in their places.

ARTICLE II: ON THE ACTS OF THE VIRTUE OF RELIGION IN SPECIES

The principal acts of Religion are adoration, prayer, sacrifice, vow, oath, and the sanctification of certain days.... Of the last three there will be discussion under the second and third precepts. Of

sacrifice, in the Treatise on the Eucharist. Of adoration, there was discussion in the article immediately preceding, I. Therefore here there is treatment only:

On Prayer.

330. Definition. - Prayer, taken more broadly, is the elevation of the mind to God, or any pious affection of the soul toward God and supernatural things. But in the stricter sense it is the petition of becoming things from God. - St. Thom.[4]

Division. It is 1° mental or vocal, according as it is performed by the mind alone, or the concepts of the mind are also expressed by the mouth; - 2° private or public, according as it is made by a private person and in a private name, or in community or by the authority and name of the Church. Yet that which is made in community is not by this very fact and in this sense public, so that it can be called liturgical (n. 322).

Principles. - I. Prayer is necessary for all adults by necessity of precept, indeed also by necessity of means. - 1° This is evinced from innumerable places of Sacred Scripture, for example, "Watch ye and pray."[1] - "It is necessary always to pray and not to faint."[2] - 2° Because prayer is the ordinary means established by God for obtaining necessary graces: "Ask, and you shall receive."[3] - St. Alph.[4]

II. The precept of praying obliges frequently, as is clear from the cited texts, yet not without interruption, which is impossible to human weakness. - Therefore the words, "It is necessary always to pray," according to the common interpretation of Doctors, signify that one must pray frequently at an opportune time, and never cease from weariness, torpor, or dejection of soul; or also that our actions are generally to be directed to God.

III. Prayer which someone performs for himself, or, according to many,[5] for others not placing an obstacle, endowed with the due conditions, has infallible efficacy from the promise of Christ. "Every one that asketh receiveth,"[6] etc. - "If you ask the Father anything in my name, he will give it you."[7]

But the necessary conditions are that it be made: 1° piously, devoutly, and attentively; - 2° with perseverance; - 3° with humility and confidence; - 4° about things necessary or useful.

Temporal things ought not to be asked except with a condition, at least implicit, namely insofar as they can contribute to the salvation of the soul.

Notes to n. 330 - note sequence 1. (4) 2. 2. q. 83. a. 1 and St. Alph. in princ. L. IV. Notes to n. 330 - note sequence 2. (1) Mark 13. 33, 40. (2) Luke 18. 1. (3) John 16. 24. (4) L. IV, init. Gran mezzo della pregh. c. 1. (5) St. Alph. Gran mezzo della preghiera, c. III. (6) Luke 11. 10. (7) John 16. 23.

331. Questions. - Quaer. 1° When does the necessity of prayer urge?

Resp. 1° It urges of itself frequently, so that it cannot be omitted for a notable time without grave sin; the time of one or certainly of two months is reputed notable. - Suarez, Lessius, etc. 2° At the instant of the use of reason. 3° At the article of death. Besides, the confessor, as Doctors hold, ought to be more solicitous in inculcating the necessity of praying frequently than in determining the grave fault of omitted prayer.

Resp. 2° It urges by accident: 1° in grave temptation which cannot easily be repelled in another way; 2° in public calamities; 3° as often as another precept is to be fulfilled for which prayer is necessary,

for example if Sacraments are to be received; 4° as often as some special divine help seems necessary to us.

332. ○ Quaer. 2° Does he sin who omits morning or evening prayers?

Resp. Negatively, precisely of itself, if they are omitted only sometimes. The reason is that there is no law which prescribes determined prayers on individual days and at certain hours. Yet some observe that rarely is some fault of negligence and sloth absent.

Besides, in practice those who rather often omit those prayers cannot be excused altogether from some fault, both because perhaps they in no way pray at another time or in another mode, and thus they will sometimes be lacking to the precept of prayer; and because, on account of the dangers which occur daily, when prayer is neglected, they fall into many sins.

Quaer. 3° In what way does one distracted voluntarily in prayer sin?

Resp. Of itself he sins venially as often as he is voluntarily distracted without a just reason, and this holds even if the prayer is made without obligation; because he inflicts some irreverence on God. - Elbel.[1]

333. ○ Quaer. 4° For whom must one pray?

Resp. 1° For ourselves; 2° for all men, wayfarers, even infidels; 3° for souls detained in purgatory. This is derived 1° from the general law of Charity; 2° from the words of St. Paul:[2] "I desire therefore, first of all, that supplications, prayers, intercessions, thanksgivings be made for all men, for kings," etc.; ... nor are enemies to be excepted, as is clear from the words of Christ:[3] "Pray for them that persecute and calumniate you."

Quaer. 5° Whom besides God can we pray to?

Resp. The Blessed Virgin Mary, as our mediatrix; the Angels, as guardians of men; all the Saints and friends of God, as our intercessors before Him. Privately, baptized infants and those dead before the use of reason can also be invoked; and the same must more probably be said of souls detained in purgatory.

But the invocation of Saints is of counsel, not of precept, since Trent[1] only says that it is good and useful to invoke them. Yet he will seem very careless of his salvation who never invokes the Blessed Virgin Mary, since by a peculiar and wonderful providence she has been constituted our mediatrix.

Note. - On 16 June 1880 "the Sacred Congregation of Rites considered it of its office to warn the Most Reverend Ordinaries of places that they not allow other Litanies to be recited publicly except" those of the Most Holy Name, those of the Blessed Virgin Mary called the Lauretane, and those of the Saints, "or others, if any have been recognized and approved by the Sacred Roman and Universal Inquisition; and at the same time they should beware" (be cautious) "of subjoining their approbation for printing to those books in which Litanies are found lacking apostolic sanction." - According to the periodical of Innsbruck "fur kath. Theol." for 1881, p. 573, the Sacred Congregation responded to some Bishops of Germany inquiring about the sense of this Monitum, that it had wished to keep Litanies not approved by the Holy See away only from Liturgical offices, not, however, to prohibit

their approbation by Bishops, nor the custom of some places of reciting publicly (that is, commonly indeed in church, yet outside Liturgical offices) Litanies approved by the Ordinaries.

Notes to n. 333 - note sequence 1. (1) n. 419. (2) 1 Tim. 2. 1, 2. (3) Matth. 5. 44. Notes to n. 333 - note sequence 2. (1) Sess. 25, de Invoc.

CHAPTER II: ON VICES OPPOSED TO RELIGION

The vices opposed to Religion are: 1° superstition by excess; 2° irreligiosity by defect.

ARTICLE I: ON SUPERSTITION

"Superstition," says St. Thomas,[2] "is a vice opposed to religion according to excess; not because it shows more in divine worship than true religion, but because it shows divine worship either to whom it ought not, or in the manner in which it ought not."

§ I. On Idolatry

334. ○ Idolatry is an action by which worship owed to God alone is rendered to a creature; and this happens not only by sacrifice, but by any sign of honor by which someone intends to submit himself to a creature as to God, for example by genuflection.

Idolatry is distinguished as twofold, namely: 1° Material or simulated, when someone without internal affection, from grave fear, shows worship to an idol. It would also be called material if it proceeded from invincible error, for example if someone, falsely thinking a host to be consecrated, were to adore it. - In the first case it would be a mortal sin; in the second, none, as is clear.

2° Formal and proper, which is done 1° by adoring a creature as God; 2° by showing worship to a demon or another creature as if to God, or at least from the mind of obtaining something from such a creature which can be asked from God alone.[3]

Notes to n. 334. (2) 2. 2. q. 92. a. 1. (3) L. IV. 28.

§ II. On Vain Observance

335. ○ Vain observance is superstition which employs means neither proportioned nor instituted by God for obtaining a certain effect.

It is of three kinds, namely: 1° Notory art, or the art of acquiring knowledge without labor. 2° Art of healings, or the art of healing by various signs or sacred things. 3° Observance of events, by which from consideration of some fortuitous event it is conjectured that something favorable or unfavorable will be in the future.[1]

Principles. - I. Vain observance is a grave sin, because it attributes divine honor to a creature, while it expects from it what must be expected from God alone; and because it rests upon an implicit pact with a demon. Yet it can often be venial from imperfection of the act, from simplicity, from some ignorance, or from timidity, as happens especially among the uneducated in the observance of events.[2]

II. Vain observance is discerned especially: 1° from the insufficiency of the cause for naturally producing the effect; 2° from the joining of a vain or false circumstance as if necessarily required; 3° from the infallibility which is attributed to means in no way infallible.[3]

III. In doubt whether effects proceed from a natural cause or from a demon, they can be attributed to the powers of nature; and therefore it is licit to procure them, because it is not established that the thing is evil. Yet Doctors counsel a previous protestation against any intervention of a demon. - But in doubt whether effects are produced by a demon or by God, if there is present a certain probability that they cannot proceed from a natural cause, they are to be attributed to the demon, unless the sanctity of the one working or other clear signs persuade the contrary, because it is rash to think that miracles are always occurring. Hence it is not then licit to try whether the effect is going to follow or not. - St. Alph.,[1] St. Thom.,[2] and others commonly.

336. You will resolve. - 1° Those are guilty of superstition who wear ligatures marked with certain characters; who invoke certain unknown names, or employ a certain number of crosses or prayers for healing wounds, for rendering themselves invulnerable, ... etc.[2]

2° Likewise those who wear certain prayers, expecting an effect altogether infallible from them. - Yet those are not to be blamed, indeed are very much to be praised, who wear pious medals, sacred images, or Relics of Saints, hoping that they will specially obtain divine help for themselves.[3]

3° Likewise those are guilty of superstition who regard certain days as favorable and others as unfavorable, so that they direct their actions from this; or who for expelling diseases require herbs gathered on such a feast, ... etc.[4]

4° But it is not superstitious to observe the moon or times more suitable for gathering herbs, cutting trees, etc.; ... nor to wear sacred things or words of Sacred Scripture for the honor of God or the Saints and for imploring their help. Likewise neither to recite a certain number of prayers, nor to do all those things which can increase devotion, provided that an infallible power is not attributed to them.[5]

5° Nor is it in any way superstitious, indeed it is very religious and pious, to recite novena prayers, or to repeat prayers so many times in worship of Our Lord, or of the Blessed Virgin, or of some Saint, provided that an infallible power is not attached to such a number, to a certain day, or to a fixed time.[7]

Notes to n. 336. (1) L. IV. 1. 2. (2) L. IV. 3. 4. (3) Ib. (4) Ib. (5) Ib. (7) Ib.

§ III. On Divination

337. Definition. - Divination is the inquiry of hidden things by the help of a demon.

Division. It is 1° express, if it is done through the express invocation of a demon; 2° tacit, if that invocation is only in disproportionate means.

Various kinds of divination are distinguished, of which sort are especially: 1° Judicial Astrology from the stars; 2° Augury from the song or flight of birds; - 3° Auspice from the song of birds; - 4° Haruspicy from the entrails of animals; - 5° Chiromancy from the lines of the hand; - 6° Geomancy from signs in the earth; - 7° Omen from a fortuitous event; - 8° Necromancy from invocation of a dead person; - 9° Oneiromancy from dreams; - 10° Sortilege from lots; - 11° Oracle from idols; - 12° Vaticination from prophets or cards.[1]

338. Principles. - I. Whatever of hidden things is known in another way than by revelation or by natural means must be attributed to divination; for no other means is given for investigating hidden things. - But in doubt whether knowledge arises from natural means or not, whether from a good or from a bad spirit, the rules set forth above concerning vain observance must be applied (n. 335, II).

II. Express divination can never be excused from mortal sin, not even through ignorance; for it is clear that a pact with a demon, or to invoke him, even without a pact, is something most gravely illicit.

This is clearly established from Sacred Scripture, Deut. 18. 10; Lev. 20. 6.

III. But tacit divination can sometimes be excused from mortal sin because of simplicity or ignorance, or because of defect of certain faith.[2]

339. You will resolve. - 1° He is not free from grave fault who, using disproportionate means for some knowledge, protests that he intends no commerce with a demon; for he acts against his protestation, and implicitly invokes the demon, since neither God nor the Angels mix themselves with such things. - Yet otherwise in doubt whether the effect is had from a natural cause, as was said concerning vain observance[3] (n. 335, II).

2° Natural effects must be carefully distinguished from free effects; for the former can often be conjectured, as, for example, from the song and flight of birds, or from the aspect of the stars, one conjectures storm, rain, or serenity of the sky, etc.; for by experience it is established that there is a natural connection among these things. But one must speak otherwise of the latter.

3° Character or state of soul can sometimes in some way be conjectured from the color of the face or other external signs, although in practice for the most part one must abstain from such conjectures because of the danger of rash judgment. But free acts, whether past or future, can never be known with certainty.

4° Those sin gravely who inquire from diviners about their future fortune or life (in English: to consult fortune-tellers; card-cutting); unless they act from simplicity, jest, or from cause of curiosity, without giving faith to the things said.[1] - Yet if the diviner does this seriously, they can with difficulty be excused from gravely culpable cooperation.

Notes to n. 339. (1) L. IV. 5, 6. (2) L. IV. 7, 8. (3) L. IV. 8.

340. Questions. - Quaer. 1° Is the use of lots ever licit?

Resp. 1° Dividing lots, by which it is discerned what is to be assigned to each in settling lawsuits or in distributing things, are certainly licit, since they are entirely free from all superstition.

Resp. 2° Consultory lots, by which the divine will is investigated so that it may be known what is to be done, are not licit unless they are made by a special impulse of God, or there is question of a grave affair in which another counsel is lacking. The reason is that, according to ordinary providence, God does not will that inquiry be made in this way about His will, but recourse must be had to prudent men or ecclesiastical Superiors.

Resp. 3° Divinatory lots, by which the manifestation of a hidden thing is sought, for example from the casting of dice, etc., ... are always gravely illicit, as containing at least tacit invocation of a demon. Superstition of this sort is properly called sortilege, by which name also other kinds of superstitions commonly come.[2]

341. ○ Quaer. 2° Is it licit to conjecture future things from dreams?

Resp. Negatively, ordinarily, because dreams almost always proceed from natural causes, for example from the stirring of humors, etc. ... Besides, dreams sent by God are very rare, and are joined with signs through which they can be certainly discerned from natural or diabolical dreams.[3]

Quaer. 3° Is the use of a divining rod licit?

Resp. 1° Certainly it is to be condemned as often as the rod is moved or not moved according to the mere intention of him who holds it in his hand, and is not moved in the presence of another thing not sought, although of the same nature. For there is no proportion between a natural thing and the intention of man. Hence those sin gravely who use a rod for seeking a thief, or for detecting the stone marking the boundary of a field.[1]

Resp. 2° To some the use of the rod for detecting waters or metals does not seem certainly to be condemned, if the rod is moved over these things in every case equally, whether they are sought or not. Yet a protestation against diabolical operation, which perhaps can be present, will prudently be made, and every superstitious spirit must be excluded.[3]

Notes to n. 341. (1) L. IV. 9. (3) Cf. Vind. p. 216.

342. ○ Quaer. 4° Is Magnetism licit?

Preliminary note. A threefold principal effect or degree is attributed to Magnetism: a) the state of sleep, by which the senses are lulled, as in natural sleep, but often so that "neither the greatest crash reaches the ears of the one lulled, nor can any violence of iron or fire excite him." Thus the Postulate of the Bishop of Lausanne, 19 May 1841; b) the state of somnambulism, in which someone, although he is altogether destitute of the use of the senses, nevertheless sees, hears, speaks, and responds to all things about which he is interrogated; c) the state of clear intuition, or wonderful knowledge of one's own or another's state, and of remedies suitable to illnesses, as well as vision of the actions of other men, even far distant, and of all things which are done both near and far.

Resp. Theologians formerly went off into three opinions, of which the first ascribes all, the second none, the third some of its effects to the devil. This third opinion can no longer be approved practically, and the first seems altogether to have to be admitted. For the simple will, or intention of the magnetizer, or even the consent of the magnetized person joined to this will, is declared to be either the sole or certainly the primary cause of all and individual of these three effects; but this cause is altogether disproportionate to individual effects. For that cause cannot be called proportionate: 1) the will with its immanent acts, because the whole power of an immanent act is consumed in the will itself, and does not pass over to an effect extrinsic to itself; nor 2) the will using the ministry of another power, because thus it is circumscribed by the faculty of that other power, so that the effect cannot exceed the faculty itself of this other power. (In what way, for example, will a Magnetizer who endeavors to know some matter which he is ignorant of be able to transmit knowledge of this thing

into the magnetized person?) - nor 3) a fluid, because between a spiritual and a material substance there is no medium. Therefore these words of the Encyclical of the Holy Congregation of the Inquisition, dated 4 Aug. 1856 (see p. XLIX), can be applied to each degree: "In all these things, whatever art or illusion" (namely the magnetizers) "may use, since physical means are ordered to non-natural effects" (of which sort is also sleep, as described above), "there is found deception altogether illicit and heretical, and" (which ordinarily is present in the manner of magnetizing) "scandal against uprightness of morals." Wherefore we think that one must altogether subscribe to these words of the illustrious Perrone:[1] "Although not a few Catholics have judged and still judge that in general the use itself of magnetism was proscribed and eliminated by the Church, yet there are not lacking those, and learned and pious ones, who deny this. Nevertheless we are persuaded that, if not theoretically, yet practically, magnetism of this sort was and is disapproved by the same Apostolic See."

Nor does the declaration of the same Sacred Congregation of the Inquisition, 28 July 1847, stand in the way: "With every error, sortilege, explicit or implicit invocation of a demon removed, the use of Magnetism, namely the mere act of employing physical means otherwise licit, is not morally forbidden." For the Sacred Congregation, as consultants of the same Holy Congregation have often holily testified, never instituted any examination about the physical question of this magnetism.

Hence precisely it will not be licit to consult magnetizers even about the nature of illnesses, so that it may be discerned what cure is to be applied to them. For unless, as we saw in n. 335. III, there is present a certain probability that certain effects proceed from a natural cause, it is not licit, not even with protestation against any intervention of a demon, to employ means even only doubtfully superstitious; but the effects of magnetism, far from being certainly or probably to be said to proceed from a natural cause, rather are to be attributed to a demon according to things commonly happening. Therefore practically, etc. - It is added that, as will soon be said, it cannot be asked from a magician that he remove a spell unless it can reasonably be presumed that he knows natural means for this. Therefore likewise remedies for illness must not be sought from magnetism unless it can reasonably be presumed that they are to be known in a natural way; but certainly the contrary must be presumed. Therefore. Cf. Capellm. p. 37 sqq.

Quaer. 5° What about Spiritism?

Resp. It is certain today that turning or knocking tables and the other means which Spiritism uses are partly deceitful tricks, partly diabolical superstitions,[1] and therefore that it is illicit either to try the operations of Spiritism, or to approve them, or to favor them in any way, for example by being present.

Notes to n. 342 - note sequence 1. (1) De Virt. Relig. P. II, S. II, c. 4, Prop. 8. Notes to n. 342 - note sequence 2. (1) Conc. Pl. Balt. II, n. 36 sqq.

§ IV. On Magic And Malefice

343. I. - Magic, taken broadly, or natural or artificial magic, which is called white magic, is the art of doing wonderful things, at least apparently, through natural causes or the industry of man, without any ministry of a demon.

Magic, strictly said, is the art of doing wonderful things which, although they are not supernatural, nevertheless surpass the powers of man, and therefore can happen by the help of a demon alone, explicitly or implicitly invoked.

II. Malefice is the art of harming with the intervention of a demon. It is distinguished as twofold, namely amatory and venomous. Amatory malefice, or a love potion, is a diabolical art by which lubricous love or hatred in some person toward another is vehemently excited, by changing the imagination and exciting it more vividly, by showing more beautiful appearances, and by moving libidinous humors. Venomous malefice is precisely the art of harming the neighbor by the help of a demon, and this in various ways, for example by illnesses, stupidity, etc.[2]

Malefice is commonly called sortilege, because through it an evil lot is cast upon those against whom vengeance is exercised through diabolical operation. Hence in Canon Law and in ecclesiastical history magicians and witches are called male and female sorcerers.

Notes to n. 343. (2) L. IV. 23.

344. You will resolve. - 1° Magic does not differ from vain observance except in that its effects are more wonderful, for example the changing of bodies, etc. But in moral species it differs neither from vain observance nor from divination; because it matters little whether knowledge of hidden things or wonderful effects are sought from a demon.

2° But malefice differs in species from other superstitions, because beyond the sin opposed to Religion it adds damage to the neighbor.

3° Amatory malefice does not induce one necessarily to perpetrating a sin of luxury, because it does not remove liberty, but only vehemently excites to lust toward some determined person, by changing the imagination and exciting it more vividly, by presenting more beautiful appearances, and by moving libidinous humors.[1]

Quaer. Can it be asked from a magician that he remove a malefice?

Resp. Negatively, unless it can reasonably be presumed that he knows natural means for this. - Thus commonly Theologians.[2] Cf. n. 319.

ARTICLE II: ON IRRELIGIOSITY

Irreligiosity is special irreverence which is inflicted on God, either immediately in Himself, or mediately in persons or sacred things. Its principal species are tempting God, sacrilege, simony, blasphemy, and perjury. Of the two last there will be discussion in the second precept.

§ I. On Temptation Of God

345. ○ Temptation of God is a word or deed for taking an experiment about God through an extraordinary effect rashly expected from Him. - Thus the common doctrine with St. Thom.[3]

But it proceeds from a twofold vice, namely either from infidelity, when someone doubting about some perfection of God says or does something with the mind of obtaining from God a manifestation

of that perfection, and this is called formal or express; or from mere presumption, when someone, doubting nothing about the perfections of God, without necessity wills to obtain either the manifestation of the divine will or special help of God through wonders, and this is called implicit or interpretative.

It is certain that formal or express temptation of God is always a mortal sin against Religion. - But if it is only implicit, often because of ignorance or inadvertence it can be venial, although of itself it is more probably mortal.[1]

You will resolve. - 1° Those formerly sinned gravely against Religion who demanded that their innocence be proved by duel, by burning iron, etc., or who without a just cause freely offered themselves to martyrdom, unless they were excused by good faith or divine inspiration. - Nevertheless it is licit to ask from God a miracle under the condition, if it has pleased Him, as often as there is a grave cause for our own or others' salvation, or for fulfilling the divine will, or, as St. Thom.[2] says, when there underlies a just necessity or pious utility and the other things which ought to concur for this. For then it is not to tempt God, but to request the help of God at an opportune time.

2° Likewise he sins gravely who, without a just cause, exposes himself to danger of death because he expects divine help; but if he acts only rashly, without certainly trusting in divine Providence, he does not sin against Religion, but only against the fifth precept of the Decalogue.

3° He sins only lightly who in a light illness, with remedies rejected, hopes for health from God; because there is not a grave disorder there. Indeed he is excused from all fault if he hopes that he will be freed naturally from such an illness with God's help.[3]

4° Likewise he sins of himself venially who from negligence approaches unprepared to preaching the word of God, hoping for special help from God.

Notes to n. 345 - note sequence 1. (1) L. IV. 28. (2) Ib. (3) 2. 2. q. 97. a. 1. Notes to n. 345 - note sequence 2. (1) L. IV. 29. Cf. Vind. P. II, q. I. (2) 2. 2. q. 97. a. 2. (3) L. IV. 30.

§ II. On Sacrilege

346. ○ Sacrilege is the violation or unworthy treatment of sacred things. It is distinguished as threefold: 1° personal; 2° local; 3° real.

Principles. - I. Sacred here is called whatever is deputed to divine worship from divine or ecclesiastical institution, and therefore deserves special reverence. - St. Thomas.[1]

Hence 1° Sacred persons are those who are deputed to divine worship through Sacred Tonsure, or through religious vows, or more probably also through any vow of chastity.

2° Sacred places are those which by the authority of the Church are dedicated to worship, as temples and public chapels (not private ones), yet consecrated or blessed; likewise blessed cemeteries. L. IV. 460.

3° Sacred things are those which pertain to divine worship or are proximately referred to it, as Sacraments, consecrated vessels, Relics or images of Saints; likewise those things which pertain to

the adornment of the Church or of ministers; finally ecclesiastical goods, even movable ones. - St. Thom.[2]

II. Sacrilege is a mortal sin from its genus, because it is opposed to the most excellent moral virtue, namely Religion, and for the most part regards grave matter. - Yet it can become light by reason of smallness of matter or imperfection of the act.[3]

III. Sacrilege differs in species according as it affects a person, place, or sacred thing; hence in confession those circumstances must be explained. - St. Alph.[4] St. Thom.[5]

347. You will resolve. - 1° Personal sacrilege is committed: 1) by inflicting violent hands on a Cleric or Religious; 2) by any sin of luxury perpetrated by or with a person bound by a vow of chastity; 3) by violation of personal immunity. - But it will not be sacrilege to detract from a priest, because his person alone is sacred, but not his reputation.[6]

2° Local sacrilege is committed: 1) by all sins by which a Church is polluted by Law, namely by illicit shedding of human blood or seed, homicide, or burial of an excommunicated person or infidel in the Church; 2) by all sins which are done against the immunity and sanctity of a sacred place, as breaking in, despoiling, theft, quarrels, and similar things; 3) by actions unbecoming the sanctity of the place, as are markets, assemblies, and the din of judgments, unless a grave cause excuses.[1]

3° Real sacrilege is committed: 1) by unworthy administration or reception of the Sacraments; 2) by unworthy treatment of sacred Relics, images, etc.; 3) by profanation of sacred vessels, instruments, or ornaments; 4) by theft of a thing pertaining to divine worship or to the Church; 5) by abuse of Scripture, for example by twisting its words to vain things, etc.; 6) by neglect of sacred vessels, corporals, etc., in those who ought to care for these things religiously.[2]

Notes to n. 347. (1) 2. 2. q. 99. a. 1. (2) 2. 2. q. 99. a. 3. (3) L. IV. 33. (4) L. IV. 34. (5) 2. 2. q. 99. a. 1. (6) L. IV. 35.

348. Questions. - Quaer. 1° Is violation of a person bound by a simple vow of chastity outside Religion sacrilege?

Resp. It is controverted. The more probable opinion of St. Alph.[3] affirms, because through any vow of chastity man is truly consecrated to God. For one's own will suffices for consecrating one's own acts to God, while for public consecration public authority is required.[4] See p. LXXXIX. 7.

Besides, whoever is bound by a vow of chastity, as often as he violates this, certainly commits a twofold sin: namely one against chastity, and the other against Religion. - Lacroix.[5]

Quaer. 2° Are all sins of luxury committed in a Church or cemetery sacrileges?

Resp. 1° Merely internal sins are not to be held as sacrileges, because they do not seem specially to affect the sacred place, unless there is a desire of sinning externally in the sacred place itself. - Thus commonly.[6]

Resp. 2° As to external sins, it is certain that sacrilege is committed through consummated acts, namely through voluntary pollution, fornication, etc. This is openly clear from Canon Law. But whether it is also committed through other grave external sins, for example gravely impure touches, is controverted. St. Alph.,[7] Collet, etc., more probably affirm.

Quaer. 3° Is every theft in a Church sacrilege?

Resp. 1° It is established that every theft of a sacred thing is sacrilege, and also theft of a non-sacred thing nevertheless committed to the custody of a sacred place, as is clear from Canon Law.[1]

Resp. 2° As to things which by chance or by accident are found in the Church, as purses, a watch, etc., it is probably controverted on both sides.

Notes to n. 348. (1) L. IV. 36, 37. (2) L. IV. 40-48. (3) L. IV. 47. Cf. Vind. P. III, q. II. (4) Billuart, Diss. 10, de rel. (5) L. III. 55. (6) L. IV. 462. (7) L. IV. 459. Cf. Vind. P. III, q. III.

349. ○ Quaer. 4° Does the injury of any goods whatever belonging to Clerics constitute sacrilege?

Resp. Negatively, but only injury of goods which Clerics possess not in their own name but in the name of the Church, and of which they cannot dispose, and of those which pertain to the adornment of the church, because these alone are sacred.[2] (II) p. 479.

Quaer. 5° To whom is it licit to touch sacred vessels?

Resp. If they actually contain the Blessed Sacrament, outside a case of necessity or danger of profanation, it is licit for no one, without grave sin, to touch them, even mediately, except for a priest or deacon; otherwise, for all Clerics without special permission. The same is licit for sacristans, whether regular laymen, or oblates of secular congregations, or nuns; likewise for those who in clerical dress serve churches. For other laymen it is prohibited under venial sin to touch them immediately, unless a reasonable cause excuses.[3]

But it is licit for all to touch other sacred things, of which sort are, for example, Agnus Dei, at least from modern custom, Relics of Saints, sacred ornaments, except those which immediately touch the holy Eucharist, as, for example, corporals, palls, purificators after use and before washing. But the first washing of these must be performed by a cleric in sacred orders, yet probably it can also be performed by a tonsured cleric; but it cannot be done without venial sin by a layman, or even by a nun or pious women living a common life under rule;[4] but the second and third washing, although more suitably done by a cleric, can nevertheless be done without sin even by a layman. It would also be venial not to throw the water of the washing into the sacrarium.[5]

Notes to n. 349. (1) C. 21. § 2. causa 17. q. 4. (2) L. IV. 42. (3) L. IV. 48, VI. 382. (4) S. R. C. 12 Sept. 1857. (5) L. IV. 48, VI. 382, 387. Q. retr. 72. Appendix annotation (Π), to n. 349. q. 4°. p. 158. col. 1. It is asked whether it is sacrilege unjustly to retain legacies left to the Church for its service? Lessius affirms, L. II. c. 16. n. 30. But Tamburini and others deny, because until the said goods are possessed by the Church, they are not sacred. St. Alphonsus, L. IV. 42. q. 3. It is likewise asked whether it is sacrilege not to pay tithes? Some affirm; others deny. Yet they say it is a graver sin of irreligiosity, because the payment of tithes is ordered to the recognition of divine dominion. Ib. q. 4.

§ III. On Simony

350. Definition. - Simony, so called from Simon Magus, is the studied will of selling or buying for a temporal price something spiritual, or something annexed to the spiritual. It is said studied will, not only because, no differently from other sins, it demands deliberation, but also because for its essential malice it is not required that the pact be completed by mutual consent or in

reality; but the interior affection even of one suffices, namely the simoniacal will of making a pact or of obligating.

A temporal price is distinguished in Canon Law[1] as of three kinds: 1° a gift from the hand, or recompense of any temporal thing estimable by price; 2° a gift from the tongue, or patronage, under which name come praises, commendations, prayers, etc., to be interposed from pact in favor of the one conferring the spiritual thing; 3° a gift from service, or any servitude, or offices furnished to another, for example servitude or any similar office.

Notes to n. 350. (1) C. 114. causa 1. q. 1.

351. ○ Likewise, the temporal thing annexed to the spiritual is threefold: 1° antecedently, to which the spiritual thing accedes, as the right of patronage inhering in land; 2° consequently, which depends on the spiritual, as the fruits of a benefice or office; 3° concomitantly, as labor in sacred functions. But labor of this sort is annexed to the spiritual thing either intrinsically or extrinsically. It is called intrinsically annexed if it is not easily separable from the thing itself; otherwise it is called extrinsically annexed. Thus celebration of Mass is labor intrinsically annexed to a spiritual thing; but extraordinary fatigue, as singing, delay until midday, a long or difficult journey to be undertaken for celebrating, and other similar things pertain to labor extrinsically annexed.

Division. Simony is distinguished as:

1° Mental, if it is done merely internally or without pact, as if someone recommends a son to the collator of a vacant parish, and meanwhile under the appearance of a liberal gift sends silver vessels to him with this internal intention, that he move and oblige him to nominate his son.

2° Conventional, if a pact indeed intervenes, but is in no way carried into execution, at least by both parties.

3° Real, if the pact is fulfilled by each party, at least inchoatively.

To this is added confidential Simony, which is done by any pact, or confidence, in election or presentation to benefices, or in resigning them, etc.[1]

Simony is also distinguished as of divine or natural law, and of ecclesiastical law. The former is had if the thing simoniacally exchanged is spiritual from its nature, as are indulgences, Sacraments, etc.; but the latter, if something is done against some law which has been made by the Church because of either the danger or the appearance of simony.

352. Principles. - I. For Simony it is required that the temporal thing be given or accepted, either formally or virtually, for the spiritual thing itself and in exchange for it, so that an equating of the spiritual thing with the temporal thing is made, or a commutation, from the primary motive of having one thing for the other as a price or just compensation. The reason is clear from the very definition of Simony. Hence if some honest motive intervenes, by force of which the temporal thing is given, and in turn the spiritual, one would no longer be the motive of the other, but only its impelling cause, and therefore it would not be Simony.

I said: 1° formally, that is, that someone directly intends to receive the spiritual in place of the temporal thing and because of its estimation.

I said: 2° virtually, namely that someone wills to obtain the spiritual thing proximately and immediately through the temporal thing, and no other true and honest motive intervenes. For in this will there is virtually included the intention of commuting one thing with the other.

II. It is licit to give for a price the temporal thing annexed to the spiritual antecedently and concomitantly extrinsically, provided the price is not increased because of the spiritual thing annexed. But in no way is it licit to give for a price what is annexed to the spiritual concomitantly intrinsically, or inseparably, nor what is annexed consequently.

The first reason is because the thing and the labor of the action are truly estimable in themselves by price. Yet by Canon Law the sale of balsam which is contained in Chrism is prohibited, although it preexists the consecration; because since it is of small price, the Bishop would seem to sell Sacraments.[2]

Nevertheless, as to blessed Oil or Sacred Chrism, Scavini observes that in some cathedral Churches the use has prevailed that something is accepted from particular Churches for compensating the expenses made in obtaining the matter.

The second reason is because what is intrinsically annexed to the spiritual is inseparable from it; hence the thing itself or the action would be judged to be sold. Yet, even apart from extrinsic labor, something can licitly be accepted for sacred ministry by reason of a stipend or support, as is established from the practice of the Church. For natural equity demands that honest support be granted to those who are vacant for the utility of others. Hence Christ:[1] The laborer is worthy of his hire. And the Apostle:[2] Know you not that they who work in the holy place eat the things that are of the holy place; and they who serve the altar partake with the altar? So also the Lord ordained that they who preach the Gospel should live by the Gospel.

The third reason is because that which is consequent is judged spiritual, or bound to the spiritual. It is also derived from a special disposition of Canon Law.

III. Simony is a most grave sin; and if it is of divine and natural law, it does not admit smallness of matter. But if the Simony is of ecclesiastical law, there can be smallness of matter in it according to St. Alph.[3] - The reason is that any spiritual thing, from comparison with a temporal thing, is treated as vile with great injury against God Himself. This is established also from the words of St. Peter to Simon Magus:[4] Thy money perish with thee, because thou hast thought that the gift of God may be possessed with money.

Notes to n. 352 - note sequence 1. (1) L. IV. 49, 85, 86 sqq. (2) L. IV. 72. Notes to n. 352 - note sequence 2. (1) Luke 10. 7. (2) 1 Cor. 9. 13, 14. (3) L. IV. 60. (4) Acts 8. 20.

353. Questions. - Quaer. 1° Is it Simony to give principally indeed a temporal thing for a spiritual, but not uniquely?

Resp. Affirmatively. The reason is that even thus there is present a comparison of the temporal thing with the spiritual. For the motive which is added, however honest it may be, does not destroy the

malice and impiety of the prior motive because of which the temporal thing is principally given. This is established also from propositions 45 and 46 condemned by Innocent XI (p. XVI).

Quaer. 2° Is it Simony to give or procure for a Superior a temporal thing for conciliating him to oneself with a view to obtaining a benefice or office?

Resp. Negatively, if the primary intention is of giving the temporal thing gratuitously; because then the immediate comparison is made of a temporal thing with a temporal thing, namely the benevolence of the Superior. But otherwise if the spiritual thing is intended as a due recompense, not, however, as the effect of gratitude of soul. This intention, unless the opposite either is established or can be gathered from adjuncts, for example from the smallness of the gift, etc., is to be presumed to exist virtually, if another title is lacking, for example of removing an unjust vexation, etc.[1]

Quaer. 3° Is it Simony to perform sacred functions principally because of a stipend, or to receive something for sacred doctrine?

Resp. to the first. Negatively, at least more probably, because the stipend is not received as the price of the sacred thing, but as something owed to the person who is occupied for the sake of the neighbor. - Lacroix and others commonly,[2] against some. Therefore if some inordinate affection intervenes (for there will be no fault if need or another honest cause impels one to seeking stipends of this sort), it will not be the vice of Simony, but of avarice.

Resp. to the second. Affirmatively, if the instruction tends to the spiritual good of others, because it is a spiritual thing, unless nevertheless it is accepted by title of stipend or support. But otherwise if the instruction is merely temporal, for example in handing on an explanation of Sacred Letters or Theology.[3]

354. ○ Quaer. 4° Is it Simony to redeem oneself with money from unjust vexation concerning benefices, or another spiritual good, for example Sacraments, etc.?

Resp. Negatively, at least more probably, because liberation from vexation, which alone is directly intended, is something temporal. - Hence you can give money to your enemy if he tries through fraud to impede the collator from favoring you. - St. Alph.[4] and others commonly. Indeed Doctors agree in the same, even if he wishes to impede by prayers alone. But you cannot give money to those who can harm or benefit by electing or presenting to a benefice or by conferring it; for to offer money to them lest they harm would be the same as to offer it so that they benefit, that is, so that they not deny consent.[5]

Quaer. 5° Is it Simony to give or accept something for entrance into Religion?

Resp. 1° It is certain that it is not licit to give or accept something for entrance alone; because this would be a commutation of a sacred thing, of which sort Religion is, with a temporal thing.

2° It is certain also that it is licit for a poor monastery to exact something for the support of the one entering, because then the spiritual thing is not commuted with the temporal; and otherwise equity demands that something be received, lest the monastery fall burdened by expenses.

3° It is likewise certain that it is licit for a monastery to exact something for the support of Novices, because since they do not yet pertain to Religion, and can depart at will, and often in reality do

depart, it is not equitable for the monastery to undergo so grave a burden for them. Yet the Religion of Friars Minor can receive nothing from a special decree.

4° But if there is question of a wealthy monastery, it is controverted. St. Alph.[1] denies, unless the one to be received is old or infirm. Besides, now all doubt vanishes because of the difficulty of the times. For no monasteries are found so wealthily founded that they need no alien help at all for the present and the future. Besides, as is established from several decrees, Nuns always can exact the established dowry, and for choir nuns they ought to [n. 1188. II. 3)].

Notes to n. 354. (1) L. IV. 61. (2) L. IV. 65. (3) L. IV. 94. (4) L. IV. 101. (5) L. IV. 100.

355. ○ Quaer. 6° Does a priest commit Simony who promises a Mass to a layman for the outcome of a game, while the companion puts up a temporal price?

Resp. Negatively of itself, because by this reason a spiritual thing is not properly equated with a temporal thing, just as it is not equated when Mass is said for a stipend; but only the execution of a spiritual thing is offered in place of a temporal thing which would otherwise have to be handed over. For he does not sin who offers to a creditor 100 Masses to be celebrated for him, so that he remit a debt of $100; therefore by parity neither does he sin who promises a Mass for the outcome of a game, while the other puts up $1. - Thus Voit[2] against others. - Besides, a game of this sort rarely lacks some scandal, and therefore must always be dissuaded from.

Quaer. 7° Does a priest commit Simony who for Mass exacts a stipend above the usual tax or one established by the Bishop?

Resp. Negatively, unless he acts with a simoniacal mind; because, since he has another title of exacting remuneration, comparison between the spiritual and the temporal is lacking. He would indeed sin against obedience or justice by exacting more than is equitable, but not at all against Religion. - Yet Voit[1] contradicts, with others, because (he says) then every just title of exacting the temporal thing is lacking.

Notes to n. 355. (1) L. IV. 92. (2) n. 506.

356. ○ Quaer. 8° What about so-called stole fees?

Resp. 1° By common law it has been established: a) that their payment not be a condition without which sacred functions are not performed, and therefore that it not be exacted before those functions; b) that after the sacred functions to which they are annexed by diocesan law or laudable custom, they can be exacted, and indeed from justice,[2] except from the poor; c) that those who maliciously strive to alter laudable custom are restrained by the Bishop, not by the priest.[3] - But a custom cannot be called laudable when it is forbidden by the Holy See or by the Ordinary (cf. Conc. Pl. Balt. II, p. 290, Doc. VI), or has proceeded from the exaction of priests.

Resp. 2° According to the Second Plenary Council of Baltimore, it belongs to Bishops "in ... diocesan synod, or otherwise, as it shall have seemed to them in the Lord, with the counsel of priests also employed, to establish a just" manner "by which among priests dwelling together ... the alms which the faithful spontaneously confer on occasion of the administration of the Sacraments of Baptism or Matrimony are distributed, with consideration not neglected of the stronger right and the graver burdens of the pastor."[1]

Moreover, in various dioceses it has been established that stole fees which proceed from functions exercised in another's parish or for the sake of another's parishioner are remitted to the proper pastor. Yet this must not be understood of offerings altogether voluntary, or of those to which the faithful are obliged neither by diocesan law nor by custom; nor even of that part of the owed offering which exceeds the tax established by law or custom; for as to that part it is altogether voluntary.

Resp. 3° As regards specifically the administration of Sacraments, on the occasion of:

a) Confirmation, if it is joined with a pastoral visitation, as is customary, "let it be ... in the choice of those who are visited whether they prefer to pay that which was previously customarily paid by them, a certain sum of money having been fixed, or rather ... to furnish provisions" to the Bishop.[1]

b) Eucharist, nothing is customarily accepted.

c) Penance, confessors "should not apply pecuniary penances to themselves ... nor should they ask or accept anything from penitents as a reward of their ministry."[2] "Even things offered spontaneously," the Second Plenary Council of Baltimore[3] warns, "under whatever name, let them refuse; nor let them allow even the Mass alms itself to be offered in this sacred tribunal."

d) Extreme Unction, nothing is accepted. "But if a priest has made a long journey for visiting them, nothing forbids that the necessary expenses of the journey be given to him; but let it be absent that they be exacted from the poor."[4]

e) Orders, "let Bishops and other collators of orders, or their ministers, accept nothing ... even spontaneously offered, under whatever pretext."[5] Yet a Bishop conferring Orders in place of another or outside the cathedral in favor of some convent or college will be able to accept expenses of the journey.

f) Baptism and Matrimony. It is certain: 1) that nothing can be exacted where there is not diocesan law or laudable custom. But this cannot be called laudable if it had proceeded not from the piety of the faithful, but from the exaction of priests, as Canonists explain.

2. "Those things which, from the zeal of piety after baptism or matrimony has been conferred, are spontaneously offered by the faithful under the name of alms" a priest, if he wishes, can accept.[6]

Resp. 4° Around burial it has been established:

I. By common law: 1° a) For ground to be deputed to burial (for the word burial comes also in this sense), not yet blessed, something can be exacted or accepted; b) but not for ground already blessed, c) unless either custom is present, or something is offered liberally, or something is sought by reason of the location or more honorable place.

The first part of the response is clear from the fact that ground of this sort is something profane, and therefore can be sold and bought without any stain of simony; the second from L. III, Decr. T. XXVIII, c. 13; the third from the fact that the custom is not called depraved in the cited law, except in the case in which "the digging of a grave is not first permitted for the deceased before a certain price is paid to the Church for the ground in which they are to be buried"; - that a free offering is prohibited by no law; - and that location or a more honorable place is something profane, estimable by price.

2° For the act and office of burial, things spontaneously offered, as is clear of itself, can be accepted, and, where custom is in force, something can also be exacted by title of support.

3° For the burial of the poor, whether as to place or act, nothing can be exacted by pastors.[1]

II. By our law, or by the statutes of the Second Plenary Council of Baltimore,[2] the price paid for a place of burial is to be employed for preserving, restoring, and adorning cemeteries, and, if anything remains, for promoting works of charity or religion by the judgment of the Ordinary. "But we strictly forbid," say the Fathers, "that ever, under whatever pretext, without permission of the Ordinary, ecclesiastical men dare to make their own the monies which are derived from cemeteries; but if they shall have attempted this, let them be punished with most severe penalties."

"Where there is custom," says De Angelis,[3] "it is admitted ... that for a common place in a cemetery a tax be paid, which is called of burial; and the reason for paying this tax is a partial reintegration of the sum expended for the building of the cemetery, and of the expenses which are made for the preservation and custody of the same place; just as here at Rome there is also such a tax, and it is noted in the said Statutes of the Clergy, chap. 6" (the Statutes of the Roman Clergy are denoted). "But for the poor, burial ought to be gratuitous; and what is rightly reprehended in these exactions is the vexatious mode by which they are made, so that permission for burial is not given unless the sum of money has been paid; ... concerning which last case, as Doctors observe, the disposition of Chap. 13, h. t."[4] is to be understood. See this above under 1°.

Notes to n. 356 - note sequence 1. (1) L. IV. 55, quaer. V. (2) L. IV. 55. (3) L. V. Decr. Tit. 3, c. 42 and Reiffenst. in h. t. Notes to n. 356 - note sequence 2. (1) n. 497. Notes to n. 356 - note sequence 3. (1) Tr. Sess. 24. c. 3, de Ref. (2) Rit. Rom. de Sac. Poenit. (3) p. 289. (4) Kenr. Tr. XII. 66. (5) Tr. Sess. 21, c. 1. (6) Conc. Pl. Balt. II, n. 221. Notes to n. 356 - note sequence 4. (1) S. Cong. 5 May 1647 and Rit. Rom. de Exequiis. (2) n. 398. (3) Prel. Jur. Can. T. II, P. II, p. 19. (4) i.e. Decr. L. III, T. XXVIII.

357. You will resolve. - 1° He does not commit Simony who exchanges Relics with Relics;[1] because thus the spiritual is not given for the temporal. The same must be said of other sacred things, if you except benefices, whose exchange, lest it be done by proper authority, is prohibited by the Church.

2° He does not commit Simony who sells blessed wax, rosaries, crosses, or medals to which indulgences are annexed, or sacred Relics enclosed in precious cases, or other similar things; because these are not sold by reason of the sacred thing, but by reason of the price of the temporal thing annexed; but otherwise if, because of the sacred thing itself, these were sold for a greater price. It must be observed besides that by several decrees of the Sacred Congregation of Indulgences it has been forbidden that blessed rosaries, crosses, or medals be exposed for sale.[1]

3° He does not commit Simony who pays money to a heretical prince, lest he be impeded from entrance to the Church or from frequenting religious assemblies of Catholics; or to a malevolent man, lest he be unjustly defamed by him and barred from a benefice to which he has or can have a right. The reason is that in this way the temporal thing is not given for a spiritual right, but for removing or impeding injury, which is something temporal.

4° Those are not to be accused of Simony who serve gratuitously or for an inadequate wage, so that by this occasion they may demonstrate their probity or dexterity with hope of sometimes obtaining some benefice; because they do not expect that spiritual thing as the price of their labors. - Elbel.[2]

5° Nor are those culpable of Simony who from gratitude furnish a temporal thing for a spiritual thing received, and vice versa. Thus a Chaplain would not sin who more gladly furnished services to a Bishop from whom he obtained a benefice, nor a Bishop who conferred a benefice on a Cleric in recognition of services; because these are not furnished as a price. Besides, it is honorable and laudable to show oneself grateful for an accepted service. Yet one must carefully beware lest disguised Simony lie hidden under the title of gratitude; but this would happen where there intervened an implicit pact of giving a benefice for temporal service, or vice versa.[3]

6° But it would be Simony to perform sacred ministries precisely because of the price to be received as such, for example to accept money for absolution from sins, from censures, or for dispensation in a vow, oath, irregularity, and matrimonial impediments. The reason is that it is a spiritual act both by reason of the principle or spiritual power and by reason of the end or salvation of souls. Yet money is licitly accepted on occasion of dispensations, especially when another just cause is not present, by title namely of commutation or alms, or of support of the burdens of the Pontificate, for coming to the aid of the necessities of the Church, for example of Temples, Missions, etc., or for other pious uses, for example for relieving the poor, for endowing hospitals, for the expenses of tribunals by which dispensations are granted, etc. For a suitable stipend must be assigned to the various officials or ministers employed for expediting causes.

Notes to n. 357. (1) See Prinziv. n. L, p. 16 and n. DXCIV, p. 232. (2) n. 618. (3) Cf., if you like, Vind. P. III, q. VI, where certain other things are noted on occasion of this resolution.

358. Questions. - Quaer. 1° Must the spiritual thing acquired simoniacally be restored?

Resp. 1° Affirmatively, as to benefices; thus the common and certain opinion of Doctors. The reason is that laws, as a punishment for the delict, stand in the way, so that the one receiving can acquire dominion of neither the price nor the benefice. And since the acquisition of the benefice is invalid, by that very fact dominion of the fruits cannot be acquired; and therefore these also must be restored.

Resp. 2° Negatively, as to the rest, although the judge can enjoin restitution as a penalty of the crime. Thus the common opinion with Schmalzgrueber.[1] The reason is not only because certain things cannot be restored, for example Sacred Order, but also because for the transfer of a spiritual thing to be valid by divine law, for example of most holy Relics, nothing more is required than the power of transferring in the one and of receiving dominion of the thing in the other; but, unless there is some defect from elsewhere in either, this power is present in both as to a spiritual thing. Therefore. But if the transfer is valid by divine law, it will also be valid by human law, since by this law simoniacal provisions alone of benefices, almost only, are decreed invalid.

Quaer. 2° Must the price accepted simoniacally for a spiritual thing be restored?

Resp. 1° If only the crime of simony intervened, but no injury of justice, there is no obligation of restoring the simoniacal price before a condemnatory sentence of a judge, unless the price itself exceeds the estimation of the temporal advantage which is transferred with the spiritual thing to another. Thus Suarez, Lessius, Laymann, Reiffenstuel apud Schmalzgr.[1]

Resp. 2° But where the simoniacal pact is also opposed to commutative justice, the price must be restored before every sentence of a judge. Thus the common opinion. The reason is that, from the injury of commutative justice, the obligation of restoring arises by the very law of nature.

Quaer. 3° To whom must the simoniacal price be restored?

Resp. 1° If the price has been given, but the spiritual thing has not yet been handed over, the common opinion teaches that the price must be restored to him who gave it, unless the judge shall have decreed otherwise. The reason is that laws establish vindicatory penalties only against real simony.

Resp. 2° But if the handing over has followed on both sides, before sentence it can probably be restored either to the giver, or to the church, or to the poor.[2]

Notes to n. 358 - note sequence 1. (1) L. V. tit. 3, n. 284. Notes to n. 358 - note sequence 2. (1) L. V. tit. 3, n. 286. (2) L. IV. 105. Cf. Vind. P. III, q. VI.

ON THE SECOND PRECEPT OF THE DECALOGUE.

Thou shalt not take the name of the Lord thy God in vain.[1]

By this precept there is prohibited any irreverence toward God, whether by the vain usurpation of His Most Holy Name, or by blasphemy, or by an oath or vow either illicit or violated.

CHAPTER I: ON THE VAIN USURPATION OF THE NAME OF GOD AND BLASPHEMY

ARTICLE I: ON THE VAIN USURPATION OF THE MOST HOLY NAME OF GOD

359. ○ The Most Holy Name of God is said to be usurped in vain when it is taken without a reasonable cause, or without due reverence. But this is wont to be done especially in a threefold manner, namely:

1° From impatience, or indignation, against creatures even inanimate, or against oneself, for example: My God! Good God! how badly this matter proceeds! My God! how foolish I am!...

2° From admiration, by way of exclamation. Thus it is said: Jesus, Mary! O God! My God!

3° Superfluously, generally from a mere formula, or from levity, or from a certain custom. Thus it is said: My God, indeed,... it is so, or it is not so.

360. Questions. - Quaer. 1° Is the vain usurpation of the name of God always a sin, and how great?

Resp. 1° Of itself it is a sin, because it injures the reverence due to the divine name. It is established moreover from Ecclesiasticus:[2] Let not the naming of God be continual in thy mouth.

Resp. 2° Of itself it is only a venial sin, because that reverence is not gravely injured. But it can become mortal because of formal contempt of God or grave anger against Him, because then it is judged to participate in the nature of blasphemy.

Resp. 3° Although fault is often absent because of inadvertence, yet they are not to be excused who, without any sense of reverence, from custom always have the Most Holy Name of God in their mouth. - On the other hand, if the Most Holy Name of God is usurped with due reverence, even in indifferent matters, not only will sin be absent, but, where it is thus usurped by way of invocation, it will be a good and meritorious work. For the rest, they will more easily be excused from sin who usurp the Most Holy Name of God by way of admiration or interjection, because then irreverence is more easily absent.

Quaer. 2° Is it a sin to usurp uselessly the names of the Saints?

Resp. Affirmatively. For what is said concerning the Most Holy Name of God must, proportion observed, also be said concerning the names of the Saints, as is established from the cited place of Ecclesiasticus, where it is added: And meddle not with the names of Saints. The same also must be said concerning the vain usurpation of the words of Sacred Scripture, when they are taken irreverently. Council of Trent, session 4.

Quaer. 3° Is the assiduous and useless usurpation of the name of the demon a sin?

Resp. Negatively, of itself. Yet it is to be reproved as less becoming in the mouth of Christians, especially of priests, who by reason of scandal sometimes are not free from mortal fault. - Busembaum apud St. Alphonsus,[1] Bouvier, etc.

Notes to n. 360 - note sequence 1. (1) Exod. 20. 7. (2) 23. 10. Notes to n. 360 - note sequence 2. (1) L. IV. 181.

ARTICLE II: ON BLASPHEMY

361. Definition. - Blasphemy is speech injurious to God. Speech, however, can be done not only by explicit word, but in some sense also by mind and by deed. Yet if there is question of reservation or of other penalties inflicted on blasphemy, only oral blasphemy is properly understood.

Division. Blasphemy is distinguished first:

1° Direct, or indirect, according as dishonor of God is either directly and formally intended by the blasphemer, or, although not intended, yet in his sayings or gestures some contumely against God is contained. Direct blasphemy, since ordinarily it has hatred of God joined with it, differs in species from indirect blasphemy, which is uttered from anger against men or creatures.[1]

2° Immediate, or mediate, according as it affects God Himself immediately, or only mediately, namely by dishonoring the Saints or sacred things in words. They do not differ in species.

3° Heretical, imprecatory, and merely reproachful, according as it contains heresy, or imprecation, or mere contumely; these differ in species, since the heretical is also opposed to faith, and the imprecatory also to charity.

Principles. - I. Any formal and deliberate blasphemy, whether direct or indirect, whether immediate or mediate, is a mortal sin from its whole genus. The reason is that any contumely against God is a grave injury inflicted on the divine Majesty. - Yet it can become venial from imperfection of the act, namely from defect of advertence or of perfect consent.

II. For perfect blasphemy, by reason of the act, an express and explicit intention of dishonoring God is not necessary, but an implicit one suffices, namely when someone with advertence utters those things which contain true contumely against God, even from jest or from anger against creatures. The reason is that from these there follows grave dishonor of God, although indirect; for grave irreverence is committed against God when words contumelious to Him are employed for jest, or for expressing anger. - Reuter.[2] Except, unless the jest takes away every manner of irreverence toward God.

III. Words are to be held blasphemous of themselves which, from common apprehension, which has already attributed a determined sense to the words,[3] or from a derisive or angry manner of speaking, or other circumstances, contain dishonor of God.

362. You will resolve. - 1° It is blasphemy to say: May the death, or blood of God destroy you; may the Sacraments destroy you. Likewise to spit toward heaven, to gnash the teeth against it, to say that one wishes to do something against God's will, and similar things.

2° It is blasphemy to say: God has wholly forgotten me. Why did God create me? - Yet except if these things are uttered in a human manner of speaking, from levity, or to show the gravity of pain or weariness, as is often wont to happen. But they are never to be excused from grave sin who advertently and seriously say: God is unjust. - God unjustly burdens me with tribulations. - He unjustly permits the wicked to be happy in the world. - Voit.

3° Ordinarily they are to be judged to have sinned gravely who, carried away by anger or some passion, uttered words of blasphemy; nor is their excuse to be admitted that they did not attend to the signification of the words, because ordinarily there was not lacking some advertence, at least confused, concerning the malice of blasphemy. The same is to be resolved concerning the habituated, excepting nevertheless those who, from an inveterate custom of blaspheming already retracted, break out indeliberately into words of this sort.[2]

4° He does not sin gravely who pronounces words indeed blasphemous in themselves, but halved or corrupted, so that he does not attend to the true sense; for these no longer have the nature of blasphemy. - St. Alphonsus,[3] Bouvier.[4]

363. Questions. - Quaer. 1° Is it blasphemy to curse creatures?

Resp. Distinguish: it is blasphemy to curse creatures with relation to God, for example rain, winds, as commanded by God, or with the word God added; likewise to curse a creature which of itself has a special relation to God, for example our soul, the Catholic Faith, heaven, and the like. But otherwise, as almost happens, if the indignation is borne against creatures without relation to God. - Thus commonly.[5] Hence:

Quaer. 2° Are the imprecations in English to be judged blasphemous: 1° "GOD DAMN ME or YOU"; 2° "GOD DAMN MY or YOUR SOUL"; 3° "GOD DAMN MY or YOUR SOUL TO HELL"?

The first formula seems scarcely, or hardly at all, able to be proved blasphemous; for the pronoun me or you, as is plain of itself, denotes the soul neither etymologically nor from common apprehension, at least among our people. Kenrick[6] excuses it in practice from mortal sin, as for the most part containing nothing other than a merely material imprecation.

The second, considering the principles applied by St. Alphonsus to cursing the dead, seems blasphemous, and therefore of itself mortal, although in the genus of cursing or material imprecation it would be. For the Holy Doctor denies that cursing the dead is blasphemous also for this reason, that it is not referred to the soul; but in the second and third formula the soul is named in express words.

Quaer. 3° Is it blasphemy to curse the whole world?

Resp. Affirmatively, because just as to swear by creatures in which the divine attributes shine forth more is a true oath, so to curse those same things is true blasphemy, because in them God is indirectly contemned.[2]

Notes to n. 363. (1) n. 519. (2) Cf. Vind. P. III, q. VIII. (3) L. IV. 130. pp. 281, 282. (4) De 2° praec. a. 1. (5) L. IV. 129. (6) Tr. III. 44.

364. ○ Quaer. 4° Is it blasphemy to curse the dead?

Resp. Negatively, unless the mind is specifically borne toward the souls of purgatory, because the dead in general do not have a special relation with God.[2]

CHAPTER II: ON OATH

365. ○ Definition. An oath is an invocation of the divine Name in testimony of truth.

Division. An oath is distinguished:

1° Assertory, by which present or past things are affirmed or denied, or promissory, which extends itself only to future things. Although not every oath concerning the future is promissory. For a twofold oath concerning the future is distinguished by Doctors: one bare and simple, which contains no promise toward another, for example if you swear that you will not enter this house or tavern, etc.; but another is promissory, which is confirmatory of a promise either toward God, which is a sworn vow, or toward one's neighbor, which adds to the obligation of justice or fidelity arising from the promise an obligation from the virtue of religion.

2° Solemn, or simple, according as it is done in the form required by law, or with solemn ceremonies, or with these excluded.

3° Explicit, or implicit, according as God is expressly invoked as witness, or creatures are employed as testimony in which the divine attributes especially shine forth.

4° Contestatory, or execratory or imprecatory, according as God is invoked as witness alone, or as witness and at the same time avenger of perjury.

Yet according to the common opinion all oaths are of the same species.[1]

An oath clothed with due conditions is honorable and licit, and, if it is promissory, obligates in conscience, unless a just cause stands in the way, or its obligation has legitimately ceased. - Thus all;[2] and it is established both from the definition of the Council of Constance, session 8, against Wycliffe (p. IX), and from the universal practice of the Church and of peoples, and also from various places of Sacred Scripture. Thou shalt fear the Lord thy God... and shalt swear by His name.[3]

The obligation of swearing presses as often as an oath is either necessary for helping one's neighbor, or is legitimately exacted by a Superior.

Notes to n. 365. (1) L. IV. 142. (2) L. IV. 188, 189 sq. (3) Deut. 6. 13.

ARTICLE I: ON THE CONDITIONS OF AN OATH

I. On the requisites for the essence of an oath. - 366. - Two things are required for an oath, namely: 1° The intention of swearing, at least virtual; because without such intention there cannot exist a formal oath. 2° An oath-formula, either by God explicitly, or implicitly by creatures, or an oath-sign; because, since God is invoked as witness, it is necessary that this be expressed in the oath.[4]

367. You will resolve. - 1° A fictitious promissory oath, or one merely external, is not valid, because of defect of will or intention. Yet he who thus swears sins; but more probably, speaking of itself, only venially, because it is nothing but a lie with vain usurpation of the name of God.[5] - Nevertheless it is mortal in contracts, or before a judge (because of grave deception against justice), or if the one swearing fictitiously does not have the mind of fulfilling the promises.[6]

2° An oath made with the mind indeed of swearing, but not of obligating oneself from religion, more probably is not valid, because this is nugatory. But an oath made with the mind indeed of swearing, but not of obligating oneself from justice or from fidelity, is valid.

3° It is an oath to say: I swear by God, by the Saints, the temple, the cross, the altar, the Gospel, the Catholic Faith, the Church, heaven, earth. - Likewise to say: I call God to witness.... Let God be witness to me.... I invoke God as witness. Otherwise, if someone swore by creatures in which the divine goodness or power does not shine forth, for example by a beard, etc.[1]

4° It is not an oath to say: God knows.... I speak before God, etc.... if these are uttered narratively; but otherwise, if invocatively, which is discerned from the circumstances or the intention of the speaker. Nor is it an oath to say: This is as true as God exists,... as I exist,... as I am in this place,... on the faith of an honest man (upon my word and honor), by my faith,... by my conscience,... by priestly faith,... may I die, or may the devil destroy me, unless it be so.... Except when these last two are uttered by way of execration, and not rather, as is customary, by way of pledge. Indeed it is not even an oath to say: I swear or I swear that it is so, unless a question about giving an oath has preceded. - St. Alphonsus,[2] and many others.

II. On the requisites for the liceity of an oath.

Notes to n. 367 - note sequence 1. (4) L. IV. 134. (5) H. A. Tr. V. 17. (6) Ib. and L. IV. 172. Notes to n. 367 - note sequence 2. (1) L. IV. 144. (2) L. IV. 134-138.

368. ○ A threefold condition is required for the liceity of an oath according to that saying of Jeremiah:[1] Thou shalt swear: The Lord liveth, in truth, and in judgment, and in justice.

I. Therefore Truth is required, that is: conformity of the assertion with intention and not with the fact. For an oath excludes only lying, not every error. In an assertory oath truth regards the existence of the fact; in a promissory oath the existence of the intention.

II. Judgment, that is, that it be done with discretion, prudence, consideration, and reverence, and not without necessity or a just cause.

III. Justice, that is, that the oath be about a just, licit, and honorable thing. Thus he would swear against justice who by oath would obligate himself to inflict damage unjustly on his neighbor, or to furnish something else prohibited.

Notes to n. 368. (1) Jerem. 4. 2.

369. Questions. - Quaer. 1° What is a sufficient cause for swearing?

Resp. Any honorable cause of some weight, for example peace to be confirmed in families, greater security in contracts, etc.[1]

Quaer. 2° Is it licit to swear with probability of truth?

Resp. Negatively, because God cannot be invoked except in testimony of a certain thing; nevertheless a certain moral certainty, or sole probability, suffices.[2]

Quaer. 3° Is it licit to swear with mental restriction?

Resp. Negatively, if it is purely mental; but otherwise, if it is broadly mental, and a just cause is present, which nevertheless ought to be greater than that which is required for an unsworn restriction, and greater in proportion as the words furnish greater occasion of erring.[4] See what is to be said n. 513-515.

Quaer. 4° Is it licit to swear, touching and kissing Protestant Bibles, when they have been presented to us by magistrates?

Resp. Negatively, of itself, as is plain; hence one about to swear is accustomed to bring Catholic Bibles or a prayerbook in which some part of Sacred Scripture is contained. For the rest, solemn affirmation among us suffices. I said: Negatively, of itself, because ignorance often excuses. Collect. p. 630 n. 1180.

Quaer. 5° Is it licit to give an oath in public disturbances of the commonwealth?

Resp. This generally depends on the circumstances. Weigh what justice or the common good postulates, and what the obligations required by the oath are, whether positive or negative. - But especially it is expedient to consult ecclesiastical Superiors, to whom it belongs to define what, according to the various circumstances, is to be done.

370. ○ Quaer. 6° What kind of sin is it to swear without truth, judgment, and justice?

Resp. to the first. It is mortal, because to bring God forward in testimony of falsity is to will to destroy His veracity. It is established also from Proposition 24 condemned by Innocent XI (see p. XV). L. IV. 147.

Resp. to the second. It is venial of itself, that is, with the danger of perjury excluded;[5] because it is only vain usurpation of the name of God. - Thus almost all, even the stricter authors.

Resp. to the third. An assertory oath must be distinguished from a promissory one. In the former, for instance if someone boasts with an oath about some sin, more probably there is only a venial sin against religion, because it is not done to confirm complacency in sin, but only to make others more certain about it, which is only a certain venial levity of soul. Except, however, an oath for confirming detraction; for it is employed as a means for making another's infamy more certain. In the latter oath it is certainly mortal, if there is question of a grave matter, as is plain; if of a light matter, St. Alphonsus[1] is more pleased by the opinion which affirms that even in this case one sins mortally, because it seems to be a grave irreverence to invoke God as witness and surety of sin, even light sin.

You will resolve. - 1° Among prohibited oaths are listed those which are customarily emitted in secret societies, and by which members obligate themselves to obey those things which perhaps will be ordered by certain superiors, or to keep secrecy even against legitimate power.[2] See n. 1721. 1°. d).

Yet there are certain societies of workers in which an oath is emitted, or is judged to be emitted, with a restriction, that it is licit to reveal its object to the Ordinary or to a priest; and these, indeed, if the oath contains nothing else which is opposed to justice, and the society is not illicit from elsewhere, are not to be disturbed. See n. 1721. 1).

2° The oath of preserving the Constitution of the United States is to be understood in the popular sense, which, namely, is received among all; for each person is not judged to embrace with judgment of mind whatever is contained in it, nor does the Constitution obligate to this.[3] Nor is a law to be

called evil, but good, which permits a lesser evil that it may prevent a greater one. Moulart, L'Eglise et L'Etat.

3° The oath of foreigners seeking the right of citizenship here is licit, even for him who shall have given an oath of fidelity to the prince from whom he departed. For that oath of fidelity was exacted for confirming the natural obligation of citizens, rather than for inducing a new one, and therefore it must be explained according to the nature of that obligation, by which no one, unless a public and grave cause presses, is bound to remain in his fatherland, and which he satisfies who obeys the prince while he dwells in his domain. But as regards the oath which is given here by foreigners seeking the right of citizenship, and by which every foreign prince is abjured, and consequently also that one from whom someone departed, it is understood of that natural obligation being abjured which, by departing from his domain, has already ceased; and therefore it cannot be called illicit.

4° He who, while war is raging among some nations, brings goods under a neutral flag and documents either fictitious or purposely made into a neutral port, so that thence they may be carried to one or the other of the nations which wage war between themselves, is sometimes compelled to swear that the documents are true. Such an oath cannot be given in the case. (o) p. 473.

Notes to n. 370 - note sequence 1. (1) L. IV. 144. (2) H. A. Tr. V. 14 and L. IV. 148. (4) L. IV. 151 sq. (5) Ib. 145 sub 3.
Notes to n. 370 - note sequence 2. (1) L. IV. 146. Cf. Vind. P. III, q. IX. (2) Conc. Pl. Balt. II. n. 519. (3) Kenr. Tr. III. 68.
Appendix annotation (ι), to n. 370. 4°. p. 168. col. 2. I add also this resolution of St. Alphonsus (L. IV. 150). "Certain simple persons seem sometimes able to be excused from mortal perjury by reason of lack of consideration, when they use certain oath-formulas, such as: By my soul, may God punish me. For although they know this to be called an oath, nevertheless they do not apprehend that to swear is something grave and is to call God as witness, but they apprehend only some confused notion of evil, not of so great moment. See Bon. loc. cit. Laym. c. 14." Thus Busembaum. St. Alphonsus adds: "Indeed it must be noted that commonly country people do not apprehend the gravity of perjury, when, confessing themselves concerning oaths, they distinguish little or not at all true oaths from false; and I have long since understood this from practice in missions. Therefore for those who have the custom of perjuring in such a way, I judge confessors should rather abstain from instructing such persons concerning the grave sin which truly is in perjury, lest material sins in them, on account of the evil habit they have, become formal, according to the general rule, as Busembaum teaches concerning the Sacrament of Penance with Lugo, Sanchez, and Laymann, etc. See book 6. n. 610. Yet such customary sinners are indeed to be strongly warned that henceforth they cease to swear falsely. Moreover, it is not always expedient to warn a rude penitent of this kind concerning the gravity of perjury, if the warning is foreseen not easily to be profitable."

ARTICLE II: ON THE OBLIGATION OF A PROMISSORY OATH

371. Principles. - I. Every promissory oath concerning a licit and honorable thing, besides the obligation of justice or fidelity which arises from a simple promise, also induces an obligation of Religion. The reason is that the promise already obligates of itself, and it is confirmed and strengthened by divine testimony invoked. - But an oath concerning an illicit or wholly useless thing does not obligate at all, because an oath, as an act of Religion, cannot be a bond of iniquity or of an idle thing.

II. The obligation of an oath is to be interpreted strictly, and follows the nature of the act or contract to which it is added, and all its conditions. The reason for the first is that the one swearing is judged to have willed to obligate himself as little as he could; but the reason for the other is that the oath does not change the nature of the act, but adds to it only the obligation of Religion, and hence ought to have the same conditions and limitations.

III. The obligation of an oath is moreover to be interpreted according to the tacit conditions included or understood in it, which are: 1° if I shall be able without grave damage; 2° if the matter shall not have been notably changed; 3° if the rights or will of the Superior do not stand in the way; 4° if the other shall have preserved reciprocal faith; 5° unless the other cedes from his right.[1]

372. Questions. - Quaer. 1° Is smallness of matter given in the transgression of a promissory oath?

Resp. The FIRST OPINION denies, because not only a simple promise is violated, but a sworn promise. Therefore in any matter whatsoever grave injury is inflicted on God, whose testimony has been invoked in vain by the one swearing. - Bonacina, Lessius, Toletus.

The SECOND OPINION affirms, because in a promissory oath God is not properly brought forward as witness of the future execution of the thing promised, but only of the actual promise, or of the true intention of executing the promise. - Suarez, Navarrus, Laymann, etc. - St. Alphonsus in the Work[2] says each opinion is probable; but in the Homo apostolicus[3] he adheres more to the second opinion.

Quaer. 2° Does a promissory oath emitted by error or deceit obligate?

Resp. Negatively, if the error or deceit concerns the substance of the thing; but otherwise if it affects only its accidental adjuncts; because a simple contract would be invalid in the former case, but not in the latter. St. Alphonsus.[4] Yet the same St. Alphonsus[5] notes that the opposite opinion is probable when the error or deceit concerns those circumstances which, although accidental, if they had been known from the beginning, would have deterred from the oath and promise.

373. ○ Quaer. 3° Does a promissory oath extorted by grave and unjust fear obligate?

Resp. It is disputed. The more common OPINION, and in St. Alphonsus[6] by far the more probable, affirms, because an oath, acceding to a contract not invalid of itself, must be preserved from Religion as often as it can be preserved without sin. But the one who has suffered fear can either rescind the contract by force of laws, or seek relaxation of the oath, that he may be excused from the obligation of paying; but if he has already paid, he can demand back in court what he gave, or compensate himself secretly.[7] Cf. n. 867.

Quaer. 4° How does the obligation of an oath cease?

Resp. 1° It ceases intrinsically, as a law does, by cessation of the motive cause (n. 165).

Resp. 2° It ceases extrinsically by irritation, commutation, and dispensation, as a vow does, concerning which we shall speak in the following chapter. It also ceases by relaxation or remission of the obligation made by him in whose favor the sworn promise was emitted, because anyone can yield from his own right.

Notes to n. 373. (1) Kenr. Tr. V. n. 19.

374. You will resolve. - 1° He who swore an evil thing is never obligated by the oath; indeed he sins doubly if he fulfills the oath, namely against Religion and against the virtue to which the matter of the oath is opposed.[1]

2° He who confirmed a prodigal promise by swearing is not obligated by the oath, because that promise is at least lightly evil. - Thus Suarez, the Salmanticenses, and others commonly with St. Alphonsus, who admits this as more probable.[2]

3° He who swore that he promised marriage to a rich, healthy, virgin girl of good reputation is not obligated if she falls into poverty, infirmity, infamy, or fornication, because then the simple promise does not obligate.[3]

4° He does not sin against the oath who, for the sake of civility, swore that he would not sit, drink, enter the house, etc. before another, if compelled by the other he sits, drinks, or enters first; because generally an oath of this sort is null from defect of intention of swearing; or, if it is valid, it is relaxed by the other.[4]

5° He does not sin who reveals a sworn secret when the law itself of the secret ceases to obligate; because an oath, as we said, follows the nature of the act to which it is joined.

6° Parents rarely sin when not fulfilling an oath of punishing children, because generally the oath concerns a useless thing, or rather disordered vengeance; added to this is that the delinquents either are already corrected, or at least have promised amendment.[5]

7° Generally merchants also do not seem to be bound by an oath not to sell for less, or not to buy for more; either because oaths of this kind are, for the most part, concerning a useless thing, or because those men do not have the mind of swearing, or certainly because in the oath there is the tacit condition, unless matters seem to go better otherwise. - Thus more commonly.

8° The oath by which alumni of the Sacred Congregation de Propaganda Fide bind themselves (see p. LXXIII, note 2), and those who here or elsewhere are ordained to the title of the American Mission, that they will not enter any Religion or Congregation without permission of the Holy See, is valid, since it is in favor of a third party.[1] Besides, the condition added, without permission of the Holy See, causes no one to be prohibited absolutely from entering Religion. (x) p. 473.

But it is violated: 1) if someone, when the Bishop commands, should refuse to receive the Orders of diaconate or priesthood; 2) if he should refuse to betake himself to that place of the diocese in which the Bishop shall have judged that he ought to labor unto the salvation of souls; 3) if through his whole life he is unwilling to remain in the same diocese, or employs crafts and deceits to withdraw himself from the authority of the Bishop, or by this manner of acting introduces for the Bishop the necessity of dismissing him; 4) if he enters a religious Order without due permission.

Yet they are not to be judged to sin: a) subdeacons who, by the counsel of a confessor or agitated by scruples, would be unwilling to be promoted to the diaconate, or deacons who for the same reason would be unwilling to be promoted to the priesthood; b) those who for a grave cause seek leave of passing to another diocese; c) those who, knowing themselves not suitable, either from defect of knowledge, or because of infirmity of soul, decline the burden of laboring in the vineyard of the Lord; yet they ought not to trust their own judgment against the mind of the Bishop and confessor.[2]

9° Oaths imposed for securing observance of odious laws, or laws which are of strict interpretation, as, for example, those which pertain to customs duties and other burdens, are to be reduced to the narrowest limits which the words allow.[3] - Resolve the same if those laws were unjust or are deservedly presumed unjust.[4]

For one or the other of these reasons, and often for both, those seem to be excused from perjury who see to it that a double document (invoice) of the goods which they have bought, for example from Europe, be permitted to themselves: one in which the lesser price of the goods is described, another in which the greater is noted; and, with only the former exhibited, swear that they bought at the price which is reported in this former one, provided nevertheless that the formula of the oath is not of such a kind as to preclude the possibility of broad mental restriction.

It happens besides that a merchant who paid the duties defined by law could scarcely gain anything by trading for the support of himself and his own, and this for the reason that either the duty is really excessive, or defrauding the duty as to this kind of merchandise has become common, from which it has come about that merchandise of this sort, if the whole duty is paid, cannot be sold at the price at which, because of common defrauding, it is generally sold. Such a merchant also seems to be excused, if he swears with words used in the strictest sense which they allow;[1] for in these cases the tax law has become unjust, either because it imposes an excessive burden, or because practically, namely from the fact that it is preserved by almost no one, it would burden too much the merchants who preserved it.

Nevertheless officials sin most gravely who, against the oath by which they have bound themselves, accept gifts so that they allow goods to be brought in immune from duty or under a duty lower than that which has justly been established.

Notes to n. 374 - note sequence 1. (1) L. IV. 510. (2) L. IV. 185. (3) L. IV. 180. (4) L. IV. 180. (5) L. IV. 186. Notes to n. 374 - note sequence 2. (1) L. IV. 177 initio, and sub 7, 8. (2) Kenr. Tr. VIII. 24. (3) Kenr. Tr. III. 70. (4) L. IV. 617. Appendix annotation (κ), to [p. LXXIII](/manuals/konings/iii-faculties#h3). Note 2 at the bottom of the page, and n. 374. 8°. p. 170. col. 1. It is useful to add here certain declarations given by Alexander VII, both in the Brief Cum circa, July 20, 1660, and in the Response approved by him of some Cardinals of the S. C. de Propaganda Fide, dated April 8, 1661. 1. In the cited Brief the Pontiff established that the profession of those who, after emitting this oath, were to enter Religion without permission of the Holy See, would be null by the law itself, and that they, notwithstanding profession, could be recalled to their former state by the Congregation de Propaganda Fide (Bullar. S. C. de P. F. T. I. p. 141). 2. In the same Brief the same Pontiff blamed those "who, not understanding the gravity of the office of secular Priests admitted to Apostolic Missions, or what, especially with attention to the circumstances of times and affairs, conduces more to the propagation of the Holy Faith and to the good of the universal Church, still dare to assert that an oath of this kind, in that part in which it prohibits entrance into any Religion, is altogether invalid as impeding a greater good." Ib. 3. To the question (IIIrd): "Whether namely it is of the mind of His Holiness to prohibit Alumni entrance into Religion, even if by the counsel of spiritual Fathers it should be judged most conducive to their salvation": the appointed Cardinals responded: "It has been said that the Brief" (Alex. VII, Cum circa) "does not forbid Alumni from becoming Regulars, but reserves to the judgment of the Apostolic See the weighing of reasons and moments, when it is to be judged fitting, and when not; among which that is certainly most important, namely whether the public good should, in those circumstances, be preferred to the private good of the Alumnus; namely by that reason by which it has been granted to some Orders, that their Religious may not pass even to a stricter one without permission of their own Superiors," Ib. p. 146. 4. To the supplication "for some declaration concerning the perpetual subjection of Alumni to the Holy See, even after, permission having been obtained, they have entered some Religion, because otherwise they will be received with difficulty by Superiors," they responded: "The continuation of the bond of applying themselves to the help of souls, even if with permission of the Apostolic See ... they have entered Religion, is found expressed in the Formula of Oath issued by order of Urban VIII, of holy memory, which from that time has always been furnished by Alumni; nor for that reason have Superiors of Religions abstained from admitting the same, or especially for this reason, that, with one or two excepted, there is almost no Order of Regulars in which they cannot fulfill the office of this kind of helping souls, to which they have devoted themselves; but if Alumni wish to enter some Religion which is in no way vacant for this office, or however much it may have been vacant, or if they are not permitted to exercise in it the offices prescribed in the foundation of the College, or to benefit the Nations to which they devoted themselves, it will be altogether equitable that they be excluded from it." Ib.

LITTLE APPENDIX: ON ADJURATION

375. Definition. - Adjuration is an authoritative and deprecatory demand, with the name of God, or of the Saints, or of a sacred thing interposed, that another be induced to do or omit something.

Therefore it differs from an oath in this, that it does not bring God in as witness, but only interposes His name for obtaining the thing desired more efficaciously because of the reverence due to Divinity or to sacred things.

Division. Adjuration is distinguished:

1° Solemn or private, according as it is done by ministers of the Church, and in the manner determined by her, or is destitute of solemnities; and this latter can be done by all.

2° Deprecatory or imperative, according as it is done through prayers, or through command. This latter belongs only to Superiors toward subjects, and to Exorcists toward demons.[2]

Notes to n. 375. (1) Kenr. Tr. VI. 21. (2) L. IV, Appendix on Adjuration, n. 1, after 198.

376. Principles. - I. Solemn adjuration is licit only for ministers of the Church, to whom it is expressly permitted by the Bishop; but to the rest it is prohibited under grave sin, not by common law, but generally by Bishops.[1]

II. Private adjuration is licit or illicit in all those circumstances in which an oath is licit or prohibited; hence those things which have been said concerning an oath are also to be applied to adjuration.

III. Only intellectual creatures, namely men and demons, can be adjured directly; irrational creatures also indirectly, as salt, water, clouds, locusts, etc., namely by adjuring demons not to harm us through them, or by beseeching God or the Saints that they assist those who will use things of this kind.[2]

But adjuration against demons ought to be done only in an imperative manner, and for removing the harms and vexation of the possessed, but not for vanity or curiosity.[3]

377. Questions. - Quaer. 1° Is it licit to use exorcisms in doubt about possession?

Resp. Affirmatively, if the Bishop, with the matter plainly known, approves it; but scandal and contempt of the Church must be diligently guarded against.

Quaer. 2° About what things can a demon be questioned?

Resp. Generally about all things which conduce to his expulsion, for example concerning the time and cause of possession, concerning the sign of departure, etc.[4]

Quaer. 3° How does he sin who curiously questions the demon about those things which do not pertain to the matter?

Resp. Of itself he sins gravely, if he has many useless conversations with the possessing demon; a fortiori, if he jests with him. But otherwise, if he interposes only one or another curious question in an imperative manner.[5]

Quaer. 4° What are the signs of true possession?

Resp. The principal ones are: 1° to speak in a language wholly unknown before the time of possession; 2° to manifest hidden and distant things which naturally cannot be known by man; 3° to obey a merely internal command of a priest, etc.; 4° a greater vexation of the demon, or greater peace, to appear from contact with sacred things wholly unknown, etc.

Generally someone is not readily to be believed to be possessed by a demon; because true possessions in our times are rare, and most of those things which are reported are found to be false.

Notes to n. 377. (1) L. IV, Appendix on Adjuration, n. 4. Ex. Ord. n. 55. (2) Ib. n. 2. (3) Ib. n. 3. (4) Ib. (5) Ib.

CHAPTER III: ON VOW

378. Definition. - A vow is a deliberate promise made to God concerning a better and possible good.

It is said: 1) promise, that it may be distinguished from a simple purpose; - 2) deliberate; for a vow induces an obligation, which no one is judged to take upon himself without sufficient deliberation; - 3) made to God; for a vow is an act of latria, due to God alone. Wherefore, when we vow certain things to the Saints, the sense is that they are vowed to God at the same time in honor of the Saints; just as we build temples and altars to God in their honor; 4) concerning a better and possible good. Concerning a good; for otherwise it would not be pleasing to God; - better, that is, what is either absolutely or relatively better than its opposite; for a promise which impedes a greater good detracts from the worship of God, nor can it be acceptable to Him; - possible, lest the promise be ridiculous.

Division. A vow is distinguished:

1° Solemn or simple, according as it hands over the one vowing to God, and therefore renders him incapable of acts contrary to this handing over, and as such is accepted by the Church absolutely and perpetually; or, with that handing over and incapacitation and such acceptance by the Church excluded, it is emitted with a simple promise. Thus St. Alphonsus[1] as more probable.

2° Personal, real, or mixed, according as an action or omission, or some thing separable from the action of the person, or each is promised.

3° Temporary or perpetual, according as it is promised to be kept only for a certain time, or through the whole life.

4° Absolute or conditioned, according as its obligation depends on some condition or not. To the conditioned is also referred the penal vow, to which a penalty is annexed by way of condition.

5° Express or implicit, according as it is uttered in words or is contained in something which someone advertently wills and to which he knows a vow is annexed, as the vow of chastity in him who receives the subdiaconate.

We must treat: 1° of the conditions required for a vow; 2° of the obligation of a vow; 3° of its cessation.

Notes to n. 378. (1) L. VI. 1025.

ARTICLE I: ON THE CONDITIONS REQUIRED FOR A VOW

The conditions required for the validity of a vow are contained in the very definition of a vow, and two are principal: 1° true intention; 2° apt matter.

§ I. On The Intention Required For A Vow

379. ○ For the validity of a vow there is required a true and deliberate intention of emitting a vow, or a true promise made to God and inducing obligation; for a vow is like a certain law which the one vowing, otherwise capable of weighing the burden which he assumes,

imposes upon himself. But the will and deliberation are required which are necessary for the perfect and direct voluntary. Wherefore a vow emitted in drunkenness, even if foreseen beforehand, is invalid.

Hence a vow differs essentially from a purpose; because a purpose, however firm, or even uttered with some solemnity - as the purpose among our people of abstaining from every intoxicating drink (the pledge) - does not produce a bond of obligation, nor is the omission of the thing proposed a sin, except perhaps sometimes accidentally, for example because of inconstancy, weariness, or negligence, which of themselves do not exceed venial sin.[1]

380. Questions. - Quaer. 1° Is a vow valid when made with ignorance of the obligation, or with inadvertence to the obligation already known?

Resp. to the first. A vow made with complete ignorance of the obligation which it induces is not valid, because without the intention of obligating oneself there is no vow.

Resp. to the second. It is valid if he who emits the vow habitually knows clearly its obligation, although he does not actually attend to it; or also if he who vows, although he does not know the obligation clearly, nevertheless apprehends it confusedly, or wills it implicitly, when, for example, he wills to vow this or that as others are accustomed to vow. Yet generally it must be held that no greater obligation is induced than that which someone shall have willed to impose upon himself and shall have apprehended.

Quaer. 2° Is a vow emitted from error valid?

Resp. 1° Negatively, if the error concerns either the substance of the thing, as if you vow a chalice to some church which you believed silver, when it is gold; - or concerning substantial circumstances, as if someone vows a pilgrimage to the House of Loreto, thinking that it is distant only so many leagues, when it is distant by many more; - or concerning the final cause of the vow, as a vow of giving alms to poor Titius because he is a blood relative, when he is not.[2]

Resp. 2° Affirmatively, if the error concerns accidental circumstances of lesser moment, which would not have stood in the way of the vow if, error excluded, they had been known, as if you vow alms to poor Caius, whom you think upright, when he is not.[3]

Yet note that vows which are emitted in any approved religious institute are not invalid because of any error, unless only a substantial one concerning the substance. St. Alphonsus.[4] "The reason is," says Lugo,[5] "because in those things which constitute a state firm and irrevocable by its own nature, such as profession and matrimony, the will, according to the nature of the thing in question, accommodates itself and consents without restriction or condition, and altogether absolutely and independently from other conditions besides those which are of the substance of the same contract. For from those conditions marriages and professions would remain uncertain, and therefore the state itself, which is not according to the nature of the thing in question." And, as Sanchez[1] adds, "From dependence of this kind it would follow that many professions and most marriages would have to be judged invalid; which would yield to the grave harm and scandal of the commonwealth."

Notes to n. 380. (1) L. IV. 196-199. (2) L. IV. 198. (3) L. IV. 198. (4) Ib. (5) De Just. et Jur. Disp. 22. n. 88.

381. ○ Quaer. 3° Is a vow made by fear valid?

Resp. 1° Negatively, if the fear is grave, unjust, and inflicted for extorting the vow. The reason is that what is extorted from someone by force through injury cannot be acceptable to God, when the law of nature postulates that the right be restored in full. And this indeed proves that vows of this sort are invalid by the law of nature. But it is established from Canon Law as to solemn vows of Religion, and more probably also as to the other vows, according to the more common interpretation of theologians.[2]

Resp. 2° Affirmatively, if the fear arises from within or from a necessary cause, unless it takes away from the one vowing the use of reason; the reason is that vows of this sort are simply voluntary. Likewise if the fear proceeds from a light cause, because light fear is not judged to influence the act efficaciously, and is rather the occasion than the cause of the vow. - Thus commonly with Sanchez, Azor, the Salmanticenses; and St. Alphonsus says this is more probable.[3]

Quaer. 4° Is he bound by a vow who doubts: 1. whether he emitted a vow or a mere purpose; 2. whether he had sufficient deliberation; or whether he was compelled by grave fear?

Resp. to the first. Negatively. This is established from what was said on Probabilism (n. 67. 1°). But if while he promised he believed that he would sin if perchance he did not execute the thing proposed, it can be judged that he truly vowed.[4]

Resp. to the second. Affirmatively, in any doubt, according to what was said n. 67. 2°, unless certainly he had vowed before the seventh year.[5]

Notes to n. 381. (1) De Matrim. L. 10. Disp. 9. n. 20. (2) L. IV. 197. (3) L. IV. 201. (4) L. IV. 201. (5) Ib. and 196 sub 3.

§ II. On The Matter Of A Vow

382. Principles. - I. The matter of a vow must be a morally good thing, because God is not worshiped by an action indifferent from every side; indeed it must be concerning a better good, that is, better than its opposite; otherwise it would impede a greater good, which cannot be pleasing to God. But a better good is understood not only absolutely in itself, but also relatively to circumstances; and thus the vow of entering matrimony which someone emits because of experienced fragility is valid, although celibacy in itself is better.

II. The matter of a vow ought to be a morally possible thing; because a vow is a promise made to God with the intention of obligating oneself. But no one can obligate himself to something morally impossible for himself. But if the matter is divisible and in part possible, as a sum of money, for this part the vow is valid; but it is not valid if it is morally indivisible, as the parts of a church; or if it is indeed divisible, but it is established that the one vowing willed to obligate himself to each part by way of one thing, and had each indivisibly before his eyes. Thus commonly.[1]

383. Questions. - Quaer. 1° Is a vow concerning matter already prescribed from elsewhere valid?

Resp. Affirmatively; first, because it is not repugnant for a debtor to be obligated by diverse titles; then also the vow of this sort concerns a thing good in itself, since it is supposed to have been prescribed; and finally it concerns a better good, since the new bond can contribute to greater fidelity and devotion in fulfilling the law. - Thus commonly.[2]

Quaer. 2° Is a vow of a good thing with an evil end, or an evil condition, valid?

Resp. to the first. Negatively, if the evil end, although only impulsive, provided the vow would not be made without it,[3] holds itself on the part of the thing vowed; for example, if you vow alms to obtain a happy success of theft, or in thanksgiving for robbery. The reason is that the giving of alms for such an end is a blasphemous action, as if God furnished help for sinning. Otherwise it must be said, according to the common opinion, if the evil intention only accidentally accompanies the vow, and the depraved end, as St. Alphonsus says, holds itself wholly on the part of the one vowing, for example if someone, vowing for the glory of God, afterward more gladly vows externally from vain ostentation.[4]

Resp. to the second. Affirmatively, if the vow is made from affection toward the good thing, as it is good, although joined with an evil cause or condition, as if someone vows alms if he is not caught in theft. For although the theft is evil, nevertheless not to be injured is not evil, but a gift of God; and the vow does not fall upon the evil, but upon the good, insofar as it is good in itself. But much more does this hold if the vow is made from detestation of the evil condition, as if someone vows alms if and as often as he blasphemes. - Laymann.[1]

Quaer. 3° Is a vow of not sinning valid?

Resp. 1° A vow of avoiding all sins, even the slightest, is not valid, because this is impossible.[2]

Resp. 2° But a vow of avoiding all mortal sins, or all fully deliberate venial sins, is valid, because this is possible with divine grace and without a special privilege, and persons who love perfection avoid them sufficiently. Likewise a vow of not committing venial sins of a certain kind is commonly valid, for example never lying, especially in persons of great virtue; but in others of moderate virtue it will be impossible matter; indeed in some matters, for example of dishonest thoughts, as to any and even the slightest subreption, of idle thoughts, etc., since they are inevitable as to all, the vow is null.[3]

Notes to n. 383. (1) L. IV. 202, 225. (2) L. IV. 213. (3) Vind. p. 919. D). (4) L. IV. 206.

ARTICLE II: ON THE OBLIGATION OF A VOW

384. Principles. - I. A vow obligates of itself, as a law or precept of the Church does, and therefore gravely in grave matter, and lightly in light matter; for a vow is as it were a certain private law which one imposes on himself.

II. A vow obligates according to the intention of the one vowing, if he determines the quantity of obligation in the act of vowing, so that he can bind himself only under light sin in matter however grave. The reason is that just as a legislator or Superior can obligate under light sin only in grave matter, so also he who vows a grave thing can impose only a light obligation upon himself. - Yet conversely he cannot obligate himself gravely in a light thing, because light matter is not capable of grave obligation. - Thus commonly.[4]

Notes to n. 384. (1) L. IV. 205. (2) Trid. Sess. 6. can. 23. (3) L. IV. 203. (4) L. IV. 211, 218.

385. Questions. - Quaer. 1° What matter of itself is judged light or grave in a vow?

Resp. That matter is judged grave which, when prescribed by the Church, gravely obligates, as fasting, Mass, etc.; or which, compared with another precept, seems grave, or contributes notably to the end of the vow or to the worship of God.

Quaer. 2° Do several light matters coalesce to make grave matter?

Resp. Negatively, if the light matters are vowed separately, so that the obligation is attached precisely to the time or day, or to sanctifying that day. - But otherwise, if the light matters are vowed by way of one thing, so that the determination of the day accedes only to urge execution, as generally happens in real vows; except nevertheless unless something else is established from the intention of the one vowing, on which the whole obligation and reason of obligation depend.

386. ○ Quaer. 3° Can someone be bound by another's vow?

Resp. Negatively, at least by reason of the vow; the reason is that a vow is a personal burden voluntarily taken up, and therefore no one can promise another's thing or action. - Hence the vows of parents devoting children to some Religion, or imposing on them an obligation, for example of fasting on certain days, etc., cannot bind them. But although children are not bound by such vow of the parents, the vow nevertheless obligates the parents so that, as much as in them lies, preserving the liberty of the children, they move them to embracing that which they vowed for them, and much more that they not hinder children willing to embrace it.

I said: at least by reason of the vow; for from justice the heir is bound to fulfill the real vows of the deceased (n. 874), and a law or custom can obligate descendants to a fast or feast introduced by a public vow.

Quaer. 4° What delay is to be judged grave?

Resp. 1° Of itself any delay of a vow gravely obligating is grave, when it is affixed to a determined time, as is the vow of fasting on such a vigil, etc.; because when the time has passed, the obligation of the vow ceases, which cannot be compensated.

Resp. 2° But if a determined time was not present, or was fixed only for urging execution of the vow, a notable delay in a grave thing will be a grave sin, according to St. Alphonsus and others. But a delay without just cause beyond two or three years in a temporal vow, and beyond six months in a perpetual one, is judged notable, as for example in a vow of entering religion made by one who is no longer quite young.[2]

Notes to n. 386. (1) L. IV. 221. (2) Ib. and H. A. Tr. V. 38.

387. You will resolve. - 1° Real vows must be fulfilled from one's own goods; but he who cannot fulfill from his own is not bound to beg from another in order that he may be able to satisfy. Yet he satisfies if another, either asked or spontaneously, wishes to fulfill for him, although he himself can satisfy; because what another gives, with the consent or ratification of the one vowing acceding, becomes his own. Except if the matter of the real vow was determined by the one vowing for a peculiar reason; for then it must be expended in the individual thing.

2° Personal vows can be fulfilled only by the one vowing himself, nor do they pass to heirs. Hence he who vowed a pilgrimage does not satisfy by inducing another to it.

3° A vow indeterminate as to cessation of time, for example concerning a daily rosary, or a fast to be kept on each Saturday, obligates perpetually, unless something else is gathered from circumstances.

In doubt whether the vow is temporary or perpetual, or for a month or a year, the minimum must be held.[1]

4° He who vowed something without a certain quantity, for example alms, money, etc., satisfies by giving that which he wills, provided he does not contribute so little that he seems rather to mock God than to fulfill the vow.

5° He who vowed to hear Mass through a month or year more probably is not bound on feast days to hear two Masses, unless he explicitly vowed this; because the end of the vow is that on each single day he should gather the fruit of the Sacrifice. Likewise he is not bound to fast on Sunday who vowed to fast for a month, a year, or his whole life, unless he expressly obligated himself to this; because he is judged to vow fasting according to the custom of the Church.[3]

6° He who vowed fasting on the vigil of some Saint, if this falls on Sunday, can fulfill the vow on Saturday according to the custom of the Church.[4]

7° In a disjunctive vow (namely in a vow of furnishing one of two or several things, for example either fasting or giving alms on Saturday), the part which is chosen must be furnished, even if after the choice the other part becomes impossible. But if before the choice one part has become impossible without fault of the one vowing, the vow falls; otherwise the obligation remains for the surviving part.[5]

8° He who has emitted a conditioned vow, and impedes the verification of the condition by reasons or prayers, does not sin; otherwise if by force or fraud. But although in this case he sinned, nevertheless more probably he remains free from the vow, unless the contrary intention of the one vowing must be presumed, as it must be presumed for example in a son who vowed that he would enter Religion unless his father contradicted; for his intention seems to have been unless he contradicted from himself, spontaneously, with the son left to himself.[1]

9° A vow of not striving either directly or indirectly for ecclesiastical dignities, which is emitted in certain Religious Institutes, according to Suarez: a) of itself is not violated by a merely internal desire of those dignities, although ambitious and therefore sinful from this heading; for to desire is not to strive;[2] b) neither is he to be said to strive indirectly who from this desire does something which is ordered only to this, that greater capacity for the dignity be obtained, for example to study more diligently;[3] c) this vow is violated by him who through an external action, even indirect, for example a display of capacity, endeavors effectively to move another so that the dignity be conferred on him or procured for him by that other.[4]

Notes to nn. 387-395 - note sequence 1. (1) L. IV. 226. (2) Trid. Sess. 24, Can. 9. (3) L. IV. 231. Notes to nn. 387-395 - note sequence 2. (1) L. IV. 238, to be followed, not L. V. 35. (2) L. IV. 241 sq. (3) c. 2. Causa 20. q. 2. Notes to nn. 387-395 - note sequence 3. (1) L. IV. 229, 230. (2) n. 600. (3) 2. 2. q. 88. a. 8, ad 3. (4) L. IV. 234. (5) Ib. (6) L. IV. 234. (7) L. IV. 231. (8) L. IV. 230. Notes to nn. 387-395 - note sequence 4. (1) Matth. 16. 19. (2) L. IV. 256, 257. (3) L. IV. 190. Cf. Vind. P. III, q. X. (4) L. IV. 250. Notes to nn. 387-395 - note sequence 5. (1) L. IV. 252, 253. (2) L. IV. 255 and H. A. Tr. V. 41. (3) Traite de l'Etat religieux, Vol. II, p. 271, 272. Notes to nn. 387-395 - note sequence 6. (1) Scav., Tom. II. n. 78. p. 58 and St. Alph., L. IV. 257 sq. (2) L. IV. 258 and L. VI. 986, 987. (3) L. IV. 246. Notes to nn. 387-395 - note sequence 7. (1) D. II, Decr. T. XXIV. c. 8. (2) L. IV. 243. (3) Quaest. rec. ref. VIII. (4) L. IV. 247. (5) L. IV. 245. Notes to nn. 387-395 - note sequence 8. (1) L. IV. 244. (2) L. IV. 248. (3) L. IV. 249. (4) L. IV. 260.

ARTICLE III: ON THE CESSATION OF A VOW

388. ◦ The obligation of a vow can cease:

I. Because of intrinsic causes, namely: 1° by cessation of the end or motive cause; 2° by substantial change of the matter; and 3° by impossibility, whether physical or moral, as was said above concerning laws, n. 137, III, 138, 165.

It is said: 1° by cessation of the motive cause. Titius, for example, a son of the family, when he was playing, having been caught by his father and vehemently rebuked by him, to turn aside his anger vowed that he would play no more. With the father dead, the obligation of the vow ceases; for the anger of the father to be turned aside was the cause of the vow, not only impulsive, but motive and principal, as appears from the case.

It is said: 2° by substantial change of the matter, and 3° by impossibility, whether physical or moral. - This happens: a) if the matter becomes illicit, or indifferent, or impeditive of a better good; b) if it becomes altogether impossible; c) if the state of the one vowing, relative to the matter of the vow, becomes morally diverse, for example if someone had vowed the building of a church, but afterward his wealth is so diminished that he cannot satisfy his vow without notable detriment of his state. - It is plain that the changes under a) and b) take away force from a vow, which ceases to be about a good, and a better and possible one (n. 378, 382). - As to the changes under c), the common opinion is that in every promise, and therefore also in a vow, the obligation is taken away through a change of matter notable of itself, since the thing becomes diverse from that which was promised; indeed probably, and perhaps even more probably, says St. Alphonsus,[1] a vow ceases if a circumstance supervenes which, if foreseen, one would not have emitted the vow, although it would not induce a change notable of itself. Yet in doubt one must stand for the vow, which possesses.

Except nevertheless: 1) If that inconvenience from the nature of the thing could reasonably have been foreseen. Hence even a simple vow of chastity does not cease through vehement stimuli of the flesh supervening, since there is scarcely anyone who does not sometimes suffer grave temptations in this matter; therefore against those stimuli other remedies must be employed,[2] or dispensation must be obtained. 2) If the public good demands the firmness of the vow. Hence through changes of this sort solemn vows emitted in religious profession or in the reception of Orders do not cease; nor simple vows which are emitted in religious Congregations, especially if an oath of perseverance is added; for then an onerous contract intervenes. Hence, just as a Congregation cannot dismiss an alumnus because of supervening changes, except those by which he would cease to be for edification, so neither can the alumnus desert the Congregation.[3]

II. Because of extrinsic causes, namely irritation, dispensation, and commutation, concerning which it remains to speak singly.

§ I. On The Irritation Of Vows

389. ◦ Definition. Irritation of a vow is its annulment or suspension made by him to whose power the will of the one vowing, or the matter of the vow, is subject.

Division. It is: 1° direct, or annihilation of the vow, if it falls directly upon the person or upon the will of the one vowing; 2° indirect, or its suspension, if it falls only upon the matter of the vow.

Principles. - I. Every Superior furnished with dominative power over the will of another (as a Regular Superior by force of the vow of obedience) can directly irritate all vows of subjects; nor do they ever revive once irritated. Therefore the vows of inferiors, whose will, by force of their state, is perfectly subject to the Superior, always involve this tacit condition: unless the Superior shall have opposed.

Hence, with the exception of the vow of passing to a stricter Religion, the other particular vows of Regulars and Nuns can be irritated: 1° by the Supreme Pontiff as supreme Prelate of all Regulars; 2° by the Superiors of the Order or house.[1]

II. Every Superior or lord can irritate indirectly all vows of subjects in those things in which his power is injured; because anyone has the right not to be injured in things subject to his dominion; but these vows revive when they can be fulfilled without prejudice to another.

Hence: 1° A husband can irritate the vows of a wife which prejudice conjugal right, the education of children, or the governance of the house.

2° A wife can irritate the vows of a husband which injure the rights of matrimony, as a vow of chastity, of a long pilgrimage, of putting on the habit of a hermit, etc.

3° A master can irritate or suspend the vows of servants which impede or diminish owed service, as a vow of hearing Mass daily.[2]

III. All vows of the impubescent, even vows of chastity and Religion, can be directly irritated by paternal power. This is established from Canon Law.[3] But males are pubescent when the fourteenth year is completed, and girls when the twelfth is completed.

Hence vows of the impubescent can be directly irritated by the father, and, in defect of the father, by the paternal grandfather, by a tutor, and, these failing, by the mother, and probably even when the father is present (provided however that he does not contradict), or the tutor.[1]

390. Questions. - Quaer. 1° Can a husband irritate all vows of a wife?

Resp. It is disputed. Some deny, and say that the husband can irritate only indirectly those vows which stand in the way of his rights. For as to the others the wife is not subject. - Thus Voit,[2] Laymann, etc. - Yet others better, with St. Thomas[3] and St. Alphonsus,[4] attribute to the husband the right of irritating even directly vows emitted while the marriage stands.

Quaer. 2° Can a father directly irritate the vows of pubescent children emitted before puberty?

Resp. Affirmatively, provided the children, after reaching puberty, have not confirmed them; indeed probably even if they have ratified them, not knowing that they are irritatable.[5]

Quaer. 3° Can irritation be made without cause?

Resp. Affirmatively, as to validity, because the lord validly disposes concerning his own thing; but negatively as to liceity, because the spiritual progress of the subject is impeded irrationally, etc. Yet this commonly does not exceed venial sin. - St. Alphonsus,[6] and others commonly.

Quaer. 4° Can a Superior directly irritate vows ratified by himself?

Resp. Affirmatively, as to validity, because he cannot take away from himself the power which he has over subjects.[7]

Quaer. 5° Can spouses mutually irritate a vow of continence emitted by mutual consent?

Resp. In this case the wife cannot irritate the vow of the man; for the wife has only the right of indirectly irritating the vows of the husband, and she renounced this right by ratifying his vow. But since the man can directly irritate any vows whatsoever of the wife and cannot renounce this right, as was said in the first question above, a solid reason why he cannot do this seems hardly able to be brought forward; yet since the opposite opinion in this case is common, St. Alphonsus[8] leaves the matter to be decided by wiser men.

§ II. On The Dispensation Of Vows

A dispensation from a vow is its absolute condonation, made in the name of God by a legitimate Superior.

391. Principles. - I. The Church has true power of dispensing in vows, as also in oaths. This is established from the words of Christ, Whatsoever thou shalt loose, etc.;[1] and from the constant practice of the Church. - Common.

II. Only Prelates to whom jurisdiction in the external forum has been given can, by proper and ordinary right, dispense from vows, because this power pertains to the external governance of the Church, like the power of making laws and censures. Hence the Pope alone can dispense from vows, even solemn ones, for the whole Church; but Bishops or Regular Prelates only for their respective subjects (see however n. 155), and only in vows not reserved to the Pope.[2]

But by delegated or subdelegated right those dispense in vows who have obtained that faculty from those who can delegate or subdelegate it. Concerning these, n. 1144. III, 1203. I. But since it is doubtful whether he who has delegated power of dispensing in vows has by this very fact also the power of dispensing in oaths made without any vow or independently of it, the obligation of an oath, already certainly contracted, cannot be taken away by that doubtful power.[3] (P) p. 479.

III. For the validity of dispensation a just cause is always required, because since vows are made to God alone, man cannot dispense from them except as delegated; but one delegated cannot validly dispense without a just cause, as was said concerning laws. - Thus commonly.[4]

Appendix annotation (P), to n. 391. II. p. 177. col. 2. That the sentence of the Holy Doctor is not to be contemned is clear from the Response which the S. C. de Propaganda Fide gave on May 3, 1828, to the Vicar Apostolic of Eastern Tonkin: "But concerning the doubt which you proposed, asking whether the faculty of commuting and dispensing simple vows is extended also to simple vows confirmed by the bond of an oath, it was consulted, and by Decree it was established that supplication should be made to the Most Holy for sanation, insofar as there is need, as regards the past, and for caution for a faculty in the future also as regards sworn vows. Which likewise was done, as you will know from the document of the Apostolic Indult already mentioned." Collect. Juris miss. p. 630. n. 1183.

392. Questions. - Quaer. 1° What are just causes of this dispensation?

Resp. The good of the Church, of society, of the family, and also of him who is bound by the vow; for example, if because of the vow he is oppressed by scruples or grave temptations; if he experiences notable difficulty in fulfilling the vow; if the vow was emitted immaturely, namely with too great facility, or from imperfect deliberation, or without perfect liberty.... For this reason vows of the impubescent can be dispensed absolutely without any commutation and without another cause....

The same must be said if the vow was emitted because of light fear inflicted from without.... The same, when imperfect deliberation or liberty in vowing proceeded from sadness, or anger, or intrinsic fear of shipwreck, death, or another evil.

Quaer. 2° Can a Superior dispense in vows made for the utility of a third party?

Resp. Affirmatively, as to a gratuitous promise not accepted, or accepted but primarily made to God. Negatively, as to an onerous promise, or a gratuitous one primarily made in favor of a third party and accepted by him.[1]

Quaer. 3° What vows are reserved to the Pope?

Resp. Besides vows emitted in a religious Community, concerning which more precisely there will be treatment in the Treatise on Particular States, there are reserved to the Pope: 1° the vow of perfect and perpetual chastity, but not the vow of virginity only; 2° the vow of entering Religion in which solemn vows are pronounced. Thus from the Response of the Holy See of January 2, 1836, to the Bishop of Le Mans apud Gautrelet.[3] From this and the preceding vow even our Bishops can dispense (p. LXX. 4). 3° The vow of pilgrimage to Jerusalem to the sepulcher of Christ; 4° the vow of Roman pilgrimage to the thresholds of the Apostles; 5° the vow of Compostellan pilgrimage to St. James. Yet this reservation, since it is odious, must be taken strictly; and therefore it ought not to be extended except to vows:

1. Properly so called. Hence a vow of emitting a reserved vow would not be reserved, because it would not be a vow made, but to be made; nor a vow emitted not principally in honor of God.
2. Absolute. Hence vows are not reserved to the Pontiff if they are penal; or conditioned, and this more probably even when the condition has been fulfilled. See nevertheless L. IV. 260. q. 3.
3. Altogether free. Hence vows are not reserved if they were emitted under light fear even inflicted by another.
4. Perfect. Hence they would not be reserved if they had been emitted under light obligation, or if they were not complete in their genus. Hence a vow of chastity, if it does not exclude every venereal act, is not reserved; wherefore a vow of not marrying, of not committing adultery, of not fornicating, of not seeking the debt, is not judged reserved; nor a vow which only indirectly regards chastity, such as would be a vow of receiving Sacred Orders.
5. Determined. Hence a disjunctive vow would not be reserved.
6. As to their substance. Hence the circumstances of reserved vows are not reserved, as of making a pilgrimage by begging; and if someone vows entrance into a stricter Religion, the Bishop will be able to dispense that he also enter a milder one.[1]

Quaer. 4° Can a Bishop dispense a spouse from a vow of perpetual chastity emitted both before and after matrimony, in order to seeking the debt?

Resp. Affirmatively, according to the common opinion against some; because he can dispense from every impediment hindering the exercise of the conjugal act.[2] Except, however, an impediment from a vow of perpetual chastity emitted by both spouses and by mutual consent; which nevertheless we

think can be taken away by Bishops who, as ours, have the faculty of dispensing in the vow of chastity (p. LXX. 4).

§ III. On The Commutation Of Vows

393. ○ Commutation of a vow is the substitution of some work in place of the promised one. It can be done in a threefold manner, namely into a better good, into an equal one, into a lesser one.

Principles. - I. Whoever has the power, even simply delegated, of dispensing from vows, has by that very fact the faculty of commuting them; for he who can do the greater can also do the lesser in the same genus. - But not conversely, because the greater power is not contained in the lesser.[3]

II. Anyone can by private authority, and without a special cause, commute his vow into a work evidently better, provided that the Church has not prohibited this in a particular case; because while someone performs a work more perfect than the thing promised, by this very fact he preserves what he had promised, since the perfect is included in the more perfect. It is established moreover from Canon Law.[1] But that is judged better which conduces to the greater spiritual utility of the one vowing, or to the greater service of God. Except, however, vows reserved to the Pope, unless the change is made into the religious state.[2*]

III. He who has emitted a vow cannot commute it into a lesser good by his own authority; for he ought to give to God whatever he promised. - Thus all. - But whether he can change his vow into an equal good is disputed. For St. Alphonsus[3] the much more probable opinion is that of St. Thomas denying this, because God rather wills the thing promised than another, even if equal.

IV. A priest delegated merely to commute vows cannot commute them into a notably lesser work; because otherwise he would dispense in great part, and thus would exceed the faculty received. Nevertheless the faculty of commuting vows is not to be interpreted so strictly that it is confined to a work altogether equal, but is to be taken in a broader sense, so that it extends itself to a work somewhat lesser; otherwise it would be liable to innumerable difficulties and scruples, since it is most difficult to find equality in things altogether disparate. Moreover, commutation almost ought to be made for the alleviation of him who has bound himself by vow.[4]

394. Questions. - Quaer. 1° Is some cause required for commuting a vow into an equal or slightly lesser work?

Resp. 1° Affirmatively, as to liceity, because otherwise the delegated person would commute prodigally, by using the power of commuting in vain.

Resp. 2° Probably also affirmatively as to validity, because the delegated person commuting without cause seems to exceed the limits of his power. Nevertheless St. Alphonsus[5] calls the opposite opinion probable. Yet a lesser cause is required for commuting than for dispensing; and again a lesser cause is required for commuting into an equal work than into a lesser one; for greater propensity of the person, or less danger of transgressing the vow, suffices.[1]

Quaer. 2° Once a commutation has been made, is it licit to return to the first work?

Resp. 1° Affirmatively, if the commutation was made into a lesser or equal work, because the first work is equally pleasing to God, indeed it seems more pleasing. - Thus commonly.

Resp. 2° Affirmatively, more probably, even if it was made into a better work, because commutation is made in favor of the one vowing.[2]

Notes to n. 394. (1) L. IV. 217. (2) L. IV. 221. (3) L. IV. 224. (4) L. IV. 224. (5) L. IV. 224.

395. ○ Quaer. 3° Must you return to the first work, if the second becomes impossible?

Resp. 1° Negatively, if the change was made by another's authority, even if by your fault it became impossible; because the prior obligation was dissolved by the commutation itself.

Resp. 2° Affirmatively, if you made the commutation according to your own judgment, because then the prior obligation is not dissolved, but is only supposed to be supplied by a better one. - Thus most commonly.[3]

Quaer. 4° When a reserved vow has been commuted, does the substituted matter also remain reserved?

Resp. Negatively, more probably, because that matter which is substituted is not reserved of itself, although it has the same bond of vow.[4]

For the rest, the faithful, especially women and adolescents, are diligently to be exhorted never to emit vows except by the counsel or approbation of a confessor, especially if there is question of the vow of chastity. But a confessor ought to grant leave or counsel of emitting a vow of perfect and perpetual chastity only with the greatest difficulty and only to persons long proved and of mature age; and often he will act prudently if he grants that leave with the condition added: until it shall seem good to the confessor for the time.

- Likewise those vows to which an obligation of justice is joined, as the vow of perseverance which is customarily emitted in certain religious Congregations; - real vows emitted principally in favor of a third party and accepted by him (n. 392, q. 2°); - and penal vows preservative from sin, unless the commutation is made into another penal work which conduces equally to preserving, as is plain from the Bulls of Jubilee. Cf. Heine, T. I. p. 256. q. 97.

Notes to n. 395. (1) L. IV. 218. (2) Suarez, de Soc. Jesu. L. VI. c. VII. n. 9. (3) Ib. n. 10. (4) Ib. n. 11, 12.

ON THE THIRD PRECEPT OF THE DECALOGUE.

Remember that thou sanctify the Sabbath day.[1]

396. ○ The third precept of the Decalogue is natural insofar as it prescribes that some time be dedicated to public divine worship; but insofar as it determinately designates the Sabbath day, it is ceremonial, and in the new law abrogated, since for the Sabbath day the Church substituted the Lord's day in memory of the Resurrection of our Lord Jesus Christ.

Besides the Lord's Day, the Church instituted other feast days for recalling the benefits of our Redemption, or the merits and examples of the Saints, and commands that they, no less than the Lord's Day, be sanctified.

This precept, insofar as it is affirmative, prescribes certain works, and, insofar as it is negative, prohibits certain others; hence a double Chapter.

Notes to nn. 396-407 - note sequence 1. (1) L. IV. 314, 332. Cf. Vind. P. III, q. XI. (2) L. IV. 309. (3) L. IV. 317. (4) n. 284. (5) L. IV. 314. Notes to nn. 396-407 - note sequence 2. (2) L. IV. 311. (3) L. IV. 314. (4) Kenr. Tr. IV. 14, 15. Notes to nn. 396-407 - note sequence 3. (1) L. IV. 324.

CHAPTER I: ON THOSE THINGS WHICH ARE PRESCRIBED ON FEAST DAYS

ARTICLE I: ON THOSE THINGS WHICH GENERALLY MUST BE FURNISHED ON FEAST DAYS

397. Principles. - I. All the faithful, having the use of reason, and who can morally advert to Mass, are bound under grave sin to be present at it on single Sundays and feast days, unless a just cause excuses them. This is established from various places of Canon Law.[2]

I said: under grave sin; for there is question of a thing grave both in itself and according to the common estimation of the faithful and the unanimous consent of theologians.

Notes to n. 397. (1) Exod. 20. 8. (2) C. 62 and 64. de consecrat. Dist. 1.

398. ○ II. Besides this, the faithful are bound by force of the precept to furnish nothing else, at least under grave sin. The reason is that nothing else is found certainly prescribed. This is the common doctrine of theologians.

I said: at least under grave sin. For most theologians add: nor under light sin of itself. For although servile works are prohibited for this reason, that the faithful may be able more easily to be vacant for divine things, nevertheless these are prescribed by no law. Moreover the end of the precept does not fall under the precept. - Thus Suarez,[1] Elbel,[2] and many others, as even Concina admits, who calls this opinion common.

Hence one excused from Mass on Sunday is not bound by reason of the precept to complete at home the prayers which he would have recited during the time of Mass, or is accustomed to recite. - Suarez.[3]

III. Yet per accidens the faithful can be bound to something else, not indeed by force of this precept, but because it can be necessary for fulfilling another obligation. For they are bound to be present at sermons or catechesis on feast days if the sermon is necessary for Christian instruction or for the ordering of morals; because he who is bound to the end is also bound to the means necessary for this end. - Billuart and others commonly. - For the rest, the faithful are earnestly to be induced to exercise other pious works besides Mass, to pour forth more abundant prayers, etc.

Notes to n. 398. (1) De Relig. Tom. I. L. 2. c. 16. n. 4. (2) n. 385 sq. (3) Ib.

ARTICLE II: ON THE HEARING OF MASS IN PARTICULAR

We must treat: 1° of those things which are required for hearing Mass rightly; 2° of causes excusing from it.

§ I. On Those Things Which Are Required For Hearing Mass Rightly

Three things are required: 1° presence of body; 2° attention of mind; 3° due place.

Point I. Presence Of Body.

A moral and continuous presence of body is required.

399. ○ I. Moral, namely, one must be present where Mass is taking place, so that he can be said to be one from the number of those assisting and offering the Sacrifice; but for this it suffices that he be in a place from which he can follow Mass as to the principal parts, whether by seeing, or by hearing, or by attending to the signs of the others assisting.

II. Continuous, that is, persevering from the beginning to the end of Mass, so that he sins gravely who omits a notable part of it, and venially who omits a slight part, unless a just cause excuses him.

You will resolve. - 1° He validly assists at Mass who, although he neither sees the priest nor hears the words, distinguishes the parts of the Mass by the sound of the bell, by the chant of the choir, by the movements of those assisting, to whom he is morally joined, although he is outside the Church, in which he cannot be contained because of the crowd. Likewise he who stands behind the altar, behind a column, or behind a wall, provided he can advert to the principal parts of the Mass.

2° Likewise, not improbably, he who is in a neighboring house, from which through a window he sees the altar, although a road intervenes, provided that the space between the Church and the place in which he is be small. But otherwise if a great space intervenes, as is more commonly taught.

3° He who remains a great distance away does not assist at Mass, although he sees the church, the altar, the crowd, because in common use he cannot be said morally to hear and to be present. According to Lugo and others, a space of thirty paces from the crowd assisting does not seem so great that it impedes someone from being present at Mass; yet St. Alphonsus[1] does not admit this.

400. Questions. - Quaer. 1° What omission is to be reckoned grave or light in Mass?

Resp. It cannot easily be determined; for although according to all, a third part of Mass is notable, nevertheless it is not established what the third part is, since a notable part ought not to be judged only from duration. Yet according to the common opinion these things seem able to be established.

1° It is grave to omit everything up to the Offertory inclusively, or up to the oblation of the bread exclusively. But certainly it is light to omit everything up to the Epistle exclusively, and more probably even inclusively; indeed probably also, according to St. Alphonsus,[2] up to the Gospel inclusively, although the Holy Doctor holds the opposite opinion as more probable. The reason for these things is that what precedes does not properly pertain to the Sacrifice, but is only as it were preparation for it. - Lugo, etc.

2° According to all, it is grave to omit all things before the Gospel and at the same time all things after Communion; but not to omit only those things which follow Communion, indeed not even to omit all things before the Epistle and all things after Communion. - Lacroix,[1] St. Alphonsus.[2]

3° The omission of the Canon from the Consecration up to the Pater exclusively must be held grave, because it is a notable part in duration and dignity. But the omission of the Offertory, that is, of all things which are done from Dominus vobiscum after the Creed up to the Preface, is reckoned light; for in this broader sense[3] the Offertory comes here; - likewise the omission of the Creed, because it is

not a regular part of Mass.[4] But the Gospel of St. John at the end more probably is not a part of the Mass, because before it the people are already dismissed by the blessing.

4° It is grave to omit the Consecration and Communion; indeed even the Consecration alone, because it is the most worthy part, in which, at least principally, the nature of the Sacrifice consists. Nay more, more probably and more commonly it is held that it is grave not to be present at even one Consecration or Communion alone, because the essence of the Sacrifice more probably consists in both the Consecration and in Communion, and St. Alphonsus practically adheres to this opinion.[5]

Notes to n. 400 - note sequence 1. (1) L. IV. 312. (2) L. IV. 310. Notes to n. 400 - note sequence 2. (1) L. III. P. I. n. 666. (2) L. IV. 310. (3) St. Alph., del Sacrif. di Gesu Cristo. p. III. ad II. Op. asc. t. III. Torino. 1867. (4) L. IV. 310. (5) H. A. Tr. VI. 33 and Istr. al popolo, p. I. c. III. n. 14. Op. mor. Ital. Vol. unico. Torino. 1870.

401. ○ Quaer. 2° Does he satisfy the precept who hears two half Masses from different priests, either simultaneously or successively?

Resp. 1° Negatively, if he hears them simultaneously. The reason is drawn from the interpretation of the common law, which is confirmed by Proposition 53 condemned by Innocent XI (p. XVII).

Resp. 2° But affirmatively, probably, if successively, if the Consecration and Communion are found in the same Mass, after another Mass has previously been heard up to the Consecration. Yet that without a just cause is at least venial.

Quaer. 3° Must he hear the remaining things who arrives after the Consecration at the last part of Mass?

Resp. Affirmatively, very probably, because the opinion is also sufficiently probable that the essence of the Sacrifice consists in the Consumption, and this opinion must be held in practice also for another reason, namely this, that a notable part of the ceremony prescribed by the Church can be heard.[1]

Quaer. 4° Is he who omits a light part of Mass bound under light sin to supply it, if he can?

Resp. Affirmatively, more probably, because he is bound to hear an entire Mass; except if there is question of a very slight part. - Thus St. Alphonsus,[2] the Salmanticenses against others. For the rest, a sufficiently light reason can exempt from this obligation of supplying.

Point II. Attention Of Mind.

402. ○ Attention to Mass is distinguished as twofold: 1° internal, by which someone actually adverts and applies his mind to those things which are being done by the priest; 2° external, which consists in avoiding any external action which impedes the application of the mind, for example to converse, paint, ... etc.

But internal attention is threefold: 1° one to the words or actions of the priest; 2° another to the sense of the words or mysteries; 3° another to God Himself through prayers or pious meditations.

Principles. - I. For hearing Mass validly there is altogether required at least external attention; because in no way can he be said to be present at Mass who posits actions incompatible with internal attention; indeed he impudently mocks God and the Church. - Thus all.

II. Some internal attention is required besides, and at least the will of hearing Mass; because this is entirely required so that the hearing or presence may be human, moral, and religious from its object. - Suarez.[4]

III. But any internal attention from the three just explained suffices. The reason is that by any one of them the mind is sufficiently applied to the divine worship which is intended through the Sacrifice.

IV. No vocal prayer is absolutely required; because religious assistance honors God, and nothing else is prescribed.[1] - Yet in practice the faithful, especially the uninstructed, must be persuaded to recite some prayers, especially the customary prayers for the hearing of Mass, or the rosary of the most blessed Virgin, lest they be exposed to too many distractions.

403. Questions. - Quaer. 1° For fulfilling this precept, is internal attention required under grave sin?

Resp. The matter is very doubtful. The FIRST OPINION, from St. Alphonsus more common and more probable, affirms. For an act by which God is worshiped is prescribed by the Church; but God cannot be worshiped by mere physical presence; therefore.... Therefore the Church, by directly prescribing the external act of hearing Mass, seems to prescribe indirectly attention, at least some, as a condition without which the formal external act would not consist. - Thus St. Thomas, Billuart, Elbel, the Salmanticenses, and not a few others.

The SECOND OPINION denies. The reason is that assistance with voluntary attention, even merely external, is a sufficiently religious act, and it is not established that anything else is prescribed by the Church. - Thus Lugo, with many others, and St. Alphonsus[2] does not judge it improbable.

For the rest, in practice there does not appear so great a difference between each opinion. For according to the prior opinion, attention in a remiss degree altogether suffices, namely to the principal parts of Mass; but according to the later, there is required: 1° a pious movement of soul, or a true intention of honoring God; 2° such attention that the one assisting at Mass can render an account to himself that he is really assisting at Mass, and consequently that he adverts at least confusedly to its principal parts. Hence the faithful are not easily to be accused of grave fault because of defect of sufficient attention in Mass, but rather are lovingly to be exhorted to direct the mind piously and diligently to the divine Mysteries. For, says St. Alphonsus,[3] after Elbel, Sporer, and Tamburini, no one ought to be anxious because of a scruple of attention not furnished, because it suffices to have had the general intention of worshiping God.

404. ○ Quaer. 2° Does he satisfy the precept who confesses sins during the time of Mass?

Resp. Negatively, both because he posits an action which impedes internal attention, since one confessing cannot be a witness of those things which are being done; and because he does not assist as one exhibiting worship, but as a guilty person. Nevertheless he is excused if the Confession is either easy and brief, since this does not impede continuous presence, or necessary, lest he remain for some time in mortal sin; for if a grave temporal inconvenience excuses from this precept, a fortiori a spiritual one will excuse.[1]

Quaer. 3° Does a cleric reciting the Breviary during the time of Mass satisfy the precept of the Church?

Resp. Affirmatively. The reason is that recitation of the divine Office does not impede someone from being able to be present at the Sacrifice of Mass and to exhibit moral presence to it. - Thus commonly.[2] (See n. 134.)

405. You will resolve. - 1° Those ministering at Mass satisfy the precept; for they attend sufficiently by exhibiting their ministry, by which they actually cooperate with the Sacrifice. The same must be said of sacristans, musicians, organists, drummers, etc.; because their acts are referred to the worship of God, and do not impede the necessary attention to those things which are done at the altar.[3]

2° Those who collect alms satisfy, provided they attend to the Mass at least confusedly;[4] but if they foresee that they cannot furnish this attention, let them hear another Mass, if they conveniently can.

3° Those who examine conscience during the time of Mass, so that they may confess, fulfill sacramental penance, or even make a prayer owed by whatever title, satisfy; because by these the mind is directed to God, and from elsewhere two precepts can be satisfied at the same time, if the things prescribed can be furnished at the same time. - Thus commonly. - Likewise those who read some spiritual book, but not sacred histories with the mind of learning the style.[5]

4° Those also satisfy who are distracted involuntarily, even during the whole time of the Sacrifice, unless they are so carried away by alien thoughts that they in no way attend; for then they satisfy no more than those who sleep involuntarily through a notable part of Mass, although they are excused from sin. Thus commonly. But one dozing sometimes during Mass satisfies, or at least does not offend gravely, provided in some way he adverts to that which is being done.

5° Those also satisfy as to the substance, or are excused from grave fault, who voluntarily are distracted, even during the whole time of Mass, provided they at the same time attend; for this sometimes can happen if the distractions are not so vehement, since a man can think about several things at the same time. - Reuter.[2]

6° But they by no means satisfy who through a notable part of Mass converse about a serious thing (or even about a light thing, but in such a way that external attention is impeded), or attentively consider images, survey with their eyes the furnishings of the church, read inscriptions or other profane things, meditate on sciences, paint, or perform other similar things, unless these are done interruptedly, or in such a way that they do not altogether impede attention.[3]

Notes to n. 405. (1) L. IV. 311. (2) H. A. Tr. VI. 33 and L. IV. 310, q. 2. (3) L. IV. 310. (4) De Euch. Disp. 88. Sect. 8.

Point III. On The Due Place.

406. ○ Omitting those things which theologians hand down concerning private oratories, it suffices to note these two things for these provinces.

1° The precept is satisfied wherever by force of the Faculties (n. 1329. q. 3°) it is licit to celebrate.

2° The priest who otherwise could not hear Mass is bound, on Sundays and feasts of precept, to use the privilege of celebrating on a portable altar which is customarily conceded to priests in these provinces, provided nevertheless that he is able reverently to undertake so great an office in those adjuncts of things in which it happens that he is placed. For the rest, if on a journey he is living alone

among non-Catholics, he is not bound to celebrate, since the reverence due to the Sacrifice can scarcely be observed.[4]

§ II. On Causes Excusing From Mass

407. ○ Any moderately grave cause excuses from hearing Mass, or one which involves some notable inconvenience or damage in the goods of soul or body of oneself or one's neighbor. This is established from the common interpretation and custom, which is the best interpreter of laws. - Thus commonly.[1]

Notes to n. 407. (1) L. IV. 313. (2) Ib. and H. A. Tr. VI. 28. (3) L. IV. 313.

408. You will resolve. - 1° The sick, the infirm, and convalescents are excused, whom either going out or being in church harms. (A) p. 474. Likewise those who must guard the sick.[2]

2° Travelers are excused, to whom no place occurs where they may be present at Mass, or who cannot interrupt the journey, because public drivers, or companions on the way, without whom the journey would not be without inconveniences or danger, refuse to stop.

3° Those are excused who guard the flock or house, or who must prepare food, or perform similar necessary things; yet if several Masses are held, all ought successively to hear Mass, insofar as it can be done.[3]

4° Mothers and nurses are excused who have no one to whom they can leave little children, nor can they lead them to the Church without great disturbance of those standing by. But if there are only two spouses, they will conveniently be able to be present at Mass by alternate turns.[4]

5° They are often excused who are distant far from the Church, so that they cannot go to it without great difficulty, especially in wintertime.

6° Those who dwell in the country and enjoy the supply of a priest once in a month in a church which is for them as if parochial, according to Kenrick,[5] are not bound to make the journey elsewhere on feast days and Sundays on which the priest is absent, unless, I would except, they are distant less than three miles from some other church.

7° Those seem to be excused, for the sake of demonstrating affection toward parents and relatives, who sometimes betake themselves to places in which there will be no faculty of hearing Mass. For the rest, this must not be done often, nor lightly, nor for a long time.[6]

8° Those who, for the sake of health or of lawful recreation of mind, betake themselves elsewhere for some fixed weeks, as is the custom of many here, are excused from violation of the precept, even if the supply of hearing Mass will be lacking to them while making the journey; for that leisure and relief of mind is sometimes necessary and very often useful, nor are they compelled always to remain in a place in which there is a supply of Mass.[7]

9° In some rural places there is a custom that neighbors, especially non-Catholics, visit others in the morning of the Lord's Day, to remain with them the whole day, whereby Catholics are detained from hearing Mass. Whether in this case those are excused who remain at home lest they seem to be lacking in company and friendship must be defined from circumstances. Thus, if there is the faculty

of going to church and returning to furnish the rights of hospitality, it is clear that Mass must be heard by most members of the family, although someone can remain at home for the sake of companionship; but scarcely do we judge, says Kenrick,[1] that all can ever remain at home, especially if guests have come by design, not once or twice, but rather often. - This must especially be said if Catholics visit Catholics. "For the rest," he adds, "we do not condemn him who, to avoid grave offense of others, sometimes remains at home with guests."

10° Innkeepers are not excused who on Sunday neglect Mass so that they may receive those going to the inn and are going to obtain great gain; for this is done with detriment of religion and great offense of all.[2]

11° Servants are excused if they cannot omit their service without grave detriment of the master, or if they are prohibited by him, nor can they easily find another master. Resolve the same concerning a wife and a son of the family, for whom grave indignation of the husband or parents is to be feared.[3]

12° Almost the same, proportion observed, resolve concerning those who accept or retain an office - for example in railroads - or are occupied with a trade - for example of a barber - by which ordinarily or very often they are impeded from Mass. Namely, they seem to be excused, provided: a) by leaving the office or trade they would suffer a grave inconvenience, or certainly would obtain a much worse or doubtful condition of life; b) from neglect of Mass they have not fallen or will not fall into indifferentism. Yet in every case they are to be exhorted to devote themselves to exercises of piety at home on that very day or on other days; but they are not easily to be admonished concerning a grave obligation of renouncing the office or trade, both because often this will be established only with difficulty, and because the admonition will often not be profitable.

Notes to n. 408 - note sequence 1. (2) L. IV. 325, 326. (3) L. IV. 326. (4) L. IV. 326. (5) Tr. IV. 23. (6) L. IV. 328. (7) Tr. IV. 24. Notes to n. 408 - note sequence 2. (1) Tr. IV. 26. (2) Tr. IV. 22. (3) H. A. Tr. VI. 27. Notes to nn. 408-418 - note sequence 1. (1) Kenr. Tr. III. 87. (2) See St. Alph. L. IV. 265. (3) Cf. Kenr. Tr. III. 76. (5) Ib. 98. (6) Ib. 93. Notes to nn. 408-418 - note sequence 2. (1) L. IV. 304. Appendix annotation (λ), to n. 408. 1°. p. 184. col. 1. It is said: to whom it is harmful to go outside. But from these are to be distinguished those to whom it is harmful to be in church. For there are not lacking those who, although they can go outside without some injury to health, cannot be present in church without the same injury to health. This happens from a twofold cause: from the unhealthy air, namely, which from various causes pervades churches, especially those crowded with many people; and from a physiological condition proper to someone. If one or other of these causes were truly present in a particular case, and from that a probable danger to health truly existed, it would surely excuse from the precept. I say: truly; truly existed; for experience proves more than sufficiently that the danger of hallucination in judging each cause is by no means chimerical. See the excellent work of Dr. Capellmann, Medicina Pastoralis, p. 87 sq., where the matter is illustrated by practical examples.

409. Questions. - Quaer. 1° What distance excuses from Mass?

Resp. It cannot be assigned absolutely, but must be determined from the adjuncts of persons, places, and times. But regularly a distance of three miles, or a walking journey of one hour and a quarter, excuses, and even somewhat less, if it is raining or snowing, or another cause is present.[1]

Yet Kenrick[2] judges that those who can be carried by horse or carriage are not always excused for this reason, that they are distant even ten miles from the church; "for a journey of this sort," he says, "they perform almost daily for the sake of their business; but generally," he adds, "six or seven miles are for an excuse for women, boys, and others who have not grown accustomed to a longer journey." I would add that attention must also be given to the condition of roads and of rainy or very cold weather, etc.

Quaer. 2° Is a sick person excused from Mass in doubt whether the inconvenience is sufficiently grave?

Resp. In this case one must stand by the counsel of a physician, Superior, Pastor, Confessor, or another prudent man. Indeed the sick person can also acquiesce in his own judgment if he judges thus prudently. But what if, counsel having been sought, he still remains doubtful? - Absolutely he is not bound to Mass, because while the danger of grave harm stands, one must judge that Mother Church does not obligate. - Thus very probably, says St. Alphonsus.[3] - In practice it is better that dispensation be sought if it can easily be sought. Cf. n. 66. 2° and 67. c).

Quaer. 3° Does the occasion of making notable gain excuse?

Resp. Affirmatively, probably, because precepts of the Church do not obligate with very grave inconvenience, as is established from what was said n. 137. But a gain of this sort ought to be extraordinary (n. 417. 9°).[4]

Quaer. 4° Are the following excused: a) women not having clothes becoming to their state; b) girls dishonorably pregnant; c) those whose banns before marriage are being made; d) women after childbirth?

Resp. to a) Affirmatively, unless they can hear Mass very early in the morning, or in a church in which they are unknown.

Resp. to b) Affirmatively, unless they can be present at Mass secretly and without notice.

Resp. to c) Affirmatively, if either 1) they suffer notable shame because of them, or 2) somewhere there is a custom of this sort, unless nevertheless they can easily be present at Mass in which the proclamations are not made.

Resp. to d) Affirmatively, for the time determined by the custom of places,[1] unless they are already going out from the house to other places. (u) p. 474.

Notes to n. 409. (1) L. IV. 329 and H. A. Tr. VI. 21. (2) Tr. IV. 19. (3) L. IV. 325. (4) L. IV. 332, coll. 301. Appendix annotation (μ), to n. 409. q. 4°. Resp. to d). p. 185. col. 2. The words: unless they already go out of the house for other things, are to be restricted to the sole case designated, namely of a custom that women after childbirth approach the church only after some determined time, for example six weeks. For it can happen that within that time they usefully go out of the house for the sake of their health itself, and nevertheless, on account of one or other of the causes just set forth under (λ), are excused from approaching the church. Indeed the above-praised Capellmann, p. 90, says it is advisable that women after childbirth and those recovering from illness, before they approach the church, go out once or twice into the open air.

CHAPTER II: ON THOSE THINGS WHICH ARE PROHIBITED ON SUNDAYS AND FEASTS

We must treat: 1° of works prohibited on feast days; 2° of the causes because of which they are sometimes licitly exercised.

ARTICLE I: ON WORKS WHICH ARE PROHIBITED ON FEAST DAYS

410. ○ Works of three kinds must be distinguished: 1° servile works or works of the body, or those which both serve the utility of the body and are exercised rather by the powers of the body than of the mind, and are called servile because they are customarily done by servants or hirelings; 2° works of the mind, which are performed rather by the powers of the mind and pertain to cultivating the mind, and are called liberal because ordinarily they are exercised by free persons; 3° common or intermediate works, which are done indiscriminately by all. Forensic works are also distinguished, which look to the judicial forum or to the market.[2]

Meanwhile this must generally be set down beforehand: that the nature of servile work is to be taken neither from the intention, nor from the profit received, indeed neither from bodily fatigue. Thus it will be servile to plow another's field, although this is done from mere charity and altogether gratis; on the contrary, the playing of organs, or dancing, will not be servile, however long-lasting and laborious, nor will transcription be servile when prolonged through the whole day for the sake of gain.

Notes to n. 410. (1) L. IV. 330. (2) L. IV. 212.

411. Principles. - I. Properly so-called servile works are prohibited of themselves under grave sin to all the faithful on entire feast days, that is, through the whole natural day, from midnight to midnight. This is established from Canon Law,[1] from the custom and perpetual practice of the Church.

II. Forensic works also are prohibited, namely forensic actions which are had with judicial apparatus, as to interrogate parties, hear witnesses and advocates, pass sentence, etc. Thus from Canon Law.[2]

III. By the same law markets, fairs, public sales, and other similar things which are done with noise are prohibited. Yet fairs constituted for a certain day are excepted where legitimate custom is in force, if they fall on a feast day. - Thus Benedict XIV declared,[3] St. Alphonsus.[4]

IV. Liberal works, common works, and some works which seem servile but are required for daily use, food, necessity, and the disposition of the body, clothing, or house, are licit, as to cook food, spread beds, sweep the house, and other things which conveniently either cannot or are not customarily deferred or anticipated. Thus from common practice and the judgment of all.

412. You will resolve. - 1° Rural works are prohibited on feast days, as to plow, dig the earth, sow, reap, cultivate vineyards, etc. Likewise works of the mechanical arts, for example of masonry,

ironwork, carpentry, tailoring, cobbling, roofing, etc. Likewise most works which serve the typographical art. They probably except the setting of type. - Elbel,[5] Laymann, Sporer, Tamburini, St. Alphonsus.[6]

2° Likewise it is not licit to make certain things which require light labor and which are customarily made by Nuns, for example rosaries, scapulars, wax images, artificial flowers, etc.; because these in common use are counted among servile works. Nevertheless, since those works and similar others are rather light, according to several authors they can be permitted, provided they are not prolonged beyond two hours. Similarly the same Doctors excuse maidservants who are occupied in plucking roses or peeling apples, even with urgent necessity excluded. - Thus Elbel,[7] Bonacina, Filliuccius, etc. - But it seems rather that it must be said that in these works a greater space of time is required for lethal fault to be present. Thus St. Alphonsus opines.[1] - Yet they are not to be accused of any fault who are occupied with such occupations for a slight time.

3° Licitly, where custom has prevailed, food, drink, shoes, candles, cloths for making clothing, and other things of this kind are secretly sold and bought in public shops. Nevertheless merchants are exposed to the danger of penalties established by the civil laws of this region. As to innkeepers, see what was said n. 310. e) and 408. 10°.

4° Houses, horses, oxen, and other goods are licitly sold and bought, whether present or absent, whether in a small or great quantity, even if notable time is spent in this, provided these things are done among private persons. Yet by our civil law contracts are generally rescindable if they are entered into on Sundays.

Notes to n. 412. (1) L. II, Decr. T. IX. c. 1. (2) Ib. (3) Const. Ab eo tempore, 1745. (4) L. IV. 286. (5) n. 401. (6) L. IV. 282. (7) n. 403.

413. Questions. - Quaer. 1° Is it licit to write or transcribe on a feast day?

Resp. to the first. Affirmatively, because this work is altogether liberal, since in it the mind principally acts. - Thus all.

Resp. to the second. Affirmatively, also more probably, because to transcribe, like to write, is ordered to instructing the mind. - Thus commonly with St. Alphonsus,[2] against Billuart and others.

Hence 1° it is also licit to draw out the designs of artisans and craftsmen, to form musical notes. - Elbel.[3]

2° Likewise it is permitted also to correct books, whether this is done by deleting lines or by placing glued paper over them. For although this seems servile, nevertheless it is accessory, since it is done accidentally by the corrector himself. - Elbel,[4] etc.

Quaer. 2° Is it licit to carve or paint?

Resp. to the first. Negatively, of itself, because sculpture is commonly held among mechanical arts.[5] - Yet probably an exception must be made if there is question only of the perfection of the work.

Resp. to the second. It is disputed.

The FIRST OPINION affirms, because painting is a liberal art, or at least intermediate between liberal and servile arts; for it is something very similar to writing, provided nevertheless that painting is

done without great labor, such as would be had by mixing colors, preparing tablets, etc. - Thus Laymann, Azor, Sporer, etc.

The SECOND OPINION denies, because the action cannot be called liberal, since it is not directed, as writing is, to cultivating the mind, and because painting is almost the same as sculpture, which is a servile work. - Thus the Salmanticenses, Sanchez, Suarez, etc. - St. Alphonsus deservedly calls each opinion probable. What I have said about painting, I would say the same about photography.

Notes to n. 413. (1) L. IV. 282. (2) L. IV. 279. (3) n. 400. (4) n. 401. (5) L. IV. 281 and H. A. Tr. VI. 10.

414. ○ Quaer. 3° Is it licit to embroider images with a needle?

Resp. It is disputed. Many excuse it; for this is referred more to exercising ingenuity than to working.[1] - Sporer.[2]

Quaer. 4° Is it licit to hunt and fish?

Resp. Affirmatively, because these are not servile works, and they are tolerated by custom, provided they are not done with great labor, effort, noise, or apparatus. St. Alphonsus,[4] and others commonly against a few.

Quaer. 5° Is it licit to make a journey on foot, by horse, by carriage? - Likewise is it licit to lead a loaded carriage or beasts of burden or ships?

Resp. to the first. Affirmatively, as is openly established from universal practice. The opposite opinion must be left as antiquated, says St. Alphonsus,[5] after Ronesglia.

Resp. to the second. It is disputed, outside the case of necessity. The opinion now more probable affirms that it is licit, not only for continuing a journey begun, but also for beginning it, provided enormous and long-lasting labor is not required for loading the carriage; from which labor, however, the cause of avoiding grave damage, or of procuring public utility, or custom which perhaps has prevailed somewhere to the contrary, easily excuses.[6]

Quaer. 6° Is it licit to grind on a feast day?

Resp. Affirmatively, more probably, if the mill is turned by water or wind, because little or almost no labor of men is required. But otherwise if it is driven by beasts, unless the cooperation of man is slight. - St. Alphonsus, pace Tamburini, etc.[7]

Notes to n. 414. (1) L. IV. 280. (2) L. I, Praec. 3. c. 4. n. 45. (4) L. IV. 283. (5) L. IV. 275. (6) L. IV. 276. (7) L. IV. 277.

415. ○ Quaer. 7° Is it licit for barbers to shave beards on a feast day?

Resp. Affirmatively, with a law prohibiting it and which is commonly observed excluded. The reason is drawn: 1° from general custom; 2° because generally only on feast days do workmen and especially country people seek the shops so that their beard may be shaved. Therefore if barbers did not furnish service to these asking, they would be left with great detriment to themselves. - Thus St. Alphonsus,[1] Viva, Tamburini, Gousset, Bouvier, etc. - I said: with a law prohibiting it and which is COMMONLY OBSERVED excluded. For if it is not commonly observed, the reasons recur because of which it is licit.

Quaer. 8° What matter is grave in work performed on feast days?

Resp. Many require at least three hours. St. Alphonsus,[2] several opinions having been brought forward, approaches more the opinion of Lacroix generally concluding that the more common and more probable opinion now is that it is not mortal unless one labors at least much beyond two hours, say two and a half hours. - And in the Homo Apostolicus,[3] he says with Mazzotta that even a greater space of time is excused by some necessity. He adds,[4] in forensic and judicial matters the quantity of matter is taken not from the quantity of time, but from the quality of the work.

Quaer. 9° Does he sin gravely who on a feast day orders six servants to work for an hour?

Resp. Negatively, more probably of itself, whether the servants work simultaneously or successively, because the works of servants are not united into one, and the individual servants sin only venially; therefore the master inducing them to the work forbidden under venial fault sins only venially. - St. Alphonsus,[5] and others more commonly.

ARTICLE II: ON THE CAUSES BECAUSE OF WHICH SERVILE WORKS CAN BE PERMITTED ON A FEAST DAY

Three principal causes are numbered, namely charity, piety, necessity.

416. ○ I. Charity toward one's neighbor. Hence it is licit on a feast day: 1° to do what is necessary for relieving the sick; 2° to dig a grave for burying the dead; 3° to labor for some determinate poor man, to whom it would be licit to work by reason of grave necessity; yet, according to grave theologians, not for the poor in general, unless in grave and certain necessity.

II. Piety toward God. It is licit because of piety: 1° to do all works proximately serving the worship of God, as to adorn the church, the altar, etc.; 2° to sweep the Church, and prepare other things which pertain to its cleanliness. But it is not licit to repair the Church (unless it is very poor), to cut stones for this, etc.; because these serve divine service only more remotely.[1]

417. ○ III. Necessity, whether one's own or another's, both of soul and of body. Hence:

1° The poor are excused who otherwise could not feed themselves and their own, provided they work privately and with scandal excluded.

2° All whose works once begun cannot be interrupted without great damage are excused, as those casting iron, etc.

3° Bakers likewise are excused who must have fresh bread so that they may satisfy buyers, for example in a populous city.

4° Likewise tailors who make funeral or wedding clothes, which they cannot complete before the feast day either by themselves or through others.

5° Likewise farmers who, because of past or imminent rain, turn, bind, and carry hay or crops.

6° Likewise servants, wives, and sons of the family in those cases which we reported n. 408. 11°.

7° Blacksmiths are excused who shoe horses on the road or brought by farmers from a certain necessity, or repair plowshares necessary for farmers on the following day; and also those who repair

wagons broken by accident, bridges, or public roads, if the work cannot be deferred without loss of the public good.

8° Those also are excused who labor for the public utility when some necessity presses, for example if there is question of celebrating a victory, of preparing a feast for the sake of some public rejoicing.

9° Probably those are excused who sustain themselves by labor, because of extraordinary gain (but not of daily wage), because to omit such gain is the same for them as to suffer grave damage.

10° "On feasts many things are generally done which are servile and little agreeable to ecclesiastical laws; the rigor of these laws has been greatly relaxed by custom in this region, since from the beginning few Catholics were living among non-Catholics, who could not observe them without grave damage,[2] which even now happens to very many. Therefore shops are open, business is transacted and works. Yet the faithful are to be urged to hear at least Mass."[1] What Kenrick here asserts was true almost everywhere at the time when he was writing; yet now in many places, with the number of Catholics increasing day by day and their condition improved, these things are no longer true so universally. Therefore nowadays it will not be licit for confessors and pastors of souls to use altogether the same benignity in this matter as before; but places will have to be distinguished, and in the very places in which feasts can now more easily be commonly observed by Catholics, account will have to be taken of the condition of individuals, whether merchants, craftsmen, or laborers. It will also be necessary to distinguish between those who compel their Catholic workers to labor and those who leave this to their judgment; for these are more easily excused than those. - There are besides some who enjoin servile works to be exercised on Sunday upon men not baptized, or permit non-Catholics to labor on a feast day. Each seems to be excused: the former indeed because, although heretics of themselves are bound by the laws of the Church, nevertheless the Church does not urge the observance of feasts in their regard in regions where heresies rage unpunished; but the latter because the opinion[2] of those who derive the whole observance of the Lord's Day from the law of the Church is the truer one. Yet care must be taken lest these things be done with scandal of others, especially on Sunday.

11° Butchers who kill animals are excused, if this cannot conveniently be done the day before, or because of summer heat meats cannot be preserved for the following days.[3]

12° There is no fault on Sundays in placing vessels under trees from which sugar liquid flows, and thereafter pouring it into another vessel, when it happens that within a few more days the liquid is flowing.[5]

13° Since tobacco cannot be planted except in moistened soil, those are easily excused who plant it on Sunday after rains fallen the preceding day, if it is to be feared that another opportunity will be lacking.[6]

But although however many have been enumerated up to now do not need dispensation, nevertheless it must be advised to the faithful that, if they conveniently can, they should ask leave from an ecclesiastical Superior, namely lest, deceived by cupidity, they labor with scandal of others without sufficient cause for excusing. But by Superior here is understood especially the Bishop; who, although he cannot grant a general dispensation for all his subjects, and much less a permanent one (since that would be equivalent to suppression of feasts), nevertheless as to some acts with particular persons he can dispense from a reasonable cause; indeed custom also grants this faculty to the pastor.

14° But those are not to be excused, indeed are to be severely rebuked, who rather often prolong work begun after midnight into the feast day, even under pretext of necessity; because generally that necessity is voluntary for them, since very often they throw themselves into it, either by undertaking more works to be completed for a certain day than they can finish, or by not employing that number of workers which the work would require, or by wasting time during the week on useless matters. You would more easily excuse those to whom a work to be completed on the following feast day was handed over on the preceding day.

Notes to n. 417. (1) L. IV. 290. (2) L. IV. 305. (3) H. A. Tr. VI. 25. (4) L. IV. 313. (5) L. IV. 306. (6) L. IV. 293.

418. ○ Quaer. Does the reason of avoiding idleness excuse?

Resp. Negatively, commonly speaking. For that reason is wholly insufficient for setting aside a law of the Church so grave. Laymann, Mazzotta, etc., make an exception if idleness induces a probable danger of sinning; because, they say, if danger of temporal damage excuses, a fortiori danger of spiritual damage ought to excuse. But St. Alphonsus[1] more willingly restricts this to the case in which a temptation would press which could not otherwise be overcome, which rarely happens.

Notes to n. 418. (1) L. IV. 292, 298 and H. A. Tr. VI. 17. (2) St. Alph. As to all, L. IV. n. 296-304.

ON THE FOURTH PRECEPT OF THE DECALOGUE.

Honor thy father and thy mother.[1]

This precept primarily and directly regards the obligations of children toward parents; but secondarily and implicitly it looks to the obligations of parents toward children, and also the mutual obligations of other Superiors and inferiors.

CHAPTER I: ON THE OBLIGATIONS OF CHILDREN TOWARD PARENTS

419. ○ Children are bound toward parents by a most special obligation. But three offices must be exhibited to parents by children by title of piety, namely love, reverence, and obedience. For parents have a threefold respect to children, namely by reason of cause, by reason of preeminence, and by reason of governance. Consequently children ought to love them as the authors of their existence, reverence them as Superiors, and obey them as rectors delegated by God.

Notes to nn. 419-429 - note sequence 1. (1) 2. 2. q. 101. a. 4 and q. 104. a. 5. (2) L. IV. 335. (3) Tr. VIII. 63. Notes to nn. 419-429 - note sequence 2. (1) Kent, T. II. p. 222. Walker, § 100. (2) Ib. pp. 49, 57. (3) Ib. p. 217. (4) Ib. p. 296 sq. Notes to nn. 419-429 - note sequence 3. (1) L. IV. 336. Notes to nn. 419-429 - note sequence 4. (1) L. IV. 336, 337. (2) Walker, § 108. (3) Kent, Vol. II. pp. 189, 191-193. (4) Ib. pp. 230-232 and Walker, § 107.

I. Love.

Children ought to love parents with love both internal, pursuing them with a pious and benevolent affection of heart, and external: 1) warding off from them every evil and notable injury; 2) exhibiting to them signs of external benevolence; and 3) aiding them according to their capacity when they are constituted in necessity.

420. You will resolve. - 1° Children sin gravely against the virtue of piety if interiorly they hold parents in hatred; exteriorly exhibit signs of hatred to them; treat them harshly, or look upon them with fierce eyes, just as if they had hatred.

2° A fortiori, if they wish evil to them, and death itself, that they may live more freely, or be able to possess their inheritance, or that they may be liberated from the care and custody of them; if they gravely detract from them before others; if by force, deceit, or other unjust means they impede them from making a testament, etc.

3° Likewise, if they provoke them to anger, and bring grave sadness on them without a just and grave cause, especially if they sadden them even to tears.

4° If they do not furnish food and other necessaries to parents gravely in need, compelling them to begging or to exercising an art unbecoming to their state; if they do not visit them when sick, afflicted, or worn by old age, or do not sympathize with them and refuse to bring help to them; but especially if they do not aid them in spiritual necessities, namely that Sacraments be administered to them in the article of death, etc. Finally, if, when they have departed this life, they do not take care that the obsequies and ceremonies of the Church be performed in a manner congruent with their condition, or do not pray for them.

II. Reverence.

421. ○ Children ought to exhibit to parents reverence both internal, so that they recognize them as Superiors and therefore also have reverential fear toward them; and external,

which is placed in words and deeds.

422. You will resolve. - 1° Children sin gravely if they strike parents, even lightly, but injuriously. - Likewise if they show the will of striking, for example by raising the hand against them, or seizing a stick or another instrument for striking. Likewise if in any manner they threaten them with menaces of this sort, etc.

2° Likewise if from the soul or in their presence they curse them; or if they cast insults against them, and afflict them with injuries or contumelious words by which they know they will be gravely offended; if they gravely mock them with laughter, sneers, gesticulations, reproaches, derisions, fierce aspect, etc., provided nevertheless that these things are done from contempt, not from levity or simple rusticity.

3° Speaking of itself, they sin gravely if they reprehend them very proudly and bitterly, exasperate them by contradictions, or address them with harsh words, or without cause afflict them with grave sorrow; and a fortiori if through these things they provoke them even to grave anger; if they studiously refuse them the signs of reverence according to the custom of the fatherland or of their condition, for example if they do not rise when they come, or do not uncover the head, or do not greet them, provided nevertheless that from these things the parents judge themselves gravely offended.

4° Likewise if they despise poor, wretched, badly clothed parents, or blush for them, or refuse to acknowledge them, or regard them as unknown and strangers. Except, however, if, with contempt and pride excluded, they pretend for a just cause that they do not acknowledge them, for example to avoid some inconvenience which the son would incur if his parents were known, etc.

Quaer. Do children sin gravely when striking or treating badly and irreverently parents who are dull, insane, delirious from old age, drunk, etc.?

Resp. Affirmatively, if they act from malice or contempt. - Negatively, if rebuke or some somewhat severer treatment is necessary for restraining parents lacking reason.

III. Obedience.

423. ○ Children ought to furnish obedience to parents in all things: 1) licit and honorable; 2) pertaining to their care; while 3) they live under their power.

424. You will resolve. - 1° Children sin more or less if in a matter looking to morals, the salvation of the soul, and the governance of the house they are unwilling to hear their parents, although want of consideration or defect of age excuses them in part. - Hence they sin:

a) If, notwithstanding the serious prohibition of parents, they frequent wicked companionships, games of chance or other games of this kind, or dangerous places, as taverns, dances, theaters, or other similar places; daughters especially sin who, against the will of parents or even without their knowledge, converse with suitors, or go out from the house by night, or speak alone with lovers.

b) If, with the command of parents neglected, they notably omit the Sacraments or other offices of religion; if they are unwilling to give attention to letters or arts congruent with their state, and thus

consume time and render useless the expenses made for them.

c) If they refuse to execute those things which look much to the good governance and peace of the family, or if they wish to administer all things according to their own judgment, with the authority of the parents spurned, especially if they respond arrogantly and proudly: I will not do it; conduct your own business. - I do not want anything to be prescribed to me. - You bring weariness and disgust upon me, etc.

2° Yet not rarely in practice the disobedience of children can be excused from grave sin because of levity of mind, inadvertence, or because of a certain human negligence, and very often because of smallness of matter. Indeed they must often be judged immune from every fault because of defect of a rigorous precept on the part of the parents. For in order that a sin, especially a grave one, be committed against obedience, it is required that parents seem strictly to prescribe, not merely to advise, solicit, or signify their mind. But a true precept being enjoined is discerned from the serious or severe manner in which the matter is prescribed, and from other adjuncts, for example from the necessity and magnitude of the thing prescribed, from a penalty appended, etc.

3° But in depraved things children neither ought to obey nor can they. This is plain from natural law.

425. Questions. - Quaer. 1° Are children bound to obey parents in the choice of state?

Resp. Negatively, of itself, because: 1° God calling must be obeyed more than men contradicting; 2° in those things which pertain to the nature of the body, man is not bound to obey man, but God alone, because all men are equal by nature: "Hence... children are not bound to obey parents concerning contracting matrimony, or preserving virginity, or some other thing of this kind." St. Thomas.[1] Therefore parents sin gravely who compel unwilling children, either directly or even indirectly, to choose a state, whether religious, clerical, or conjugal; or on the contrary, if without a just cause they impede them, altogether unwilling, from choosing some state of life.

I said, of itself; for otherwise it must be said if parents, because of grave and reasonable causes, contradict children, for example if, constituted in grave necessity, they need the aid of the son, nor can he assist them here in another way except by remaining with them. - St. Alphonsus.[2]

Quaer. 2° Can children embrace the religious state without the knowledge of parents?

Resp. Affirmatively, of itself. Indeed sometimes the son will act more advisedly if, feeling himself divinely called to the religious or clerical state, and noticing that entrance will be unjustly closed against him by parents, he conceals the matter from them and executes the divine will. Yet this is not to be advised to children younger in age as often as the matter does not press so greatly, or it is not sufficiently established concerning the divine vocation.[3]

426. ○ Quaer. 3° Can children enter matrimony without consulting parents?

Resp. Negatively, generally speaking, as to liceity. See what is to be said in the Treatise on Matrimony, n. 1548. q. 8°-q. 10°.

Quaer. 4° What do our civil laws generally establish concerning the obligations of children toward parents?

Resp. I. Concerning the love to be exhibited to them by aiding them when they are constituted in necessity, neither the Common Law nor the Statutes of most States compel adult offspring to this, however rich.[1]

II. Our laws prescribe love, reverence, and obedience in this sense, that they attribute to parents (that is, to the father, and, with him lacking, dead or legally impeded, to the mother, and, with both either dead or legally impeded, to the tutor) the right to everything which coheres with the sustenance and education of offspring, minor nevertheless. Hence among other things: a) the obligation of offspring to seek the consent of parents[2] for licitly entering matrimony; b) the right of domestic correction;[3] c) the right of placing offspring with strangers so that they may learn some art or trade, which right nevertheless is variously limited in various States;[4] d) the right that they can reclaim offspring from whatever place, for example from a monastery which the offspring had entered.

CHAPTER II: ON THE OBLIGATIONS OF PARENTS TOWARD CHILDREN

Parents owe children: 1° love; 2° education.

The reason for this obligation is founded in the very bowels of nature and in the title of generation. For nature teaches each, indeed even brute animals themselves, which love their offspring and seek for them the things necessary for preserving life.

I. Love.

427. ○ Parents ought to pursue children with love: 1) internal; 2) efficacious; and 3) ordered, so that they not only put away every hatred and malevolence of soul, but love them in heart and, as much as in them lies, care for their good and provide for them in every matter. For just as anyone ought to love himself, so parents are bound sincerely to love children as something of themselves, flesh from their flesh, so that after God they have nothing dearer to themselves.

Hence parents sin more or less against the special virtue of piety:

1° Who are inflamed with a depraved affection and unjust hatred against children, and disdain them by their aspect, or seriously imprecate grave evils against them, and do not assist them when there is need.

2° Who call them by gravely contumelious names. For thus they furnish to them occasion for anger, and make them peevish and contumacious.

3° Who manifest their hidden faults to outsiders without a just cause. Yet parents can reveal these to one another, because they share in the power of punishing, and it is often expedient that they be known to each, for preventing the perversion of children, etc.

4° Who love them with disordered affection, so that they concede or permit all things to them lest they sadden them; or who, using unseasonable kindness, act more remissly toward them, and whether because of sluggishness or because of cruel benignity neglect to draw them back from vices by serious precepts or other efficacious means.

5° Who favor one more than the others without a just reason, and look upon the rest indifferently, or even have them as adulterine; for this love of one before the rest is the font and occasion of quarrels, fights, divisions, and infinite evils in families.

II. Education.

The education of children, both bodily and spiritual, must be procured by parents.

A. Bodily Education.

428. ○ Bodily education demands from parents a threefold providence, namely by reason of: 1° life; 2° food; 3° state.

a) By reason of life. Parents are bound to carry on diligent care of offspring from conception itself, to turn aside all things which can be harmful to them, and to watch that they be exposed to no danger of life.

Hence of themselves they sin gravely: 1° women who do not take care lest the fetus in the womb be destroyed by disordered wantonness, dances, too heavy burdens, running or a long journey, too much anger, or rather vehement grief; 2° men who treat pregnant wives harshly, afflict them with grave blows, or impose enormous labors on them; 3° spouses who do not take care lest little children be suffocated, by placing them, still very tender, that is, in general before they have completed the first year of age, with themselves in bed without any barrier, or do not take care lest some evil in any way happen to them from water, fire, beasts, iron instruments, etc....

b) By reason of food. Parents are bound to procure for children whatever things are necessary for food, habitation, and clothing congruent with their state and condition.

Hence parents sin: 1° who do not assist children suffering necessity, until they are able to provide for themselves by labor or industry; 2° who cast children out of the house while they cannot yet provide for themselves, or who compel them to beg or to exercise a vile art alien to their condition.

Quaer. Must a mother nourish little children with her own milk?

Resp. Affirmatively, with the common opinion, because natural right seems to postulate this. Nevertheless this obligation does not press under grave sin, because otherwise a grave disorder does not appear. But necessity, notable utility, or custom in force among primary families, etc., excuses from every fault; ... but then under grave sin the mother ought to substitute for herself a nurse good as to morals and health. St. Alphonsus[1] - Collet, etc., and others commonly against others more lax or more strict.

Notes to n. 428. (1) Exod. 20. 12.

429. ○ c) By reason of state. Parents are bound to procure for children a state in which they can sometime live honorably according to their condition. - Hence they sin:

1° Who do not employ at least moderate diligence so that they may acquire goods from which they may suitably sustain their children and provide for their future state.

2° Who do not teach, nor take care that their children be taught, an art congruent with their state, or another kind of living decently.

3° A fortiori, those who by laziness, negligence, drinking, feasting, games, and imprudent business dissipate the family property.

4° Who without a legitimate cause obstinately deny a dowry suitable for the daughter for entering matrimony or entrance into Religion.[1]

Quaer. What do our laws generally establish concerning the obligation of parents as to the bodily education of offspring?

Resp. 1° "The common law furnishes no means of enforcing the parent to maintain, protect, or educate his child."[2] But in many States, during the minority of the child, "... the parent is absolutely

bound to provide reasonably for his maintenance and education; and he may be sued for necessaries furnished, and schooling given to a child under just and reasonable circumstances...."

"In consequence of the obligation of the father to provide for the maintenance, and ... the education of his infant children, he is entitled... to the value of their labor and services."[3]

Resp. 2° Concerning the obligation of parents as to the sustenance and education of illegitimate offspring, Kent[4] has these words: "The mother or reputed father" (by which the judge ordinarily considers him whom the sworn mother affirms) "is generally in this country chargeable by law with the maintenance of the bastard child." Cf. L. IV. 951.

Notes to n. 429. (1) L. IV. 302.

B. Spiritual Education.

430. ○ Parents are especially bound to procure spiritual education for children. The reason is that man, besides material or bodily being, which he has in common with the other animals, is endowed by God with a rational and most noble soul, created to the image of the Divinity itself; and he was made that he may tend to God as his supernatural last end. Therefore by parents he ought especially to be instructed and directed to this end; for matrimony has been raised to the dignity of a Sacrament for this reason, that offspring born may be reborn in Christ and prepared for eternal life. - But for this education there is required: 1° doctrine; 2° correction; 3° example.

a) Doctrine. Parents are bound, by themselves or through fit instructors, to educate children in good morals, in observance of the commandments of God, in faith, and in all things necessary to salvation, because they ought to educate them in the way by which they may arrive at God.

Therefore parents must carefully take care: 1° that children be regenerated by the grace of Baptism as soon as possible (see n. 1259. q. 5°); 2° that from tenderest childhood they teach them the principal heads of Christian doctrine (n. 257 sq.), and incline their hearts to God; 3° that from the first years they accustom them to morning and evening prayers, to the Offices of the Church and Catechisms, and also turn them away from the fallacious allurements, pomps, and pleasures of the world; 4° that they set over them teachers conspicuous in doctrine and especially in gravity of morals; 5° that they watch day and night lest they be corrupted by depraved companions, conversations, or readings.

431. ○ b) Correction. Parents are bound to correct delinquent children. Hence: He that spareth the rod hateth his son.[1]

But correction, that it may be useful, ought to be moderate and prudent. For immoderate chastisement is known to harm more than to profit, since it renders children peevish, stupid, faint-hearted, and sometimes affected by despair; indeed, instead of the love owed to parents, it is wont to produce contempt or even deadly hatred.

c) Example. Parents owe good example to children, because 1° examples more efficaciously than words somehow draw to following, especially if they are furnished by Superiors; 2° because, if parents themselves are known to be imbued with evil morals, their words will move children little to pursuing good morals.

Notes to n. 431. (1) Prov. 13. 24.

432. You will resolve. - 1° Parents sin gravely who, spending every care only on temporal things, so forget spiritual things that they do not even know the things necessary for attaining salvation, much less instruct their children or take care that they be instructed.

2° Parents sin gravely who, to spare expenses, utterly neglect the spiritual education of their children.

3° Of themselves parents sin gravely who by excessive indulgence notably neglect to correct children when otherwise it would be necessary; but no less do they sin who punish children with more grave penalties, for example if they mutilate them, or inflict on them a grave wound or blows or beatings so grave that their life or health suffers notable detriment.

4° Parents perpetrate a threefold sin in species when they utter filthy words and obscene conversations while children are hearing, vomit forth curses and imprecations, and belch out oaths and blasphemies. This is plain from those things which I taught n. 293, under "We have said: Scandal has at least a twofold malice."

5° Parents sin gravely who permit children near the use of reason, either with themselves or with others of a different sex - whether children or adults - in the same bed, or older ones with themselves in the same room. But if the matter can in no way be otherwise, parents should abstain from the use of marriage during the time when children lie with them in the same bed or room.

433. Questions. - Quaer. 1° What about parents who hand over offspring to a foundling home, especially in these regions?

Resp. It is certain that those sin gravely:

1° Who place newly born offspring near the house of someone; for they expose both the temporal and spiritual life of the offspring to grave danger.

2° Who hand over offspring to a public foundling home in those places where a Catholic one exists; for without cause they expose the soul of the offspring to grave danger.

3° Who, in whatever manner finally they expose the offspring, do not first duly baptize them, or neglect means by which their baptism may be rendered indubitable.

4° Who expose them in whatever manner without a cause sufficiently excusing.

Quaer. 2° What in places where no Catholic foundling home exists, and where therefore offspring, after leaving the public foundling home, is to be handed over to sectarians or infidels, as is customary?

Resp. A mother can be moved by a threefold cause to expose offspring: a) infamy alone; b) poverty alone; c) each at the same time. If the girl has means, in the first case, she is bound to hand the offspring over to a nurse or take care that it be handed over, as often as this can be done without danger of her reputation, which, as is supposed, is still intact. - But one who is pressed by necessity of consulting her reputation is bound to take care lest the offspring be imperiled in life or salvation. But to take care for salvation will be most difficult for her, since the curators of the foundling home hand infants over for education to whomever they wish, as was said above.

The second cause, or poverty alone, will be of various force for excusing. Yet where it is extreme, or so grave that the mother cannot sustain the offspring, Kenrick[1] does not dare to condemn her if, that she may consult its life, from the instinct of nature she hands the offspring over to the foundling home to be nourished, cherishing hope that some occasion may afterward be born to her to instruct it with Christian documents.

The third cause will excuse if she commits the offspring to the foundling home with this intention, that at least she may consult herself, being prepared to consult the salvation of the offspring by that means which she can.

434. ○ Quaer. 3° What are the obligations of other blood relatives, ascendants and descendants, especially tutors?

Resp. They are generally the same, with due proportion, as those of parents with respect to children, and vice versa; for all these, by reason of the generation of some from others, are bound mutually by the strict bond of piety, especially if, parents lacking, ascendants take up the care of grandchildren. - Thus all.

Yet note with Kenrick[2] that the care of non-Catholics is not easily to be assumed by anyone as tutor or curator, since on one side he cannot favor heresy by educating them in it, and on the other side, by not educating them in it, he would seem to violate the faith given to the testator or the court. (z) p. 479.

The dispositions of our civil laws concerning the constitution of a tutor and his rights and offices, see, if you like, apud Kent,[3] or apud Walker,[4] or apud Smith.[5]

Quaer. 4° What are the mutual obligations of brothers and sisters?

Resp. 1° They ought to pursue one another with mutual love, not only with common affection, as other men, but with a peculiar love because of the close bond of blood.

Resp. 2° They ought also mutually to aid one another as to the necessaries of life, not only in extreme, but also in grave necessity. - Thus all. - See St. Alph.[1]

Notes to n. 434 - note sequence 1. (1) Tr. VIII. 84. (2) Tr. VIII. 7. (3) Vol. II. pp. 234-253. (4) §§ 110-118. (5) Common Law, n. 130. Notes to n. 434 - note sequence 2. (1) L. IV. 340. Appendix annotation (Σ), to n. 434. q. 8. p. 194. col. 2. "In mixed marriages the Catholic party near death sometimes not without reason fears that the faith of the children will be endangered, if they are committed to the care and guardianship of heretics" (Marres, De justitia, L. I. C. 3. n. 41). By what juridical means this danger can be forestalled will have to be discerned from the laws of each State.

LITTLE APPENDIX: ON PARENTS COMMITTING OFFSPRING TO PUBLIC SCHOOLS TO BE INSTRUCTED.²

Concerning this question, on June 30 (Wednesday) in the year 1875, there was given by the Supreme Congregation of the Universal Inquisition an Instruction to the Most Reverend Bishops of the United States, which Our Most Holy Lord Pope Pius IX, on November 24 (Wednesday) of the same year, deigned to approve and confirm. Indeed I have found nothing in this Instruction by which those things which I taught on this matter in the first and second edition of this Compendium, and in the little work cited at the bottom of this page, are weakened. Yet since those things which proceed from the Roman See have that authority against which it is forbidden to resist, in this edition also of my work I have judged that extracts from this Instruction should be exhibited to readers (p. 471 (b) of this Volume), with certain notes added, by which beginners, confessors, and pastors of souls may be helped to understand it rightly and apply it prudently. - But in this place we resolve the following cases, sufficiently obvious in this region.

435. ○ Case I. Parents cannot be absolved who hand over children to public schools to be instructed, in which they are compelled to use a Protestant version of the Bible, or to recite hymns or prayers of sects. For faith is not only exposed to danger in schools of this sort, but the precept of confessing the same faith is also violated, or certainly is judged to be violated, through a certain communion in sacred things. Cf. Conc. Plen. Balt. I.[3]

Case II. Generally parents cannot be absolved who commit children to public schools to be instructed in which, either because of teachers, or because of books, or because of fellow students, their faith or morals are exposed to proximate danger. For they are of the number of those schools which the Holy See, in letters of July 14, 1864, to the Archbishop of Freiburg in Breisgau, declared cannot in conscience be frequented anywhere.

I say: generally they cannot be absolved, because of the exception concerning which we shall treat below.

Case III. Universally parents cannot be absolved who entrust children to public schools concerning which it is unknown whether they are of the number of those about which we spoke in Case II. For it is established that public schools nowadays among us commonly constitute proximate danger because of some one of the three positive causes indicated in Case II; therefore a presumption militates against them; and this presumption yields only to truth, that is, to certainty that this or that public school can be tolerated as not positively harmful. For in moral matters judgment must be made according to what commonly happens.

Notes to n. 435. (2) Whoever desires more concerning this matter should go to our little work: "De absolutione neganda necne parentibus, qui prolem scholis publicis," etc. Boston, 1874. (3) a. 429. Appendix annotation (θ), to n. 435-440. p. 195-199. INSTRUCTION ON PUBLIC SCHOOLS TO THE MOST REVEREND BISHOPS IN THE FEDERATED STATES OF NORTH AMERICA. Extracts. First of all, there had to fall under deliberation the very plan of educating youth which is proper and peculiar to schools of this kind. But to the S. Congregation this seemed even of itself (1)(1) full of danger, and very adverse to the Catholic cause. For the pupils of such schools, since their own plan excludes every doctrine of religion,

will neither learn the rudiments of Faith, nor be instructed in the precepts of the Church, and therefore will lack the knowledge most necessary to man, without which one does not live Christianly. In truth, in schools of this kind young persons are educated already from earliest boyhood and almost from tender years, at which age, as is clear, the seeds of virtue or vice adhere tenaciously. Therefore, if an age so flexible grows up without religion, this is surely a great evil. Moreover, in the aforesaid schools, since they are separated from the authority of the Church, teachers from every sect indiscriminately are employed, and otherwise no law has made provision that they not bring ruin upon youth; thus it is free for them to pour errors and the seeds of vices into tender minds. Further, a certain corruption threatens from this also, that in the same schools, or at least in very many of them, adolescents of both sexes are gathered into the same room for hearing lessons, and males are ordered to sit on the same bench next to females. All these things bring it about that youth is wretchedly exposed to harm concerning the Faith, and morals are endangered. But unless this danger of perversion is rendered remote from being proximate, such schools cannot be frequented with safe conscience. The natural and divine law itself proclaims this. ... Therefore it is necessary that the Most Reverend Prelates, by whatever help and labor they can, keep the flock committed to them away from every contagion of public schools. But by the consent of all, nothing is so necessary for this as that Catholics everywhere have schools proper to themselves, and that these not be inferior to the public schools. Therefore, with every care provision must be made for Catholic schools, whether to be established where they are lacking, or to be enlarged and more perfectly furnished and prepared, so that in instruction and discipline they equal the public schools. (2.) And in executing so holy and so necessary a design, members from Religious Congregations, whether men or women, will not be employed uselessly, if it has seemed so to the Bishops; and that the expenses necessary for so great a work may be supplied by the faithful the more willingly and abundantly, when a suitable occasion has been offered, whether by pastoral letters, or sermons, or private conversations, it is seriously necessary that they themselves (3) be reminded that they would gravely fail in their office unless with every care and expense they can (4) they provide for Catholic schools. Concerning this, especially to be admonished are all those among Catholics who surpass others in wealth and authority among the people, and who are enrolled in assemblies for passing laws. ... Moreover the S. Congregation does not ignore that circumstances of affairs sometimes are such that Catholic parents can in conscience commit their offspring to public schools (5). But they will not be able to do this unless they have sufficient cause for acting thus (6); and whether such a sufficient cause is present or not in some particular case will have to be left to the conscience and judgment of the Bishops (7), and according to the matters related then it will generally be present when either no Catholic school is at hand, or the one which is at hand is not sufficiently suitable for instructing adolescents conveniently and congruently to their condition (8). But in order that public schools may be approached in conscience, the danger of perversion, which by their own plan is more or less always connected with them, must be rendered remote from proximate by suitable remedies and precautions. Therefore it must first be seen whether in the school about whose attendance inquiry is made, the danger of perversion is of such a kind that it cannot be rendered plainly remote, as often as there either are taught or are done certain things contrary to Catholic doctrine or good morals, and which cannot be heard or done without detriment to the soul (9). In truth such a danger, as is clear of itself, must altogether be avoided with any temporal harm whatever, even that of life. Moreover, youth, in order that they may be committed to public schools in conscience, must duly and diligently receive necessary Christian instruction and education, at least outside school time. Therefore pastors and missionaries, mindful of those things which the Council of Baltimore most providently established concerning this matter (10), should diligently devote themselves to catechetical instructions, and chiefly apply themselves in explaining those truths of Faith and morals which are more attacked by unbelievers and heterodox persons; and they should strive to fortify youth exposed to so many dangers, both by frequent use of the Sacraments and by piety toward the Blessed Virgin, and again and again excite them to holding religion firmly. But parents themselves, or those who are in their place, should watch solicitously over their children, and either themselves, or, if they themselves are less suitable, through others, should question them about the lessons heard, review the books handed over to them, and, if they find anything harmful there, should provide antidotes, and should entirely keep and forbid them from familiarity and company with fellow pupils from whom danger to Faith or morals could threaten, or whose morals have been corrupt. But whatever parents neglect to impart this necessary Christian instruction and education to their children; or who allow them to frequent such schools in which the ruin of souls cannot be avoided; or finally who, although a Catholic school is present in the same place, suitable and aptly instructed and prepared, or although they have the faculty of educating their Catholic offspring in another region, nevertheless commit them to public schools without sufficient cause and without the necessary precautions by which the danger of perversion is rendered remote from proximate: if they are contumacious, it is manifest from Catholic moral doctrine that they cannot be absolved in the Sacrament of Penance (11). Notes to These Extracts. (1) Therefore public schools are intrinsically or of themselves evil, yet in the sense explained in n. 26 (under 3°) of this Compendium; namely, so that sometimes for a just cause and with the danger of perversion removed, they can be approached, as also the Instruction itself, which wholly rests

on this principle, clearly teaches. (2) Cf. this Compendium n. 440. 3°. b). (3) Namely the faithful. (4) Cf. this Compendium n. 440. 3°. c). (5) Therefore, as a rule, that must be held, that public schools cannot be approached in conscience; but place is given for exception, yet under three conditions, which the Instruction sets forth. (6) This therefore is one of the three conditions which must be present so that parents can in conscience commit their children to public schools. The second is that the danger can be rendered remote from proximate. The third, that the danger is truly rendered remote from proximate. Cf. note (1) above. (7) Therefore in doubt about the sufficiency of the cause the Bishop is to be approached. I say: in doubt; for the S. Congregation must not be thought to have wished this, that in all and singular cases the Bishop's judgment concerning the sufficiency of the cause be sought; for a cause judged undoubtedly either sufficient or insufficient does not require the Bishop's judgment. (8) To this belong Case IV, n. 436, and Case IX, n. 439, set forth in this Compendium. (9) Here is set forth the second condition which must be present so that public schools can be approached in conscience. See note (6) above. What those things are which cannot be heard without detriment to souls, there is no need to say. But what things cannot be done without the same detriment, you have in Case I, n. 435, of this Compendium. (10) Cf. n. 440. 3°. d) of this Compendium. (11) Here you have the three chief cases in which, because one of the three conditions enumerated above in note (6) is lacking, absolution is to be denied to parents. Notes to preceding text. 1 The numbers (1), (2), etc. correspond to the numbers of the notes which are found at the foot of this Instruction.

436. ○ Case IV. Unless otherwise they sufficiently provide for the Catholic instruction of their children, parents cannot be absolved who hand them over to public schools to be instructed, even if certainly not proximately dangerous, in those places and adjuncts in which they can commit them to some Catholic school. For the precept of instructing offspring as Catholics is not only negative, or prohibiting lest they be committed to proximately dangerous schools, but also affirmative, namely prescribing that some means, and an apt one, be employed by which Catholic instruction of this sort may be obtained. But parents of whom there is question in the case are supposed to neglect or not to employ a means of this sort. Therefore they cannot be absolved.

I said: 1) Unless otherwise they sufficiently provide for the Catholic instruction of children. For a Catholic school, although it is the best and ordinary means for obtaining this end, nevertheless is not the only one; therefore parents cannot be compelled under denial of absolution to employ precisely this means, supposing that on one side the public school is not proximately dangerous, and on the other that the children are sufficiently instructed in Christian doctrine either by the parents themselves or by others. But whether that instruction can be judged sufficient which is handed on once in the week in Sunday schools, or by the priest in church, will have to be judged from the adjuncts. For less suffices for an intelligent and diligent child, especially if he has parents by whom he is duly stimulated and helped in learning, so that he may arrive at a congruent knowledge of Christian doctrine, than for one undiligent and left to himself alone. Yet generally, and according as the condition of things is in most places, this single instruction in the week must be called insufficient.

I said: 2) In those places and adjuncts in which they can commit them to some Catholic school. For there is no obligation of impossible things. But in the matter of which we are treating, not only that which cannot be done physically is called impossible, but also that which cannot be done morally, or without grave difficulty. You have a case of the former, or of physical impossibility, in places in which, or in whose near vicinity, no Catholic school is had; or, if there is question of poor parents, in places in which Catholic schools either are not free, or are absent, or are not present in sufficient number. An example of the latter, or of moral impossibility, occurs in parents for whom that which they earn

by daily labor scarcely or hardly at all suffices for bearing those double expenses which civil power exacts for public schools, and the Church for Catholic ones.

437. ○ Case V. Parents cannot be absolved who, without a proportionately grave cause, commit children to some public school, although not proximately dangerous, in those adjuncts in which this cannot be done without grave scandal. Suppose, for example, a Catholic man conspicuous among his fellow citizens by wealth, authority, or any other cause, in whose parish a Catholic school coexists with some public school. This man, if by his example, and especially if, as is customary for such persons, by praises also directed to the public school, he would induce others either to desert the Catholic school or not to approach it, would certainly be guilty of grave scandal, and consequently not to be absolved.

Yet I said: who without a proportionately grave cause would commit children to a public school, although not proximately dangerous, and this because of the exception concerning which we shall treat below.

Case VI. It can be doubted whether parents can be absolved who commit children to schools in which a Catholic teacher, from some Protestant version of the Bible (which nevertheless the children do not use), reads aloud only those things which are conformable to the Catholic version. And indeed the reason for doubting is that he who uses a Protestant version seems both to acknowledge its authority - since he is judged to read it aloud as the Word of God - and to propose it to children as a norm. Yet if either the children are unaware that he uses a Protestant version, or from the explicit protestation of the teacher, or from the adjuncts, it is sufficiently clear that he does not acknowledge its authority and acts in this way compelled by hard necessity, I would deny absolution neither to the teacher nor to the parents; for then the reason for doubting brought forward will no longer subsist. Yet I suppose that the school is not to be avoided for other causes, and I assume that the benign mind of Mother Church is not to wish to urge the prohibition of Protestant Bibles in such a way that in those adjuncts also in which her law would become harmful it would not be licit even materially to hold them in the hands, so that those things which are conformable to Catholic Bibles may be read aloud from them.

438. ○ Case VII. What if children are compelled to recite hymns or prayers of sects, but only such as contain nothing heretical, for example the formula of the Lord's Prayer with the addition: "for thine is the kingdom," etc.?

Parents who hand over children to be instructed in schools of this kind cannot be absolved, if hymns and prayers of this kind are employed as the object of a religious act, and not, as hymns often are, as the object of recreation or of natural doctrine. Yet attendance of a school of that sort could be permitted to children who would abstain from every cooperation in these prayers and songs; for by acting thus they would protest against them. But who would expect this from children?

Case VIII. What if children, in places where there is no supply of a Catholic school, could not even learn the art of reading or writing unless they are sent to some public school? I answer by distinguishing. If the children are taught in some school which is not proximately dangerous, absolution cannot be denied to the parents. But if, because of one of the causes indicated above in

Case II, it is proximately dangerous, it will again have to be distinguished and the case resolved according to the principles of a necessary proximate occasion. Namely, either the danger which threatens the faith or morals of the children can be rendered remote from proximate, and in reality is rendered remote, or not. If the former, they will be able to be absolved; if the latter, they will not be able. Yet in children that danger can only with greatest difficulty be rendered remote from proximate, since that tender age is almost always imbued with the principles and morals of those whose teachings they constantly hear, or whose familiarity they use. I confess indeed that it seems rather harsh that children be deprived of the opportunity of learning the art of reading and writing; for this is of greatest moment to them, especially today, not only in any social condition which they will sometime obtain, but it can also be very useful to their faith and piety. But if that art cannot be learned without damage to faith or morals, the words of Christ the Lord in Matthew[1] hold good: "What doth it profit a man, if he gain the whole world, and suffer the loss of his own soul?" St. Alphonsus[2] resolves an analogous case in the same way, treating of girls who would be taught the art of reading and writing (privately, of course) by men. "Nor should the confessor indulge these girls," he says, "that they be taught to read by men, and much less to write. How many simple girls, who learned to read, have bewailed the ruin of the soul!" Therefore he teaches that neither are mothers to be absolved who would permit this.

Notes to n. 438. (1) 16. 26. (2) Praxis Conf. cap. vii. § iii. n. 101, 7.

439. ○ Case IX. What if children cannot learn in some Catholic school those things the knowledge of which they will sometime need in their social condition, for instance some language, commercial accounting, mechanics, chemistry, medicine, jurisprudence, and other things of this kind? The case occurs either because no Catholic school is present in which children are taught these things, or because that school cannot be approached except with expenses to which the parents are not equal.

The response given to the preceding case holds entire for the present case. Yet judgment concerning the lesser or greater possibility of removing danger will necessarily be various according to the various adjuncts. Thus in adolescents who are going to devote themselves to higher disciplines in some non-Catholic school, there must be considered not only a stronger or weaker character, and a mind protected more firmly or less firmly by the principles of Religion, and also childhood passed honorably or less honorably, but also the lesser or greater care, vigilance, and authority of parents; and likewise the distance of the place in which he applies himself to studies from the paternal home. For the farther the son's residence is distant from the dwelling of the parents, the more difficult it will be for them to watch over him and to exercise authority and influence upon him. Attention must also be given to the condition of the school itself and of the place, since this renders the danger more or less proximate, or increases or diminishes the difficulty of removing it. Finally, the greater or lesser gravity of the cause by which parents are impelled to hand over children to schools of this sort for instruction must be kept before the eyes; and, with all these things weighed, confessors will have to be either stricter or more benign with parents of this sort. In a word, the solicitude of Holy Mother Church concerning mixed marriages is to be held as the norm by confessors. For just as she never permits those marriages unless precautions have been employed by which the Catholic instruction of the offspring to be born from them is secure, so also confessors should in no case permit children to be committed to schools where the proximate danger of perversion is not removed; and just as

absolution is to be denied to the Catholic party who is at fault that offspring is not instructed as Catholic, so also it is to be denied to parents who by their own fault either expose or leave exposed offspring in schools of which we are treating to danger as to faith or morals. Those things which we have said are consonant with what the distinguished Craisson writes in the periodical Revue des sciences ecclesiastiques,[1] and likewise with the Statutes of the Synod of Columbus, 1873.

Case X. If, the non-Catholic father compelling it, a child is committed to a public school to be instructed, the Catholic mother will be able to be absolved even in the case in which the school would be proximately dangerous, provided: 1) she yielded only to violence; 2) she opposes according to her powers the depraved influence of the school; 3) she has care, according to her ability, for the Catholic instruction of the child. Thus almost the praised Synod of Columbus.

Notes to n. 439. (1) Livr. de Juillet, 1872, p. 91. Tome xxvi de la collection.

440. ○ Those things which we have said concerning absolution to be denied or not to parents who commit offspring to public schools hold also, proportion observed: 1) concerning Catholic teachers teaching in them; 2) concerning those who are being instructed for the office of teacher sometime to be undertaken in public schools; 3) concerning all who have care of souls and are not solicitous, according to their power, concerning the Catholic instruction of youth; 4) concerning Catholic curators of public schools (members of the school-board). It is helpful to note a few things concerning each.

1° Teachers cannot be absolved who in school use, or read aloud to children from, books which are dangerous to faith or morals, or recite with children hymns or prayers of sects, or order children to recite them. There are some who secretly substitute a Catholic Bible for the Protestant version of the Bible, or certain Catholic sheets, or in books which they are compelled to use and which are not expressly opposed to Religion, amend depraved passages either by opportune explanation or omit them; and these, with those things observed as to Bibles which I said above n. 437, do not seem to be disturbed.

2° Resolve the same concerning those who are being instructed for the office of teacher sometime to be undertaken in public schools, unless they firmly propose, in undertaking it, to abstain from those things from which we just said a Catholic teacher ought to abstain. But if they do not seem likely to be tenacious of this purpose, they are earnestly and prudently to be exhorted that they should rather give themselves to another office or art.

3° Those who have care of souls ought diligently to weigh these words of the Second Plenary Council of Baltimore:

"The Fathers of this Plenary Council cannot but voluntarily acknowledge and openly profess that the care to be spent on forming the more tender age and adolescence in Christian morals is to be counted among the principal parts of Pastoral solicitude; and this the more, in proportion as the present enemies of our Religion strive to bring all their arts together, that they may deprave the minds of the young even from their first age."[1]

Wherefore pastors are admonished:

a) "That with every zeal by which they are able, they provide for the Christian and Catholic education of Catholic children, and diligently watch lest they use a Protestant version of the Bible, or recite

hymns or prayers of sects. Therefore it will have to be watched lest books or exercises of this sort be introduced into public schools, with danger to faith and piety. But everywhere constant and moderate resistance must be made to these efforts of the sects, with the aid of those who have authority to apply an opportune remedy implored."[1]

b) That, since this seems to remain "the best, indeed the only" remedy "by which the gravest evils and inconveniences" which are accustomed to exist from public schools "may be met," "in each diocese, near almost every church, schools be erected in which Catholic youth may be imbued both with letters and liberal arts, and with Religion and upright morals,[2] ... and if there shall be need, and the adjuncts of things allow it, let pastors provide" that from the revenues of the church to which the school is annexed, suitable teachers be had in it.[3]

c) Let them also "seriously admonish parents" "that they watch more and more over their offspring, and diligently consult and labor earnestly for its right instruction; that they piously conspire with their Pastors, and generously pour out their resources, so that Catholic Parochial Schools may be erected and sustained as quickly as possible."[4]

d) "But since in all parishes exclusively Catholic Schools cannot yet be had because of narrow circumstances, ... Catecheses and Schools of Christian doctrine should be instituted. Let Pastors call boys and girls into their own church on Sundays and other feast days, and sometimes even more often, so that they may studiously and diligently teach them the elements of Christian doctrine."[5] "Nor should he" (the pastor) "execute this office through others, as the more negligent are accustomed to do, but by himself. For the burden of instructing children in the rudiments of Christian faith is so joined with the pastoral office that he who from sloth or idleness is unwilling to bear it, or casts it back upon others, can in no way avoid the penalties of violated office. This is recalled to memory in express words for all to whom it pertains by the Fathers of the preceding Plenary Council."[6]

And these things indeed, as is plain of itself, are of such a kind that if any one of those who have care of souls should neglect, or be unwilling to furnish, even one of these things - may it be absent! - he would have to be held unworthy of absolution. For what parents are bound under grave sin to furnish from the office of piety, this certainly pastors of souls are bound to furnish from justice. Nor indeed can it be conceived why it would be licit for a confessor to be more benign with a pastor of souls than with parents. For the rest, in many cases it will be difficult for the confessor to judge what a pastor of souls can or cannot do in the special adjuncts in which he is placed, and the penitent will have to be left to his own conscience. Yet woe to this man if, as to this his most grave office, he shall have deceived himself!

4° Unless a founded hope is present that by their influence they will render them notably less damaging, Catholic curators of public schools which are proximately dangerous cannot be absolved; but of the rest, they cannot of themselves be called unworthy of absolution, indeed they are worthy of praise if they accept or retain the office for this end, that books and teachers which are dangerous to the faith or morals of Catholic children may be kept far from the school. For the rest, this class of men in some places causes pastors much work, and generally brings no little detriment to the Church.

Notes to n. 440 - note sequence 1. (1) Conc. Pl. Balt. II. a. 425. Notes to n. 440 - note sequence 2. (1) Conc. Pl. Balt. II. a. 429. (2) Ib. a. 430. (3) Ib. a. 430. (4) Ib. a. 434. (5) Ib. a. 435. (6) Ib. a. 438.

CHAPTER III: ON THE OBLIGATIONS OF SPOUSES

441. ○ I. Spouses are bound:

1° To mutual love. For since they are one flesh, they ought also to be one heart. Husbands, love your wives, as Christ also loved the Church. - Let them (wives) love their husbands.[2]

2° To conjugal society and cohabitation. This is plain from the nature and ends of matrimony, and from the words of Christ: A man shall leave father and mother, and shall cleave to his wife, and they shall be two in one flesh.[3]

3° To furnishing mutually to one another food, and whatever pertains to the honorable sustenance of their condition: For (now) they are not two, but one flesh.[4] But no one ever hated his own flesh, but nourisheth and cherisheth it.[5]

4° To rendering the conjugal debt mutually to one another, concerning which matter in the Treatise on Matrimony.

Notes to n. 441. (1) Ephes. 5. 25. (2) Tit. 2. 4. (3) Matth. 19. 5. (4) Matth. 19. 6. (5) Ephes. 5. 29.

442. ○ II. The husband is bound in particular:

1° To conduct the family property studiously.

2° To take care that the wife fulfill the duties of a Christian profession, and execute the precepts of the law both divine and ecclesiastical. For the man is the head of the woman and the rector of the whole family; and therefore to him belongs the right governance both of the wife and of the other members of the family.

3° To correct a delinquent wife where this is necessary for her amendment and for preventing scandal. But correction ought to proceed from charity, or love of justice, or zeal for procuring the right governance of the family, and in manner to be such that it is plain the wife is the partner of the man, not a servant. Care must also be taken lest peace and love perish between them.

443. ○ III. The wife for her part is bound:

1° To reverence her husband, because he is her Superior, as is established from what was said, and from the words: Thou shalt be under the power of the husband, and he shall rule over thee.[1]

2° To furnish obedience to him; because obedience is owed to a Superior in those things which pertain to governance; and the Apostle says to the Colossians:[2] Women, be subject to your husbands, as it behooveth in the Lord.

3° To carry care of the house in the family property, and therefore to undertake the offices of the family, as to prepare food, sweep the house, wash linens, repair torn garments, and furnish other things of this kind. Yet in families sufficiently wealthy the wife can fulfill the lower offices through male servants or maidservants, provided she watches over them and takes care that the domestic matter be well conducted.

444. You will resolve. - 1° A husband can sin gravely if he pursues his wife with insults, for example by calling her an adulteress, etc.; - if without a just cause he impedes her from fulfilling divine or ecclesiastical precepts, or from devotions very useful, for example from discreet frequency of the Sacraments; - if he treats her in a tyrannical manner like a vile slave; - if he does not cohabit with her; - if he neglects the governance of the family, etc.[3]

2° A wife likewise can sin gravely if she is accustomed to ridicule and mock her husband; - if by harsh words, contumacious disobedience, or excessive peevishness she provokes him to anger and blasphemies, etc.

3° Ordinarily the man ought to begin the correction of the wife by gentler words, and, if these do not profit, to proceed to graver correction. Sometimes he ought to conceal the faults of the wife when he can do this without sin, and not be excessive in correcting; but sometimes to defer correction for a time, lest the correction seem to proceed from the heat of anger and lack fruit, while the wife is less disposed to receive it.

4° Let the confessor not immediately believe a spouse complaining against a spouse, especially if a wife rails against the husband; because women are generally prone to lying or certainly exaggerating. Wherefore it is better, the matter being passed over, to commend to them prayer, patience, meekness, and greater solicitude for furnishing services to the man.

5° Let the wife be silent while the husband is angry or drunk; if admonition seems likely to profit, let her admonish while the husband is well disposed; if a reply must be made to an angry man, let her reply gently: for a soft answer breaketh anger, and a hard word stirreth up fury. If these things obtain nothing, let her take care that the husband be admonished by the Pastor or another prudent man.

Notes to n. 444. (1) Gen. 3. 16. (2) 3. 18. (3) L. IV. 356.

445. ○ Quaer. What are the principal dispositions of our civil laws concerning the obligations of spouses?

Resp. 1° "The husband may ... be bound to keep the peace as against his wife, and for any unreasonable and improper confinement by him, she may be entitled to relief upon habeas corpus. But as the husband is the guardian of the wife, and bound to protect and maintain her, the law has given him a reasonable superiority and control over her person, and he may even put gentle restraints upon her liberty, if her conduct be such as to require it, unless he renounces that control by articles of separation, or it be taken from him by a qualified divorce."[1]

2° "If he" (the husband) "shifts his domicile, the wife is bound to follow him wherever he chooses to go."[2]

3° The husband is bound to provide his wife with necessaries suitable to her situation and his condition in life; and if she contracts debts due for them during cohabitation, he is obliged to pay those debts; but for anything beyond necessaries, namely "elegancies or luxuries,"[3] he is not chargeable....

"If the husband abandons his wife, or they separate by consent, without any provision for her maintenance, or if he sends her away, he is liable for her necessaries, and he sends credit with her to

that extent." The same says "if she receives such treatment as affords a reasonable cause for her to depart from his house, and refuse to cohabit with him."

"But if the wife elopes, though it be not with an adulterer, he is not chargeable even for necessaries."[1]

Notes to n. 445 - note sequence 1. (1) Kent, Vol. II. pp. 179, 180. (2) Ib. p. 180. (3) Walker, § 103. Notes to n. 445 - note sequence 2. (1) Kent, ib. n. 146, 147.

CHAPTER IV: ON THE OBLIGATIONS OF OTHER SUPERIORS AND INFERIORS

The obligations which regard other Superiors or inferiors are generally the same, proportion observed, as the obligations of parents and children. Hence we shall say only a few things: 1° concerning the obligations of masters and servants; 2° of teachers and students; 3° of citizens toward temporal authority.

But concerning the offices of Pastors and other ecclesiastical Superiors there will be treatment in the Treatise on Particular States, where there is treatment of the clerical state.

ARTICLE I: ON THE OBLIGATIONS OF MASTERS AND SERVANTS

§ I. On The Obligations Of Masters

446. ○ Masters are bound toward their servants: 1° to treat them kindly; 2° to instruct and correct them; 3° to pay them a just price.

I. To treat kindly, that is, by addressing them and prescribing to them decently and humanely; by furnishing good and sufficient food; by not burdening them with excessive works; by suitably caring for the sick. This is established from natural law and from Sacred Scripture: If thou have a faithful servant, let him be to thee as thy own soul; treat him as a brother.[2] And you, masters, do the same things to them (servants), forbearing threatenings, knowing that the Lord both of them and of you is in heaven, and there is no respect of persons with Him.[1]

II. To instruct and correct: for the master is the head of the servant, as of the whole family; but it belongs to the head to direct where there is need. It seems also to be established from the words of Paul:[2] But if any man have not care of his own, and especially of those of his house, he hath denied the faith and is worse than an infidel. But servants are reckoned among domestics. - Elbel,[3] and others commonly.

III. To pay a just price: for there is question of an obligation of justice and natural equity; hence fraud of such wage is numbered among sins crying to heaven.

Notes to n. 446. (2) Eccli. 33. 31.

447. You will resolve. - Masters can sin, and indeed even gravely:

1° If they do not concede time to servants for learning the rudiments of the Christian Faith, or do not send them to catechism and sermon; - if they do not take care that at the time of the precept they confess and communicate.

2° If they hire or retain in the house servants who are irreligious, impious, blaspheming, speaking filthy things; - if they do not admonish and correct those sinning gravely; - or do not dismiss those unwilling to promise amendment, unless perhaps they have very great need of their work and cannot find others.

3° If they do not take care, as much as in them lies, that servants abstain from sins; - if they permit to them an occasion of sinning; - if by depraved example or solicitations they induce or allure them into sin.

4° If they do not pay the promised or just stipend, or delay too much; - if they do not care for a sick servant, immediately expel him, or dismiss him without a just cause before the fixed time. - But if a servant hired for a year is sick for some months, suppose for a quarter of a year, according to the truer opinion a salary is not owed to him for service not furnished; nor probably is the master obligated to the expenses of sickness, provided charity does not demand aid because of grave necessity. Except, for each case, if and insofar as custom bears otherwise, especially in brief sickness.[4] Yet in these matters let equity prevail over strict right! - Similarly neither is the servant bound in such a case to supply his services. - To a servant departing before the fixed time by his own fault, according to the more common opinion, half the stipend owed for the time in which he served, or a little less, is owed, unless grave damage comes to the master from this, or mutual agreement or custom establishes otherwise.[1]

Notes to n. 447. (1) Ephes. 6. 9. (2) 1 Tim. 5. 8. (3) n. 590. (4) L. IV. 364.

§ II. On The Obligations Of Servants

448. ○ Servants are bound to furnish to masters:

1° Reverence; for thus the Apostle:[2] Let servants count their masters worthy of all honor. From this they can sin even gravely who ridicule masters, spurn them, or manifest their hidden defects.

2° Service and obedience in all those things to which they have obligated themselves by force of the contract, and in those things which look to good morals. Thus to the Ephesians:[4] Servants, be obedient to them that are your lords according to the flesh, with fear and trembling, in the simplicity of your heart, as to Christ. - And St. Peter:[5] Servants, be subject to your masters with all fear, not only to the good and gentle, but also to the froward.

Hence by reason of matter they sin more or less who, when something is prescribed to them, murmur, answer insolently, are accustomed to be unteachable, neglect to carry out the prescribed labor, or fail in the office imposed on them; and in one word, all who do not furnish the service such as is ordinarily able to be exacted and furnished from such persons.

3° Fidelity; according to the words of Paul:[6] Servants to be subject to their masters, ... not defrauding, but in all things showing good fidelity.

Hence they sin, and often gravely against justice, who do not take care of the things entrusted to themselves; who from their own fault permit them to become worse; who steal precious victuals, or those not customarily given to them, either to eat, or to give or sell to outsiders.

Notes to n. 448. (1) L. IV. 346. (2) 1 Tim. 6. 1. (4) Ephes. 6. 5. (5) 1 Peter 2. 18. (6) Tit. 2. 10.

449. ○ Quaer. What do our laws generally establish concerning the obligations of masters and servants?

Resp. 1° The "relation of master and servant rests altogether upon contract," express or implied.[1] If this contract is lacking, nothing is owed by civil law to a servant.[2]

2° "If the servant hired for a definite term leaves the service before the end of it, without reasonable cause, or is dismissed for such misconduct as justifies it, he loses his right to wages for the period he has served. A servant so hired may be dismissed by the master before the expiration of the term, either for immoral conduct, wilful disobedience, or habitual neglect."[3]

3° The power of the master of giving "moderate corporal correction to his servant ... may safely be confined to apprentices and menial servants while under age, for then the master is to be considered as standing in loco parentis."[4]

4° "The master is not bound to provide even a menial servant with medical attendance and medicines during sickness."[5]

Concerning servants whom they call "apprentices," see, if you like, Kent.[6]

Notes to n. 449. (1) Walker, § 114. Smith, n. 337. (2) Kent, Vol. II. pp. 286, 287. (3) Ib. pp. 287-289. (4) Ib. pp. 294, 295. (5) Ib. pp. 295, 296. (6) Ib. p. 296 sq.

ARTICLE II: ON THE OBLIGATIONS OF TEACHERS AND STUDENTS

450. ○ I. Teachers and instructors owe to students: 1° love; 2° example; 3° correction; 4° doctrine. The reason is both because they in some way stand in the place of parents, and because they are instituted for educating students in sound doctrine of morals and letters.

Therefore they ought: 1° to perfect themselves in the knowledge which they teach, for duly educating others; 2° to promote the progress of students in letters, as much as in them lies; to turn them away, as much as they can, from others who are disgraced by depraved morals, and whom they ought in no way to admit into their schools.

Hence instructors can offend even gravely when they neglect the instruction of students, or punish them unjustly or indiscreetly; but especially if they seduce them, by impelling them for example to carnal sins; if they do not teach good morals; if deliberately they teach false things as true, or things harmful to salvation; if they admit or retain students imbued with evil morals who are pernicious to others, etc. Cf. n. 437. case VI, 440. 1°.

451. ○ II. Students are bound to exhibit to teachers:

1° Love and reverence, because of their superiority and care.

2° Obedience, while they are being educated by them in good morals and arts. The reason is plain: for the reciprocal obligation of students toward teachers imports this, since teachers would be obligated altogether in vain to educate them or imbue them with good morals unless students were likewise obligated to follow the admonitions and precepts of teachers.

Hence students sin if, instead of studying diligently, they waste time in idleness, play, or other foolishness contrary to the will of their teachers; but much more gravely if they detract from teachers, ridicule them, mock them, afflict them with curses, calumnies, annoyances, etc.

Concerning these obligations we note these dispositions of our civil law. "The power allowed by law to the parent over the person of the child may be delegated to a tutor or instructor, the better to accomplish the purpose of education. A schoolmaster, who stands in that character loco parentis, may in proper cases inflict moderate and reasonable chastisement, even for acts done out of school, if prejudicial to its order and good discipline."[1]

Notes to n. 451. (1) Kent, Vol. II. pp. 219, 220. (c.) 5.

ARTICLE III: ON THE OBLIGATIONS OF MAGISTRATES AND CITIZENS

452. ○ A. On Magistrates. Principles. I. They ought to know the things which pertain to their office, for example laws.

II. They are bound to seek and guard the common safety of all.

453. You will resolve. They sin:

1° Who, altogether ignorant of laws and not powerful in judgment, procure or assume some office for themselves, with danger of inflicting harm on those concerning whose controversies they are going to pronounce sentence, or whose business they are going to handle.[1]

2° Who foster quarrels or lawsuits for their own gain.[2]

3° Who pronounce an unjust sentence, yielding to popular prejudices, or courting popular favor, or seeking the utilities of private persons, with damage to the innocent.[3]

4° Who permit the rights of conscience to be violated, the children of the poor being taken away by masters from ancestral Religion against the laws.[4]

5° Who promote or take care that men not suitable be promoted to offices because they are men of their own party;[5] or indeed suitable men, but with the promoted, by wages agreed upon to the prejudice of the public treasury; and likewise those who take care or permit themselves to be promoted by this same pact.

6° Who either permit the public treasury to be pillaged, by entrusting public money to fraudulent men,[6] or pillage it themselves, while, for example, they expose public money to dangerous businesses from which they hope profit for themselves, or on occasion of contracts which they enter with private persons in the name of the republic they bargain or procure something unjustly for themselves.

7° Higher magistrates, namely Presidents and Governors, if, uniquely seeking their repeated election, in distribution of offices and in laws either to be approved or vetoed they especially consider whether they are going to procure more votes for themselves, and to that end neglect the advantages of most citizens.[7]

8° Who do not take care that laws be committed to execution, and do not guard public tranquillity and order.[8]

Notes to n. 453. (1) Kenr. Tr. VIII. n. 161. (2) Ib. (3) Ib. (4) Ib. (5) Ib. n. 162. (6) Ib. n. 162. (7) Ib. (8) Ib.

454. ○ Yet they do not sin if, when asked and from office, or according to the laws, they do something which of itself is licit, but either because of adjuncts yields to the detriment

of Religion, or is little consonant with the laws and mind of the Church, although not forbidden. For 1) they do these things not in their own name, but in the name of the law; and 2) they neither intend the evil effect from a cause not evil in itself, nor are they compelled to impede it with the loss of their office or with their own danger. Besides, they would try this in vain; for what citizens seek by force of law they will certainly obtain by recourse to others, especially superior magistrates. Therefore a Catholic magistrate will be excused who commands that a child be shut up in a prison, with testimony sworn before him according to the laws that the child is vagrant, or that the parents are vagrant, although he knows that by this arrangement the child is to be instructed there according to the principles of the sects. Nor does he sin who receives the matrimonial consent of citizens and refers this into the records, not solicitous concerning impediments of the Church; for in this case he usurps no spiritual authority, but only testifies concerning the consent furnished. Therefore the Cardinal Prefect of the Sacred Congregation de Propaganda Fide wrote back to Bishop Kenrick on July 30, 1851, that he was not to be disturbed for this cause. Nevertheless Catholic magistrates seem to sin who easily receive Catholics approaching them to contract matrimony, while there is a supply of a priest, since they add courage to sinners; but if, having been admonished, those who seek to enter nuptials are unwilling to desist, they are not guilty of fault because they furnish a merely civil service.[1]

455. ○ B. On Legislators. Principles. I. They are bound to be skilled in the matters to be treated in the assembly of legislators,[2] or certainly to acquire skill in these, lest they either themselves give a vote rashly and with danger of harm to the republic or to private persons, or persuade others to give one.

II. They are bound principally to seek the public utility, and only then the utility of those by whose votes they were elected.[3]

456. ○ You will resolve. They sin:

1° Who promote the utilities and advantages of certain places for catching votes, with public detriment.[4]

2° Who, unless others obligate themselves to furnish votes for matters which have no public utility, refuse to vote for matters which concern all.[5]

3° Who squander public money in things of no moment.[6]

4° Who neglect to carry out those things which would bring very many advantages to the republic, or reject profitable things from party zeal.[7]

5° Who spend time in useless disputes, with expense to the fisc.[8]

6° Who give votes after a certain pact concerning payment has been entered.[1]

7° Who take care that laws be made and unmade, that they may consult their own affairs with detriment of others.[2]

8° Who in the Senate cast votes concerning those designated by the President or Governor for some public office, from party zeal by voting for the unworthy or rejecting the worthy.[3]

9° Catholic legislators confirming by their vote whatever is opposed to the doctrine of the Church, for example that divorce from the bond of matrimony may be given because of adultery or another cause. But they are not to be blamed because they furnish their service for making laws by which the rights of all citizens are vindicated according to the Constitution.[4]

Notes to n. 456. (1) Kenr. Tr. VIII. n. 161. (2) Ib. n. 163. (3) Ib. n. 163. (4) Ib. (5) Ib. (6) Ib. (7) Ib. (8) Ib.

457. ○ C. On Citizens. Principles. I. Although it is licit for citizens to exercise all those rights which belong to them from the Constitution, nevertheless it is necessary to preserve both order and the laws of charity.[5]

II. In choosing magistrates and legislators public utility must be kept before the eyes, and votes must be given according to merit, so that he who seems more suitable and useful be preferred.[6]

III. Concerning those who discharge a public office it is not licit to speak rashly, nor maliciously to carp at things done by them; yet it is licit to scrutinize these, and to speak and write publicly about them, insofar as the laws permit, so that judgment may rightly be made concerning them, and the public utility may be provided for.[7]

IV. Nothing is to be attempted by the judgment of individuals against the authority of laws.[8]

458. You will resolve. They sin:

1° Who, led by money, favor, hatred, or zeal for private utility, confer votes on the unworthy.[9]

2° Against charity and justice, those who announce in public papers the hidden delicts of some persons which do not harm others, or in their speeches or conversations, so that they may repel them from some office or deprive them of it.[10] Whether and when these are bound to restitution, see n. 715.

3° Who maliciously carp at the acts of magistrates, so that they stir up envy against them.[11]

In what cases those of whom there is speech under 2° and 3° can be punished by our law, see apud Kent.[1]

4° Who, with the authority of laws spurned, usurp to themselves the supreme right of life and death, as happens more often in this region, and generally rashly, namely under pretext and not by true title of necessity and common safety. (Lynchers) Kenrick.[2]

Notes to n. 458 - note sequence 1. (1) Tr. VIII. n. 163. (2) Ib. (3) Ib. (4) Ib. (5) Ib. n. 164. (6) Ib. n. 164. (7) Ib. and Tr. X. 139. (8) Ib. (9) Ib. n. 165. (10) Ib. and Tr. X. 167. (11) Ib. p. 166. Notes to n. 458 - note sequence 2. (1) Vol. I. p. 607 sq. (2) Tr. III. 142; Tr. VIII. 165.

459. ○ Quaer. Is it ever licit to resist legitimate temporal authority?

Resp. Resistance is one thing passive, another active.

Passive resistance, or the simple refusal of obedience, obligates when something is prescribed which is contrary to a law from which either you can never be excused (as if there is question of a negative

precept of the natural law), or at least here and now you are not excused; - it does not obligate, but is licit, when something is prescribed which here and now can both be furnished and omitted without sin; suppose because, although it is not illicit, nevertheless it exceeds the power of the one prescribing, or is useless to the common good, or is opposed to distributive justice, equality not being observed in the imposition of burdens. Except if per accidens, for example by force of the natural law, a precept of this sort would have to be observed, suppose because it cannot be neglected without scandal, or disturbance of public order, or grave damage to the common good.

As regards active resistance, or rebellion, these two things are certain: First, a case of rebellion, or of active resistance to legitimate authority, is not given when the community itself (not private persons), by force of the pact by which it was legitimately constituted, and in cases expressly determined in the pact, takes power away from someone in order to transfer it to another; for in these cases, the title perishing, the power ceases to be legitimate. The other is that it is not licit to rebel against a legitimate prince, as is clear from proposition 63 condemned in the Syllabus. See p. XLV. But whether a prince ceases to be legitimate when he has habitually become a tyrant in governance is disputed. Against those affirming stands the fact that much graver evils are wont to follow from active resistance than from tyranny, and that today, at least, in fact there is lacking one who may judge between the Prince and the nation. H. A. Tr. VIII. 13.

ON THE FIFTH PRECEPT OF THE DECALOGUE.

You shall not kill.[1]

460. ○ This precept, insofar as it is negative, primarily indeed prohibits homicide, that is, the unjust killing of a man; secondarily, however, and consequently, every unjust lesion, wounding, or mutilation of the body, whether one's own or another's. But insofar as it is virtually affirmative, it commands the conservation of life.

Simple homicide is to be distinguished from qualified homicide, namely one having another species of sin annexed. Of this kind is 1° sacrilegious homicide, either by reason of the person killed, or by reason of the place in which the killing is done; 2° parricide, namely the slaughter either of parents or of children, or of a brother or sister, or of a spouse, or even of a Prince; 3° robbery-murder, namely killing or wounding from the will of plundering; 4° magical poisoning, when namely by the help of the demon bodily evil, or even death, is inflicted on someone.

But those things which will be established concerning killing, whether licit or illicit, will have to be applied, with due proportion observed, to mutilation or to any bodily lesion.

We must treat 1° of the killing of oneself; 2° of the killing of one's neighbor; 3° of the duel; 4° of war.

CHAPTER I: ON THE KILLING OF ONESELF OR ON SUICIDE

461. Principles. - I. It is never licit for anyone directly, that is, from intention and by his own authority, to kill himself. This is clear 1° from the divine precept: You shall not kill.[2] 2° From the natural law. For man does not have direct dominion over his body, nor over his life, but only useful dominion, since he does not have these from himself, but has received them from God and must render them back to God alone when He demands them. Therefore the suicide violates the supreme dominion of God by destroying a thing not his own. He also harms society, of which he is a part, as St. Thomas says.[3]

II. Without divine authority it is never lawful to posit an external act, tending of itself immediately to one's own destruction, unless that act has another good and immediate effect, which alone is intended, and a most grave reason urges that that good effect be obtained. The reason is that where the physical act, even of itself indifferent, has no other effect than suicide, it now becomes evil, since then there is present no reason by which the precept of conserving life and of guarding against the danger of death would cease. Therefore in any case whatever it is prohibited.

III. It is licit to concur indirectly in the killing of oneself, or to posit an action from which, beyond the intention, one's own death certainly follows, provided from that action there follows equally immediately some good which compensates the loss of life, and this alone is intended. Sometimes we are bound to this.

Notes to n. 461. (1) Exod. 20. 13. (2) Exod. 20. 13. (3) 2. 2. q. 64. a. 5. Cf. Rutten, Eth. n. 182.

462. Questions. - Quaer. 1° Is it licit to set fire to a ship or fortress, so that the enemies may suffer grave damage, but with certain loss of one's own life?

Resp. In the affirmative, at least more probably; because it is expedient that public damage be avoided, or that the common good be procured, even with most certain damage of private persons. Lugo, Lessius, St. Alphonsus.[1]

Quaer. 2° Can a virgin, in order to preserve chastity, expose herself to the danger of death?

Resp. In the affirmative, at least if death is not certainly going to follow; and this both on account of the love of chastity, and also (and this reason is valid for a woman in general, and not only for a virgin), on account of the danger of sin, which is often had in such an occasion. - Thus commonly. - Indeed, more probably still one must answer affirmatively, even if death is certainly going to follow, and there is not present a proximate danger of consent; because even the integrity of the body alone is very highly esteemed. - Laymann, St. Alphonsus,[2] etc.

Quaer. 3° Is a woman bound to permit herself to be killed rather than violated?

Resp. In the negative, probably, at least speaking speculatively, provided she resist with the will positively, and a proximate danger of consent be absent. The reason is that this permission is not formal cooperation in another's sin, but only material; and a just cause of permission is present, namely danger of death. Yet this practice is not to be counseled, on account of the danger of consent, which can easily be present in that permission.

Quaer. 4° Is it licit for an accused man to present himself before the judge, even if he must certainly be punished by death?

Resp. In the affirmative. Because that action is of itself indifferent, indeed even honorable; for in the case to will to die is equivalent to willing the order of justice; and just as because of a just cause it is licit to desire death for another, and even to procure it in a legitimate mode, so also for oneself. - Lugo, Lessius, St. Alphonsus.[1]

Notes to n. 462. (1) L. IV. 367 and H. A. Tr. VIII. 1. (2) L. IV. 366 and H. A. Tr. VIII. 1.

463. You will resolve. - 1° Each one is bound to conserve life, since no one can cast away the gift of this life without sin, and it is equivalent not to conserve life and to take it away from oneself.

2° It is never licit to posit with the intention of killing oneself an action from which death, although only per accidens, is going to follow; because it is never licit to will a forbidden thing, and to reduce this will to act.

3° You are not bound to preserve life which is not necessary to the common good by remedies either extraordinary (for example, by expenses enormous for your condition), or bringing the greatest pain.[2] Note, however, that sections, or so-called surgical operations, are accomplished today with happier success than formerly, and scarcely without some pain, by the help of chloroform. Capellmann, Medicina Pastoralis, p. 20.

4° A virgin is not bound to suffer an operation by the hands of a physician, even if life is endangered, when on account of modesty this happens to be most grave for her, and casts into her a greater horror than death itself.[3]

5° It is never licit to macerate the body in order to shorten life, nor, even with such an end excluded, to ruin health gravely by immoderate and wholly indiscreet penances. Yet it is licit, from the virtue of penance, ordinarily to use grave things with a certain definite shortening of life; because, according to the common sentence of the Doctors, on account of merit, or the mortification of depraved nature, some loss of longer life can be contemned.[4]

6° Craftsmen do not sin who ascend over the roofs of buildings and expose themselves to various dangers, where there is need; nor blacksmiths, who daily diminish life for themselves by handling fire; the reason is that they do this from a reasonable cause. - On the contrary, bold men sin gravely who from rash wagering and vain glory cast themselves without cause into grave risks, by climbing high, by lowering themselves downward, by bearing heavier burdens, etc., etc. - But whether those sin who, from a cause licit of itself, work too confidently in dangerous occupations cannot so easily be defined. Custom, character, caution, etc., can bring it about that for them there is no danger, or only remote danger.

7° It is not licit to mutilate oneself, unless it is necessary for the conservation of the whole body; because man is not the master even of his members, but only their guardian, and whatever man is, the whole is God's, nor does he have any other dominion over his body except useful or indirect dominion.[1]

8° It is not licit to mutilate oneself for a spiritual good, or for avoiding any sin whatever. For as St. Thomas says, "spiritual health can always be provided for otherwise than by the cutting off of a

member, because sin is subject to the will. And therefore in no case is it licit to cut off a member for the sake of avoiding any sin whatever."[2]

9° More probably it is licit to cut off one's own hand bound by a chain in order to avoid death impending from a wild beast or a tyrant, or from fire; because the part ought to yield to the good of the whole man. - Lugo,[3] Lacroix,[4] Billuart, against others.

Notes to n. 463 - note sequence 1. (1) H. A. Tr. VIII. 2. (2) L. IV. 372 and H. A. Tr. VIII. 2. (3) L. IV. 372 and H. A. Tr. VIII. 2. (4) L. IV. 371 and H. A. Tr. VIII. 2. Notes to n. 463 - note sequence 2. (1) L. IV. 373. 374. (2) 2. 2. q. 65. a. 1. ad 3. (3) De Justitia disp. 10. n. 22. (4) L. III. P. I. n. 786. Cf. Mar. p. 372. n. 247.

CHAPTER II: ON THE KILLING OF ONE'S NEIGHBOR

Namely 1° of the killing of a guilty man; 2° of an aggressor; 3° of an innocent.

ARTICLE I: ON THE KILLING OF A GUILTY MAN OR MALEFACTOR

464. Principles. - I. It is licit to kill malefactors by public authority. The reason is that this is a necessary means for procuring the common good of the whole society, indeed for preserving society itself; which indeed for the most part cannot be obtained except by the death of wicked men. But God must be said to have conferred the power without which society could not stand. This is clear also from the practice of every legislation, from Sacred Scripture, and from the universal consensus of all.

II. But it is not licit to kill malefactors by private authority. Because no one can kill another without power; but private persons have received no power of this sort from God: for, lest all things be filled with slaughters, this power has been given to the Superior alone of the whole civil society. Therefore.

465. You will resolve. - 1° It is licit for no one to beat someone not subject to his power, unless there accede at least the tacit consent of him who has power, for example, of a father over a son, of a master over a disciple; for beating is a punishment; but this supposes gubernative power. Except, unless this be necessary for averting a present injury, as will be said below. - Reuter.[1]

2° It is not licit for a father to mutilate or kill his own children, nor for a master his own servants, for the sake of correction; the reason is that to punish by mutilation and killing, which inflict irreparable damage, certainly requires perfect power, which neither the father nor the master has. - Billuart.

3° An elder brother cannot beat younger brothers, unless this has been commanded to him by the father, or unless, the father being dead or absent, he himself governs the family; because primogeniture does not confer such a right on him. - Billuart and others.

466. Questions. - Quaer. 1° Can those upon whom, from office, it is incumbent to apprehend or guard a malefactor kill him when he flees?

Resp. In the negative, even if he has already been condemned to death; because by force of their office they can only restrain the guilty man,[2] indeed with weapons among us, if there is need, even deadly ones, yet avoiding his killing as much as it will be possible.

Quaer. 2° Is it licit to kill a tyrant?

Resp. 1° It is certain that it is not licit to kill a tyrant of governance, or a legitimate Prince governing the people tyrannically, and even oppressing them: for it is necessary to obey masters even harsh ones.[1] - Thus commonly with St. Alphonsus.[2]

Resp. 2° Nor is it licit to kill a tyrant of usurpation, if he is already in peaceful possession of the kingdom. But the opposite sentence must be called improbable and false; because according to St.

Thomas a usurper ought to be held as legitimate, at least in practice, if afterward the subjects acknowledge him as such. Besides, the public good requires that obedience be furnished to him for preventing disturbances and overturnings of the Republic.[3]

A tyrant certainly sins by usurpation of authority, whether while he makes laws, or while he pronounces law, or imposes tributes, etc. For he usurps to himself the authority of a prince, since he is not prince.

Nor does he sin only by invading the republic or provinces, but he also sins afterward by constantly preserving them oppressed and subject to himself; since he constantly oppresses and inflicts injury, not otherwise than as someone thrusting another unjustly into prison not only sins at the beginning, but also continually afterward, as long as he continues this calamity of another.

There is added also this, that while the tyrant sins by retaining usurped power, he at the same time has another obligation, namely of providing for the common good of the usurped province; and therefore he sins still more if, when there is need, he either does not pronounce law, or does not restrain the guilty, etc. The reason is that he harms the citizens still more gravely, and inflicts a greater injury; namely just as one who retains another's thing and uses it sins by using it, and at the same time sins by not using it, if use is necessary to the thing, lest it perish or become worse.

Corollary. - Laws which are made by a tyrant of usurpation, now peacefully holding another's dominion which he unjustly occupied, are of two kinds. For either they are directed against the legitimate prince, or they conduce to the tranquillity and prosperity of another's dominion. If the former, it is not licit to obey them, provided a most grave penalty is not imminent; for then one would not sin who, for example, took up arms or stood among the ranks until he could safely flee; yet, excepting the case of pure defense of one's own life, he could not strike the defenders of legitimate authority. If the latter, the subject can and ought to observe the laws (Haine, T. I. p. 69. q. 49): for the necessity of the republic, which cannot kill itself, requires this. Nor does he sin who seeks justice from a judge constituted by the tyrant: the reason is sought from "the will, at least interpretative and implicit, of the republic, which, while it cannot repel the tyrant and the judges constituted by him, tacitly confers on them the power of governing, and ratifies their laws and acts."[1] Cf. n. 369. q. 5°; n. 459; n. 1717.

When a tyrant of usurpation or his successors become just possessors, even though the prior prince does not consent or even protests, is difficult to say. Yet that this must happen at length sometime is clear even from this, that otherwise almost no prince now could be judged legitimate.

Resp. 3° Nor is it licit to kill a tyrant or unjust usurper, even if he is not yet in possession of the kingdom, except from the authority of the legitimate Prince, or from just defense, or in an act of war of the Republic against him; for it is never licit to kill a man by private authority. - Thus commonly, and it must be held certainly.[2] - Recall what was said in n. 459.

Notes to n. 466 - note sequence 1. (1) n. 369. (2) H. A. Tr. VIII. 9. Notes to n. 466 - note sequence 2. (1) I. Petri. 2. 18. (2) H. A. Tr. VIII. 13. (3) H. A. Tr. VIII. 13. Notes to n. 466 - note sequence 3. (1) H. A. Tr. VIII. 13. (2) H. A. Tr. VIII. 13.

ARTICLE II: ON THE KILLING OF AN UNJUST AGGRESSOR

467. Principles. - I. It is licit for each one to defend his own life even with the killing of an unjust aggressor; for each one has a right of conserving life unjustly attacked: therefore he can defend

it by necessary means, and consequently even by mutilation or killing of the aggressor, if in no other way he is able to snatch himself from death; for the order of right and of charity permits that we prefer our own life to another's: and in Canon Law it is said: "All laws and all rights permit force to be repelled by force." - I said: it is licit, but not commanded, unless the life of him who suffers the aggression is very useful to the common good, or the one attacked would die in mortal sin. - St. Alphonsus.[3]

II. In just defense against an unjust aggressor the moderation of blameless defense must be observed, or nothing ought to be done except that which is absolutely necessary for protecting oneself; because what necessity does not excuse is against justice. - Likewise one must take care lest the killing, etc., be done from hatred, revenge, etc.

Notes to n. 467. (3) L. IV. 380.

468. Questions. - Quaer. 1° Is it licit to kill a drunken or insane aggressor?

Resp. In the affirmative, more probably, unless it is clear to you that he is in the state of mortal sin. The reason is that although the drunken or insane man is not formally your unjust aggressor, nevertheless he inflicts a true injustice, and there remains for you the right of defending your own life. But if you know certainly that he is in the state of lethal sin, since he is in extreme necessity, charity requires that you prefer his eternal salvation to the conservation of your temporal life. But otherwise if he were master of himself (for his own evil would be imputed to him), or if no prudent hope of his salvation shines forth, as almost in the insane. L. IV. 390 at the end. (T) p. 479.

Quaer. 2° Is it licit to defend an innocent neighbor by the killing of the aggressor?

Resp. In the affirmative, in every case in which it is licit to defend one's own life; and this by reason of charity.[1] Yet a private person rarely seems to be bound to this. - I said: 1° rarely; for an exception must be made if the one attacked is necessary to the public good, or if he is father, son, wife, or brother, whom piety obligates one to protect, or if he is drunk and in mortal sin, because then he is in extreme necessity. I said: 2° a private person; because by themselves those are bound upon whom the special duty is incumbent of defending citizens, yet not with danger of their own life, unless there is question of averting a public evil,[2] or they have specially obligated themselves also to this.

Appendix annotation (T), to n. 468. q. 19. p. 208. col. 2. The obligation of abstaining from the killing of a materially unjust aggressor, who is known certainly to be in mortal sin, supposes that the person attacked prudently judges himself to be in the state of grace. Therefore if either this prudent judgment or that certain knowledge is lacking (and both will rarely be present together), the one attacked cannot be deprived by this uncertain obligation of his certain right of defending himself. Nor is he deprived of it if there shines no prudent hope that the aggressor, if spared, will obtain salvation. Cf. Marres, p. 368. n. 238 under 2°. Haine, T. I. p. 280. q. 132.

469. ○ Quaer. 3° Is it licit to kill an unjust aggressor also for the defense of members?

Resp. In the affirmative with the common sentence, against a few. The reason is that each one has a right of preserving a good most necessary to himself for life. Besides, in such risk the life of the one attacked is also practically endangered.[3]

Quaer. 4° Is it licit to defend goods of fortune of great moment with the killing of the thief, if otherwise they cannot be defended or recovered?

Resp. In the affirmative, at least more probably. The reason is deduced from what was said in the preceding question; for each one has the right of conserving goods of great moment in proportion to his condition, and therefore, by that very fact, of using means absolutely necessary for this. On the other hand, the precept of charity does not obligate one to prefer the goods of a neighbor, although of a superior order, except when the neighbor is in extreme necessity; but otherwise, when he of his own accord exposes himself to this danger of death.[2] (Y) p. 460.

Notes to n. 469 - note sequence 1. (1) L. IV. 389. (2) L. IV. 390. (3) L. IV. 390. Notes to n. 469 - note sequence 2. (2) L. IV. 382. § 3. Appendix annotation (Y), to n. 469. q. 4°. p. 209. col. 1. What in regions where the civil law permits the killing of an unjust aggressor only for legitimate defense of oneself or of others? There are those who pronounce a law of this kind just and therefore to be observed (Marres, p. 369. n. 240 under II). Yet even those who contend for the justice of such a law admit that it is lawful to protect one's goods even by force and arms, and if a thief either of his own accord or induced by this defense uses force also, and now no longer attacks the goods but the very body of the owner, it is lawful, as is clear from the things set forth in n. 469. q. 3°, to provide for one's own safety even with the death of the thief; likewise that it is lawful in the nighttime to slay by a weapon, even sent from a distance, thieves violently breaking doors, since from aggression of this kind not only loss of goods but also danger of death is to be feared.

470. ○ Quaer. 5° Is it licit for a woman to kill an invader of chastity?

Resp. In the affirmative, more probably. The reason is that chastity is a good more excellent than riches; therefore, if it is licit to kill an unjust aggressor of goods of fortune, it will be licit a fortiori for preserving chastity. - St. Alphonsus[2] and others commonly. From what was said in n. 468, Quaer. 2°, it is also clear that it is lawful to kill an invader of another's chastity, just as it is licit for the one suffering force herself; unless, however, the woman consents, or at least does not positively resist; indeed even if she consents, provided she is very closely related to the defender. - Yet this is never licit after the fact.[3] Cf. n. 471. 3°.

Quaer. 6° Is it licit to kill another for the conservation of honor?

Resp. In the negative, at least speaking practically; because honor for the most part can be preserved by other means: besides, by today's morals, flight in such a case is not held shameful either for a noble or for a military man. Otherwise, moreover, a way would lie open to innumerable slaughters. This is also clear from propositions 17 and 18 among those condemned by Alexander VII, p. XIII, and 30 by Innocent XI, p. XVI.

471. You will resolve. - 1° It is not licit to kill a thief carrying off a thing of lesser moment, even with resistance of the owner; because although such taking away is done with a special injury against him on account of violence, nevertheless an injury of this sort is not judged grave according to the estimation of men.[4] Yet the owner is not bound to let go of the thing, and, the moderation of blameless defense being observed, he can defend himself, if the other inflicts force upon his person for carrying it away.

2° It is not licit to kill him whom you merely suspect of aggression.[5] But otherwise, speaking speculatively, if it is morally certain concerning the depraved will of the aggressor, and the danger cannot be met in another way. - I said: speaking speculatively; for in practice, on account of the danger of hallucination, and because that certainty is obtained with greatest difficulty, it will scarcely be licit.[2]

3° It is not licit to kill an aggressor after the fact, because it would be revenge, not defense. An exception is made when the aggression, effectively, as they say, was continuing in the flight of an aggressor carrying off a stolen thing. - Thus commonly.

4° It is not licit for a girl to kill the aggressor of her honor after oppression; yet she can strike him and treat him badly and most bitterly, especially because, unless in such a way she shows her constancy and displeasure, the wicked man will not easily depart, or will be able easily to return to solicitation.[3]

5° It is not licit, at least practically speaking, even for an honorable man to anticipate by killing an aggressor wishing to strike him with a slap; for he can always consult his own honor by flight or another way.[2] Yet it is licit to ward off the one attacking, even with weapons made ready, and to show oneself ready for one's own defense.

Notes to n. 471. (1) L. IV. 387 and H. A. Tr. VIII. 19. (2) L. IV. 386. (3) L. IV. 391. (4) L. IV. 388. (5) L. IV. 383.

ARTICLE III: ON THE KILLING OF AN INNOCENT

§ I. On the killing of an innocent in general

472. Principles. - I. It is never licit directly to kill an innocent, whether by private authority or public, even for procuring the public good; for it is an intrinsically evil action and expressly prohibited by divine law.[4] The innocent and just you shall not kill.[5]

II. It is licit, on account of a grave cause (that is, equal to the life of the innocent), to posit an honest action from which, beyond the intention, the death of an innocent follows, according to the principle of St. Thomas set forth at n. 461.

III. He is not guilty of homicide who, even without cause, but with diligence applied, posits an action which of itself does not bring death, from which nevertheless by accident homicide follows; because that homicide is altogether fortuitous and involuntary. But otherwise, if he posits an action which of itself brings death, or is very dangerous, and from which death often follows, even if diligence has been applied for preventing damage.[1]

Notes to n. 472 - note sequence 1. (2) L. IV. 386. (3) L. IV. 381. (4) L. IV. 393. (5) Exod. 23. 7. Notes to n. 472 - note sequence 2. (1) L. IV. 398.

473. You will resolve. - 1° It is not licit to kill those lethally wounded, nor any other moribund persons whatever, lest they suffer longer; nor those who are rabid, lest they harm others, provided they can otherwise be held back from harming. The reason is that according to the known maxim evils are not to be done in order that goods may be obtained.

2° It is not licit to kill an innocent in order to satisfy a tyrant demanding his death even under penalty of a city to be overthrown, and even if he consented to his own death; the reason is that he does not have dominion over his own life. Yet more probably he could be compelled to hand himself over to the tyrant for the public good, and probably, if he were unwilling, even to be handed over. St. Alphonsus[2] with others.

3° It is licit in war to direct artillery against the stations of enemies, although from this even some innocents are going to suffer death; because their death follows beyond the intention.[3]

4° It is not licit to kill envoys or hostages, even if the enemies who sent them have not kept the faith given, and have unjustly killed hostages or envoys sent to them; because they are innocent. - Busembaum, and others commonly with St. Alphonsus.[4]

5° Physicians, midwives, and guardians of infants and the infirm sin gravely if, from grave negligence, they either do not impede, or cause, or accelerate their death. Likewise if from gravely culpable ignorance they furnish harmful things to the sick.

6° It is not licit for those voyaging, tossed at sea and escaping from shipwreck in a skiff, for the sake of lightening the skiff, which otherwise they fear is to be sunk, to throw into the sea any others than those who, last descending into the skiff, are the cause why it is to be sunk.

§ II. On the procurement of abortion

Abortion is the lethal expulsion of the ovum, embryo, or fetus from the maternal womb. Mar.

474. Principles. - I. It is never licit directly to procure abortion, even if the fetus were supposed to be still inanimate; which supposition today, especially now that the dogma of the Immaculate Conception of the B. V. M. has been proclaimed, lacks foundation.[5] The reason is that if the fetus is animated, it is homicide properly so called; but if it is not animated, it is anticipated homicide. For the fetus even not animated is ordered to forming a man; therefore its ejection is anticipated homicide. St. Alphonsus,[1] Lacroix.[2]

II. Sometimes it is licit indirectly to procure abortion, or better, to permit it, namely by administering to a mother laboring under grave disease remedies harmful to the fetus, if the following conditions concur, namely 1° that there is question of a lethal disease; 2° that the remedies harmful to the fetus are directed of themselves to curing the disease; 3° that there is no hope of procuring for the fetus eternal life through Baptism. But hope of this sort can be absent in a twofold case: namely in the earlier days of conception; or where it is morally certain that the fetus, when the mother dies, will die at the same time or before. - St. Alphonsus,[3] Lacroix,[4] Billuart.

III. It is licit to give to a pregnant woman who is ill remedies suitable for curing diseases, even if sometimes abortion could follow. The reason is that it is clear from experience that abortion very rarely follows from ordinary remedies, at least most of them. - Thus commonly.

Notes to n. 474. (2) L. IV. 393. (3) L. IV. 393. (4) L. IV. 393. (5) Revue des sciences ecclés. T. XXI. p. 5, sq.

475. Questions. - Quaer. 1° Is embryotomy, or the killing of an infant in the mother's womb, ever licit?

Resp. 1° It is certainly illicit, if either by a Caesarean operation, of which in the Treatise on Baptism, one can certainly consult the life of the infant and probably also of the mother, or if the fetus is soon to perish, and, its natural death having been awaited and it then extracted, some hope still probably remains of saving the mother. For where the good effect can be had from a certainly licit cause, it is illicit to use a cause concerning the liceity of which at least there is doubt.

Resp. 2° Since embryotomy is an action of itself or directly killing, but the direct killing of an innocent is licit in no case ever, embryotomy, although the sole remedy remains by which the life of

the mother can certainly be provided for, cannot be permitted. And this is the common sentence of Theologians. Cf., if you please, Acta[5] and Revue des sciences ecclés.[6]

Quaer. 2° Is at least the so-called medical abortion ever licit, or the acceleration of birth before the completed 28th week of gestation induced by art?

Resp. It is controverted. There are those to whom it seems the direct killing of an innocent, because from the very acceleration of birth before the seventh month of gestation the death of the fetus ought to follow of itself; for before that time it cannot live outside the mother's womb; therefore to extract it from that womb is the same as positively depriving it of precisely that thing without which it cannot live. Those who think the contrary say that in this case the fetus is only removed from a place in which it cannot live longer, and is placed in another in which it cannot continue life for long; wherefore they permit that acceleration of birth if the conditions are present of which in n. 474. II. Adhering to the former with Capellmann,[1] we apply the following admonition of Kenrick concerning embryotomy also to the acceleration of birth. If the mother asks what is to be done by her, it seems one must say that she ought to beg the surgeon to consult the life of the fetus in every way that he can.[2] (a) p. 469.

Notes to n. 475. (1) L. IV. 394. (2) L. III. P. I. 823. (3) L. IV. 394. (4) L. III. P. I. n. 826. sq. (5) Vol. VII. p. 285. 460. 516. (6) T. XXV. p. 563; XXVI. p. 194 and 208; XXVIII. pp. 247. 364. Appendix annotation (α), to n. 475. q. 1°. R. 2°. p. 210. col. 2. and q. 2° p. 211. col. 1. If the mother must not be killed, as St. Thomas teaches,(1) in order that the child may be saved, neither must the child be killed in order that the mother may be saved; and the intention of saving the mother, however much it may be considered principal and predominant, does not prevent the procurement of abortion from being direct, and willed in itself. Nor can those procuring abortion be excused from sin on the ground that they only hasten the death of offspring otherwise certainly about to die; for a direct hastening or anticipation of death, and willed in itself, not I say on account of itself, is true homicide. - For the same reason that is not lawful even on account of conferring Baptism upon offspring which otherwise would not be baptized. And in truth, St. Thomas(2) says that the mother is not to be killed so that the child may be baptized. But although St. Alphonsus(3) says that "it is lawful to baptize with cold water a child soon about to die, if no other can be had, even if it were feared that death would be hastened from this," he permits this only because "such an action does not tend to killing, but to washing," and a just cause is present; but at the same time he warns that "it is never lawful to throw an infant into a river in order to baptize him" (which baptism nevertheless is probably valid), "although he is soon about to die without Baptism; because it is never lawful, for any cause whatever, directly to kill an innocent." Therefore he kills the infant as directly who directly procures abortion as he who throws him into the river. Nor is it lawful to equate an animated fetus, endowed with its own life, with an unjust aggressor; for one who from the sole course of natural things, for example a man infected with plague, becomes the cause of death to another, cannot be held as an aggressor, either formally or materially unjust. - Nor can he be compared with an innocent who is killed together with an unjust aggressor, because: 1° a dangerous or death-bringing delivery will never rightly be called an unjust aggressor of the mother; 2° it is never lawful to assume the death of an innocent as a means for killing an enemy; but in the case, abortion or the killing of the infant is assumed as a means for freeing the mother from dangerous childbirth. - Finally, from the fact that a mother in shipwreck is not held to sustain a child above the waters with peril of her own life, it would not rightly be concluded that she can provide for her own safety by abortion; for the preservation of another's life by means or positive action, such as sustaining a child above the waters, pertains to the affirmative precept of charity, which does not oblige always nor with grave harm; but the prohibition of abortion pertains to the negative precept of not killing, which never does not oblige. And indeed the mother by abortion not only does not retain, or ceases to retain, the infant within the womb, but rather casts him outside the womb; and in like manner, in the example adduced, although she is not held to sustain the child, she is entirely held, even if she must perish, not to immerse him. Thus rightly Dumas.(1)

476. You will resolve. - 1° It is licit to expel a dead fetus, because the expulsion is no longer lethal. - Likewise, in the very violent oppression it will be licit to impede conception, yet not to expel a fetus actually already conceived.[3] (b) p. 430.

2° It is not licit for a pregnant girl to take medicines (although these are generally taken in vain) for expelling the fetus, lest she lose reputation, because abortion would be directly intended. This is also clear from proposition 34 condemned by Innocent XI, p. XVI.

3° It is licit for a physician to furnish a remedy of itself ordered to curing the disease of the mother, if it is certain that, the remedy not being given, both the mother otherwise will die, and the fetus will be extinguished without Baptism; for thus both the mother and the fetus are helped in the better way in which they can be helped; but most rarely will there be certainty concerning both. But if the danger of abortion is equal, whether the remedy be taken or not, it is licit to apply it; because without greater danger to the offspring the life of the mother is consulted. - But if the danger becomes greater from the medicine, certainly one must proceed cautiously, since it is not lawful, in order to protect temporal life, positively to expose one's neighbor to the danger of eternal death. Yet it must be noted that, in order that this prohibition urge, there ought to be present a reasonable hope of saving the life of the offspring after the death of the mother, not indeed that a slight and most remote hope suffice; but most rarely does the offspring survive the pregnant mother. Hence the physician should weigh the circumstances conscientiously, yet not scrupulously.[1]

4° They are homicides who strike a pregnant woman, or terrify her, so that abortion follows. Likewise pregnant women who with grave imprudence in various ways posit a proximate cause of abortion, for example by giving attention to excessive labors, by carrying heavy burdens. In both cases foresight of the danger is required.

5° A fortiori those girls are guilty of homicide who, pregnant from fornication, apply repeated attempts to try for abortion, by potions, jumps, burdens, strong striking and compression of the belly, etc. ... When women of this sort confess, they are to be questioned about abortion desired or attempted carefully, but not abruptly.

Notes to n. 476 - note sequence 1. (1) De occ. foet. p. 73 sq. (2) Tr. III. 130. (3) L. IV. 394. Quaer. I. toward the end. Notes to n. 476 - note sequence 2. (1) L. IV. 394. Appendix annotation (Φ), to n. 476. 1°. p. 211. col. 1. "In doubt whether the fetus lives, it must be presumed by the physician to live, no otherwise than any sick person, concerning whose death it is not certainly clear." Marres, p. 387. n. 274.

CHAPTER III: ON THE DUEL

A duel in general is the fight of two or of a few among themselves; more strictly, the fight of two or several equal in number, from a preceding agreement concerning place, time, and weapons, with danger of killing, mutilation, or wound.

A duel is 1° public or private, according as it is done by public authority or not; 2° solemn or simple, according as it is done before witnesses, or with these omitted.

477. Principles. - I. A duel undertaken by public authority is licit if it is done for the common good, for example, that war may be brought to an end; otherwise, if it is commanded or permitted for other causes. The reason of each is evident.

II. A duel undertaken by private authority can never be licit. The reason is that it is repugnant 1° to natural right, since God has given to none of men direct dominion over his own life or another's, nor over members outside the case of defense against an actual aggressor; 2° to Canon Law, as is clear from Trent,[1] where the duel is called: "A detestable usage, introduced by the contrivance of the devil."[2]

478. You will resolve. - 1° It is not licit to accept a duel even for averting ignominy; because it is repugnant to reason to use that cruel means with evident danger to one's own life or that of a neighbor, indeed also of eternal salvation, on account of an end not necessary or even useless. True estimation, praise, and honor are not placed in the vain opinion of this world, whose wisdom is foolishness with God.[3]

2° It is not licit for a military man to accept a duel, even if for this reason he must yield an office necessary for the sustenance of himself and his own. The reason follows from what has been said: for the killing of another by private authority is never licit, except against an actual aggressor with moderation of blameless defense; but one provoking to a duel is not an actual aggressor.

3° It is not licit to undertake a duel on this law, that, when one has been wounded or when a certain number of blows has been completed, the fight cease; 1° because even in this there is the greatest danger of a lethal wound; 2° because Clement VIII, Constitution Illius vices, 1592, § 5, also forbade this; 3° because this kind of duel creates scandal and furnishes occasion for fatal duels.

4° It is not licit to undertake a duel, even with public authority acceding, for knowing the truth, for proving innocence, or for ending a private lawsuit; because it is not a means ordered to these ends.[4]

5° But it is licit to fight in a duel for mere defense, even accepting weapons from the adversary, if death is intended by him, or the loss of goods is going to follow unless the fight is accepted, and there is not another way of escaping this danger; but not to go from agreement to another place, even if death is intended for you in the case in which you would not immediately go to another place; - nor to appoint another determined time for defense; because then there would be a duel properly so called. Cf. Vind. Ed. 2. T. I. p. 317.

6° Those do not enter into a duel properly so called, and consequently do not incur the penalties inflicted on duelists, who, becoming inflamed with sudden anger on account of injury, provoke each other to a fight and immediately engage; because it is more truly a brawl, but not a duel, which ought to be done from agreement of place and time. And for the same reason, on account of an unforeseen meeting of this sort, the aforesaid penalties are not incurred, although the fighters from the same impulse of the brawl immediately betake themselves together to some suitable place.[1] - S. C. C., Oct. 5, 1744. - Scav.

See the five propositions concerning the duel condemned by Benedict XIV in the year 1752, in the Bull Detestabilem, p. XXVI.

Notes to n. 478. (1) Sess. 25. c. 19. (2) L. IV. 399. 400. (3) H. A. Tr. VIII. 20. (4) H. A. Tr. VIII. 27.

CHAPTER IV: ON WAR

479. ○ War is the fight of a multitude against a multitude foreign to the Republic, for the sake of defending or vindicating the Republic.

Hence it differs 1° from a brawl, which is a fight of a few against a few; 2° from sedition, which is a tumult or conflict of a multitude against political society, to which it belongs.

War is distinguished as 1° offensive, if it is done for vindicating an injury; 2° defensive, if it is sustained for repelling force.

Principles. - I. War of itself is licit, whether for repelling injury, or for vindicating one's right. The reason is that any society, independent from another society, ought to have a means of defending itself against injury, and of vindicating its right; but sometimes no other means is supplied for obtaining this end except war. - St. Thomas.[2]

II. For a just and licit war the following things are necessarily required:

1° Legitimate authority, that is, supreme, acknowledging no other Superior in civil matters. The reason is that where a greater authority is had, this ought to judge concerning the dispute.

2° A just and grave cause, which is preponderant over the inconveniences to follow from the war, for example, a kingdom or province to be recovered, or a grave injury against the Republic to be driven away, or a rebellion of subjects to be repressed, ... etc.

3° The due mode of waging war, namely that before the war fitting satisfaction be required from the adverse party; and if this is offered, it ought to be accepted from justice; for where war ceases to be necessary, it also ceases to be just. - St. Thomas,[1] Billuart, etc.

Notes to n. 479. (1) L. IV. 401. (2) 2. 2. q. 40. a. 1.

480. Questions. - Quaer. 1° Is it licit to declare war with probability of one's right?

Resp. It is controverted. But the negative part is by far more probable, at least intrinsically and practically. The reason is, 1° because a possessor in good faith cannot be despoiled of the thing possessed, unless it is clear that he retains it unjustly; 2° because for positing the cause of very grave evils, such as slaughters, injustices, corruptions of morals, and other things of this sort, which ordinarily follow war, moral certitude of one's right seems to be required.[2] Tamburini, Billuart, against several, some of whom judge that only greater probability suffices, while others judge that even equal probability suffices.

Quaer. 2° Can soldiers wage war with doubt concerning the justice of the war?

Resp. 1° If there is question of a subject soldier (drafted), he is bound to obey, where the war is not evidently unjust, because it does not pertain to him to examine the reasons of Superiors.

2° If there is question of a hired soldier (volunteer) before war has been declared, he is bound to obey; for he is hired for this: hence he ought to conduct himself almost as if he were a subject.

3° If there is question of a soldier not yet hired, he is bound to inquire concerning the justice of the war, nor can he place himself in doubt concerning justice. The reason is that no one can cooperate in despoiling another of a thing which he possesses, unless he is certain that it is possessed unjustly by him.[3] (X) p. 480.

Quaer. 3° Can the guilty or the innocent be killed by the victor?

Resp. 1° Sometimes the guilty can be killed, or soldiers who have fought, if this is necessary for establishing peace and security or for vindicating injury, unless they have surrendered themselves with a pact of life to be preserved. But this is wholly alien from the morals of our time. (W) p. 480.

2° But the innocent, that is women, old men, foreigners, Clerics, Religious, etc., ... cannot be killed directly, unless it is clear that they were associates in the war. Yet they can be killed indirectly, the fight not yet having been completed, if they are mixed with the guilty, so that, with these preserved, the remaining crowd of the guilty which needs to be destroyed cannot be killed.[1]

Notes to n. 480. (1) 2. 2. q. 40. a. 1. (2) L. IV. 404. (3) L. IV. 408. Appendix annotation (X), to n. 480. q. 2° p. 213. col. 1. "It easily happens that a defensive war is just, even if cause has been given for war: for if reparation of the injury has been offered" and no response to it is given by the enemy, or "excessive vengeance is sought, the citizens justly defend the fatherland." Kenrick, Tr. V. 26. Appendix annotation (Ψ), to n. 480. q. 3°. R. 1°. p. 213. col. 1. "While civil war is raging, he who obtains mastery over affairs judges citizens resisting him to be rebels, and kills them when captured by hanging, or by another infamous death. As often as it is a question of seditious persons, namely of those who from a slight cause or from the sole lust of ruling or growing rich disturb the republic, punishment is just; but if it happens that a great part of the people contends with arms, even without a just cause, fear can be struck into the rest by the punishment of a few, without raging against the multitude. If a people oppressed by tyranny seeks its rights by arms, the prince ought to satisfy it by conceding what is equitable; for this reason, if he cannot placate it, he will be able to punish after the manner of rebels those who labor to overturn public order and government." Kenrick, Tr. V. n. 28.

481. You will resolve. - 1° Soldiers in an unjust war cannot licitly kill enemies even for the sake of defense; if they cannot flee, they ought to take care that they do not strike with their blows. For they themselves are unjust aggressors, and contrary rights in the same matter cannot be given, unless by accident, on account of some invincible ignorance, each side be judged just; which can often happen in soldiers, to whom in doubt it does not pertain to define the cause. - Lacroix, and others commonly.

2° A Prince, the justice of the war having been ascertained, ought to propose it to the adverse party, nor can he begin war if competent satisfaction is offered to him; indeed even war already begun, adequate satisfaction having been offered, he is bound to leave, if not from the rigor of justice, at least for the most part from charity, provided the other party wishes to compensate all expenses already made, and it is not necessary for the public good that his insolence be broken.

3° It is licit in war to prepare ambushes, to use stratagems so that enemies may be deceived by fallacies and cast into dangers. For these are not reputed lies, because the adversaries are deceived by their own fault, since those means are generally accustomed to be used in war; thus it is licit to feign flight, etc. ... But frauds which cannot be guarded against by any prudence are illicit, for example to infect wells and fountains with poison, etc.; ... for these things in the common sense fight against the rights of war.[2]

4° It is licit in a just war to besiege cities and fortresses, to discharge artillery against them, indeed sometimes to destroy or burn monasteries and churches, and in them to plunder and kill, if, for

example, the enemies use the church as a fortress for defending themselves. - Likewise sometimes it is licit to give a captured city over to plunder, but only on account of most grave reasons.[3]

5° Leaders of the army and soldiers ought especially to guard against exceeding after victory in punishing the conquered: for they are ministers of legitimate vengeance, but not robbers and assassins; especially they ought to avoid whatever smacks of cruelty or the spirit of harming.

6° Leaders and soldiers cannot harm the envoys of the adverse party, because by the law of nations they are everywhere inviolable; nor can they send spies who secretly slaughter the Prince or Leader of the army or other Primates of the kingdom, because this pertains to treachery by the consensus of all.

7° By the right of war soldiers acquire things of the enemies captured in a just war, but not for themselves; for according to a very well-known principle of law: things won by war fall to the republic. It is said 1° in a just war, because in an unjust war an injury is done to the enemy, which must be repaired by restitution both by its author and by all who are participants in this injury (n. 824 and 825. q. 1°).... It is said 2° they acquire not for themselves, because they occupy those things not in their own name, but in the name of the republic, by right of war. But by today's law of nations, not private things of enemies, but only public things, among which the arms of soldiers and also the spoils of the slain are reckoned, are acquired in this way. Leaders command that harm be done to private things of citizens only indirectly, insofar as they either hold the line of battle attacking, or the enemy uses them for harming.[1]

Therefore soldiers commit injury and are held by the obligation of restitution: 1° who from public things captured in war retain for themselves those things which have been granted to them neither by the express nor by the tacit will of the prince. But unless the contrary will is clear, soldiers can presume with reason that by this tacit consent the spoils of the slain are conceded to them; 2° who, besides provisions and other things of this sort commanded, extort certain things, as money, from private persons, or without reason and the authority of the leaders do damage to them.[1] 3° who, if they pass through the regions of those who are not conjoined by any treaty with the enemies, and who are called neutrals, take what is not necessary.[2]

By the express will of the prince, the ships of enemies and all things which are found in them are captured for themselves by those who, in these Federated States, obtain from legitimate authority letters or a license ("commission") for outfitting ships at their own expense, so that they may attack enemies. Yet he who captures and retains booty without that license does not seem guilty of violated justice; for that license pertains only to the order of law, and the tacit consent of the republic, among us, adjudicates the booty to the one capturing it. It pertains to the same order only of law that those who have obtained a license are bound to lead the booty into port and subject it to judgment.[3] The things said, among us, are valid also concerning goods captured at sea, although they pertain to private persons; yet of that nation with which war is being waged.

Notes to n. 481 - note sequence 1. (1) L. IV. 409. (2) L. IV. 410. (3) L. IV. 410. Notes to n. 481 - note sequence 2. (1) Mar. p. 362. n. 226. 227. Notes to n. 481 - note sequence 3. (1) Mar. p. 362. n. 227. (2) Kenr. Tr. V. 29. (3) Ib. 30. 31.

ON THE SIXTH AND NINTH PRECEPT OF THE DECALOGUE.

You shall not commit adultery. - You shall not desire his (your neighbor's) wife.[1]

Admonition of St. Alphonsus. "Now with difficulty we approach the treating of that matter whose name alone infects the minds of men. Would that I could have explained myself more briefly or more obscurely! But since it is the more frequent and more abundant matter of Confessions, and that on account of which a greater number of souls slide down to hell, indeed I do not doubt to assert that, on account of this one vice of impurity, or at least not without it, all are damned who are damned; hence it was necessary for me to explain myself clearly, although as chastely as it could be done, and to discuss very many particulars. - Yet I beg students who are preparing themselves for the office of hearing Confessions, that they not read this treatise (just as also the other on the conjugal debt), unless they shall already be near to receiving Confessions; and that they read it for this end alone; and, at that time, that they often raise their mind to God, lest, while they strive to acquire the souls of others for God, they themselves suffer detriment to their own."[2]

The Sixth precept of the Decalogue prohibits any external luxury, or that which is committed by deed. - The Ninth also prohibits sins of the heart, or evil thoughts and desires. - Each indirectly commands chastity.[3]

Here we must treat only of external sins; for of internal sins, or of morose delectation and evil desire, it has already been said in n. 228 sq. Hence 1° of chastity and luxury in general; 2° of sins of luxury not consummated; 3° of sins of luxury consummated.

CHAPTER I: ON CHASTITY AND LUXURY IN GENERAL

Preliminary notes. - 1° To the generative powers both in the male and in the female this end has been appointed beforehand by the Creator of nature, that through the natural congress of each sex in legitimate Matrimony the human species may be propagated and preserved.

2° The delectation which accompanies the act of this power rightly concurs to that end to this extent, insofar as it allures men to a thing by no means a little burdensome in its consequences.

3° Man, by original sin, was chiefly wounded and disordered in the concupiscible appetite, especially as regards the genital power and the sense of touch.[1]

ARTICLE I: ON CHASTITY

482. Definition. Chastity (from chastising), broadly taken, is a general virtue inclining man to keep himself immune from every inordinate love and delectation of creatures; properly taken, it is a special virtue inclining man to restrain inordinate appetites and the use of venereal things according to the prescription of right reason.

Division. A threefold chastity is distinguished:

1° Conjugal, which, while it abstains from illicit pleasures of the flesh, uses licit ones according to right reason in Matrimony.

2° Widowly, which, Matrimony having been dissolved, abstains from every venereal delectation.

3° Virginal, which proposes to abstain perpetually from all delectations of this sort. - Virginity, according to St. Thomas,[2] is a special virtue, having itself toward chastity as magnificence toward liberality, because it conquers a special difficulty, and indeed the greatest one; and it consists: formally in the purpose of abstaining from every venereal pleasure; but materially in immunity from every experience of venereal delectation, and in a certain integrity of the flesh.[3]

Principles. I. - Conjugal chastity is good, widowly continence better, but virginal perfection best. - Thus Ven. Bede and all Catholics. - Hence St. Jerome[1] writes: "We assign the hundredfold fruit to virgins, the sixtyfold to widows, the thirtyfold to chaste Matrimony." The reason is ready at hand from the definitions above.

Indeed it must be held by divine faith that the state of virginity and celibacy chosen for the sake of God is to be preferred to marriage. This is clear from the words of the Apostle,[3] and from Trent:[4] "If anyone says that the conjugal state is to be placed before the state of virginity or celibacy, and that it is not better and more blessed to remain in virginity or celibacy than to be joined in Matrimony, let him be anathema." - Reason supports this; since the use of matrimony makes man like the beasts, virginity like the angels. Hence St. Bernard: "Nuptials fill the earth; virginity, Paradise."

II. Decorum or spiritual beauty, although it is in every virtue, nevertheless most excellently belongs to chastity. Thus the common sense; and it is clear: 1° From Sacred Scripture: How beautiful is a chaste generation with brightness; for the memory of it is immortal, since it is known with God and

with men.[5] 2° By reason, for a virtue is the more beautiful as the vice opposed to it is the more base. But to chastity there is opposed what is most base and most indecent to man, namely carnal and brute pleasure. - Hence St. Alphonsus[6] says with St. Cyprian: "virginity is the queen of virtues, the possession of all goods," and with St. Ephrem: "If you love this, you will prosper in all things from the Lord."

Note. - 1° Through rape altogether violent or through involuntary pollution, for example in sleep, neither the prerogative of virginity is taken away, nor the aureola lost. Hence St. Lucy to the tyrant: "if you command that I be violated unwillingly, chastity will be doubled for me unto a crown."

2° Those who have sinned against chastity in mind will be able, through penance, with the will of abstaining in the future resumed, to recover virginity and its aureola; not likewise those who, through an external libidinous act (or one of itself resolutive of semen), have voluntarily lost the incorruption of the flesh, and this more truly even if pollution does not follow by accident.[1]

Notes to n. 482. (1) Exod. 20. 14. 17. (2) L. IV. 413. (3) Ib. 414. Notes to nn. 482-485 - note sequence 1. (1) Cf. Craisson, De reb. ven. n. 18-21 and Salmant. Tr. XXVI. c. 1. n. 78 sq. (2) L. IV. 415. Cf. Vind. P. III. q. XII. art. 1°. Ed. 2, q. XIII. (3) H. A. Tr. IX. 2. - L. IV. 415, 418. (4) Gal. 5. 19. Notes to nn. 482-485 - note sequence 2. (1) St. Thomas, 1. 2. q. 33. a. 3. (2) Scav. T. I. n. 918. Ed. XII. (3) L. IV. 416. Cf. Roncaglia, Tr. XII. c. 1. q. 3. Notes to nn. 482-485 - note sequence 3. (1) L. IV. 416. a. 3. edit. (2) Praxis n. 39. L. VI. 503. Cf. Scavini. T. I. n. 931. (3) 1, 2. q. 73. a. 5.

ARTICLE II: ON LUXURY IN GENERAL

483. Definition. Luxury (so called from loosening) is the inordinate appetite for, or use of, venereal delectation or sense.

Venereal delectation (libidinous, luxurious, simply carnal) is that which arises from the movement of the spirits serving generation, and is felt around the genitalia.

It differs specifically from sensitive delectation (natural, sensible), which is had from the contact of a smooth thing, without any movement of the genitalia being present. There are those who distinguish this species of delectation into sensitive carnal, which arises from contact with living flesh, and simply sensitive or merely organic, which arises from contact with any other soft thing.[2]

Division. One luxury is directly sought, which is had when libidinous or carnal pleasure is intended precisely in itself. Another is indirectly willed, when another thing is intended, from which the aforesaid pleasure arises, as happens, for example, in looks or readings less chaste from curiosity or another illicit end.

The species of luxury are various, as they are recounted in Chapters II and III.

484. Principles. - I. Luxury of any species whatever directly willed is a grave sin from its whole genus, so that every venereal delectation, even slight, taken with full advertence and consent is a mortal sin.[3] For the Apostle openly declares that the luxurious are excluded from the kingdom of God,[4] and Alexander VII condemned proposition 40, which said: "that a kiss had for carnal and sensible delectation, which arises from the kiss, is only venial." The reason is, 1° because every carnal delectation or venereal movement is a certain begun effusion of semen or movement toward it; and therefore, if it is sought outside the legitimate act of marriage, it tends toward a grave disturbance of essential order: 2° because the character of delectation of

this sort is such that it corrupts the whole rational nature. For we are much affected by those things in which we delight; and therefore reason is either altogether taken away or very much weakened concerning other things in him who lingers in carnal delectations.[1]

II. Luxury, indirectly willed, admits smallness of matter, that is, it is judged grave or slight according as the action from which carnal delectation is foreseen as going to follow influences it either proximately and gravely, or only remotely and lightly. The reason is that an evil effect following beyond the intention from an action is judged evil in that degree in which the cause itself is evil. Cf. Scavini.[2]

485. Questions. - Quaer. 1° Can lightness of matter be given in sensible delectation, if someone, for example, is delighted by contact with the hand of a woman as by contact with a smooth thing?

Resp. Several affirm with St. Antoninus, Sylvius, etc.; for, they say, just as he who hears a sweet voice or tastes savory food precisely for organic delectation does not sin except venially, so he is judged to sin only venially who looks at a beautiful woman, or touches her hand or face, on account of organic delectation alone, willing or feeling nothing further.

But indeed, this opinion is not practically probable, and St. Alphonsus teaches that the opposite is altogether to be held, at least as a general rule. The reason is that, on account of corrupted nature, it is morally impossible to take that natural delectation without carnal and venereal delectation being felt, especially by persons apt for copula; and especially if those acts are had with some affection and delay. Moreover, to expose yourself to the danger of consenting to venereal delectation is of itself mortal. - Wherefore St. Doctor admits the first opinion only "in some rare case, in which through long experience someone would be morally certain that no danger of consent threatens him; but this case," he adds, "when will it be?"[3]

Yet the Saint notes "that to act on account of sensible delectation is one thing, to act with such delectation another, in which lightness of matter can well be given; provided (it must be added) that the agent not rest in it, but detest it in act. Otherwise he would act not only with delectation, but also on account of delectation; which cannot be separated from the danger of falling into venereal delectation."[1]

Quaer. 2° Can invincible ignorance be given concerning sins of luxury?

Resp. It can be given, experience testifying, invincible ignorance concerning the grave malice of certain sins of luxury, whether not consummated, or even consummated: 1° in adolescents, for a short time, especially when deep silence concerning these things has been kept before them; 2° in the rude (indeed perhaps also in others for a short time), when a special circumstance intervenes apparently lending an honorable appearance. Thus, for example, the grave malice of unchaste kisses or touches between betrothed persons can be unknown; the malice of onanism among the unmarried, or even among spouses who are now burdened with a numerous family to be fed. Likewise "rustics, commonly speaking, judge rape a greater sin than simple fornication; on the contrary they do not know the malice of adultery; therefore with those who have the habit of this vice, it is not expedient to admonish them concerning the malice of adultery, when it is foreseen that the admonition will be of little profit, but will only effect that the penitent sin with a twofold sin if he does not resist the concupiscences of the flesh."[2] Yet carefully beware lest from this you generally conclude for practice

that penitents who inculpably do not know that some act of luxury which they have posited either is a sin or is mortal are to be left in good faith; for ignorance of this sort is usually only very harmful to the penitent. For on account of the very ignorance he will repeat that act more easily, and therefore also more often. From this there will soon exist a habit, and one which will put down roots deeper day by day. But amendment is most difficult for a habit of luxury, especially a rooted one: for the sin of luxury, as St. Thomas says,[3] is of the greatest adherence.

Notes to n. 485 - note sequence 1. (1) St. Thomas, 1. 2. q. 83. a. 3. 4. (2) 2. 2. q. 152. a. 3. (3) Cf. Lessius, De justitia, L. IV. C. II. n. 112. Notes to n. 485 - note sequence 2. (1) Apud Ben. XIV, De Beatif. L. III. c. 24. n. 56. (2) In Matth. XIII. (3) 1 Cor. 7. 25. (4) Sess. 24. can. 10. (5) Sap. 4. 1. (6) Vera Sposa. c. II. 12. Cf. Selva P. II. 3. Istr.

CHAPTER II: ON SINS OF LUXURY NOT CONSUMMATED

Sins of imperfect or not consummated luxury are those in which the final term of venereal things, which is the emission of semen, does not intervene. They are chiefly committed 1) by touch, 2) by sight, 3) by speech. They become grave from the object, the end, the danger.

ARTICLE I: ON LIBIDINOUS TOUCHES

1° On one's own body.

486. Principles. - I. To touch one's own shameful parts from levity or curiosity is not mortal, provided this is done in passing, without movement of the spirits, without scandal, and without danger of delectation. - Otherwise it will be mortal.[1]

II. To touch the same parts from a just cause, for example to wipe away filth, to soothe itching, to cure infirmities, etc., with base delectation absent or not voluntarily admitted, is no sin. Hence:

1° Young men, adolescents, indeed even infants, are to be strongly deterred from handling their own body; because these touches are wont to lead to greater things, and they take away shame, the guardian of modesty and morals.

2° A girl can sin gravely by touching her own bosom; for this often conduces to venereal movement.

Quaer. Is it licit to drive away a great itching by touch with danger of pollution?

Resp. Very many, as St. Alphonsus testifies, teach that this is licit: "But Roncaglia rightly prohibits this if the itching is not very troublesome, although he permits driving it away with only some movement. - Nevertheless one should not easily believe certain girls who are wont to pollute themselves by touches under pretext of heat of this sort; for, if they are examined diligently, it will be known that that itching is often" not from acrimony of the blood, but "rather ... either from evil thoughts previously had, or from an evil habit contracted of touching themselves."[2]

Notes to n. 486. (1) L. IV. 418. (2) H. A. Tr. IX. 3. L. IV. 419.

2° On another's body.

487. Principles. - I. Touches on the shameful parts of another body, especially if they are bare, and a fortiori if of a different sex, even when had with venereal affection excluded, are scarcely ever excused from mortal sin outside matrimony. The reason is that there is grave indecency in them, and grave danger of lust. - They are excused only because of the necessity of the physician and surgeon, provided they do not consent to the delectation; "and would that," ... says St. Doctor, "physicians in these things were not sinning continually."[1] Hence:

1° He sins gravely who touches the shameful parts of the different sex, even over clothing, and as through a lattice: this is very dangerous for each person. - He sins a fortiori gravely who imprints or admits kisses on parts of this sort, in which even married persons do not seem able to be excused, at least from venial sin.

2° Nor ordinarily is he excused from mortal sin who touches the shameful parts of another of the same sex, unless perhaps it is done from petulance, jest, levity, and in passing.

3° Nurses and guardians of infants sin gravely who are wont to handle and morosely touch the genital parts of infants in order to quiet them, and thus beget in them the plague of masturbation, and one all the more incurable as it is more premature. Yet they can be excused, at least from grave sin, on account of ignorance of the danger; or if they do these things in passing and without carnal delectation, for example while they dress or wash infants.[2]

4° Impubescent infants of the same sex touching one another immodestly from jest or levity can be excused from mortal sin; because they are not wont to be moved carnally. Yet the contrary is often clear, especially in girls, who already in the sixth year of age can experience a certain pollution, although they should never be questioned about this.[3]

II. Touches on less honorable parts (such as the breast, arms, legs) constitute mortal sins when they are exercised for the intention of venereal delectation, or practically (see n. 485) even organic delectation, between persons apt for copula. - They are venial if they are done from levity of soul, jest, curiosity, or petulance, without delay and danger. - The reason is clear from what was said about luxury in general (n. 484). Hence:

1° A young man who draws a girl upon his knees and holds her sitting there, or presses her against himself, ordinarily sins at least mortally; as also does the woman willingly suffering this.[4]

2° Touches of the breasts of a woman, especially already pubescent, are mortal when they are pressing and morose; but venial if they are done in passing and lightly, without libidinous affection.

3° Kisses impressed on less customary parts of the body, for example on the chest, must ordinarily be held mortal, especially if they are done between persons of different sex.

Notes to n. 487. (1) L. IV. 420. Notand. I. H. A. Tr. IX. 3. (2) Ib. not. 1. at the end. (3) Craisson, De reb. ven. n. 20. (4) Ib. n. 208.

488. ○ III. Touches on honorable parts (that is, kisses on the face, embraces, contact of hands, and similar things) are free from all fault if they are done decently according to the custom of country, civility, or honest benevolence. - They are venial sins if they are done in passing from levity, jest, petulance; - but mortal, at least ordinarily, if they are exercised often or morosely by young persons, especially of different sex, without any necessity or other just cause, although on account of organic pleasure alone. See what was said in n. 485. Hence:

1° "A woman or adolescent does not sin if she permits herself to be touched modestly according to custom; unless (except) it is clear to her concerning the depraved affection of the one touching, and she can then resist without her own infamy or scandal of others. - But she sins if she does not resist ... morose or furtive kisses."[1]

2° Young men and girls are not immediately to be accused of sin, at least grave sin, who in certain games embrace one another decently and without evil intention: "yet very many sin gravely in these things, and all are to be altogether turned away from games of this sort on account of the danger annexed to them, and seriously admonished."

3° He sins only venially, of itself speaking, who lightly and without delay touches the fingers, hands, or face of a person of different sex, evil end and every affection and danger of lust being excluded, if these things, for example, are done from mere levity, and do not have special danger annexed by reason of one's own or another's frailty. - Likewise, to kiss boys greatly, even with sensible delectation, does not of itself exceed venial sin; because then the danger of venereal delectation is ordinarily absent. - For the same reason:

4° Of itself, both delay and repetition in honorable embraces are free from all fault among persons very closely joined by blood, and not suspected of mutual concupiscence, for example between father and daughters, mother and sons, if they are done as a sign of special love, although with some organic delectation, provided this is neither sought nor gladly felt.[2]

5° Kisses, even if they are done from the custom of country, if they are had with delay or ardor, are ordinarily mortal. Likewise kisses on the mouth, or the tongue of another received by the mouth.[1]

Note. - To touch the genitalia of brute animals is not lethal of itself; but St. Alphonsus deservedly condemns, against some, a touch of this sort all the way to the effusion of semen as mortal, not indeed on account of the waste of the brute's semen, but because such an act very much incites to lust. Those joining horses, oxen, etc., are excused because of necessity, provided they do not consent to lust.

Practical rules. 1° Touches toward another's body, embraces, and kisses, whether they are libidinous from their own nature, or from the intention of the agent, are of the same species as consummated acts; hence in Confession it must be explained whether they have been had with a married person, a blood-relation, an affine, one bound by a vow of chastity.[2]

2° In morose embraces there are very often the thought or desire of copula, indeed also pollution or carnal motions, concerning which those who declare embraces without those circumstances are prudently to be questioned, as ordinarily happens.

3° Young people often do not know by what spirit they are moved; hence on account of these and similar things full of danger, even if they do not yet suffer venereal things, absolution is prudently deferred for the accustomed and relapsed; because the occasion of fall, at least for one or the other, will soon become proximate.

Notes to n. 488 - note sequence 1. (1) H. A. Tr. IX. 5. L. IV. 430. (2) Martinet. Lib. V. art. 9. § 5. Notes to n. 488 - note sequence 2. (1) L. IV. 417. (2) Ib. 453. 469.

ARTICLE II: ON IMMODEST LOOKS

489. Principles. - I. Base looks, which are had without a sufficient cause, are gravely or lightly sinful according to the intention of the one looking, the degree of baseness, and the danger of venereal consent. - Concerning this it must be noted: 1° More easily is he excused from grave guilt who looks at himself than he who looks at others; because one's own things move less. - 2° By an equal reason, a look at a person of the same sex is more easily excused than one of different sex.

II. Any looks whatever, although honorable in themselves, but had from an evil intention, are also mortal sins. This is clear of itself. Yet the quality of the person basely looked at, suppose if she is

consecrated to God, married, etc., is not to be explained in Confession unless there was at the same time an evil desire; because of itself a quality of this sort is not the object of the sinful vision. Thus St. Doctor against the Salmanticenses.[1]

490. You will resolve.[2] - 1° "To look at human copula without doubt is lethal; but of brutes" (larger ones) "very dangerous; hence it is to be permitted to no one, except only to those upon whom it is incumbent to join animals for generation, and provided the danger of consenting to base things is absent in them."[3]

2° "To look at the shameful parts of a person of different sex is with difficulty ever excused" (and never, I believe, in a painter, because no necessity of painting is present here) "from mortal sin, unless perhaps the look is done from a place very far away, and so in passing that no danger of delectation is present." And St. Alphonsus thinks this is to be held against the Salmanticenses, even if danger of movement were absent by reason of puerile or senile age or frigid complexion; because at least the danger of concupiscence would be present. Except if the eyes are fixed on a tiny infant, because it moves little; unless this is done morosely or repeatedly with evil affection.[4]

3° To look at the pudenda of the same sex from curiosity or levity, as happens among those swimming, or sometimes among the impubescent, is not mortal. - Otherwise if there is present libidinous affection, or special danger of lust, as if the one looking is very prone to sodomy, or a beautiful adolescent is looked at naked morosely and with delectation.[5] Hence those are to be gravely reprehended who, with shameful parts uncovered, swim together; likewise boys and girls uncovering their shameful parts to one another, even if in passing and from levity; for this, if it is not mortal, without doubt conduces to mortal sin.

4° To look at one's own shameful parts is mortal "if it is done studiously and morosely, without necessity; otherwise, if briefly."[6]

5° "To look at the less honorable parts of a person of different sex, but not base ones, namely arms, legs, or chest, is not always of itself mortal; but if the look is deliberate and lasting, or if the one looking is prone to venery, he will be excused from mortal sin with greatest difficulty. - And I think the same," says St. Doctor, "of him who morosely looks at the face of a beautiful woman, at least if he loves her with an inordinate affection."[1]

6° To look at obscene pictures (or lascivious statues) from mere curiosity, authors say, is not mortal, if danger of base delectation is absent; but "a man morosely looking at the naked female pudenda depicted, or covered with a light veil, I do not know," St. Doctor continues, "how he can be excused from mortal sin."[2]

Notes to n. 490. (1) L. IV. 421. (2) H. A. Tr. IX. 8. (3) L. IV. 419. (4) Ib. 421. (5) Ib. 420. Not. III. 421. H. A. Tr. IX. 8. (6) Ib. 419.

ARTICLE III: ON BASE SPEECH AND THE READING OF OBSCENE THINGS

491. Principles. - I. To speak, sing, write, hear, or read base things, either for the sake of carnal delectation, or with danger of consent to it, or also with grave scandal, is a mortal sin. Thus all.[3] Hence:

1° Generally speaking, those sin gravely who mingle conversations, although from levity only, concerning the conjugal act, concerning licit and illicit things between spouses, concerning modes of impeding generation, of procuring pollution, especially if this is done among young persons of different sex.

2° Those sin gravely who narrate their own base sins; and indeed ordinarily threefoldly, namely on account of complacency, scandal, and boasting about a sin committed.

3° Those also sin gravely who utter only base words (although not conversations) on account of delectation taken from the very thought of base things, or with danger of such delectation. Nor are they excused from grave sin who, under pretext of joking, express the same things by equivocal words, but sufficiently known, on account of base delectation.

4° The same must be said concerning those who read, without just cause, wholly obscene books, even if they seem to do this from curiosity or for the sake of recreation; because of itself reading of this sort greatly provokes to lust, at least ordinarily speaking.

5° Moreover, it must be carefully noted here, with the Salmanticenses from St. Thomas, that a prolonged conversation with a girl loved inordinately is not lacking in grave danger.[4]

Notes to n. 491. (1) H. A. Tr. IX. 8. Cf. L. IV. 422-423. (2) H. A. Tr. IX. 8. Cf. L. IV. 424. (3) L. IV. 426. (4) H. A. Tr. IX. 9.

492. ○ II. It is not mortal to utter base words from anger, jest, for vain solace, as harvesters, grape-gatherers, muleteers, and those of this sort are wont to do. Except things too lascivious, or if they are a scandal to others, as they are generally to boys and girls. - "Those hearing ... only on account of curiosity, or for vain solace, can sometimes be excused from mortal sin; unless there is present base delectation, or the danger of it, which will easily always be present in adolescents, or others of little timorous conscience, or unless scandal is present." - "To read base books" (but not those of which n. 491. 4°) "from curiosity, without base delectation or its proximate danger," of itself is only venial. Yet this must be carefully prohibited to young people as much as possible.[1]

III. To speak, write, read, or hear base things with a legitimate cause, without an evil intention, danger of consent, and scandal, is no sin.[2] Hence:

1° They do not sin who, for forming and perfecting style, read the poems of the ancients; yet these are not to be conceded to young people.

2° They do not sin who read obscene books for acquiring knowledge, for correcting morals, for learning the truth of history, for informing Superiors, etc.; provided they do not consent to base things and truly intend an honorable end.

As regards those hearing, these things are specially to be noted:

a) If those who hear obscene things have authority over those uttering them, they are bound from office to restrain them; but if they are inferiors or equals, let them admonish them, or at least be silent before them.

b) Those who hear base speech mortal on the part of the speaker, and laugh a little, are not immediately and indiscriminately to be charged with mortal sin: for it can happen that they laugh at

the mode of speaking rather than at the things themselves. - Yet Religious and Clerics would easily furnish grave scandal.[3]

Practical rule.[4] Concerning obscene words penitents are to be questioned: 1° Before whom and how often they have spoken them, by reason of scandal: - whether before men or women, married or unmarried? before boys or adults? For girls and boys are more easily scandalized than adults, especially if there is question of adults habituated in this vice. Yet beware lest you conclude from this that lascivious conversations among married persons are altogether immune from grave sin. For they can be a scandal to themselves. Nor should they deceive themselves because they have them before little children under the pretext that they are not understood; for sometimes they are truly understood, or at least little children retain in memory certain things whose explanation they afterward seek, and easily obtain. - 2° What words they have said; whether, for example, they have named the pudenda of the different sex (Note that the Saint is speaking of questioning the rude; therefore do not question all in that way), so that it may be known whether it is mortal. - 3° Whether they have uttered the words from anger or jest; for from anger complacency and scandal will more difficultly be present. - 4° Whether they have boasted of some sin; for then three sins often concur, as was said. - They are also to be questioned whether they were delighted in hearing others speaking dishonorably, and whether then they adverted to the precept of correction, thinking it would be profitable. St. Doctor adds:[1] "Let the confessor beware of absolving those relapsing in base conversations, although they say that they uttered them from jest, unless they first amend, or bring an extraordinary sign of sorrow." "Alas! what damage," he says, "from dishonorable words! One dishonorable word can effect that all who hear it be damned."[2]

Notes to n. 492 - note sequence 1. (1) L. IV. 426. 427. H. A. Tr. IX. 9. 10. (2) Ib. 426. 1. (3) Scav. T. I. n. 801. (4) Prax. Conf. n. 40. Notes to n. 492 - note sequence 2. (1) Prax. Conf. n. 40. (2) Inst. Cat. P. I. c. 6. n. 21.

CHAPTER III: ON SINS OF LUXURY CONSUMMATED

These are of a twofold genus: some according to nature, others against nature, according as the conditions necessary for generation are observed or not observed.

ARTICLE I: ON SINS OF LUXURY ACCORDING TO NATURE

Six sins of this sort are recounted, namely: 1° simple fornication; 2° adultery; 3° incest; 4° sacrilege; 5° stuprum; 6° raptus.

§ I. On fornication

493. Definition. - Fornication, if it is taken in a broad sense, is every illicit concubitus. - But strictly it is defined: Concubitus of an unmarried man with an unmarried woman from mutual consent. - Here "unmarried" is understood as one who is free from every bond of Matrimony, vow, or kinship in a prohibited degree.

Principles. - I. Fornication is utterly forbidden by natural right and by positive divine right, so that it can never be excused from grave sin. - This is clear: 1° From Sacred Scripture:[1] Neither fornicators shall possess the kingdom of God. Every fornicator or unclean person ... has no inheritance in the kingdom of Christ: 2° From reason; for, if fornication were permitted, men would generally withdraw from contracting Matrimony, and offspring received from fornication would be left without any education. But from this the subversion of social order would necessarily follow. St. Alphonsus adds:[2] "of itself it is against the right of nature to subject reason to the flesh, as happens in fornication on account of the delectation of the act; but in Matrimony, although the same delectation intervenes, God nevertheless by a special providence disposes that such disorder be absent."

II. To fornication, as to the same species, are referred concubinage and prostitution. - Concubinage properly so called is the habitual commerce of an unmarried man with an unmarried woman. It will be treated in n. 1438 sq. Prostitution is the state of a woman prostituted to many, at least to more than two. It is a most grave sin by reason of the disposition of soul, scandal, and harm of offspring, which is rarely born from prostitution, and, if ever it is born, is usually educated most badly.

The circumstance of concubinage or prostitution, although by reason of species it need not necessarily be declared in Confession, nevertheless per accidens it must ordinarily be explained for manifesting the state and genus of occasions, and must always be opened to the confessor when he asks.

Notes to nn. 493-499 - note sequence 1. (1) 1 Cor. 5. (2) 2. 2. q. 154. a. 10. ad 2. (3) Lib. IV. 450. (4) Ib. 451. (5) Scav. T. I. n. 778. nota 2. Craisson, De reb. ven. n. 110. Notes to nn. 493-499 - note sequence 2. (1) H. A. Tr. IX. 20. (2) Cf. L. IV. 454-457. (3) L. IV. 458-462. Cf. Vind. P. III. q. 3. (4) H. A. Tr. IX. 23. L. IV. 463. (5) Cf. Craisson, Man. juris can. n. 6266. Notes to nn. 493-499 - note sequence 3. (1) Scav. T. I. n. 775. (2) L. IV. 443. (3) Ib. 444. (4) Acta T. I. p. 15-25.

§ II. On adultery

494. Definition. - Adultery is copula had with a married person.[3]

Principles. - I. Adultery is a most grave sin, both against chastity and against justice. This is clear: 1° From Scripture:[1] If a man sleeps with the wife of another, each shall die, that is, the adulterer and the adulteress; and you shall take away evil from Israel. ... Neither adulterers shall possess the kingdom of God. 2° From reason: for adultery violates in a grave matter the right of another, namely of the other spouse; it obstructs the good of offspring; it harms the family; often it begets scandals and quarrels, and produces innumerable other evils, as daily experience teaches.

II. Adultery committed with a married woman is a graver sin, of itself speaking, than if a married man were to sin with an unmarried woman. The reason is that in the prior case copula either harms generation (which happens not rarely), and then the husband is unjustly deprived of children; or it introduces false heirs into the family, or at least often begets uncertainty of offspring.[2]

Note. - 1° It makes no difference that the spouse consents, because such a cession of right is null, since the right over the body of the spouse belongs to each not only for the private good, but also for the public good. Hence this proposition 50 was proscribed by Innocent XI:[3] "Copula with a married woman, with the husband consenting, is not adultery."

2° If a married man sins with a married woman, there is a twofold adultery; which must be expressed in Confession.

3° He who knows his wife sodomitically, by the common opinion more probably commits adultery; because this is against the good of the faith given, and this circumstance must be declared in Confession.[3]

Notes to n. 494. (1) 1 Cor. 6. 9. Eph. 5. 5. (2) L. IV. 432. Cf. Vind. P. VII. Q. 8. a. 2. (3) H. A. Tr. IX. 16.

§ III. On incest

495. Definition. - Incest is concubitus with a person joined by kinship or affinity within the degrees in which it is not licit to enter Matrimony. But kinship is threefold: natural, namely among blood-relations up to the fourth degree inclusive (the same is valid concerning affines); spiritual, arisen from Baptism or Confirmation; and legal, proceeding from adoption.

Principles. - I. Incest is a special and most grave sin. For it is opposed both to chastity, and to the piety and reverence owed to kin and affines. Hence in Leviticus[4] it is punished by the penalty of death; and Blessed Paul[1] gravely rebukes the incestuous man, handing him over to Satan that he may be corrected.

II. It is certain that at least four species of incest are given which must be explained in Confession. - For they commonly teach: Incest among blood-relations or affines differs in species, both 1° from incest among spiritual relatives, and 2° from incest among legal relatives, because they arise from a formally diverse root: indeed, according to St. Thomas,[2] by copula among spiritual relatives, sacrilege is committed in the manner of incest. 3° Likewise incest among blood-relations or affines in the first degree of the direct line differs in species from every incest of an inferior degree; because conjunction between parents and children, and especially between mother and son, is altogether prohibited by the right of nature on account of the reverence owed to parents; likewise from the same motive, says St. Alphonsus, conjunction between father-in-law and daughter-in-law, between stepmother and stepson, is prohibited.[3] See the rest in n. 1365. q. 2°.

Note. - A confessor more probably does not commit incest in having intercourse with a penitent; for there is no spiritual kinship between them, since this arises only from Baptism and Confirmation. But a pastor sinning with his parishioner offends against justice, from which he is bound to feed his sheep not only by word, but also by example.[4] Several say the same of a guardian toward a ward, and of all to whom the care of minors has been committed.[5]

§ IV. On sacrilege

496. Definition. - Sacrilege (in matter of luxury) is the violation of a sacred person, place, or thing through a venereal act.

It is a great sin: for reason dictates that holy things are to be treated holily; and it contains a twofold malice, one against chastity, the other against religion.

Principles. - I. Concerning the person, sacrilege is committed if someone sins luxuriously having a vow of chastity, or with one having it. Hence a priest sinning with another sacred person commits a twofold sacrilege.

St. Alphonsus notes:[1] 1° "A Religious who is also a priest, by harming chastity, more probably commits one sacrilege"; because he offends one virtue of religion. - 2° "A priest inducing by his counsel a layman to fornicate commits sacrilege, if he induces him to lust from affection. Otherwise, if from another evil end."[2]

II. Concerning the place, every luxurious action in a sacred place will be sacrilege. Thus, for example, voluntary pollution in a church is sacrilege, although it is secret and the church does not need reconciliation, as it needs in notorious pollution.

Note. - 1° Lightly base touches in a church are more probably not sacrileges; because from them there does not result a great irreverence against a sacred place. 2° Enormously grave touches are commonly held as sacrileges; and St. Alphonsus affirms the same as absolutely more probable if the touches (likewise words and sight) are simply grave. 3° Internal acts are not sacrileges, if you except desires of sinning externally in a sacred place.[3]

III. "Concerning the thing, he commits sacrilege who abuses sacred things for base things. - The same must be said concerning a priest who sins basely vested for Mass, or while carrying the Eucharist, or immediately after Communion, for example, within half an hour."[4]

§ V. On stuprum (Rape)

497. Definition. - Stuprum strictly taken (as in Canon Law) is the defloration of a virgin, she herself being unwilling. In a broader sense (as in civil law) it is the oppression of any woman whatever, even a married one.

Principles. - I. Stuprum in each sense has a special malice; because beyond fornication it contains an injury certainly grave on account of violence inflicted on the modesty of a woman; which malice is increased, but more probably within the same species, when someone violently takes integrity from a virgin: for this is reputed, and deservedly indeed, as a good of the greatest price, by which especially

virgins are honored and are sought for suitable nuptials. Therefore the stuprum of a virgin is punished in canon law with special penalties.[5]

498. ○ II. For the crime of stuprum, moral and interpretative violence suffices. - For commonly even he is judged guilty of stuprum who has oppressed a girl not yet enjoying the use of reason, a drunk, foolish, or sleeping woman. - Likewise he is called a violator who has induced a virgin to evil by fraud (for example, by a false promise of Matrimony or of a great dowry), or by grave fear, even reverential fear.[1]

Indeed, even if more commonly and more probably it is taught that of itself it is not a special sin if a virgin plainly consents, because properly speaking an injury is not done to one consenting; nevertheless it can be such from elsewhere, "namely by reason of infamy or sorrow of parents, or of quarrels, hatred, etc."[2]

§ VI. On raptus (Abduction)

499. Definition. - Raptus is committed in two ways: either by violently leading away a resisting woman from place to place for the sake of contracting Matrimony; - or by leading away a man or woman for the sake of fulfilling lust, from a safe place to one not safe, through force or grave fear inflicted either on the person carried off, or on those under whose power she is, that is, parents, or guardians, or husband.

Principles. - I. Raptus for the sake of Matrimony is not only a grave sin, but also induces a diriment impediment, and is punished in Canon Law with most grave penalties.

II. Raptus for the sake of lust (of which here there is question) is a grave sin, by which both chastity and justice are harmed. - 1° Chastity, on account of the fornication itself, or at least on account of the libidinous intention. 2° Justice, because force is inflicted either on the one carried off, or on those whose power she is under, or even on both.

Note. - If a woman sui juris (of age or emancipated) consents to one wishing to carry her off, and departs of her own accord, even without the knowledge of her parents, it is not properly raptus, but flight (elopement), which does not add a malice distinct in species from fornication.[3]

But importunate prayers also constitute raptus; likewise deceit and fraud. This, with respect to Matrimony, was decided by the Sacred Congregation of the Council on Aug. 27, 1864.[4]

Notes to n. 499. (1) Deut. 22. 22. 1 Cor. 6. 9. 10. (2) L. IV. 445. (3) Ib. 446. (4) C. 20. v. 14. sq.

ARTICLE II: ON SINS OF LUXURY AGAINST NATURE

Sins against nature are four, diverse in species: 1° pollution or softness; 2° onanism; 3° sodomy; 4° bestiality. They are called against nature because they offend not only rational nature, as other sins do, but also right animal nature.

§ I. On pollution

500. ○ Definition. It is the effusion of semen with libidinous delectation without congress with another. - It differs from distillation, which is a flow of a certain humor of lesser moment, almost drop by drop, and accustomed to happen without vehement delectation or movement.[1]

Division. Pollution can be either voluntary in itself, or direct; or voluntary in the cause, or indirect; or involuntary.

1° On directly voluntary pollution.

501. Principles. - I. Pollution directly and perfectly voluntary is always a mortal sin; so that it is never licit to procure it. - This is clear 1° from Scripture: Neither the soft shall possess the kingdom of God.[2] 2° By reason: both because pollution has an intrinsic repugnance with nature, which has ordered the effusion of semen in each sex solely to the work of generation; and because, on account of the vehement delectation in this effusion, the order of nature would soon be overturned, unless pollution were gravely prohibited. Most easily a habit of the same is contracted, which is wont to be followed by alienation from the licit pleasures of marriage, dullness of sense and reason from frequent failing of the mind, weakening of the body, an accumulation of diseases, finally the abominable corruption of the whole man. 3° It is confirmed by the condemnation of proposition 49 by Innocent XI, p. XVII.[3] Hence it follows:

1° In no case, and not even for preserving life, is it licit to intend or procure the effusion of semen, however slight, or to promote one begun.

2° It would probably be licit to expel semen certainly corrupted, provided it could be done without the sense of lust and without direct effusion of healthy semen, for example by the help of a medicine.[1] But today physicians testify that semen is not corrupted, but only not elaborated, and therefore that the hypothesis of corrupted and disease-producing semen is vain.[2]

II. All pollutions according to themselves are of the same species, provided they occur without concubitus. We say according to themselves; because by reason of circumstances there can be annexed to it other malices, for example, if a priest or a married man is polluted; if it is done with a desire of sinning, or by delighting in concubitus with another imagined person, or through alien touches. Hence:

1° He who is polluted by touching a dead person, a sleeping person, or one incapable of deceit, or an infant (provided affection toward the sex or concubitus is absent), need not declare in Confession anything except the sin of pollution.

2° He who is polluted by the touches of others, without affection toward sex, is not bound to explain whether he was polluted by the touches of a man or a woman, but only to say whether that other was a married person, blood-related, etc.[3]

3° He who is polluted from contact with a beast is not bound to express this circumstance if concubitus was not present;[4] a fortiori nothing is to be said about the use of an inanimate instrument.

4° The pollution of eunuchs, boys, and girls, although they do not have perfect semen, theologically differs in nothing from the pollution of others. Nor are diverse grades (inside or outside the womb, etc.) in the pollution of a woman to be distinguished; although by accident a man or woman ought to express grave harm inflicted on himself or on offspring to be born, if it was foreseen.

Note. - Physicians of today see in women no semen properly so called in the humor which is poured forth in them inwardly or outwardly, and they say that that semen improperly so called is not necessary for generation. And this sentence indeed already seemed more probable to St. Alphonsus. Nevertheless effusions of this sort, just as also inordinate motions of women, of themselves speaking, must be declared in Confession; and effusions indeed as sins of luxury consummated (since in women they are the final term of venereal delectation, inasmuch as it is satiated and comes to rest through them), and against nature, since they have been destined by the Creator for the commerce of the sexes. Thus Craisson in the periodical Revue des sciences ecclés.[1]

Practical rules. - I. Those polluting themselves are to be questioned also about immodest touches separated from pollutions, and admonished that they are mortal.[2]

II. From boys or girls it is not to be asked whether effusion of semen was present; because with these it is better to be lacking in the material integrity of Confession than to be the cause that they apprehend things which they do not yet know, or are placed in curiosity to learn them.[3]

III. Commonly they also teach that it is never to be asked of women whether an effusion of this sort was present; for the question is useless. - Women polluted are recognized when, from vehement movement of the organs, great delectation arises in them, by which, when completed, the moved parts are satiated and come to rest.[4]

Notes to n. 501 - note sequence 1. (1) H. A. Tr. IX. 29. 30. Salm. Tr. 26. C. 7. n. 18. (2) 1 Cor. 6. 10. (3) L. IV. 476. Cf. Martinet. L. V. art. 10. § 3. Notes to n. 501 - note sequence 2. (1) L. IV. 478. (2) Scav. T. I. n. 785. nota 2. (3) L. IV. 476. H. A. Tr. IX. 29. (4) L. IV. 467.

2° On indirectly voluntary pollution.

502. Principles. - I. Pollution indirectly, or in the cause, voluntary is then a sin when no reason of necessity or utility is given for positing the action from which the loss of semen is foreseen as going to follow. It follows from what was said in n. 7. - Moreover:

1° It is a grave sin whenever the action is a cause per se and proximate of pollution, as certainly are those things which are gravely culpable in matter of luxury, for example, reading or hearing of very base things, voluntary and morose looking at things altogether obscene, a prolonged conversation with a girl loved inordinately (at least on account of the danger of consent), base and libidinous touches, especially on another's body, morose thought of concubitus, etc.; ... for these things of themselves gravely influence it, and he who posits such a cause, adverting at least in a confused way to the danger, by that very fact wills the effect connaturally joined to it, although he does not intend it.[5]

2° It is venial when the action is a cause per accidens or only remote of pollution, or venial in base matter, to which danger is joined per accidens, or rarely. Such is, for example, a curious look at a beautiful woman, or a less honorable picture, or the coitus of smaller animals, a lightly base reading, a base word uttered in jest, and similar venial sins in the genus of luxury. Likewise causes which are

indeed mortal, but not mortal in the genus of luxury, as, for example, intemperance in food or drink gravely sinful. The reason is because these are judged to influence not of themselves, but rather from the infirmity of nature and per accidens. Except, as is clear, if someone knew that pollution frequently happened to him from causes evil of themselves venially in base matter; because then, from that special disposition, these would be respectively a proximate cause of pollution. But otherwise, "if the causes are altogether slight, as would be the sight of honorable parts of a woman, a lightly base reading, a conversation with a woman not prolonged, or lightly obscene"; for "to avoid them all would be morally impossible."[1]

II. Indirectly voluntary pollution is free from all fault if a sufficient reason is had for positing its cause, provided that 1° the pollution is in no way intended by the agent, 2° the danger of consenting to it is excluded. - The reason is that celebrated one of St. Thomas: Where two effects follow from the same cause indifferent per se, one evil, the other good, it is licit to posit the action by intending the good effect and permitting the evil one.[2] But the reason of acting (or the good effect intended) is called sufficient when it is proportionate, that is, grave for grave danger, slight for slight danger. Thus any reasonable cause of necessity, utility, or convenience excuses from a slight influence (even in the genus of the base), as they commonly teach.[3]

Hence it is not a sin of itself: to ride horseback for the sake of recreation; to take heating foods temperately; to lie in bed in a certain position; from an honorable cause to speak with a person of the other sex; to kiss or embrace a female relative according to the custom of the country; to serve the infirm; to help them in baths; to practice the surgical art; to hear sweet singing; to receive Confessions, and similar things; although there is foreseen as going to follow by accident a pollution, provided it is not intended and a firm purpose is present of not assenting to it if perhaps it happens.

Note. - If beyond the danger of material pollution there is given some danger of formal consent, a graver reason and special caution will be necessary. It follows from what was said in n. 8.

Notes to n. 502 - note sequence 1. (1) T. XXVII. p. 586 sq. T. XXIX. p. 98 sq. and p. 205 sq. Nouv. Rev. Theol. T. VIII. p. 235. (2) Praxis n. 41. (3) H. A. Tr. ult. n. 37. (4) Scav. T. I. n. 782. nota 2. (5) L. IV. 482. H. A. Tr. IX. 33. Notes to n. 502 - note sequence 2. (1) H. A. Tr. IX. 34. L. IV. 484. (2) 2. 2. q. 64. a. 7. (3) L. IV. 484 at the end.

3° On involuntary pollution.

503. Principle. - There is no obligation to restrain pollution occurring of its own accord, that is, in sleep or in wakefulness begun against the will, provided consent to the delectation is absent, or proximate danger of it (which from past experience each one will be able to judge). - The reason is that it is most difficult to restrain it, when it has already begun, nor is man bound to impede it with danger of disease, temptation, or another inconvenience: for then he does not will it, but suffers it. - Yet ordinarily it is very expedient to restrain or impede it, also for the health of the body; and this is valid especially for those who labor under frequent pollution.[1] Craisson assigns a certain material means,[2] which I would prefer to leave to the judgment of wiser men, how much it is worth and whether it can be used by all without danger of soul.

St. Alphonsus notes: 1° "He who suffers pollution ought at least to take care that at that time he avert his mind from delectation and devoutly and trustingly invoke the Names of Jesus and Mary, that he may avoid consent. - 2° If a person exists in half-waking and then is delighted by the copula begun,

he is by no means to be condemned of mortal sin, since full advertence and perfect consent are altogether required for mortal sin; and these certainly he lacks who is half-asleep, and therefore does not have the use of reason perfectly free and ready."[3] Hold the same also concerning nocturnal touches.

What, you ask, concerning distillation and carnal movement?

Resp. 1° Concerning distillation St. Doctor hands down these things: "If it is with some venereal delectation, or with movement of the spirits, it will indeed be mortal if it is not avoided as pollution is to be avoided. - But if without sense and movement, it can be permitted as the emission of another excrement, as they most commonly teach. - But it can never be procured on purpose."[1]

2° The same things, with proportion observed, seem to be said concerning movement of the genital parts. If it is grave and libidinous, it must altogether be avoided, as pollution itself; if it is slight and proceeding from an honorable action, or from the infirmity of nature, it will be more advisable to contemn it, by turning to other things. (Cf. n. 234.)

Note. - Remedies for curing those accustomed to the sin of pollution are: 1° In the order of nature: abstinence from liquors and foods that heat or irritate; discreet mortifications; custody of the senses; prompt repulsion of base thoughts; flight from occasions, bad books, persons of different sex, etc. 2° In the order of grace: fervent prayer and invocation of the B. V. M., especially in time of temptation; - alms; - but especially frequent approach to the Sacraments. "I scarcely think," says St. Doctor with Toletus, "there is another efficacious remedy than to use most frequent Confession; for this Sacrament is the greatest bridle, and he who does not use this should not promise amendment to himself except through a miracle."[2]

Notes to n. 503 - note sequence 1. (1) L. IV. 479. (2) De reb. vener. n. 162. (3) H. A. Tr. IX. 30. Notes to n. 503 - note sequence 2. (1) H. A. Tr. IX. 30. L. IV. 477. (2) L. VI. 464.

§ II. On onanism

504. ○ Onanism is copula begun with effusion of semen outside the vessel. This crime committed among the unmarried is a twofold sin, namely fornication begun or affective, and pollution in effect. - Note that the special malice of onanism, when it is committed by the unmarried, is not rarely unknown; because they easily persuade themselves that there is less evil there where scandal is avoided and the honor of the girl is consulted. Therefore the confessor should not press questions if the penitent seems to be in good faith, nor is there present a special motive of inquiring about it, for example suspicion of abortion procured or attempted, of affinity contracted, etc.

§ III. On sodomy

505. Definition. - The horrendous crime of sodomy is concubitus with an undue sex, or with a due sex, but in an undue vessel.

Division. - One sodomy is called perfect, which is the congress of two of the same sex, namely a male with a male, a female with a female. Another is imperfect, which is concubitus with a person of diverse sex, but in an unnatural vessel. L. IV. 466.

Principle. - Sodomy is a crime much graver than simple pollution. This is clear from the horror which it excites among all, and also from the unheard-of penalties which God inflicted on Sodom.[1]

St. Doctor notes[2] with the more probable sentence: 1° Perfect sodomy is any concubitus whatever with a person of the same sex; therefore, as regards this species, it is not to be expressed either by men or by women in what part of the body the congress or pollution occurred, because its whole malice consists in affection toward the undue sex.

2° Imperfect sodomy is not any unnatural concubitus whatever of a man with a woman, but coitus in the preposterous vessel; for its specific malice consists in affection toward the undue vessel.

3° Yet concubitus or conjunction of bodies is essential in each crime. Hence:

506. You will resolve. - 1° If only mutual touches have intervened, even with pollution, it is not sodomy. Nor is it sodomy if a man pollutes himself between the legs, arms, in the bosom, or even in the mouth of a woman; but they are two other sins, namely pollution in effect and fornication in affection.[3]

2° In Confession there must be expressed: 1) The sex of the accomplice. 2) The sodomitic copula itself, or in the preposterous vessel, if the sex was diverse. 3) The quality of the person, whether married, blood-related, etc. 4) Whether the guilty party was active or passive, by reason, namely, of the danger of pollution, which in the active party happens much more easily than in the passive. Moreover, the circumstance of pollution is supposed from things commonly occurring; wherefore only then, when it was not present, is one to speak about it. 5) Whether force was applied.[4]

3° But when the confessor understands that a woman has been known outside the natural vessel and preposterously, he ought not to ask further in what place or in what way.[5]

Notes to n. 506. (1) See Gen. c. 19 and Rom. 1. 26. 27. (2) L. IV. 466. 467. H. A. Tr. IX. 24. (3) H. A. Tr. IX. 25. (4) L. IV. 468. 469. H. A. Tr. IX. 24. (5) L. IV. 466. Dicunt autem.

§ IV. On bestiality

507. Definition. - Bestiality is coitus with a beast.

The enormity of this crime is clear of itself.

508. ○ To bestiality is reduced sin with a succubus or incubus demon. To this sin there is added malice against religion; and besides also of sodomy or fornication, if the demon appears in the form of a boy or woman; of adultery or incest, if someone is delighted concerning this horrendous coitus, as though he were carrying it out with a married or related woman.[1]

Concerning bestiality those greatly given to lust and much working with beasts are always to be questioned cautiously; for several think that it suffices to confess it as pollution, and there are many who, when they have committed it once or again, perhaps only in adolescence, keep silence about it for a very long time. I have found farmers, concerning whom I doubted whether they knew this sin, to be questioned in the following manner without danger: Have you sinned with an irrational being?

If they affirm, let them be questioned what they did; if they deny or wonder at the question, let the confessor immediately add: I mean to ask whether perhaps you have blasphemed against beasts.

In Confession of this crime it is enough that concubitus be distinguished from a simple obscene touch of a beast. - Inquiry concerning the mode of congress, concerning the species or sex of the beast, would be superfluous and illicit; because the whole deformity of this crime consists in approach to a diverse species. Except if another thing were required on account of reservation of the case.[2]

Notes to n. 508. (1) H. A. Tr. IX. 28. (2) L. IV. 474. H. A. Tr. IX. 27.

ON THE SEVENTH AND TENTH PRECEPT OF THE DECALOGUE.

You shall not steal. - You shall not covet your neighbor's house, ... not his servant, not his maidservant, not his ox, not his ass, nor anything that is his.[2]

The Seventh precept of the Decalogue prohibits every external injustice in the goods of fortune of one's neighbor. - But the Tenth also forbids the internal sins of concupiscence, that is, of desire for the goods of one's neighbor and of unjust action. Concerning the various sins of injustice about goods of fortune we shall speak in the particular Treatise on Justice and Right.

ON THE EIGHTH PRECEPT OF THE DECALOGUE.

You shall not speak false testimony against your neighbor.[3] - You shall not say false testimony.[4]

509. ○ This precept, insofar as it is negative, prohibits 1° chiefly and primarily, that false testimony be said both in judgment and outside judgment; 2° indirectly and secondarily, that the reputation and honor of one's neighbor be harmed.

But insofar as it is affirmative, it commands that, with any simulation and fallacy removed, simple and naked truth be said, and that as such it always obligates indeed, but not for always, since often it is necessary to conceal the truth.

Hence it prohibits 1° perjury against one's neighbor; 2° lying; 3° detraction; 4° contumely; 5° rash judgment and injurious suspicion. Concerning each one must speak, except perjury, of which there has been enough in the Second Precept.

Notes to nn. 509-515 - note sequence 1. (1) Coloss. 3. 9. (2) 2. 2. q. 110. a. 3. (3) Lib. de Mendacio and Contra Mendacium. (4) 2. 2. q. 110. a. 4. Notes to nn. 509-515 - note sequence 2. (1) L. IV. 152. Notes to nn. 509-515 - note sequence 3. (1) L. IV. 151. 152. (2) L. III. 287. (3) L. IV. 151. 154. (4) L. IV. 154. (5) L. IV. 154. Scav. Tom. II. n. 85. Notes to nn. 509-515 - note sequence 4. (1) L. IV. 154. (2) L. IV. 165.

CHAPTER I: ON LYING

ARTICLE I: ON LYING IN GENERAL

510. ○ A lie is speech or signification against the mind with the will (at least implicit. Nouv. Rev. Th. T. 18. p. 479 sq.) of deceiving. - A threefold genus of lie is distinguished: 1° harmful, by means of which unjust damage is inflicted on someone; 2° officious, which is uttered for the sake of one's own or another's utility; 3° jocose, which is done from jest and for the sole sake of trifling.

Principles. - I. A lie properly so called is always intrinsically evil. The reason is, 1° because it is repugnant to right reason to use words against their natural end and institution; 2° because, if it were licit to deceive others in speaking, the order of society, which rests upon the mutual commerce of men, would be altogether overturned. Hence: Do not lie to one another.[1] - St. Thomas,[2] St. Augustine.[3]

II. A harmful lie is grave according to the measure of the damage which is inflicted on a neighbor; for this reason there follows from it the obligation of repairing the damage. - Thus all. St. Thomas.[4]

III. An officious lie is of itself a venial sin, because in it grave disorder is not apprehended. - Thus all. - A fortiori a jocose lie of itself does not exceed venial sin. Indeed sometimes that which is called a jocose lie is altogether free from all fault; because it is not a lie properly so called, but a jest used for the sake of recreation without the will, even implicit, of deceiving, and consequently our definition does not belong to it. But this alone can be admitted when such are the adjuncts of things that the hearers can easily understand that the speaker wishes only to joke. - Thus commonly.

Notes to n. 510. (2) Exod. 20. 15. 17. (3) Exod. 20. 16. (4) Matth. 19. 18.

511. You will resolve. - 1° Those do not lie who assert a false thing which they believe true, but only err. On the contrary, those lie who say a true thing which they judge false, because they speak against the mind.

2° Tropic, ironic, hyperbolic expressions are not lies, when they can and are wont easily to be taken as such by the hearers. Much less are parables lies, which Christ Himself used so frequently. - Nor are equivocations lies, if they do not impede the speaker's sense from being able to be known.

3° Those do not lie who compose fables, or from jest say things openly false, as is manifest.

4° To lying are referred formal simulation, hypocrisy, flattery, and vain boasting, which of themselves do not exceed venial sin; yet they can become mortal, or rather mortal sin can accede to them on account of another species of sin which supervenes.

ARTICLE II: ON MENTAL RESTRICTION

512. ○ Mental restriction is an act of the mind diverting or restricting the words of some proposition to another sense than the natural and obvious one.

Mental restriction is 1° purely or strictly mental, if the sense of the speaker can in no way be perceived, and this is properly called mental; 2° broadly or improperly mental, if the sense of the proposition can be gathered from the adjuncts, for example from the mode of responding, from received usage, etc.

To mental restriction are reduced equivocations or amphibologies, which are expressions having a twofold sense, but one more obvious and the other literal.

513. Principles. - I. It is never licit to use purely or properly mental restriction, nor amphibology not perceptible in a human manner; a fortiori it is not licit to swear with the same, because it is simply a lie. This is clear also from propositions 26, 27, and 28 condemned by Innocent XI, pp. XV and XVI.[1]

514. ○ II. Sometimes it is licit from a just cause to use broad restriction, that is, improperly mental restriction, and equivocal words, when the sense intended by the speaker can be understood. The reason is that this is not evil in itself, since the neighbor is not properly deceived, but his deception is only permitted from a just cause; on the other hand, for the good of society it is required that a means be present of licitly concealing a secret; but sometimes no other means is supplied besides equivocation or broad or improperly mental restriction. - I said: from a just cause; because if the use of such restrictions were permitted without a proportionate cause, no one could or would wish to believe another; and this would yield to the greatest damage of human society. - Thus the theologians most commonly. St. Alphonsus.[1] - Lacroix.[2] - Suarez, Lugo, Laymann, Sporer, Elbel, and innumerable others.

But it is licit to use a broad restriction of this sort even with an oath; although then a greater cause is required, since the divine testimony is not to be usurped without judgment, and indeed the greater in proportion as the words furnish greater occasion of erring. But outside judgment, or unless there is question of entering an onerous contract, it is only venial to swear in this way without just cause.[3]

515. You will resolve. - 1° He is not free from fault who uses a restriction even not purely mental, or an equivocation perceptible in some way, 1) if he does this without reason, but from the sole intention of deceiving, because it is an abuse of signs; 2) if the one questioning has the right of inquiring or commanding confession of the truth and uses that right legitimately, because regularly in a subject there corresponds to that right the obligation of confessing the truth without ambiguity.[4] Add 3) if from this some damage of a neighbor would emerge which from the precept of charity we are bound to avert; 4) while onerous contracts are celebrated; in which case justice demands that naked words be uttered according to the mind of the contracting party.[5]

2° A confessor, questioned by a tyrant whether Titius confessed homicide, can and ought to respond: I do not know; because the confessor does not know this by communicable knowledge. Indeed even if the tyrant insisted and said: Do you not know this by communicable knowledge? He could still respond: I do not know. The reason is that the tyrant well knows that he does not have the right of questioning concerning this, nor does the confessor understand himself to know as a man, but as the vicar of God, and consequently by incommunicable knowledge.

3° A guilty man questioned by a judge not juridically, or not legitimately, can respond that he has not committed the crime, by understanding: one concerning which inquiry can be made, or which he is bound to confess.[1]

4° All public persons questioned concerning things committed to their trust can use a restriction of this sort, as are secretaries, legates of princes, leaders of armies, magistrates, advocates, physicians, surgeons, midwives, and whoever has office and reason of concealing some truth. For if secrets committed to these persons were violated, most grave inconveniences would follow from this in society.

5° A servant by command of his master can deny that he is at home, although he is present; because such speech is generally received by usage for signifying that he is not at home insofar as he can be seen or visited. Yet attend to the custom of places.[2]

Notes to n. 515. (1) Scav. T. I. n. 985. (2) L. IV. 474. H. A. Tr. IX. 27.

CHAPTER II: ON DETRACTION

1° On the vice of detraction; 2° on restitution of reputation.

ARTICLE I: ON THE VICE OF DETRACTION

516. ○ Detraction is the unjust denigration of the reputation of an absent neighbor. But reputation is the good estimation which others have concerning our excellence, whether true or apparent.

Detraction is called simply such if the reputation of a neighbor is violated by the revelation of a true crime; but it is named calumny if violation of reputation follows from the imposition of a false crime.

Detraction can be done in various ways: 1° directly, if either a false crime is imposed, or a true one amplified, or a hidden one manifested, or a good work explained sinisterly; 2° indirectly, namely either by denying the good works of a neighbor, or diminishing them, or also sometimes by being silent when others praise, or by praising coldly. - But all these modes are, of themselves, of the same species, because all regard the same good of reputation. Yet per accidens they could add a new species, for example contumely, injury in goods of fortune, whispering (which intends the dissolution of friendship), a sin against piety, if the person from whom detraction is made is joined to the detractor by a most close bond, and this mortally, unless there is question of persons joined outside the second degree. Scav.[2]

Notes to n. 516. (2) Tr. II. n. 552.

517. Principles. - I. Every direct detraction, whether it is calumny, or detraction simply, is mortal from its own genus, because it is against justice; and indeed it is a graver sin than theft, because it unjustly deprives the neighbor of a greater good, as is clear from common sense and from Sacred Scripture: A good name is better than riches; and A detractor is an abomination of men.[2]

II. The gravity of detraction is to be taken chiefly from the gravity of the damage which the neighbor can suffer from it, and not precisely from the gravity of the defect or crime which is narrated concerning the neighbor. Hence for knowing in a particular case the gravity of detraction, one must attend to the quality 1° of the person detracting, for greater faith is given to a grave man than to a chatterer; 2° of the person harmed, because the more entire reputation and greater dignity he has, the more gravely he will take damage; 3° to the common judgment of men concerning the thing divulged, because by this very judgment, which varies according to the adjuncts of the persons to whom (n. 526. 4°) detraction is made, reputation consists.[3]

518. III. It is never licit to impose a false crime on another, as is clear from proposition 44 condemned by Innocent XI, p. XVI. Yet it is licit from a just cause to manifest another's hidden crime even with loss of his reputation; because sometimes the public or private good requires this, and then the right of one's neighbor to conserving reputation is broken by a more powerful right.[4]

IV. But the causes on account of which, duly under conditions, another's crime can licitly be revealed are the following: 1° the notable utility of the one revealing himself, for seeking counsel or help in a grave matter, yet with any affection toward detraction excluded; 2° the utility of the delinquent, namely for his instruction or correction, etc.; 3° public utility, as for impeding evils threatening the Republic or Religion or some Community, in which case, of itself speaking, each one is bound to reveal; 4° grave utility, even private, either of hearers, or of others, for example so that they may be freed from evils, damages, or inconveniences certainly or probably going to occur. Thus you can make a master more certain concerning the infidelity of a servant; reveal to another, who consults you about this on account of a grave business,[1] the defects of some person; indeed sometimes you will be bound to this according to the rules of charity. Thus a murderer will have to be revealed if some innocent person were accused of this crime; for the condition of the innocent is stronger.

The reason for these things is that the right in true reputation and false, or apparent and estimated reputation, differs to this extent, that the former is absolute, or to be observed by all always and everywhere, and therefore calumny is never licit (this number III); but the latter is limited, that is, it ceases when others would take grave damage from error concerning someone's excellence: - indeed it ceases even in doubt concerning the gravity of the damage, because in such doubt the innocent must be favored. Wherefore in the cases alleged neither is justice violated, since the neighbor's right is limited, nor charity, because this does not obligate with grave inconvenience.[2]

I said: duly, however, under conditions, namely 1° that knowledge of this sort has not been had from Sacramental Confession, which, as is clear, it is never licit to use; 2° that the damage cannot be avoided in another way; 3° that it is sufficiently proportionate to the loss of reputation; 4° that neither more nor to more persons be manifested than is necessary for averting the damage; 5° that you have not received the knowledge unjustly by force or fraud, suppose by opening letters, etc., unless nevertheless, because of changed adjuncts, it would be licit for you to seek it even in this way; which case would be if a) revelation were necessary for the common good; b) the other were held from justice to reveal the secret for repairing your damage; c) he were vexing you unjustly.[2]

Notes to n. 518 - note sequence 1. (2) Prov. 22. 1 and 24. 9. (3) L. IV. 967. Mar. p. 410. (4) L. IV. 972. Notes to n. 518 - note sequence 2. (1) L. IV. 968. Mar. p. 407. (2) L. IV. 969.

519. Questions. - Quaer. 1° Does he sin gravely who reveals one mortal sin of another?

Resp. 1° It is not always a grave sin to reveal the sin of another, even if it is manifested to several. Therefore one must attend to the adjuncts of things and persons, from which you will gather whether someone suffers grave loss of reputation from the revelation of the sin.

Resp. 2° If the sin would gravely dishonor either in itself, or relatively to the one defamed, certainly the detractor sins gravely as often as he manifests a sin of this sort, although one only, to several, because grave damage of reputation is inflicted on the neighbor.

Resp. 3° But whether it is mortal to reveal a sin of this sort to one prudent and discreet man, from whom namely there is no danger that it be manifested to others, with the spirit of harming and damage of another genus excluded, is controverted.

The first sentence, more common and more probable, says that one sins gravely, unless inadvertence or great levity excuses. The reason is, 1° because injury to reputation even before one grave person is

judged grave, as is clear from rash judgment, which of itself is grave; 2° because often men bear it with more distress to be harmed before one grave person than before three or four others.

The second sentence, sufficiently probable, denies. The reason is that since reputation consists in the common estimation of men, he is not judged absolutely defamed who has lost his good name among one or another only.[1]

520. ○ Quaer. 2° Does he commit sins diverse in number who detracts from someone in several matters, or affects him with diverse contumelies, or detracts from one man before several?

Resp. See what was said in n. 227, questions 1° and 2°.

Quaer. 3° Can a public crime be revealed to those ignorant of it, who dwell in the place where it is already public?

Resp. In the affirmative, because this seems neither to be against justice nor against charity, whether it is public by publicity of law, or by publicity of fact.[2]

521. ○ Quaer. 4° Can a crime public in one place be revealed in another place where it is unknown?

Resp. 1° In the affirmative, more probably of itself, at least without grave sin, if there is question of a nearby place, or of a place where it is easily and shortly to be made public, and no grave damage follows for the one defamed from the anticipation. The reason is that reputation to be lost shortly and necessarily is of no estimation, or certainly not of great estimation, and morally speaking is already cast away.[3]

Resp. 2° If there is question of places to which the divulgation is not going to come, or not except after a long time, one must distinguish:

1° As regards notoriety of law: 1° It is not against justice, because the judge, when he publicly condemns someone, intends to despoil the guilty man of reputation, so that he may be everywhere an example to the rest. Thus commonly. - 2° Nor more probably is it against charity, at least gravely, because it greatly contributes to the common good that the sentence be divulged everywhere, so that the penalty may be more efficacious, and the guilty man may be known also by inhabitants of a remote region, who could have to conduct business with him. - Thus more commonly,[1] with Lugo, Salmant.

2° As regards notoriety of fact, it is controverted among theologians.

The first sentence, very probable, says that it is not of itself illicit, because neither is there sin against justice, nor against charity, at least gravely, provided there is question of crimes which render a man pernicious. The reason is that it conduces to the public good that criminal men be known, so that all can guard against them.[2] (Q) p. 480.

The second sentence, on the contrary, says that it is a sin both against justice and against charity: 1° against justice indeed, because one defamed in one place has not lost the right to reputation in another remote place, where the reputation of the crime is not shortly going to arrive: therefore he does injury to him who defames him there; 2° against charity, because the one defaming harms his

neighbor in a grave matter, or in reputation, which elsewhere he continues to possess without injury. - Billuart, Antoine.

Notes to n. 521. (1) L. IV. 973. (2) L. IV. 974. (3) L. IV. 974. Appendix annotation (Ω), to n. 521. p. 232. col. 2. "To this sentence a new strength is added today from the fact that through railways the distance of places almost vanishes, and the things which ancient theologians taught concerning inhabitants of a very neighboring place, namely that a matter can be manifested without the fault of detraction, now have force for the inhabitants of an entire region." Marres, p. 416. n. 330. I add from St. Alphonsus, L. IV. 974: "Fr. Concina in this question distinguishes, and says that when a delict is public by notoriety of fact, that is, if it has been perpetrated publicly, then it can be manifested in every place; but when it was public only by notoriety of fame, with respect to its manifestation he thus concludes: All must be cautious, because this public fame is easily feigned."

522. ○ Quaer. 5° When can a crime or fact be called public or notorious?

Resp. 1° It is called altogether public or famous when it has become known to the greater part of the community, or city, town, village, etc.

Resp. 2° It is called simply public or notorious when it has become known to so many persons that it cannot be concealed by any evasion, and morally it is impossible that it not come to the knowledge of the community. But it is very difficult to determine the knowledge of how many persons is required for a crime to be judged public. Theologians have assigned various rules according to the various number of persons who compose the community. According to the more common sentence a crime can be called public if fifteen know from a community of one hundred persons; or twenty from at least three diverse families in a community of a thousand persons; or forty dispersed in a town of five thousand persons.[3]

But, as Billuart rightly says,[1] in practice this matter is remitted to the judgment of a prudent man, who, with the number of the community, the talkativeness of men, and other circumstances attended to, judges whether it is possible that the matter remain secret. - St. Alphonsus also warns[2] that a delict made public in one monastery cannot be called absolutely public, and therefore cannot be manifested elsewhere, not even in another monastery of the same Order, although it had frequent communication with it.

Notes to n. 522. (1) L. IV. 974. (2) Ib. and H. A. Tr. XI. 12; In Retr. recent. n. 12. (3) L. IV. 975.

523. ○ Quaer. 6° Can a delict formerly public, but now hidden, be made public without grave fault, at least against charity?

Resp. In the negative, unless there is question of a delict formerly public by notoriety of law, or one pertaining to history.[3]

Quaer. 7° Does he sin gravely who only reports the grave sins of another as heard from others, for example if he says: It is reported, they narrate, I have heard such or such about that man?

Resp. 1° He sins gravely against charity and justice if he reports in such a way that others are more probably and deservedly going to believe it, for example if he asserts that he has heard the things which he narrates from a person worthy of faith, because then he furnishes a sufficient cause of believing the evil; otherwise, if probably faith is not given to the things said, because no infamy will arise from it. But he will much more easily sin gravely by reporting, even as a mere doubt, the enormous sin of another, for example heresy, sodomy, etc.

Resp. 2° He sins gravely against charity if he reports what has been heard before those who will probably believe it from levity or malice of their own; because each one is bound under grave sin from charity to take away the occasion of another's damage, when he easily can. Yet he does not seem to sin against justice, because he is not the efficacious cause of the damage.[4] - Billuart,[5] and others commonly.

Notes to n. 523. (1) De Justitia, diss. 15. a. 2. § 5. (2) H. A. Tr. XI. 12 at the end. (3) Ib. 13. (4) L. IV. 977. (5) Ib. a. 2. § 4.

524. ○ Quaer. 8° In what way does one hearing detraction sin?

Resp. 1° He certainly sins gravely against justice who efficaciously - for example, by exciting, praising, questioning - induces another to detract. (a) p. 480.

Resp. 2° He sins gravely against charity who rejoices in grave detraction done by another, because he rejoices in the grave damage of his neighbor. Except if he rejoiced only in the hearing of a new or curious thing, but not in the detraction itself.

Resp. 3° A Superior sins against charity if he does not impede detraction insofar as he conveniently can, even if he does not rejoice in it; because the special obligation is incumbent on him of correcting the detractor, or of meeting the damage of the defamed subject. But the Superior does not sin against justice, either of the detractor or of the defamed; for neither is this one bound from justice concerning the temporal good of a subject, nor that one concerning the temporal good of one not a subject. But a Bishop and pastor are bound from justice to correct a subject detracting, as one sinning.[1]

Resp. 4° A private person for the most part is excused either altogether, or at least from grave sin, if he does not impede detraction, whether from shame, or from fear, or even from negligence, even if he conveniently can, provided he does not rejoice in it, and no other damage besides infamy accedes. The reason is that in this matter it often cannot be clear that correction will be profitable; indeed it is often dangerous, and it can deservedly be feared that detraction will rather be increased or prolonged. Yet he will not be free from some fault if he can easily apply efficacious correction.[2]

But those are excused even from venial sin who, when they notice detraction, depart, turn the conversation to other things, or avert the face and show themselves sad according to that saying: A sad face dissipates the detracting tongue.[3]

Appendix annotation (a), to n. 524. p. 233. col. 1. "Yet he seems to be excused from mortal sin who privately fishes out the crime of another without any intention of further publishing it, because then ... no grave harm is brought upon the other's reputation; or who, having suspected something light, contrary to opinion induces another to grave detraction, since that is done outside his intention." Marres, p. 417. n. 332, from Sporer, Tr. V. C. IV. n. 105.

525. ○ Quaer. 9° Is it licit to defame oneself?

Resp. In the affirmative, of itself, if it is done with right intention, scandal and the damage of others being excluded. The reason is that it is not against justice, since each one is master of his own reputation; nor against charity, because this does not obligate one to conserve external goods except insofar as one's own salvation or that of a neighbor requires it.

But per accidens you will sin, and even gravely, if your reputation is necessary for your office, or if from this damage of life could arise for you, or of infamy for others.[4]

Notes to n. 525. (1) L. IV. 980. H. A. Tr. XI. 17. (2) L. IV. 981. (3) Prov. 25. 23. (4) L. IV. 983.

526. You will resolve. - 1° It is a grave sin to detract even from the dead in a grave matter; for they are not despoiled of the right to reputation, although they have departed from the living. Hence historiographers can sin gravely by branding a mark of ignominy upon the memory of the dead without sufficient cause, by manifesting hidden things, exaggerating known things, and not reporting penance done.[1]

2° It can be lethal to reveal so many things, although not individually grave, concerning someone constituted in conspicuous dignity, that his reputation is notably harmed. Yet the faithful scarcely attend to the grave malice.

3° It is mortal if you say that someone is an adulterer, although you have probable indications concerning this; because you bring grave harm to his reputation. Indeed the same must be held, even if you said it was probable that he is such.

4° It is grave to say concerning a priest that he has committed a duel, that he is a lover of girls, and other things of this sort. But often it is not lethal to assert this concerning a soldier, or even concerning a young man of mediocre reputation; nor to say concerning a girl that she is talkative, proud, etc.[2]

5° It is not grave detraction to speak badly concerning someone indeterminate, for example, that in such a place there are many wicked, drunken, immodest persons; because grave injury is done to no one. Likewise, it is not grave to report some crime concerning someone whom the hearers do not know, nor ever will recognize, even if he is named: indeed this of itself is free from all fault, because there is no estimation of one unknown.

6° Yet it is lethal, at least commonly speaking, to detract gravely from some Monastery, although no Religious is named, for example, if it is said that in it an evil life is led, that a grave sin has been committed. The reason is that the Religious of the same Community are so joined among themselves that before outsiders they are judged as though responsible in common one for another. Hence the whole Community is wont to be stained before the imprudent and simple.[3]

Notes to n. 526. (1) L. IV. 978. (2) Tr. IV. 967. (3) L. IV. 978.

527. ○ 7° It is not mortal to say concerning a public drunkard that he has become drunk on this day, even if he did it secretly; indeed sometimes no sin is present, if someone has lost every reputation as regards something, for example if you say concerning a prostitute that she has fornicated. Nor is it mortal to dishonor one infamous in one crime concerning another crime closely related, for example, if you say concerning an adulterer that he has sent love letters, or concerning a drunken man that he has quarreled with his wife; because such revelation is not a new infamy, or at least not grave. Yet to defame someone concerning a disparate and unconnected crime can be mortal, because he who is dishonorable in one genus of vice has not therefore lost the right of reputation as regards the rest.[1]

8° He does not sin, at least gravely, who, only for the sake of solace, with intention of detracting excluded, narrates to some friend an injury done to him by another, even if from this some infamy

comes to the author. Hence servants revealing injuries inflicted on them by masters, wives by husbands, children by a father, Religious by a Prelate, etc., are probably excused, at least from mortal sin; because the author of the injury cannot be reasonably unwilling, and demand so difficult a thing, that the one harmed lack solace or necessary counsel. Yet one must take care lest it be said to more persons, and lest the person be named more openly than is necessary for counsel or solace.[2]

9° Unless someone is to be affected by grave damage (as, for example, can happen from the revelation of illegitimate birth by which one is deprived of desired nuptials), or by great sorrow, it is slight to uncover the natural defects of the soul or body of another, for example his stupidity, or certain dispositions to more common vices, for example that someone is proud, avaricious, irascible; for the former are not moral, and neither the former nor the latter are judged gravely defaming.[3]

10° It is not licit in general to reveal another's hidden crime by at the same time narrating the penance done, because some sinister opinion always remains.

11° Of itself it is grave to name a person directly, but only to indicate his defects indirectly (by saying, for example, I know many things about him, but charity forbids me to disclose them), if such things are apt to cast in grave suspicion. (b) p. 480.

Notes to n. 527. (1) H. A. Tr. XI. 14. (2) L. IV. 973. (3) L. IV. 967. Appendix annotation (b), to n. 527. p. 234. col. 2. "That someone sin mortally by detraction, these conditions are required: "1°. That someone either truly bring grave harm upon another's reputation, or believe that he is bringing it; "2°. That he not have, or not invincibly believe that he has, a legitimate reason for injuring another's reputation; "3°. That he attend at least in confused fashion to the mortal malice of the action, or to the grave harm to be inflicted on another." Marres, p. 416. n. 332.

ARTICLE II: ON RESTITUTION OF REPUTATION

528. Principles. - I. The detractor is bound from justice, as much as can be done, 1° to repair the reputation unjustly taken away; 2° to compensate all temporal damages arising from the defamation and in some way foreseen.

The reason of the first is that through the taking away of reputation a damaging injury has been inflicted; for the right which each one has to reputation cannot be taken away by private authority; and so, since restitution of a good unjustly taken away is necessary, that injury must be repaired. - Thus all.[1]

The reason of the second is that all damages proceeding from detraction are to be attributed to the detractor as their efficacious cause, whether the crime revealed is false or true, since in each case the detractor has unjustly harmed reputation. - Thus commonly.[2]

II. The obligation of restoring reputation is personal. But the obligation of repairing damages which have arisen from defamation is real, and therefore passes to heirs. - The obligation of restitution urges also if someone has detracted from the dead. Nor can heirs condone it, since they are not masters of another's reputation.

529. ○ III. Restitution of reputation is to be done in one way by a calumniator, and in another by a simple detractor. Hence:

1° A calumniator is bound to retract the things said, and indeed of itself even with loss of his own reputation, if otherwise reparation cannot be made; the reason is that the condition of the innocent is better than that of the guilty, and he ought to impute to his own malice whatever he is going to suffer on account of this.

2° A simple detractor cannot retract the things said, because thus he would lie, but in another way, as much as is in him, he ought to restore reputation, by saying, for example, that he spoke badly, that he erred, or something similar; for not only those err who recede from truth, but also those who recede from rectitude, according to that saying:[3] They err who work evil. But often that mode does not suffice among the intelligent and clever, who rather from these formulas conjecture that the crime is true, which is not openly asserted to be false. Therefore then the detractor, by being silent concerning the things said, on an occasion being given, ought with dexterity and truth to praise and honor him from whom he detracted.

Let the confessor take care that compensations of reputation of this sort, when they can conveniently be made, be made before absolution, because afterward they will be fulfilled with difficulty.[5]

Notes to n. 529. (1) L. IV. 990. (2) L. IV. 996. (3) Prov. 14. 22. (5) H. A. Tr. XI. 18.

530. You will resolve. - 1° He who has unjustly defamed another by manifesting a true crime is bound to repair the whole damage coming from this and foreseen, at least in common, because that unjust revelation of his is the true and sole cause of the damage.[1] Hence he who in this way impeded someone from entering into a contract with a merchant, who would have perceived honorable profit from it, must satisfy him according to the estimation of the profit. Likewise he who for this reason deprived another of an office - for example, by accusing a man who is now upright of a delict which he secretly committed some years before - is bound to satisfy for the measure of the emolument lost. But in estimating damages, the hope of gain indeed, speculatively speaking, is to be considered with St. Alphonsus;[2] yet practically the estimation of the hope will have to be judged from the gain itself, account being taken also both of the labor which he was compelled to spend on the office lost and which he now spends on another business, and of the uncertainty whether he would otherwise have discharged the office for a long time, which uncertainty must be attended to especially in our region. Cf. Kenrick.[3]

2° He who detracted through a libel is bound, so that the restitution be efficacious, to make it by contrary writings or by public revocation. Likewise the reparation ought to become known, if it is known that the defamation has reached many, but it is unknown to whom it came.[4]

3° Likewise, in default of the defamer, those who cooperated in propagating the defamation are bound to reparation of reputation, and all these are equally bound concerning damages of fortune, if any have occurred.

4° A defamer is not bound to petition pardon if he cannot repair reputation; because through the petition of pardon the lost reputation is not restored; nor is he more urged by the obligation of seeking pardon than he who cannot restore goods of fortune in which he has harmed someone. - Thus commonly.

Notes to n. 530. (1) L. IV. 994. 996. (2) L. IV. 996. (3) Tr. X. n. 162. (4) L. IV. 997.

531. Questions. - Quaer. 1° What are the causes excusing from restitution of reputation?

Resp. The following are commonly admitted:

1° If the delict which you revealed to one or several has become public by another way, or if reputation has been repaired in another way, for example by a sentence of a judge, etc.

2° If it is prudently judged that the memory of the crime has been erased by oblivion through passage of time. - But in doubt, a true crime in general is not to be recalled into the memory of men, unless there is evident danger lest that infamy return into memory in another way; for then restitution obtains the desired effect with more difficulty. But if the crime is false, the defamation is to be recalled. Except, however, if perhaps the greater good of the defamed man counsels otherwise, or if certain damage threatens the detractor from the retraction, unless the doubtful damage of the defamed in some case ought to be estimated higher.[1]

3° If restitution of reputation cannot be done without much greater damage of the one defaming, as if the danger of life were imminent for him, and not for the defamed, or if a prelate must undergo much graver infamy from restitution of reputation taken away from a lowly man: in which case it will suffice afterward to extol the defamed man with merited praise. L. IV. 1002.

4° If reparation is morally impossible on account of too great distance of places or other special difficulties, which are especially found in the reparation of simple detraction; for example, if those who heard the detractor cannot be recalled from their preconceived opinion.

5° If it is judged that faith was not given to the detraction by the hearers, as happens more often when detraction is done in the heat of anger.

6° If the defamed man has remitted the obligation expressly or tacitly, provided he can remit it; indeed sometimes presumed condonation suffices.[2] But he remits it invalidly if another, suppose an accomplice, loses reputation thereby; illicitly, namely with charity or piety forbidding, if someone, for example a priest, needs reputation for the utility of others.[3]

Quaer. 2° Is there given an obligation of restoring reputation harmed without formal injustice, for example, if someone detracts from inadvertence?

Resp. In the affirmative, because each one is bound to repair damage arising from his action, although damaging only materially, if he conveniently can, as we shall say in the Treatise on Justice and Right.[4]

Notes to n. 531. (1) L. IV. 998. (2) L. IV. 1003. (3) L. IV. 1003. (4) L. IV. 994.

532. ○ Quaer. 3° Is the defamer bound to restore reputation also before those who have received mediately the crime revealed by him?

Resp. In the affirmative, more probably, if you violated reputation before hearers whom you foresaw would easily divulge the infamy; because then you are the true and voluntary cause of the damage; otherwise you are not bound.[1]

Quaer. 4° Are you excused from restitution of reputation if the one harmed has also violated your reputation, and is unwilling to restore it?

Resp. Navarrus, Sporer, and certain others deny; but more probably one must affirm with St. Alphonsus;[2] because you are not bound to render to another his right if he refuses to render yours to you. (c) p. 481.

Quaer. 5° Are you bound to compensate reputation with money if you cannot restore it?

Resp. In the negative, at least more probably, because justice obligates only to rendering the thing taken away, or its equivalent; but money was not taken away through detraction, nor is it the equivalent of reputation, since it is of another order.[3] - Yet foreseen damages are to be repaired. See n. 528. (d) p. 481.

Notes to n. 532. (1) L. IV. 991. (2) L. IV. 999. (3) L. IV. 1000. Notes to nn. 532-543 - note sequence 1. (1) L. IV. 970. (2) Ib. (3) L. II. 70. Notes to nn. 532-543 - note sequence 2. (1) L. II. 70. (2) Mar. p. 434. n. 368; p. 438. n. 378. Appendix annotation (c), to n. 532. q. 4°. p. 236. col. 2. From the things said in this place concerning compensation, and at the same time from the things handed down in n. 531 under 6° concerning presumed condonation of the obligation of restoring reputation, some (see Marres, p. 431. n. 362) adhere to Sporer (Tr. V. C. IV. n. 116), who writes: "I think that commonly men, especially common people, are excused among themselves from restitution of reputation; for since generally they know that others everywhere detract, and that restitution is never made, nor do they themselves demand restitution, they can be judged to wish mutually to remit to one another the debt of restoring; or certainly to wish to use mutual compensation in not restoring." Appendix annotation (d), to n. 532. q. 5°. p. 236. col. 2. They ask whether it is lawful for one to compensate himself by money in secret for reputation which another either cannot or does not wish to restore. St. Alphonsus denies against others. See L. I. 35 in the note of Fr. Heilig to this number.

CHAPTER III: ON CONTUMELY

533. ○ Contumely is the unjust injury of honor inflicted on one present and knowing. But honor is the external attestation of the estimation which is held internally concerning someone's excellence. But someone can be present either personally or physically, or morally through an image, and through another thing in which he is in some way represented.

But contumely can be done 1° negatively, through omission of honor due here and now; 2° positively, both by words and by deeds or signs of contempt.

To contumely are referred 1° derision,[3] by which someone is contemned by words and laughter; 2° mockery, by which someone is ridiculed by ridiculous gestures; 3° reproach, by which indigence, defects, or obscurity of birth is objected to someone.

534. ○ I say I. Contumely is a mortal sin from its own genus. For it is something graver than detraction, which of itself is grave. Besides, this is clear from the words of Scripture:[4] But he who shall say to his brother: Raca, shall be guilty of the council; but he who shall say: Fool, shall be guilty of the hell of fire.

I say II. Contumely of itself induces the strict obligation of restoring honor and of repairing damages, if any have followed, at least if they have been foreseen in a confused way, as is clear from what was said about restitution of reputation.

But although we are bound to tolerate contumelies - by casting aside the spirit of vengeance - nevertheless sometimes it will be expedient to repel contumelies, namely when tolerance could harm the common good, for example if a Prelate by tolerating were rendered contemptible, and thus the petulance of subjects were increased, etc.

Notes to n. 534. (3) L. IV. 1000. (4) Matth. 5. 22.

535. You will resolve. - 1° Honor publicly taken away through contumely is to be restored publicly before those who were witnesses of the dishonoring, or at least in such a way that the satisfaction can come to their knowledge. But it suffices that satisfaction be made through another person, who in the name of the one dishonoring seeks pardon.[1]

2° Honor harmed through hidden contumely must likewise be restored, because a true damage of honor has been inflicted on the neighbor; yet reparation can be made secretly.[2]

3° That restitution of honor is required which is judged sufficient for manifesting estimation according to the condition of the person offended. For if he who dishonored was a Superior, it will suffice if he greets the dishonored man, visits him at home, or shows him benevolence. But if he was an equal, or a fortiori an inferior, greater satisfaction is required, namely that he anticipate in greeting, yield place, ask pardon, etc., if he cannot satisfy sufficiently in another way.[4]

4° If the dishonored man has taken vengeance, for example by striking the other, wounding, ... for the most part further satisfaction is not required for honor; because he seems to accept vengeance for

satisfaction, and the other by not resisting seems to confess his own fault and estimation concerning the other.[5] - Likewise rustics are exempt from restitution of honor if equal insults or reproaches have mutually been hurled between them, because by that very fact compensation is made.

5° In practice it is often expedient that the confessor omit admonishing a penitent existing in good faith concerning the obligation of satisfaction, especially if he foresees that the admonition will not be profitable; or if he thinks that he who has been dishonored will easily condone it, or will refuse reparation especially public, lest the memory of the injury return among others, or lest he himself be affected by more shame, etc.[1]

Notes to n. 535. (1) L. IV. 966. (2) L. IV. 984. (4) L. IV. 986. (5) L. IV. 989.

CHAPTER IV: ON RASH JUDGMENT, SUSPICION, AND RASH DOUBT

536. ○ 1° Rash judgment is firm assent, conceived from light indications, concerning some sin or defect of one's neighbor: it must be distinguished from opinion, which is assent less firm and with fear concerning the opposite.

2° Rash suspicion is a certain inclination to assent concerning the evil of one's neighbor from an insufficient reason.

3° Doubt is a suspension of the mind determining itself toward neither part.

537. Principles. - I. Rash judgment concerning the fault of one's neighbor is a mortal sin from its own genus against justice; for each one has a right to a good estimation of himself before individuals, nor should anyone be presumed evil until he is proved: consequently he inflicts grave injury on the neighbor who judges rashly against him in a grave matter. Yet more often it is venial because of smallness of matter or imperfection of the act.

II. For the gravity of rash judgment it is required 1° that it be firm, or without doubt; 2° that it be fully deliberate and voluntary; 3° that it be in a grave matter concerning a determined and known person; 4° that it rests upon indications which are known as light and inept for judging. The reason for these things is that otherwise it would not be a true judgment, nor truly rash, nor gravely injurious to the neighbor. But often it is slight because of the defect of some one of the conditions commemorated.[2]

III. Rash suspicion, opinion, and doubt concerning the stain of a neighbor are venial from their own genus. The reason is that on account of weak and easily movable adherence they ordinarily bring only slight damage to the neighbor, since they do not remove reputation, but only diminish it and render it doubtful.[3] - But doubt concerning an extraordinary sin is grave, because it inflicts a greater injury than certain judgment concerning an ordinary one.[1]

Notes to n. 537. (1) L. IV. 988. (2) L. IV. 962. (3) L. IV. 963.

538. You will resolve. - 1° He does not sin gravely who judges sinisterly about a neighbor if the judgment rests on indications sufficient for prudent probability, because moral certainty and true probability are not so distant that it is judged a grave injury to hold as almost certain that which is very probable.[2]

2° He does not sin gravely who, in judging, does not advert fully to the insufficiency of the motives, or to the grave matter of rash judgment, or admits only slight negligence in repelling the judgment.[3]

3° He does not sin gravely who rashly judges concerning someone indeterminate among several, for example of some assembly or community, or even concerning a determined person whom, for example, he sees from afar but does not know.[4]

4° You would not judge rashly if, hearing something from an upright and trustworthy man against a neighbor, you believed it. Much less if you only suspected or doubted, since much less is required for

prudent suspicion or doubt than for prudent judgment; but otherwise if you heard something from a perverse man or one badly affected toward another.

5° Doubtful things are to be interpreted in the better part in this sense: that if in doubt about someone you wish to make a firm judgment, you are bound to make it in the better part, since in doubt he cannot be despoiled of his right; but not in this sense, that, a founded doubt having been left, you ought to conceive a firm judgment concerning him in the better part: for you are not bound to expose yourself to the danger of erring.[5] Hence:

6° It is licit to guard against damages from fear not altogether imprudent; and so, for example, you can keep your things under guard, lest they be stolen by a stranger staying in your house; because, although you cannot judge positively that this or that man is a thief, nevertheless you can consult for yourself excellently, since you know for certain that there are sometimes thieves among men. Wherefore Superiors also deservedly observe subjects.

Notes to n. 538. (1) L. IV. 963-965. (2) Ib. 962. (3) Ib. and H. A. Tr. XI. 3. (4) Ib. Cf. Lugo, De Just. D. 14. S. 2. n. 26. (5) Mar. p. 424. n. 345.

APPENDIX: ON THE VIOLATION OF A SECRET

539. ○ A secret in general is called whatever is hidden: as regards our matter, we call secret whatever either from its own nature, or from a special contract, ought to be kept hidden.

A threefold secret is distinguished:

1° Natural, which, without any contract, arises from the mere nature of the thing, as if you cannot manifest it without harm to another, either in estimation, or in goods, etc.

2° Promised, which someone, hearing from another or learning by chance, promises by the gratuitous contract of promise to preserve.

3° Committed, if someone manifests something to another, and at the same time tacitly or expressly demands silence from him concerning it.

540. Principles. - I. A natural secret in a grave matter obligates of itself under grave sin, and indeed from justice, unless a just cause excuses. The reason is that from the revelation of the secret there follows of itself damage to the neighbor, who has the right not to be harmed without reasonable cause.[1]

II. A promised secret obligates of itself gravely or lightly according to the quality of the matter (which namely would demand a natural secret apart from any promise), and the nature of the obligation undertaken, which, unless it is clear concerning the intention of the one promising wishing to obligate himself from justice, for the most part is from fidelity alone. The reason is that the contract is contained in a simple promise, which of itself obligates only from fidelity and according to the intention of the one promising, as was said concerning a vow.[4]

III. A committed or communicated secret, which is also called rigorous, obligates of itself under grave sin from justice, and indeed more strictly than a merely natural secret, and also than a promised one; because beyond the natural obligation there urges also the obligation from an onerous contract expressly or tacitly undertaken.[5]

541. Questions. - Quaer. 1° What are the just causes of manifesting a secret?

Resp. 1° The rightly presumed consent of him whose interest it is that the secret be concealed. - 2° Divulgation of the matter arising from elsewhere. - 3° Damage to the Republic or to private persons that is going to follow from the secret. Yet if there is question of damage already inflicted, you cannot licitly reveal a committed secret, until the one causing the damage himself is bound to betray himself. And in this a committed secret differs from a merely promised one: that in this latter the one promising did not receive knowledge of the matter by force of his promise, but gratuitously promises secrecy about knowledge received in whatever way. Moreover, while afterward he promises this, even with an oath added, he cannot by his promise exempt himself from an obligation by which he is already held. Therefore since each one questioned legitimately by a judge is bound to open the truth, the promise of secrecy cannot be extended to the case of the judge legitimately questioning. But the contrary happens in a committed secret. For the common good demands that men not, from fear of

revelation, be deprived of the convenience of seeking necessary counsel or help, which nevertheless they would never seek unless they were certain of secrecy to be observed. Therefore the common good demands that as long as the one committing can licitly preserve his secret, he retains the right that the other not betray it. Hence the reason why physicians, advocates, midwives, theologians consulted, etc., are not bound to open to even a judge questioning the matter known by a committed secret; indeed why they are bound not to open it, which nevertheless, insofar as it concerns physicians, surgeons, and midwives, is not acknowledged by our common law, nor can it be demanded by those committing, since this disposition of law is judged known to them.

Quaer. 2° Can you reveal a secret if you promised to preserve it even with loss of life?

Resp. 1° In the affirmative, if the common good demands it, because a promise made against the common good is null.

Resp. 2° In the negative, if there is question of your own damage simply grave, because it is better to preserve a secret promised by this special contract. In the negative also, very probably, if there is question of your extreme damage, because you have expressly renounced your right, nor is it illicit to omit the conservation of life, that you may keep a promise. - Thus Lugo, Lacroix, and St. Alphonsus.[2] - Yet St. Author deservedly says the opposite also is sufficiently probable.

542. ○ Quaer. 3° Does he sin gravely who reveals a secret to one or another upright man under the same secret?

Resp. In the negative, probably, of itself; because in this case a grave injury toward another does not seem to be committed, provided it is not revealed to a person to whom the one committing the secret to you is deservedly presumed to have specially wished it to be concealed.[1]

I said, of itself; because in practice, on account of the circumstances, revelation of a secret easily becomes grave, namely when you suppose too lightly that the persons to whom you commit a received secret are so discreet that they will certainly preserve it, especially if there is question with women. For a secret was committed to you because you were thought discreet; but if you violate it, do you think another, in whom you confide, will be more discreet than you yourself?

Quaer. 4° Does he sin gravely who opens or reads the letters of another?

Resp. In the affirmative of itself, or from its own genus. The reason is that by natural right and by the law of nations there is an obligation of leaving the secrets of letters unharmed; otherwise human commerce would be ruined. - St. Alphonsus,[2] and others commonly. And indeed in this way there will be committed in genus a sin against justice and against charity; but only mortal against charity, if it is thought that matters of small moment are contained in the letters, and he to whom or by whom they are sent is to be gravely saddened by it. - The same is valid for those who, against the master's will, read another's writings by stealth, and probably for those who join and read letters torn into small pieces. - But damage perhaps inflicted against justice must be repaired.

Except the following cases: 1° if the tacit or presumed consent of him who writes, and of him to whom the letters are sent, is present; 2° if it is known or presumed that the letters contain matters of slight moment; 3° if it is done from a just cause, for example, for averting public or private damage even of another, provided one has the right of opening the letters for driving away that evil, and reads

no more than is necessary for this end. In what cases one enjoys that right, see above n. 518. - 4° If the letters are opened from levity or from some inadvertence.[3]

Notes to n. 542. (1) L. IV. 970. (2) Ib.

543. You will resolve. - 1° A promised secret obligates in no way whenever otherwise you were held to manifest the matter, for example if you are legitimately questioned by a Superior or by a judge.[1]

2° A committed secret must generally be preserved by you, even if you are questioned by a Superior or judge, etc.; but you must answer that you know nothing about this; since you have knowledge of this sort just as if you did not have it.[2]

3° A secret only implicitly or tacitly committed must be preserved in the same way as if it had been expressly committed. Thus, strictly speaking, counselors of Princes, leaders of war, advocates, physicians (concerning physicians cf. what was said for this region n. 541, question 1° at the end), theologians consulted concerning some question, and universally all to whom a secret is committed for the sake either of counsel or of solace or of help, are bound to secrecy.

4° A religious Superior licitly opens the letters of his subjects or of others sent to them either by the statute of the Religion, or by custom, or from prudent suspicion that they contain something less right.[3]

5° Yet the Superior cannot open and read letters which subjects send to mediate Superiors and in turn those Superiors to subjects; for the right manner of governing demands that supreme Moderators be able to communicate freely with all subjects.[1]

6° "He who by culpable revelation of a secret has harmed another must repair every damage, whether of reputation or fortune, which he at least foresaw in a confused way as going to arise therefrom for another, by title of damage unjustly inflicted."

7° "There is given an obligation of justice, grave from its own genus, of not seeking out the secret of another unwilling person without sufficient cause, neither by deed, namely by observing from a hidden place the things which others secretly do, nor by words, namely by scrutinizing and questioning others who know hidden things. Because each one has a strict right in his own secret, as in a thing of his own. - It is said: without sufficient cause, because it is licit to seek out another's morals, even secret ones, for avoiding one's own or another's damage, for example where Matrimony is to be contracted. It is said: grave from its own genus: hence the things which according to what has been set forth above excuse from grave fault, or from all fault, the revelation of a secret, also fall upon the one fishing out the secret itself; therefore also he who seeks out a secret with the intention of betraying it to no one does not seem to sin mortally, unless the other feels from this some other grave damage, or wishes to conceal it in a special way."

Notes to n. 543 - note sequence 1. (1) L. IV. 971. (2) Ib. Notes to n. 543 - note sequence 2. (1) L. IV. 971. (2) H. A. Tr. XI. 5. (3) L. IV. 70.

TREATISE ON THE PRECEPTS OF THE CHURCH

544. ○ The Church enjoys the faculty of establishing precepts obligating the faithful under grave sin. For Christ conferred legislative power upon her.

Many precepts of the Church exist, as is clear from Canon Law; but the principal ones, which regard all the faithful of whatever state or condition, are reduced to the six following, namely: 1° that the faithful honor the feasts instituted by the authority of the Church; - 2° that they assist at Mass at least on Sundays and feast-days; - 3° that they confess their sins at least once in each year; - 4° that at least at Easter time they approach the Sacrament of the Holy Eucharist; - 5° that on certain days they abstain from flesh-meat; - 6° that they observe fasts at the appointed times.

ON THE I AND II PRECEPT OF THE CHURCH OR ON THE OBSERVANCE OF FEASTS.

545. ○ Holy Mother Church enjoys the power of instituting feasts and of prescribing their sanctification under grave sin to all the faithful, as one who received from Christ all power in order to the spiritual good of her children. No controversy concerning this is agitated among Catholics.

The precept of celebrating feasts, if you consider the obligation by which we are sometimes bound to venerate God by some worship, is certainly divine and natural; but as to the time and days to be consecrated to this worship, this in the old law is sanctioned by a ceremonial precept, in the new by an ecclesiastical precept.[1]

The Pope alone can appoint feasts for the universal Church, because he alone enjoys jurisdiction over the universal Church. Bishops also can institute feast-days in their own diocese; for they have the faculty of making laws in their diocese. Yet, from the present discipline, lest feast-days be multiplied beyond measure by the excessive facility of Ordinaries, Bishops are forbidden to establish feasts when the Clergy and faithful are opposing them, or concerning some Blessed. - So commonly. L. II. Decr. Tit. IX. c. 5.[1] A vow of celebrating certain feasts of precept with vigil and procession, although confirmed by a Bishop, obligates only those willing.[2] Cf. n. 386, q. 3°.

Many feasts were formerly instituted which, in the course of times, because the fervor of the faithful grew cold or for the relief of the poor, have passed into desuetude, or have been abolished by the Ecclesiastical authority itself.

Notes to n. 545. (1) L. IV. 263.

546. ○ The present discipline of this region, in most provinces, enjoins only nine feast-days per year to be observed from precept, namely: the Immaculate Conception of the B. M. V. (from Decree of Our Most Holy Lord Pope Pius IX, dated 24 Jan. 1868);[3] the Nativity of the Lord; the Circumcision of the Lord; the Epiphany; the Annunciation of the B. M. V.;

the Ascension of the Lord; Corpus Christi; the Assumption of the B. M. V. and of All Saints. In Louisiana and other southern States, and in certain western dioceses, only five feasts are celebrated, namely the Immaculate Conception of the B. M. V. (from the decree of Pius IX cited above); the Nativity of the Lord; the Ascension of the Lord; the Assumption of the B. M. V. and of All Saints.

Notes to n. 546. (1) L. IV. 266. (2) S. R. C. 19 Nov. 1650. Gardellini. n. 1621. (3) Conc. Pl. Balt. II. p. CL. Decr. V.

ON THE III PRECEPT OF THE CHURCH OR ON ANNUAL CONFESSION.

547. ○ This precept is contained in Lateran Council IV, held under Innocent III in the year 1215, canon 21,[1] which reads thus: "Every faithful person of either sex, after he has arrived at the years of discretion, shall faithfully confess alone all his sins, at least once in the year, to his own priest," namely to the Pope, Bishop, Pastor, or a priest approved by the Bishop. - Benedict XIV.[2]

548. Questions. - Quaer. 1° When are children judged to have reached the years of discretion, so that they are bound by the precept of annual Confession?

Resp. When they are capable of mortal sin; and this is to be judged not from age alone, but chiefly from the degree of intelligence or of the discretion of good and evil. But sufficient discretion is judged to be present in those who already apprehend that lying, or disobedience, is evil, or who blush concerning certain impure actions, etc.

Hence pastors of souls are bound to prepare little children even of seven years for Confession little by little, and to absolve, at least within the year by force of the Lateran Council, those in whom they observe mortal sin, even doubtful.[3] In doubt about discretion, let them be absolved conditionally.[4]

Therefore confessors err gravely, and cannot be excused, who never wish to absolve children committed to them before the age of first Communion.[5]

Quaer. 2° Is he who is not burdened with mortal sins bound, by reason of the precept of annual Confession, to confess venial sins?

Resp. In the negative, because the Church prescribes that confession only which is from Christ's institution. But Christ prescribed no other Confession except of mortal sins, as the Council of Trent explains.[1] - St. Alphonsus,[2] and others commonly.

Moreover, as to practice this question is of the least moment; for what faithful person, burdened only with venial sins, omits to confess at least once in the year, or is accustomed to approach the sacred Synaxis without having confessed from a year back?

Quaer. 3° Is one who for an entire year has not confessed bound to confess as soon as possible, or when an occasion occurs, if it is to be lacking to him through the remaining part of the year?

Resp. To each: in the affirmative. The reason as to the former is that the term of a year was not placed by the Church for ending the obligation, but only for urging it.[3] The reason as to the latter is that inability cannot excuse one who places the voluntary cause of the same. Hence those who live in a place distant from the church and who are usually without every help of the sacred ministry ought to

confess when a priest visits them, if they foresee that through the rest of the year there will be no supply of a confessor for them.

Quaer. 4° Must annual Confession, which is not made to the Pastor or to another with the Pastor's permission, be judged valid?

Resp. In the affirmative. - So commonly; and today, says St. Alphonsus, it is certain from universal custom. Compare what is to be said concerning the Sacrament of Penance.

See more concerning Confession in the Treatise on the Sacrament of Penance, nn. 1356, 1357.

Notes to n. 548 - note sequence 1. (1) L. V. Decr. T. XXXVIII. c. 12. (2) De Syn. L. XI. c. 14. n. 2-6. (3) L. IV. 270 and L. VI. 432. 666. (4) L. VI. 666. (5) L. VI. 666. Notes to n. 548 - note sequence 2. (1) Sess. XIV. (2) L. VI. 667. (3) L. VI. 668.

ON THE IV PRECEPT OF THE CHURCH OR ON EASTER COMMUNION.

549. ○ I. The precept of Easter Communion, no otherwise than the precept of annual Confession, is divine as to substance, but ecclesiastical as to the determination of time. This precept is clear from the perpetual practice of the Church, from innumerable Councils and Pontifical Constitutions, and especially from the Council of Trent:[1] "If anyone shall deny that all the faithful are bound in each year, at least at Easter, to communicate, according to the precept of Mother Church, let him be anathema." - Easter time, from the declaration of Eugene IV, begins from Palm Sunday and ends on Low Sunday. "But since the scarcity of priests and the distances of places have rendered it almost impossible that among us, in so brief a space of time, all can approach the Sacred Synaxis, the prelates in the first Provincial Council of Baltimore humbly asked the Holy See that ... faculty might be granted them of prolonging the time of Easter Communion from the first Sunday of Lent to Trinity Sunday inclusive; and the Roman Pontiff Pius VIII benignly assented to their prayers."[2] Yet some Bishops have circumscribed that time by narrower limits. Let each one consult the statutes of his own diocese. Therefore among us the year of obligation will be computed from the time at which the beginning of Easter time shall have been fixed by the Bishop. Cf. Ben. 14. S. d. 1. lz. c. 6 n. 10.

II. Easter Communion is to be received in one's own parish, as is openly gathered both from various Constitutions of the Supreme Pontiffs and also from the general practice of the Church.

Hence the precept of receiving the Eucharist is threefold: 1° it regards Communion itself, 2° the time, 3° the place; but where either the last or the second cannot be fulfilled, the two others, or certainly the first, are to be satisfied. Whether and to what extent these things pertain to us will have to be resolved according to what was said at n. 1138.

Notes to n. 549. (1) Sess. 13. can. 9. (2) Conc. Pl. Balt. II. a. 257.

550. Questions. - Quaer. 1° Is he who has omitted Communion at the prescribed time bound to communicate as soon as he can?

Resp. In the affirmative. The reason is that the time has by no means been determined for ending the obligation, but for urging it. For from what has been said the precept of communicating is divine in

itself; therefore when the Church commands that this precept be fulfilled at Easter time, she is not judged to dispense from it. It is clear also from the practice of the Church, which not rarely, after Easter time had elapsed, compelled the faithful by censures to satisfy the precept.[1]

But before Easter time has begun, no one is bound to obey this precept, even if he foresees that afterward he will be impeded; but, once that time has begun, he is bound 1) to satisfy this obligation as soon as possible, if he foresees an impediment; 2) to remove impediments, even grave ones, since it is a divine and grave precept; 3) to communicate again, even if, on account of a future foreseen impediment, he has already anticipated Holy Communion.[2]

Quaer. 2° Does he sin gravely who defers Communion to the first or second day after Easter time has elapsed?

Resp. In the affirmative, of itself. The reason is that, although a delay of this kind can seem small in itself, nevertheless for Easter time it is sufficiently notable. Nor are those to be excused from mortal sin who from grave negligence approach indisposed on the last day of Easter time, so that they must be remitted by the confessor to another time. By accident those are excused who in good faith judge it sufficient if they then approach a confessor for the sake of beginning Confession.

Quaer. 3° Does the precept of communicating in the parish oblige under grave sin? See (B), p. 469.

Notes to n. 550. (1) L. VI. 297. (2) Ib. 297-299. Appendix annotation (β), to n. 550. p. 243. col. 2. Since, beyond my expectation, not a few copies of my work have been sold outside the Federated States and in those regions in which parishes properly so called are had, it has seemed good here to add the following questions concerning the place in which Paschal Communion, by common law, is to be received. Query 3° Whether the precept of communicating in the parish obliges under grave sin? Resp. Affirmatively, at least per se. The reason is that the matter seems grave in itself. For to what purpose would there be so many constitutions and decrees of the Supreme Pontiffs for establishing a light obligation? - Thus commonly. - Yet some assert that it is only light if someone once or twice in life should communicate elsewhere, because he does not seem to inflict a grave injury on the pastor, especially if he had communicated several times during the year in the parish. - Tamburini, meth. comm. Query 4° Whether the precept of communicating in the parish still presses when the Paschal time has elapsed and the precept has not been satisfied? Resp. Affirmatively, with the common sentence. The reason is that the end of the law always remains to be obtained. Yet in practice here good faith can easily be supposed; and this would be disturbed most imprudently unless fruit is hoped for. Query 5° Whether he satisfies the precept of the Church who communicates in the cathedral church or from the hand of the Bishop outside the parish? Resp. Negatively, notwithstanding any custom whatever, even immemorial, as is clear from the decisions of the S. C. C. The reason is that he has not communicated in his own parish. - Thus commonly.(1) Query 6° Who can give the permission by force of which the precept of communicating is satisfied outside the parish? Resp. 1° The diocesan Bishop and Vicar General; 2° the parish priest himself to parishioners, since the law was made in his favor and otherwise this is clear from custom. Indeed, permission morally certainly presumed is sufficient.(2) But the parish priest ought not give general permission that any parishioner whatever may communicate outside the parish church. - S. C. C., Sept. 7, 1615. Query 7° Where can the following satisfy the precept of Paschal Communion: 1) pilgrims and wanderers; 2) soldiers; 3) servants; 4) Regulars and their domestics and boarders; 5) priests? Resp. to 1). In any church, provided, if it is a question of pilgrims, they are so absent from their own parish that they cannot conveniently approach it.(3) Resp. to 2). Those staying in a station or having domicile in the city, in the parish in which they are staying; otherwise in any church. Resp. to 3). Servants and all others having quasi-domicile are bound by the same law as inhabitants of the place. Resp. to 4). If they are exempt, see n. 1195. G). a). But those not exempt must receive Holy Communion either from the hand of the pastor, or, if they are not impeded by enclosure, in the parish church. - Anal.(1) Resp. to 5). If they celebrate, anywhere.(2) Query 8° Whether he who has communicated sacrilegiously in the parish is held to communicate again in the parish? Resp. Negatively, because he has fulfilled the end of the precept as regards the circumstance of place; therefore it suffices that he communicate in any place whatever in order to satisfy the precept of Paschal Communion, which he did not fulfill by sacrilegious Communion. Nor is he held to make Paschal Communion in the parish who in Paschal time has received Sacred Viaticum; for the end of the law has been sufficiently fulfilled.

ON THE V PRECEPT OF THE CHURCH, OR ON ABSTINENCE FROM FLESH-MEAT OUTSIDE FASTING.

551. Principles. - I. There exists an ecclesiastical precept, imposed upon all the faithful, of abstaining from flesh-meat on certain days. This is clear from various Constitutions of the Supreme Pontiffs, from Catechisms, from universal custom, and from the consensus of all theologians. Indeed the precept of abstinence is reputed Apostolic, no otherwise than the precept of fasting, from which in the first ages of the Church it was not separated.

II. This precept outside the time of fasting urges 1° on Friday of any week in the whole Christian world, unless the Nativity of the Lord falls on this day; 2° on Saturday. Yet abstinence on Saturday, from the indulgence of the Apostolic See, among us, formerly for twenty years, now when Bishops recur in particular, is relaxed.[1]

III. The precept of abstinence obligates of itself under grave sin, because the matter is grave of itself; yet in it, according to the common sentence of theologians, smallness of matter is admitted.[2]

But as from other positive laws, so also from this obligation there are excusing causes, namely inability, both physical and moral, or a great difficulty which is found in the observation of the law. - So all theologians with St. Alphonsus.[3]

552. Questions. - Quaer. 1° Can flesh-meat be given to little children on those days on which it is prohibited?

Resp. In the affirmative, if they have not acquired the use of reason; otherwise, in the negative. - But if they possess the use of reason before the seventh year is completed, St. Alphonsus more probably denies.[4] Yet the affirmative sentence does not seem improbable to him.[5] But it is expedient that children of this kind, even before they are obligated, be accustomed to abstinence. - Recall what was said at n. 110.

Quaer. 2° What quantity of flesh-meat is required for grave sin?

Resp. It is very much disputed. All agree that the matter is grave which notably nourishes; but this can scarcely be determined. According to many, grave matter ought to exceed half an ounce; but St. Alphonsus rejects this sentence,[1] where he reports, and seems to approve, what the Salmanticenses say: that small matter is only the eighth part of an ounce.

Quaer. 3° What is to be said about the use of fat?

Resp. Unless there is a legitimate custom (which among us, according to Kenrick,[2] exists even in the little collation), or unless it is a question of those who earn so little that they cannot buy butter, it is not licit to season foods with it. An indult, if there is one, is to be understood of liquefied fat alone (before the cooking of the food, or in the cooking itself); and that, unless another also is granted, is to be understood as pork fat; and, unless the contrary is expressed, it is valid also for the little collation. It is not to be used as a relish. (γ) p. 470.

Notes to n. 552. (1) Kenr. Tr. IV. Part II. n. 37, and Conc. Pl. Balt. II. p. CXLV. art. X. (2) L. IV. 1030. (3) Ib. 1031. (4) L. I. 155 and L. IV. 1012. (5) Ib. and L. IV. 270. Appendix annotation (γ), to n. 552. q. 3. p. 244. col. 2. To the doubt whether, when either by the Bull of the Crusade or for another cause an indult is granted for the use of melted lard (commonly strutto) by the title of condiment alone, those who are held to fasting can use that condiment also in the evening refection?

- The S. Penitentiary, Jan. 16, 1834, by the express oracle of Leo XII, replied ... that those who are held to fasting can lawfully use in the evening refection also the condiments permitted in the Indult, because by force of the Indult they hold the place of oil, provided a restriction has not been placed in the Indult that they may be employed in the one meal.(3)

553. ○ Quaer. 4° Who are judged to be excused from the law of abstinence?

Resp. 1° Poor beggars; for they can eat whatever they receive in place of alms, as theologians commonly hold.

2° Poor workers, who have nothing else except a little piece of grease or bacon for seasoning pottage or lettuces.[3]

3° The sick, for example those laboring under fever, etc.; also those who are so weak in stomach that they cannot digest licit foods; but hallucination is to be guarded against, and religious and timorous physicians are to be consulted, if it can easily be done.[4] (v) p. 474.

4° Those who daily apply themselves to labors so arduous and fatiguing to the stomach that, like the sick, they do not experience hunger and reject foods; of this kind are those who pass their life in mines, or in glass and iron workshops. In the number of these also seem to be judged drivers who, over the space of several days, driving public coaches by day and night, can scarcely swallow one or another morsel of food; and this, in the same circumstances, will also be valid for those who drive cars on railroads (conductors, brakemen, etc.), but not for those who slowly drive carts, horses, or mules, and rest at inns by night.

5° Travelers who find nothing in inns except prohibited foods and cannot easily turn elsewhere. Yet they are bound seriously and insistently to ask for licit foods. For the mere reason of a journey in no way exempts from the law of abstinence, even if perhaps it dispenses from fasting because of excessive weariness. Hence travelers cannot be excused because of human fear, fear of displeasing companions, mockeries, and other difficulties of this kind; otherwise almost all who make journeys would be exempted from this law.

6° Finally soldiers are excepted who live in camps or barracks, and who are nourished in common at the expense of the Government. Moreover, "Pius IX granted, at the prayers of the Bishop of Buffalo, that American soldiers and sailors should be exempted universally from the law of abstinence, six days excepted, namely Ash Wednesday, the last three days of Holy Week, and the Vigils of the Assumption of the B. M. V. and of the Nativity of the Lord. This is to be understood of those who are actually serving in camps, ships, and garrisons, but not of those who are absent by leave. Families using common board with them enjoy that privilege; not likewise those which live far away."[1]

Notes to n. 553 - note sequence 1. (1) L. IV. 1029. (2) Tr. IV. 39. (3) L. IV. 1008. (4) L. IV. 1008. Notes to n. 553 - note sequence 2. (1) Kenr. Tr. IV. Part II. n. 37. Appendix annotation (v), to n. 553. 3°. p. 244. col. 2. As regards abstinence from flesh-meat, Capellmann (Med. Past. p. 97) warns that, except those who are truly sick or recovering from a grave infirmity, there are few who are excused from it precisely because they do not receive necessary nourishment from other foods. Eggs, he says, furnish as much nourishment as meats.

ON THE VI PRECEPT OF THE CHURCH OR ON ECCLESIASTICAL FASTING.

554. ○ Ecclesiastical fasting is placed in abstinence from foods and from a certain quality of foods, and in these provinces is to be observed in the time of Lent, the Ember Days, and certain vigils, namely of Pentecost, the Assumption of the Blessed Virgin Mary, All

Saints, and the Nativity of Our Lord, and in most dioceses on the Fridays of Advent.[1] Coll. Lac. T. 3. p. 58. c. p. 61. 62. a-d.

We must treat 1° of the essence and obligation of fasting; 2° of causes excusing from fasting. (x) p. 475.

Notes to n. 554. (1) Conc. Plen. Balt. II. p. 343. Notes to nn. 554-562. (1) H. A. Tr. XII. 20. (2) p. 922. (3) L. IV. 1030. (4) Capo XII. n. 6.

CHAPTER I: ON THE ESSENCE AND OBLIGATION OF FASTING

555. ○ I. All the faithful, from the twenty-first year of age completed, are bound under grave sin to observe fasting on the appointed days, unless they are legitimately excused, or dispensed by Superiors. It is a most ancient obligation, which is said to have been handed down by the Apostles themselves. Moreover, concerning this obligation there is proof from various Constitutions of the Supreme Pontiffs, and from all the Catechisms of the ecclesiastical Provinces.

I said: 1° under grave sin; because the law regards grave matter, since it is something which greatly conduces to the salvation of souls. It is clear moreover from Proposition 23 condemned by Alexander VII, p. XIV.

I said: 2° from the twenty-first year completed; because the Church, as a pious mother, does not wish to impose upon boys and adolescents a law surpassing their strength. This is clear from universal custom and from all Catechisms.

II. Ecclesiastical fasting consists, as it were, in three parts, namely 1° in one meal through the twenty-four hours of the day, with an evening little collation added; - 2° in abstinence from flesh-meat, and in Lent from milk-products; - 3° in the time determined for taking the meal. - Yet observe that the custom of places and times contributes very much to determining, or modifying, or restricting the nature and obligation of ecclesiastical laws, especially of fasting.

ARTICLE I: ON THE ONE MEAL AND THE LITTLE REFRESHMENT

§ I. On the one meal

556. Principles. - I. The one meal is the primary condition of fasting; for in this especially is situated its essence, and when this is removed, no one is ever said to fast, while on the contrary a fast is conceived without abstinence from flesh-meat and milk-products.

II. But small eatings which are done besides are venial sins when taken separately; but, if repeated more often on the same day, they can coalesce into grave matter, as is clear from Proposition 29 condemned by Alexander VII, p. XIV, and because otherwise fasting would be done away with.

III. The fast is not broken by a draught of water, wine, and other drinks which of themselves are ordered, and are commonly used, to quenching thirst, although according to the first discipline of the Church Christians abstained altogether from wine and similar liquors. Hence the axiom: Liquid does not break the fast.[1] But by liquid is understood everything which, from the common estimation of the faithful, is held as drink, even if perhaps, as beer, it nourishes.[2]

557. Questions. - Quaer. 1° Does wine drunk for allaying hunger break the fast?

Resp. In the negative, more probably. The reason is that the law of fasting prescribes only abstinence from food, but not from drink, and according to St. Thomas[3] "the statute of positive law does not

attend to the intention of the one observing, but to the act itself, because the mode of virtue does not fall under precept, but is the end of the precept." - St. Alphonsus.[4]

Quaer. 2° Does a draught of coffee and tea break the fast?

Resp. In the negative, unless an excessive quantity of sugar is mixed in; because these do not have the nature of food, but of drink or medicine. - So the common sentence. - Moreover from custom it is permitted that in the morning with coffee or tea a little crust of bread (of two ounces) be taken. On this matter see the Response of the Sacred Penitentiary for Canada (z), p. 470.

Notes to n. 557. (1) L. IV. 1022. (2) L. IV. 1021. (3) 4 Dist. 15. q. 3. a. 4. q. 1. Sol. 1. (4) L. IV. 1022. Coll. H. A. Tr. XII. 12. Appendix annotation (δ), to n. 557. q. 2°. p. 246. col. 2. Most Blessed Father, "N. sets forth the custom of taking in the morning on days of fast, in a small quantity, coffee or chocolate with a little piece of bread, which has prevailed in many regions, and also in dioceses of the United States of North America, ... but has not yet been introduced into Canada. Therefore, in order that he may be able to reply something certain to those who ask whether it is also lawful in Canada, the said Orator suppliantly begs Your Beatitude that you may graciously deign to declare whether with safe conscience it can be tolerated or permitted in the aforesaid region of Canada that in the morning on days of fast there be taken, in a small quantity, coffee or chocolate with a little piece of bread?" The S. Penitentiary, after maturely weighing the matters set forth, judged that the reply should be given: "Those who follow such a custom are not to be disturbed." Nov. 21, 1843. Nouv. Rev. Théol. T. IV. p. 431.

558. ○ Quaer. 3° Does a draught of water mixed with sugar, or made from the juices of oranges or lemons, break the fast?

Resp. In the negative of itself, that is, unless you mix in a great quantity of their substance, which is judged to have the character of food. - So commonly. - The reason is that all these things from the common estimation are regarded as drinks. Moreover St. Alphonsus[2] grants that this very thing is licit even if these have been congealed by ice.

Quaer. 4° Does a drink of chocolate break the fast?

Resp. In the affirmative, if, rich as is the custom outside the time of fasting, it supplies nourishment to you. - But in the negative, if a moderate quantity of chocolate is taken, as is accustomed among us,[1] and is done only once in the day. The reason is drawn from general custom.[2] - What quantity can be taken? The holy Author says that not less than an ounce and a half of chocolate is accustomed to be put into ordinary cups; for thus, by a practice tolerated by the Church and observed commonly by pious faithful, it is accustomed to be done.

Quaer. 5° Is it licit to mix coffee and tea with milk?

Resp., as to the question concerning chocolate; for the same reason is valid here, yet preserving in Lent the law of abstinence from milk-products, unless derogation has been made from it by custom or dispensation has been granted in it.

559. ○ Quaer. 6° Is it licit on a day of fasting to taste some food, for example an ounce before drink, lest this do harm?

Resp. This certainly is not licit as often as one pleases, although Diana, Leander, and others also grant it; for then the law of fasting would be ridiculous. Therefore it can be permitted only once or twice in the day.[3]

Quaer. 7° Do electuaries break the fast?

Resp. Electuaries are those things which are made from selected things, for example from sugar and juniper, etc. But they are not judged illicit on fast-days if they are taken in the manner of medicine and in moderate quantity. Any reasonable cause suffices for excusing from all fault, for example for the digestion of foods, strengthening the stomach, tolerating the foul smell of the mouth, conserving the voice, and similar things. - St. Thomas,[1] Sporer, Elbel. - St. Alphonsus[2] adds that probably those also are excused who take something lest their strength fail, when they must delay dinner beyond the common hour. - Indeed the obligation of taking something will urge, if this is necessary for observing the fast. Namely, if by using this help you can bear a fast which otherwise you would not bear, the obligation itself of fasting requires of you that you use that help. See Croix.[3] From this it is clear that certain men deserve entirely badly of fasting when, either under pretext of a custom which has not yet prevailed in their own province, they forbid the faithful to take anything in the morning, or they restrict this very thing to a mere small drink, with a little crust forbidden. For thus they effect this one thing: that many who otherwise would bear the yoke of fasting entirely cast it off.

Notes to n. 559. (1) Kenr. Tr. IV. Part. II. n. 45. (2) L. IV. 1023.

560. ○ Quaer. 8° What quantity of food is judged slight matter, if it is taken outside the meal and the little supper?

Resp. A quantity of two ounces. So St. Alphonsus.[4]

Quaer. 9° Does he who culpably has taken a double meal sin gravely if he adds a third?

Resp. In the negative, at least more probably. The reason is that the precept of fasting urges in an indivisible way during the day of precept; hence he who has once violated it does not sin again and again by eating. Therefore, once mortal sin has been committed by violation of the fast, the whole law urging on that day has been violated. Therefore, etc. - St. Alphonsus,[5] Mazzotta, Roncaglia, and others commonly.

Yet he who breaks the fast by eating forbidden flesh-meat or milk-products several times sins as often as he eats.[6]

Notes to n. 560. (1) L. IV. 1018 and H. A. Tr. XII. 11.

561. ○ Quaer. 10° Is he who inculpably has taken a double meal in the day, once the error has been detected, bound under grave sin to abstain from a third?

Resp. In the affirmative, more probably. The reason is: because he harmed the fast only materially, not formally; wherefore, as soon as he adverts to the law of fasting, he is bound to observe it, as the rest do; otherwise he would violate it formally. So St. Alphonsus in the Homo Apostolicus,[1] who, on account of the observation alleged in the Vindiciae Alphonsianae,[2] p. LXXXVIII. 2., seems here to be preferred to the Larger Work,[3] where the denying sentence is also called probable. Add that the holy Doctor in the work Conf. diretto per le conf. della gente di camp.[4] reports only the affirmative sentence, while in the work Istr. e pratica pei confess. he only adds that he does not reprobate the denying sentence. Cf. p. LXXXIX. 4.

Notes to n. 561. (1) 2. 2. q. 147. a. 6. (2) L. IV. 1019. (3) L. III. Part. II. 1824. (4) L. IV. 1025. (5) L. IV. 1030. (6) H. A. Tr. XII. 20.

562. ○ Quaer. 11° What if on a fast-day you have taken breakfast inadvertently?

Resp. 1° If you have taken only a little, for example two ounces of food, you indeed ought from custom to fast, without leaving the meal and the little supper at the customary hours; for the fast was not substantially harmed.

2° If you have taken a quantity equivalent to the little supper, you must transfer dinner to the evening time, or abstain from the little supper itself, unless this falls to you into grave inconvenience.

3° Yet if a quantity of this kind was equal either to almost a double little supper or to the accustomed meal, you ought, having omitted dinner, to take only the evening little supper, yet take it earlier if you cannot wait without grave difficulty. Moreover you could increase this little supper according to the measure of necessity.

§ II. On the evening collation

Besides the customary meal it is licit, from universal custom introduced over many centuries and tolerated by the Church, indeed also tacitly approved, to take toward evening a little refreshment from lighter foods. - So all.

563. Questions. - Quaer. 1° What quantity of food can be taken in the little supper?

Resp. From present and common custom, about eight ounces of food can be taken, at least speaking ordinarily.[6] - But others say that a fourth part of supper is to be permitted. But this doctrine is too vague or liable to scruples. - A quantity of eight ounces is to be denied to no one, but a greater is to be conceded to those for whom this would not suffice. - St. Alphonsus,[1] Elbel, Lacroix. - Certainly no entirely fixed rule can be established, since attention must also be paid to constitution, duties to be performed, the duration of the fast, etc. In general it is licit to take as much as one judges necessary for avoiding an indisposition which impedes him from suitably fulfilling his offices. - Scavini, Gousset. - Account also must be taken of one's own region, if somewhere a greater quantity of food is necessary.

Notes to n. 563. (6) L. IV. 1025.

564. ○ Quaer. 2° What excess is judged grave in the little supper?

Resp. All agree that an excess of two ounces is slight matter.[2] See what was said above, n. 560, q. 8°.

Quaer. 3° Must sugar and milk, which are mixed with coffee or tea, be computed among the eight ounces?

Resp. By distinguishing according to those things which we said at n. 557, q. 2°, and n. 558, q. 5°.

Quaer. 4° What quality of foods can be used in the little supper?

Resp. Bread, any fruits whatever, any vegetables also, and sweetmeats of various kinds. But especially the custom of places is to be observed. For many things are permitted in various dioceses or provinces which are forbidden elsewhere: thus, for example, among us and elsewhere generally it is licit to eat cheese.

565. ○ Quaer. 5° Is it licit to eat eggs and butter in the evening little supper?

Resp. In the negative, generally, although dispensation is had for milk-products, as is clear from the Decree of Benedict XIV and Clement XIII. Yet among us, from present custom, it is licit to take some butter or cheese; but eggs are by no means permitted, because they are of very great substance,[3] unless a contrary custom or dispensation is present.

Quaer. 6° Are fish permitted in the little supper?

Resp. In the affirmative, if it is a question of little fish, especially dried, and probably also of larger fish; yet St. Alphonsus[4] thinks that with regard to these the weight of two or three ounces is not to be exceeded.

Notes to n. 565. (1) L. IV. 1026. (2) L. IV. 1027. (3) Ib. 1027. (4) L. IV. 1028.

ARTICLE II: ON ABSTINENCE FROM FLESH-MEAT IN FASTING

566. Principles. - I. To all the faithful using reason, by the precept of the Church the eating of flesh-meat is forbidden on each day of fasting. Hence by the law of fasting a double precept is imposed, as Benedict XIV also defines, namely of abstaining from several meals, and of abstaining from flesh-meat; therefore contrary to what several of the older authors hold, one dispensed or unable as to one is not for that reason and by this very fact to be excused from the other.[1] - Under the name of flesh-meat come all animals living and breathing on land; therefore frogs, tortoises, etc., are not prohibited. In doubt, if custom is lacking, one should attend to whether the animal is similar to what is forbidden and whether it nourishes more strongly. If the doubt persists, the Holy See should be approached.[2]

II. In the Lenten time eggs and milk-products also are prohibited, namely all those things which draw their origin from flesh. This is clear from the practice of the Church, from its dispensations, and from Proposition 32 condemned by Alexander VII, p. XIV. Now, however, in most places an almost general dispensation from that law is conceded to the faithful. Indeed today Bishops, from an indult conceded by the Roman Pontiff, grant to the whole diocese a dispensation also as to the eating of flesh-meat for the principal part of Lent. On the use of fat see what was said at n. 552, Quaer. 3°.

Moreover, although the eating of eggs and milk-products could not be excused from grave sin, of itself, according to the common sentence, nevertheless smallness of matter seems more easily to be admitted in these than in the eating of flesh-meat.

567. Questions. - Quaer. 1° Must abstinence from milk-products be observed also in fasting outside the Lenten time?

Resp. In the negative. Because an obligation of this kind is imposed by no general law. It is the common sentence, says St. Alphonsus.[3] Yet somewhere, for example at Rome, a custom has prevailed, having the force of law, that abstinence of this kind is to be observed also on certain other days, for example on Ember Days.

Quaer. 2° Must abstinence from milk-products be observed on the Sundays of Lent?

Resp. In the affirmative, because neither law nor custom excepts Sunday. - St. Alphonsus,[1] and others commonly against some, whose sentence is not probable according to St. Alphonsus.

Notes to n. 567. (1) L. IV. 1005. (2) L. IV. 1011 and three responses. (3) L. IV. 1009.

568. ○ Quaer. 3° In the time of Lent is it licit in the meal to eat breads made with eggs?

Resp. In the negative, unless eggs have been permitted; the reason is that their substance is not lost from the fact that it is mixed with flour.[2]

Quaer. 4° Are those dispensed for milk-products judged by that very fact also dispensed for eggs?

Resp. In the affirmative, because these are equated from custom (n. 145), unless a distinction is clearly expressed in the dispensation.

Quaer. 5° Can those dispensed for flesh-meat on days of fasting also eat fish?

Resp. In the negative, if it is a question of eating fish in the same meal. This is clear from the Constitution of Benedict XIV Non ambigimus. See also Response concerning Fasting, questions 5 and 10, pp. L, LI. It is said in question 10 "on days of fasting"; for that a mixture of this kind is licit outside Lent, when only abstinence is to be observed, is clear from the Response to question 6, p. LI. (e) p. 481.

Notes to n. 568. (1) L. IV. 1007. (2) L. IV. 1009. (3) T. I. p. 426. (1). Appendix annotation (e), to n. 568. q. 5°. p. 249. col. 1. The S. Penitentiary, under June 14, 1880, declared that meats seasoned with fish sauce are not comprehended under the forbidden mixing of fish and flesh-meat.

569. ○ Quaer. 6° Whether the faithful exempt from the law of fasting because of laborious arts, in the time of Lent, when the eating of flesh-meat and milk-products is permitted to all for one meal, can eat flesh-meat and milk-products several times in the day, no otherwise than on the Sundays of the same Lent, on which the obligation of fasting does not urge?

The Sacred Penitentiary (on 16 Jan. 1834) responded: "The faithful who, by reason of age or labor, are not bound to fast, can licitly in Lent, when an indult has been granted, on all days comprehended by the Indult, eat flesh-meat or milk-products permitted by the same Indult, as often as they eat through the day." But this is not valid in a diocese whose Bishop by apostolic authority concedes that on certain weekdays of Lent it is licit once in the day to eat flesh-meat and eggs, at the same time permitting those who by reason of age or labor are not bound to fast to use eggs more often in the day. So the same Penitentiary, 27 May 1863. The Acta compose each response very well (f) p. 481.

Appendix annotation (f), to n. 569. p. 249. col. 1. We transcribe here the response given on Jan. 24, 1881, to a certain Bishop by the Most Eminent Prefect of the S. Congregation de Propaganda Fide, and graciously transmitted to me. "I have received your letters ... by which you sought an Indult concerning the eating of meats outside the one meal on days of fast, in favor of those who, by daytime labor in procuring livelihood for themselves, could with difficulty obtain other food. As regards this, you know that an Apostolic Indult is by no means necessary; for according to the doctrine commonly received from approved authors, those who are devoted to heavy labors, since they are by no means held to fast, can eat meats on all the days on which dispensation concerning the eating of meats was granted by the Apostolic See, whenever they eat. Although the response does not speak about those who by reason of age or affected health are not held to fast, nevertheless it must also be applied to these, since the reason of the resolution has force for them also: 'since they are by no means held to fast.'" This is clear from the response of the S. Penitentiary, Acta, T. 14. p. 568.

570. ○ Quaer. 7° What is to be said about Catholics who on days of abstinence supply flesh-meat to non-Catholics with whom it happens that they are at table?

Resp. They are not to be blamed, if either 1° this is permitted to them from the Apostolic Indult which our Bishops have by force of the Extraordinary Faculties C. (see p. LXXII. 5); or 2° some just cause concurs, provided nevertheless that in either case scandal and contempt of the ecclesiastical law are absent.

ARTICLE III: ON THE HOUR OF THE MEAL

In our times, from universal custom, the meal is licitly taken almost about noon.[1]

571. Questions. - Quaer. 1° Does the hour of the meal pertain to the essence of fasting, so that he sins gravely who notably, for example by an hour, anticipates it without grave cause?

Resp. The sentence which affirms is probable only according to St. Alphonsus.[2]

Quaer. 2° Is the fast broken if the little supper is taken at midday, but the meal in the evening?

Resp. It is not broken essentially, and therefore if it is done without cause, it does not exceed venial sin. But even from this venial sin a reasonable cause, and the custom of the place or condition, excuses. Indeed in many places by present custom the little supper can be taken at the tenth hour in the morning, and the meal in the evening. The Response to question 1 among the Responses concerning fasting, p. L, agrees.

Quaer. 3° How long can dinner be prolonged?

Resp. Nothing absolutely can be determined concerning this; but it does not seem that without some fault it can be prolonged beyond two hours. - St. Alphonsus,[3] Lacroix, Billuart, etc.

572. ○ Quaer. 4° Does he break the fast who interrupts the meal and, after an interval has elapsed, approaches it again?

Resp. 1° If the interruption is slight, for example of a sesquiquadrans, or even of half an hour, it lacks every fault, even if it is done without reason.[4]

2° If it is of one hour and without reason, the fast is judged morally interrupted.

3° If the interruption, even for one hour, is made from a just cause, for example for doing some business, it will be excused entirely from all fault.

But however great an interruption there may be for a just cause, there is no sin in returning to table when the preceding meal was not sufficient and the fast cannot be borne without grave inconvenience; because the Church never intends to obligate one to pass the day without sufficient refreshment.[1]

Quaer. 5° Can he who has risen from table with the intention of eating no more sit again at the table?

Resp. In the affirmative, probably, if the fellow diners are still eating, or if a new dish is placed on the table which he did not know was to be placed, or if the interruption was slight. The reason is that it is still judged morally the same dinner.[2]

Quaer. 6° If someone in the morning, for the sake of a journey, has taken breakfast, is he bound to fast if afterward he does not set out?

Resp. In the affirmative, of itself. The reason is that, since the essence of the fast has not yet been destroyed, its obligation continues to urge. Yet make exception if, through that one eating, he cannot conveniently fast for the rest of the day.[3]

Notes to n. 572. (1) L. IV. 1016 and H. A. Tr. XII. 9. (2) H. A. Tr. XII. 21. L. IV. 1016. q. Ref. XIII. Ben. XIV. C. Si fraternitas. Dub. III. 8 July 1744. (3) L. IV. 1020 and H. A. Tr. XII. 10. (4) Ib.

CHAPTER II: ON CAUSES EXCUSING FROM FASTING

The causes excusing from fasting are commonly reduced chiefly to three, namely 1° to inability, whether physical or moral; 2° to piety or charity; 3° to dispensation, as has been said concerning other precepts. (k) p. 475.

573. You will resolve. - 1° Poor persons begging from door to door are excused from fasting, and all others who neither have, nor can provide for themselves, the means from which they may procure an adequate meal.[4]

2° The sick, the infirm, convalescents, and the weak are excused, for example those who labor under tertian or quartan fever, or who are recovering from it; moreover those who, unless they are refreshed twice, suffer notable headache or dizziness from emptiness of stomach. Likewise pregnant and nursing women, and these also from the law of abstinence, if they either have a weak offspring or are weak.[1] (o) p. 475.

3° Those are excused who exercise very laborious works, such as plowing, digging, cutting stones, carrying heavy burdens, and other things of this kind. Hence also blacksmiths, woodworkers, masons, tanners, shoemakers, bakers, oven-men, cooks preparing banquets for many, farmers, potters, weavers, wool-workers, fullers, drivers, sailors, and rowers are excused, provided the greater part of the day is spent in labors of this kind.[2]

4° Servants and maidservants or others of this kind are excused when they are occupied with so many and such great labors that fasting cannot be joined with these without great difficulty or inconvenience; likewise those making a journey on foot for a notable time with great weariness.[3]

5° But barbers, tailors, painters, scribes, servants attending on foot, printers who do not turn the press but only arrange the types, and those applying themselves to other similar things, are not excused of themselves and ordinarily.[4] The same is to be resolved when the press is turned by a machine, not by movements of the arms.

6° To this refer also the Responses concerning fasting to questions 2 and 3, p. L, from which you will conclude: a) a wife, children of a family, and servants in the stated case are excused from sin when eating flesh-meat, provided nevertheless that this eating is not demanded in contempt of religion, or, if it is so demanded, that those eating signify that they reverence religion and do what they do from necessity. But servants of this kind are bound to leave such service if, without their grave damage, they can have another in which they can observe the laws of the Church. b) A girl who on forbidden days eats flesh-meat, fearing lest her non-Catholic father become violently enraged when he perceives that she has passed over to the Catholic Church, is guilty neither of denied Faith nor of violated fasting; "yet," adds Kenrick,[5] "she will not be excused on account of ridicule or some slight molestation." I would add 1) that the same is to be resolved concerning a wife and a son, if she with respect to her husband, he with respect to his father, is situated in the same circumstances; yet I would not concede the same to a husband with respect to his wife, for he will more easily be able to contemn her angers; 2) that this can be conceded to a son with more difficulty than to a daughter; for he, especially if he has grown up and particularly in this region, generally needs the help of parents

less; 3) that it is to be conceded to none of these longer than until that time up to which it is licit or possible for him to hide his conversion to the Catholic Faith.

7° Where labor excuses of itself, in doubt the presumption stands for exemption from fasting; on the contrary, where labor excuses not of itself, but by accident, namely on account of some circumstance of weakness of the person or gravity of labor, in doubt the presumption stands for the obligation of fasting.[1]

8° Kenrick observes[2] that in this region fasting foods, by which someone eating once per day is sufficiently refreshed, are not easily obtained, and that those things which are born from American soil alone do not contain very much juice and nourishment, and therefore our people are more easily excused from fasting. I would add also this reason: on fast-days Americans are deprived of flesh-meat, which even workers themselves are accustomed to eat for breakfast; this deprivation renders fasting more difficult for them.

Notes to n. 573 - note sequence 1. (1) L. IV. 1020. (2) L. IV. 1020. (3) Ib. (4) L. IV. 1033 and H. A. Tr. XII. 23. Notes to n. 573 - note sequence 2. (1) L. IV. 1033, 1034. H. A. Tr. XII. 23. (2) L. IV. 1041. (3) L. IV. 1041. 1047. (4) Ib. 1041. 1047. (5) Tr. XI. 80. Appendix annotation (ξ), to Before n. 573. p. 250. col. 1. Exemption or dispensation from abstinence does not of itself include exemption or dispensation from fasting. "Yet the case is excepted in which dispensation to meats is granted on account of infirmity or weakness of strength, as the Doctors commonly say, and as" by Benedict XIV "was declared in the Bull In suprema, where it is said: provided no certain and dangerous reason of affected health intervenes, or otherwise necessarily requires it to be done." H. A. Tr. XII. 9. Appendix annotation (o), to n. 573. 2°. p. 250. col. 2. Capellmann, Med. Past. p. 92, holds that women in the time of menstruation also are excused from fasting. The same author, ib. p. 98, likewise notes that meats are not permitted to pregnant women who are not weak for this reason, as some think, that they vehemently desire them, but only then when other foods cause insuperable nausea for them; and even in this case he requires the previous counsel of a physician.

574. Questions. - Quaer. 1° Are young men more hot in strength bound to fast before the twenty-first year of age has been completed?

Resp. In the negative, because the law, as it is received and determined by approved custom, obligates only those who have completed the twenty-first year; for in this attention is paid only to that which commonly happens. Yet young men are to be persuaded that, according to the measure of their age, they should sometimes fast, so that more easily, when the time of obligation has arrived, they may be able to observe the law of fasting.[3]

575. ○ Quaer. 2° Are those who have begun their sixtieth year excused from fasting?

Resp. 1° They are certainly excused if they are weak in strength, as is clear. Indeed they are excused also, according to the common sentence, in doubt about the soundness of their strength; because then the presumption stands for their weakness.[4]

Resp. 2° If they are strong in strength, it is disputed. The first sentence denies that they are exempted from the law of fasting, because those who in that age have strong powers are not reputed as old men. - Laymann, Antoine, Collet, etc. "This sentence indeed is probable," says St. Alphonsus,[1] "but the opposite sentence is not less probable, which Sanchez, Roncaglia, the Salmanticenses, ... hold. The reason is both because universal custom so bears, as the Doctors more commonly testify; and because otherwise it would be a matter liable to many scruples, to examine whether some sexagenarian is or is not sufficiently robust for sustaining a fast. But the stronger reason is that old

men of this kind, both on account of weakness of powers and on account of defect of heat, cannot take sufficient nourishment all at once, and they need more frequent food; and, although some in such an age seem robust, nevertheless their robustness is easily illusory and inconstant, since it cannot be denied that in old men of this kind the powers fail and slip into destruction. ... Hence the common saying: Old age itself is a disease." - The holy Doctor, speaking of the question whether women in their fiftieth year are excused from fasting by reason of age alone, responds: "The sentence" (affirming) "I do not dare to disapprove, but neither do I dare to call it probable."[2] It is said: by reason of age alone; for certainly women in their fiftieth year are excused when infirmity or some weakness concurs.

Notes to n. 575. (1) L. IV. 1049. 7°. (2) Tr. IV. P. II. 60. (3) L. IV. 1035. (4) L. IV. 1036.

576. ○ Quaer. 3° Are smiths, artisans, etc., excused from fasting, if they are so robust that they can fast quite easily?

Resp. In the affirmative, probably, because custom generally exempts all who exercise arts of this kind; but laws do not regard that which happens rarely and by accident, but that which happens commonly and of itself. Yet Concina, Bonacina, etc., also probably deny. - "Here the second sentence," says St. Alphonsus,[3] "speaking speculatively, seems more probable, but in practice scarcely one will be found who is not gravely relaxed from labor of this kind."

Quaer. 4° Are craftsmen excused from fasting on those days on which they abstain from labor?

Resp. In the affirmative, if they interrupt labors only for one or another day, by reason of repairing weariness and of preserving strength for sustaining future labors. - So commonly.

Quaer. 5° Are rich artisans, who could cease from labor on days of fasting, excused?

Resp. In the affirmative, more probably. The reason is that it is of interest to the Republic lest workers, on account of fasting, interrupt exercising the arts which are incumbent on them from their office. This also seems clear from the declaration of Eugene IV apud St. Alphonsus.[1] Nor is it the mind of the Church that the faithful be impeded from ordinary occupations. - So commonly.

Notes to n. 576. (1) L. IV. 1036. (2) Ib. 1037. (3) Ib. 1043.

577. ○ Quaer. 6° Do those sin who, without just cause, assume an unaccustomed labor incompatible with fasting?

Resp. In the affirmative, of itself, even if they do not act in fraud of the law; for the law which commands fasting consequently commands that causes adverse to satisfaction of the same not be placed without reason. - So commonly. Cf. n. 139.

I said without reason: because when a just cause intervenes it is licit to undertake labor incompatible with fasting, although that labor is unaccustomed, for example for perceiving a very great gain, etc. But the reason of mere enjoyment alone never suffices, unless another honest cause is added.[2]

Quaer. 7° What journey undertaken on foot from a just cause exempts from fasting?

Resp. They commonly say that a journey of nearly five leagues is required and suffices, that is, fifteen miles; but if either the road were very difficult, or the weather inclement, or the traveler weak and unaccustomed to a journey, he could be excused by a journey of two leagues,[3] or even shorter. -

Hence letter-carriers and others are excused who run around a city through the whole day for the sake of business. Likewise, probably, servants who continually serve through the day, going around for buying, accompanying, carrying letters, and similar things.

578. ○ Quaer. 8° Whether and when one making a journey by horse, carriage, or railroad is excused?

Resp. It depends on the circumstances, and thus a journey of one day could excuse someone who had to make it with great labor, or was weak in strength, or if the weather was rainy and the road rough and laborious.[4] Kenrick[5] generally excuses those who are carried by public coaches through the whole day and almost the whole night, even on a railroad.

Notes to n. 578. (1) L. IV. 1042. (2) Ib. 1046. (3) Ib. 1047. (4) Ib. 1047. (5) Tr. IV. P. II. 57.

579. ○ Quaer. 9° Whether or how preachers, teachers of sciences, confessors, students, advocates, judges, physicians, etc., are excused?

Resp. 1° Preachers who have a sermon daily or almost daily are commonly excused from fasting by reason of piety and duty. With stronger right also missionaries, who are exercised with graver fatigue in missions. Generally speaking, preachers are not excused who preach only three or four times in the week; but in this one must stand by the judgment of prudent men.[1]

Resp. 2° Teachers of sciences are excused if they need great study and labor for preparing lectures; but not those who only deliver from writing lessons already earlier arranged and often repeated. ... But Palaus and others apud Croix say that teachers of grammar who teach for four hours are not bound to fast more than three days in the week.[2]

Resp. 3° Confessors are not excused of themselves, but only when they undergo extraordinary labor, for example when for several successive days they must hear Confessions, as is accustomed to happen in Missions, or when they are so weak in strength that they cannot satisfy the frequency of penitents without grave inconvenience.[3]

Resp. 4° Concerning students St. Alphonsus defines nothing.[4] I think that those who devote themselves to necessary studies (of which kind are those which are enjoined by a teacher) are excused, if either they need great study and labor, as was said in Resp. 2° concerning teachers of sciences, or if, by reason of weakness, they need moderate and frequent refreshments for sustaining labor.

Resp. 5° Advocates, judges, physicians, and the like are excused, who because of the study to which they must devote themselves for satisfying clients, rendering judgment, and aiding the sick, could observe fasting with very great difficulty; for these, although they do not need more abundant food (since the labor is of the mind), nevertheless need more frequent food, so that the consumption of spirits may be repaired in them.[5]

But observe that those who are enumerated in this number are universally excused only by accident, that is, in the sense declared above at n. 573 under 7°.

Note. - The fast on the day before the consecration of a church is of strict obligation for the Bishop consecrating, and only for those who ask that a church be consecrated for them. S. R. C. in Mechl. 19

July 1780. Therefore for the clergy assigned to the church, but not for the people. N. R. Th. T. 12. p. 594. n. 62.

Notes to n. 579. (1) L. IV. 1049 and H. A. Tr. XII. 34. (2) L. IV. 1049. 5. (3) Ib. 1049. 7. (4) Ib. sub 5. (5) Ib. sub 6.

TREATISE ON RIGHT AND JUSTICE

NOTE. - Those things which in this treatise and in the following treatise On Contracts are alleged from civil laws, for the most part pertain only to the Common Law. For not all the laws of the individual States could be brought forward in this Compendium, nor even would they be brought forward with any utility, since in the individual States either derogation is made from the Common Law, or something is added to it, and they are changed equally from day to day. Therefore let the reader beware lest he think that these things, either alone or in all States individually, have force in all things; but let him also consult the laws of the places in which he is engaged in the Sacred Ministry. - Moreover let him observe that it has not been in my mind to form a Jurist, but a Moralist, for whom it is enough to know that concerning civil laws which is necessary for introducing for himself and for others a doubt, concerning which he may consult, or take care that consultation be made of, either books or jurists.

FIRST PART: ON THE NATURE AND PRINCIPLES OF JUSTICE AND RIGHT

That is, 1° concerning the general notions of justice and right; 2° concerning the principal species of right.

CHAPTER I: ON THE GENERAL NOTIONS OF JUSTICE AND RIGHT

ARTICLE I: ON THE NATURE OF JUSTICE

580. Definition. - The name of justice is used in a multiple sense, even in Sacred Scripture, and signifies 1° the complex of all virtues; 2° charity or sanctifying grace; 3° generally a right act; 4° any good habit; 5° finally the special virtue from the four cardinal virtues, which is defined by St. Thomas[1] as "a habit according to which someone by a constant and perpetual will renders to each one his right."

It is said 1°: "a habit," or a constant and perpetual will, as the definition pursues. Cf. n. 247.

It is said 2°: "by will"; for this is the subject of justice: "for we are not called just from the fact that we know something rightly" (namely what is to be rendered to each one), "... but we are called just from this, that we do something rightly" (or that we actually render to another his own right): "but the proximate principle of act is the appetitive power"; in the present matter not the sensitive, but the rational, power, or the will.[1]

It is said 3°: "his right," i.e. the very thing which is owed to each one. Hence "it is proper to justice, among" or besides "the other virtues, that it order man in those things which are toward another":[2] and therefore "the proper operations of justice are exterior operations according as they are ordered to another."[3] For "justice imports a certain equality, as the name itself shows; for those things which are made equal are commonly said to be adjusted; but equality is toward another."[4] Wherefore someone can be called just toward himself only metaphorically.[5]

It is said 4°: "renders": namely by conserving the right of another, or not injuring it, or, if it has been injured, by repairing it.

Notes to n. 580 - note sequence 1. (1) 2. 2. q. 58. a. 1. c. Notes to n. 580 - note sequence 2. (1) 2. 2. q. 58. a. 3. c. (2) Ib. q. 57. a. 1. c. (3) S. Th. in L. 3 Sent. D. 33. q. 2. a. 2. sol. 3. c. (4) 2. 2. q. 57. a. 1. c. (5) Ib. q. 58. a. 2. c. - As to all things, Signoriello, Eth. P. I. n. 193. Notes to nn. 580-584. (1) Mar. p. 14. n. 13. (2) 2. 2. q. 66. a. 8. c. (3) Mar. p. 15. n. 14.

581. Division. - The subjective parts, or species, of justice are general justice, which is also called legal, and particular justice, which is divided into commutative and distributive. For in however many ways someone can be compared to another, so many species of justice must there be. But as far as the present matter is concerned, someone can be related to another in three ways: namely either as a part to the whole, as a citizen to the city; or as part to part, as citizen to citizen; or as the whole to a part, as a Superior or city to subjects. The justice which makes man right or just in the first way is called general and legal: general indeed, because it pursues and intends the good of the city or republic, which is a certain general good; but legal because it strives toward that general good through law, whose function it is to procure the common good.[1] The justice which rightly disposes man compared to man in the second way is called commutative; for it is concerned with contracts, exchanges, and commerce, which are accustomed to be exercised between private persons. Finally, that which directs man compared in the third way is called distributive, because it has place in distributions of common goods

and burdens; for it effects that both goods and common burdens are distributed to private persons in right order and by right reason.[2] Now commutative justice observes simple or arithmetical proportion; but distributive observes comparative or geometrical proportion. Namely commutative justice brings in an equality of all things, such as is between thing and thing, so that what is rendered is entirely equal to that which had been received; for example, if someone has received four coins by loan, he is bound to repay four coins to the creditor. But the equality which is observed by distributive justice is not of this kind, except by a certain proportion, namely that one receive so much more than another as he excels him more in dignity or merit; and thus there is not equality of thing to thing, but proportion of thing to person. It is called geometrical proportion, because as merit is related to merit, so reward is related to reward, so that if one having merit as eight receives one hundred coins, one having merit as four receives fifty.[1] In like manner the distribution of burdens ought to correspond to the unequal capacity of those upon whom they are imposed. Wherefore, other things being equal, greater taxes are to be imposed on the richer than on the less rich.

Legal justice "is in the Prince principally and, as it were, architectonically," because by making law he prescribes the manner of contributing to the common good; "but in subjects secondarily and, as it were, administratively,"[2] because namely they execute and fulfill the law. Distributive justice likewise is principally in the Prince and electors; yet it is "also in subjects, to whom distribution is made, inasmuch as they are content with a just distribution."[3]

Notes to n. 581. (1) See Signoriello, Eth. T. I. n. 202. p. 134 note 1, where concerning the controversy whether and in what sense legal justice is a special virtue. S. Th. in lib. 1 Ethic., L. II. and 2. 2. q. 58. a. 5, 6. (2) S. Th. q. 61. a. 1. c. and 2. 2. q. 61. a. 1.

582. Vindicative justice. - Some add this to the three species of justice just mentioned. It is defined: "justice inclining the prince to punish the guilty with congruous penalties for the good of society." Neither does St. Alphonsus commemorate this as a distinct species of justice, nor does St. Thomas[4] hold it as such.

ARTICLE II: ON THE NATURE OF RIGHT

583. ◦ Since it belongs to justice to render to each one his right, as is clear from the definition of justice handed down at n. 580, in this article what comes under the name of right must be explained.

Right is taken in various senses; for it signifies: 1) the very science of right or laws, those who cultivate which we call Jurists or Jurisconsults; 2) law or the rule of right, and thus divine right is spoken of, natural or positive, human, canonical or civil, of nations, etc.; 3) the very complex and system of laws, as when we say the Corpus Juris Canonici, Corpus Juris Civilis, Code of Law; 4) the sentence pronounced by a judge, although perhaps iniquitous, in which sense they say that a judge speaks right; 5) the very place or forum in which cases are conducted, in which sense the accused is said to be called into court.[5]

Notes to n. 583. (1) S. Th. De Div. Nom. c. 8. L. 4. L. 5, Ethic. L. 5. - As to all things, Signor. ib. n. 202. (2) S. Th. 2. 2. q. 58. a. 6. c. (3) Ib. q. 61. a. 1 ad 3. (4) Ib. q. 80. c. and ad 1. (5) Ib. q. 57. a. 1 ad 1.

584. ○ Right, as it is taken here, is defined: "A legitimate moral faculty by which someone can do or have something in such a way that it is licit for no one to violate it without some injury."

1° It is a faculty. This, "according to the common use of speaking, signifies the power by which something is held at one's nod,"[1] or at one's own judgment.

2° It is a moral faculty, because it does not consist in physical force. Wherefore it cannot be diminished by the violence of anyone stronger. Cf. Syllabus p. XLV. n. 59, 60.

3° It is a faculty by which someone can do or have something, since the matter of right consists in actions, such as possessing, retaining, etc., and in things.

4° It is a faculty which it is licit for no one to violate without some injury; for otherwise that faculty would be vain and useless.

5° It is a legitimate faculty, because, when a just law is repugnant, nothing can be done or had by right. But law can be repugnant to a faculty in two ways, namely so that either it removes the faculty itself, for example of disposing of goods by testament, or renders the exercise of the faculty illicit, for example the prodigal squandering of one's own goods.

Notes to n. 584. (1) Ib. in 2 Sent. D. 24. q. 1. a. 1 ad 2.

585. Title of right. - From what has been said it is understood what a title of right is: namely it is nothing other than the very reason why someone has a right or legitimate faculty of doing or having something, and why it is not licit for others to violate this faculty without some injury.

586. Division of right. - Right:

1° Is either objective, which others call passive, and is called the just thing, or that which is owed to another, or subjective, which others call active, and is the very faculty of doing or having something defined above.

2° It is either personal, or pertaining to a person considered in himself and immediately inhering in him, such as the right of preserving life; or real, or belonging to a person only on account of some thing which he possesses. Hence real rights can be transmitted from one person to another, according as this person succeeds that one in possession of the thing by force of which the rights exist, as, for example, the right by which a Bishop has power to make laws. - Real and personal right is also taken in another sense: namely the former for a right in a thing, the latter for a right to a thing, concerning which this number under 4° will treat.

3° One right is strictly so called, or strict without addition; another is broadly so called. The former, if it is taken objectively, is that "which is owed to another with equality of thing to thing, and which therefore cannot be violated without injury"; but the latter is that "which is indeed owed to another," but not with the said equality. Thus a seller "has a strict right in the price of the thing: therefore money is to be paid to him which equals the price of the thing; but parents indeed have a right to the obedience of children, but not a strict right; for what sort of obedience is owed to them cannot be defined by an adequate number."[1]

Strict right by its nature is perfect. But perfect right is called a right which is joined with the right of coercing, namely of coercing him who would violate it, or lessen it, or disturb the use of it, so that he desist from violating it, etc.; and also of coercing him who has violated it, etc., so that he restore all things to their former state. Yet this right of coercion, if you except the right of repelling force by force, in a society rightly constituted passes into an action, i.e. into the right of reclaiming through a judge that which you think is owed to you. "In human society," says St. Thomas,[2] "no one has coercion except through public power." Yet it can happen that in fact no action is given from that right, for example because the proof which is required by law is lacking, or because the legislator denies an action to some special perfect right.[3] Hence sometimes, as for example in hidden compensation, n. 709, 2° and n. 712, without imploring a judge, you licitly procure right for yourself.

4° Strict right is divided into right in a thing and right to a thing. A right in a thing is that which someone has in a thing already his own, or in a thing which is already bound to him in itself, and which therefore he will be able to vindicate from anyone into whose hands, against his will, it has come. A right to a thing is that by which we have not the thing itself, but the person obligated to us. Thus I have a right in a thing in my horse, and therefore I can vindicate it from any possessor into whose hands, against my will, it has come. But if I have bought a horse - where from law its handing over is required, so that it becomes mine - and the handing over has not yet been done, I can seek it only from the seller, but not from any other to whom the seller afterward sold and handed it over.

Corollary. - Since office or duty is said in order to right, duties can be divided in a manner corresponding to the division of rights. Wherefore some are personal, others real, this number under 2°; some perfect or legal, others imperfect or moral, this number under 3°.

ARTICLE III: ON THE GENERAL PRINCIPLES OF JUSTICE

PROPOSITION I. Commutative justice obligates under grave sin, and with the burden of restitution.

587. The first part is proved. - For it is proper to justice to preserve to each one his right, and violation of another's right from its genus speaks a grave disorder. I said: from its genus, not from its whole genus; because in this matter smallness of matter is admitted, as is clear to all.

The second part is proved. - For justice regards equality of thing to thing; but an injury of this cannot be repaired except through restitution, or, as long as inequality remains, the obligation of reducing equality also remains; and the one injuring sins by preserving inequality, just as he sinned by inducing it.

PROPOSITION II.

The other species of justice, namely legal justice, distributive justice, and, if it pleases one to admit this as a fourth species of justice, vindicative justice, also obligate under grave sin, but OF THEMSELVES not with the burden of restitution.

588. The first part is proved. - For injury to these introduces grave disorder, and necessarily harms the order of society gravely.

The second part is proved. - For he who violates, for example, legal or distributive justice indeed acts against the common good, or does not preserve the due proportion in distributing common goods, yet he takes away from no one what is his, nor does he deprive anyone of a thing which is his. Therefore of itself he is not obligated to restitution.

I said: OF THEMSELVES not with the burden of restitution. For often commutative justice is joined to the others, and injury to it induces the burden of restitution. Thus a Superior, magistrates, and a judge are bound to restore when by grave negligence in punishing, or in assigning the unworthy to public offices, they are the cause why private persons or the community suffer grave damage; in which case they are guilty not only of not having procured the common good, to which legal justice inclines, but also of having violated the contract by which, by this very fact that they undertook the office, they tacitly obligated themselves to guarding against damages of subjects. Yet more probably he is not bound to restitution who distributes offices of society to the less worthy; because he does not violate the strict right of the more worthy, nor of the community, which by strict right cannot demand anything else except that the unworthy, from whom damage is to be feared, be kept from offices.[1] But otherwise if in a contest the Superior preferred the less worthy to the more worthy; because in a contest there intervenes a pact from which strict right belongs to the more worthy.

Nor is he bound to restitution who distributes merely honorific dignities - whether to the less worthy, or even to the unworthy; because he has deprived no one of his strict right, although he has sinned through acceptance of persons.

Here it can be asked whether and when, from the sentence of a judge, a strict obligation of justice arises?

Resp. 1° "The sentence of a judge produces an obligation of the same genus as the law itself according to which it is pronounced. Therefore ... in a penal cause it imposes an obligation of obedience, because penal laws are to be observed not from justice strictly so called, but from obedience, so that the fine or penalty imposed by a judge is to be paid not from strict justice, but from obedience."

Resp. 2° "That the sentence of a judge constitute an obligation of strict justice, it is required that the law itself, whence it has all its force, define the strict right of citizens, e.g. a just sentence of a judge concerning paying a legacy, in a singular cause judged, imposes upon the heir an obligation of strict justice, with the burden of restitution; but from the sentence of a judge rendered against parents or children according to a law which obligates from piety, an obligation of piety, without the burden of restitution, arises."

Resp. 3° "When from a certain law a certain obligation arises, the sentence of a judge does not 'wish' or at least does not 'have power' to remove it, e.g. if someone from a contract which is indeed certain but" which cannot be proved in the way prescribed by law, "owes a thing to another, the sentence of the judge which rejects the action ... of the creditor because of defect of legitimate proof in no way removes the obligation of the debtor to provide the thing agreed upon. But in a doubtful cause, whether there is doubt concerning right or concerning fact, it is licit with a safe conscience to stand by the sentence of the judge; for judges are constituted for this reason, that they may resolve doubts."[1]

CHAPTER II: ON THE PRINCIPAL SPECIES OF RIGHT

The principal species of right are dominion, use, usufruct, and servitude.

ARTICLE I: ON DOMINION

589. ○ Dominion is a perfect right, acquired through legitimate acts, of disposing at will of some thing and of its utility with the exclusion of others. - It is said:

1° Right (see n. 584).

2° Perfect right (see n. 586. 3°).

3° Acquired through legitimate acts. What those acts are, see below n. 638.

4° Of disposing: this word signifies three rights contained in dominion, namely:

a) The right of retaining or possessing the thing (concerning the notion of possession see n. 662): I say right, because the right of possessing a thing is to be distinguished from actual possession or the physical faculty of using and enjoying a thing; for legitimate possession can be lost while dominion and the right of possessing are preserved. Thus possession of a flooded field, or of a thing lost, or of a thing taken away by force or fraud, is lost, and nevertheless the right of possessing is retained; and this is not lost except from the express, or legitimately presumed, will of the owner.

b) The right of disposing of the thing as one pleases, so that he can change, consume, and alienate the thing; for "we are said to possess that which we have quietly and fully,"[2] and concerning which "we are able to do what we wish."[3]

c) The right of vindicating the thing, or reclaiming it, if perhaps, against the owner's will or without his knowledge, it has passed into the hands of others.

5° At will: yet this is not to be understood as if in civil society that right could not or should not sometimes be circumscribed by certain limits, as below, where there will be discussion concerning the dominion of children of a family, wives, etc., we shall see.

6° Of some thing, so that dominion of property may be distinguished from dominion of jurisdiction, which is referred especially to persons.

7° And of its utility: for the right of disposing of the utility of the thing is contained in the right of disposing of the thing itself, above under 4°. 2).

8° With the exclusion of others: therefore the object of dominion is not those things which are never exhausted by use, such as air, light, and the heat of the sun; for exclusion of others from these cannot even be imagined (n. 592).

Note. - Dominion is defined here as dominion taken subjectively and morally; understood objectively and materially, it is the thing itself of which someone is owner.[1]

Notes to n. 589. (1) L. V. 106. 107. Notes to nn. 589-593 - note sequence 1. (1) Amendm. to the Const. of U. S. art. V. (2) Sap. 16. 13. Deut. 32. 39. (3) Gen. 1. 28. Ps. 8. 8. Notes to nn. 589-593 - note sequence 2. (1) Walker, § 122. (2) Walker, §

21. (3) Walker, § 122. (4) a. 460-480.

590. Division. - Dominion is principally divided into perfect or full, which in our law is called Fee simple if it is a question of immovables; if of movables, more commonly the complete and absolute ownership; and imperfect or not full, according as it is the right of disposing both of the thing itself and of its utility, or of only one of the two. But imperfect, or not full, is subdivided into direct and indirect or useful, according as it regards only the property of the thing, or only its utility. Thus an owner (the landlord) has direct dominion of an estate which he has leased to another; but the lessee or tenant has indirect or useful dominion.

They also commonly distinguish eminent dominion (the right of eminent domain) and lowly dominion. The former is called the right which supreme authority has of sometimes disposing, from a very grave cause, of the goods of private persons for the good of the community; the latter is the dominion of private persons.

The former properly is dominion only of jurisdiction, since the republic has no dominion of property in the goods of private persons, but only a right of administration, or the right of commanding when and how much from the goods of private persons is to be contributed to the common good. For the republic makes laws by which the dominion of private persons is governed not as supreme and universal owner of the territory, but as supreme administrator of the common good. "All things belong to princes for governing, not for retaining them to themselves," etc. St. Thomas, Quodl. 12. a. 24 ad 1.

That this right belongs to the supreme power is clear from this: that a right to an end necessarily implies the right to those means without which the end cannot be obtained. But the public good sometimes requires that someone be deprived of his thing, for example of a field for constructing a public road, etc.

But in the use of this right, not the utility of private persons, but only public utility is to be considered, nor is it licit to take away from someone what public utility does not require: "nor shall private property be taken for public use without just compensation."[1]

We must treat 1° of the object; 2° of the subject; 3° of the acquisition of dominion.

§ I. On the object of dominion

Goods, as objects of dominion, are 1° internal or external; 2° of soul or of body; 3° of reputation and honor; 4° of the person, i.e. of liberty and independence in those things in which man, as an individual, is his own right; 5° of fortune.

591. Principles. - I. Man has useful dominion of the goods of soul and body which are naturally inalienable; God has direct dominion.[2] Cf. n. 461.

II. Man has direct dominion of the goods of the person, in the sense above under 4°; likewise of the soul, insofar as they are abdicateable without legal injury, though very often not without moral injury, i.e. without sin: namely of his free acts, indeed also of habits, whether natural or supernatural, such as virtues and graces; likewise of reputation and honor in the sense explained at n. 525.

592. III. The proper objects of dominion are goods of fortune or external things,[3] provided 1° they can be subjected to the power of man and insofar as they can; and thus things not beneath the moon, such as the sun, moon, and stars, can be subjected to it according to their effects and influences, not according to themselves; 2° they are not inexhaustible in use, such as air, wind, etc., of which only the use or particles already exhausted by someone, not the things themselves considered generically, are objects of particular dominion (n. 599); 3° they are not outside dominion by law. Van Egeren.

Notes to n. 592. (1) Mar. p. 18. n. 18. (2) S. Th. 1. D. 8. q. 2. a. 1 ad 6. (3) Ib. de malo. q. 13. a. 1.

593. ○ Goods of fortune are distinguished in our law in this way. Property is ... divided:

1. Into things real and things personal. Things real include every valuable thing of a fixed and immovable nature, and pass under the general description of lands, tenements, and hereditaments, or simply realty. Things personal include every valuable thing of an unfixed and movable nature, and pass under the general description of goods and chattels, or simply personalty: "There are certain things occupying a sort of intermediate position between the two, some of which are called chattels real, others fixtures";[1] to understand which, it should be borne in mind, that "although immobility is the distinguishing characteristic of realty, an indefinite duration of interest also enters into the idea; and therefore certain determinate interests in land, as leases for years, are called chattels real, because, although they have that immobility which is denoted by the term real, yet for want of an indefinite duration, they are treated as chattels." So also "there are various articles of personalty, which become realty by being annexed thereto; and these are called fixtures."[2]
2. Real property is again subdivided into things tangible and things not tangible. Things tangible include land and every corporeal thing permanently connected therewith to an indefinite extent above and below the surface, and pass under the general description of corporeal hereditaments, or simply land. Things not tangible include certain rights, privileges, or easements, annexed to land in the ownership of another, and pass under the general description of incorporeal hereditaments.[3]

For Louisiana, see "Civil Code of Louisiana."[4]

Notes to n. 593. (1) Signor. Eth. P. 2. n. 198. 199.

594. Questions. - Quaer. 1° Does man have dominion of his reputation?

Resp. See n. 525.

595. ○ Quaer. 2° Can man have dominion over another man?

Resp. 1° In the negative, as to direct dominion; for that belongs to God alone, as is clear from what was said at n. 591, and men are metaphysically independent of one another; or:

Resp. 2° In the affirmative, as to useful dominion, or the works of man. The reason is that any man is owner of his own work, and therefore can alienate it and hand it over into the dominion of another. For an owner can use and abuse his own thing insofar as the character of right permits.

Hence 1° by natural right man can sell himself to another, even in perpetuity, and indeed hand himself over gratuitously as to useful dominion of himself. For if he can confer upon another useful dominion of himself for some time, he can do the same in perpetuity, since he can cede all that of which he is owner. 2° Servitude, or a perpetual state of subjection by which someone is bound to provide all his works to another for sustenance, is not of itself repugnant to the law of nature. I say: his works; for servitude in the strict sense, namely that by which slaves properly so called are counted not among persons but among things, which the master can use and abuse, can be called licit in no case.

596. Note. - Although servitude has been abrogated among us, nevertheless it is fitting that confessors receiving the Confession, especially general, of former masters or slaves know the sins to which they were more commonly liable. Wherefore in this place we briefly enumerate them. Therefore I. As to masters:

1° They sinned and are bound to restitution, if any exercised the so-called traffic in Negroes, or cooperated with it, or bought for themselves as slaves those whom they knew had been unjustly despoiled of liberty. - Against so inhuman a trade various Apostolic Constitutions have come forth, namely of Paul III, Urban VIII, Benedict XIV, and lately Gregory XVI, Constitution In supremo Apostolatus, 3 Dec. 1839. And rightly indeed. For although someone, either from pact or his own renunciation, or, as formerly, by the law of war, or from delict or from just condemnation, or from birth from a slave mother, can sometimes be bound to hand over his works to another in perpetuity,[1] nevertheless he is unjustly forced to this where none of these titles can be invoked. But in the traffic in Negroes none of these titles can be invoked; for through it free men, against their own will and without any delict on their part, are carried away from their own regions and sold. Therefore:

I said: free men; for if it is a question of Negroes or others in servitude legitimate by one of the aforesaid titles existing, of itself that commerce is not absolutely illicit, because, once servitude has been admitted as legitimate, the master has a true right in the slaves, or in their works, and therefore can transmit it. I said: of itself; for either circumstances or civil laws can stand in the way.

2° They sinned because of circumstances standing against sale:

a) Those who by selling separated spouse from spouse, or offspring from parents, without grave cause. I said: without grave cause; which would have been present, for example, if a slave had been wicked, whom the master had tried in vain to bring back to good fruit, and from whom he feared death or some other grave evil.[1]

b) Those who by selling a slave, especially a Catholic, cared nothing about seeking for him a Catholic, humane, and just buyer; for it was not licit for a master to cast the care of a slave upon just anyone at hand. Yet those would be excused who had sold to anyone at hand slaves from whom they feared death for themselves or their own, unless they were immediately dismissed from the house, provided nevertheless that damage was not inflicted on an unsuspecting buyer.[2] Those also are to be excused, as is clear of itself, through whom it did not stand that slaves were sold to anyone at hand, as if they had been sold at auction in the distribution of an inheritance, or by authority of law for punishing crimes or for satisfying creditors.[3]

3° They sinned who did not supply them necessary food and clothing; who did not care for the sick; who did not endeavor to relieve with remedies the old, or those otherwise no longer fit for labor.[4]

4° Those who selected or retained overseers whom they knew imposed harsher burdens upon bondmen, or treated them more severely and cruelly;[5] and likewise those who, carried away by anger, flogged slaves for a light cause, or ordered them to be flogged, especially with danger to limbs or life.[6]

5° Those who did not leave to slaves the liberty of entering marriage and of using its rights, although slaves would not on account of this be drawn away from providing the work owed.[7]

6° Those who did not take care that the children of their slaves be baptized.

7° Those who did not provide for the salvation of the slaves themselves; of this kind were a) those who did not take care that they learn the rudiments of Christian doctrine, and that a supply of priestly ministry for receiving the Sacraments be made available to them; b) those who omitted every precaution for preserving integrity of morals among them, not taking care, for example, lest they use promiscuous sleeping together; c) those who fostered corruption of morals by their very bad example and wicked solicitations; d) those who favored the delicts of a female slave because of the utility that would come to them from offspring.[1]

Notes to n. 596 - note sequence 1. (1) Lugo. de Jure et Just. disp. VI. n. 11 seq. Notes to n. 596 - note sequence 2. (1) Sanch. de Mat. L. VII. disp. XXII. (2) Kenr. Tr. VIII. n. 97. (3) Ib. (4) Ib. n. 98. (5) Ib. n. 94. (6) Ib. n. 95. (7) Ib. n. 96.

597. ○ II. As to former slaves. They sinned 1° who neglected the work enjoined upon them, or the care of things committed to them; yet they did not violate justice, but obedience owed to the master; for the actions of a slave are not owed to the master by the law of justice, as are those of a hired man, who receives a price for them.[2]

2° Those who stole from the master things other than common edibles; and these are bound to restitution, if they have the means from which they may repay, and unless by their works they seem to have repaired the damage inflicted.[3]

3° Those who ran around at night, so that they might visit women, and this not only because of immodesty, but also because of other crimes to the danger of which they exposed themselves.[4]

4° Those who lived in concubinage, whether simple fornication, or adulterous; and this simple or double.

5° Those who, when opportunity was offered, neglected to learn the documents of the faith and to fulfill the duties of religion.[5]

Notes to n. 597. (1) L. VI. 130. (2) Kenr. Tr. VIII. n. 102. (3) Lessius de Just. et Jure, S. II. c. VIII. dub. III. n. 20. (4) Kenr. Tr. VIII. n. 104. (5) Ib.

598. ○ Quaer. 3° Whether and by what right does man have dominion in the fruits of his industry and talent?

Resp. In the affirmative, and indeed 1° by natural right. For if a thing bears fruit for the owner, a fortiori this must be true of internal faculties, since nothing can be more proper to man.

Hence a) it is certain that both he who steals from the inventor of some art, for example whose machine has not yet been handed over to commerce, his secret and divulges it publicly against his will; and he who prints the manuscript work of another, are bound to restitution and compensation of damages; for a work remains under the dominion of the author or inventor as long as it has not been given to public use.

b) It is disputed whether he who has printed a book has, positive law being set aside, the right of impeding lest anyone commit it to the press and sell it with damage to the author or bookseller to whom the author has transmitted his right. Those who deny bring forward this reason for their denial: that a thing handed over to the community, as a book published in print is, by that very fact becomes of common right, and for the same reason neither would those be guilty of injustice who brought to light the public lectures of some professor or the sermon of an orator. Those who affirm respond to the reason of those denying: the natural right which all attribute to the author in the fruit of his talent cannot be exercised by him unless he hand over this fruit to the community; and therefore it is absurd to say that that right is lost through that very thing without which it cannot be exercised. Practically, this question is of lesser moment; for usage today everywhere has it that works published in print are committed to the press and sold by others in the case in which either the author neglected to do those things which are required by positive law in order to provide for himself, or positive law does not assist him, whether because it does not sanction the property of some genus of books, or because it denies its protection to books edited in another region.

Resp. 2° In the affirmative, also by the positive law of almost all nations. And indeed by a law passed by Congress among us provision is made that one who wishes to claim as proper to himself the right of a thing invented by himself (Patent right) deposit a model in the public office (Patent-office) at Washington. But one who wishes to have the right of publishing his own books (copyright) ought to deposit a copy in the public office of the librarian of Congress in the same city, and on the title page of the book committed to type, or on the page immediately following the title page, to state it in the following words: "Entered, according to Act of Congress, in the year by N., in the office of the librarian of Congress at Washington." He who desires to know more should go to Kent,[1] or Wells's Every Man his own Lawyer,[2] or New Amer. Encycl.[3]

If someone violates a privilege of this kind, a civil action is given against him. But although the inventor, or author or bookseller to whom the privilege belongs, does not bring a lawsuit, nevertheless the violator is bound in conscience to repair the damage inflicted on them. The same seems to be said whenever someone, by a certain change of a new machine or book, renders the force of the law and privilege void.[1]

Notes to n. 598. (1) Vol. II. n. 365-384. (2) p. 204-215. (3) V. Patents et Copyright.

599. ○ Quaer. 4° Can seas and the ocean be subject to someone's dominion?

Resp. with Kent:[2] "Navigable rivers which flow through a territory, and the sea-coast adjoining it, and the navigable waters included in bays, and between headlands and arms of the sea, belong to the sovereign of the adjoining territory as being necessary to the safety of the nation, and to the undisturbed use of the neighboring shores. The open sea is not capable of being possessed as private property. The free use of the ocean for navigation and fishing is common to all mankind and the public jurists generally and explicitly deny that the main ocean can ever be appropriated."

§ II. On the subject of dominion

600. ○ The subject of dominion is the owner of some thing, or he whose some thing is.

Hence 1° to God alone belongs supreme and absolute, and therefore independent, dominion over created things, as Scripture cries out: The earth is the Lord's and the fullness thereof, the world and all they who dwell in it.[3] Indeed he can communicate this dominion to no one, because it depends on creation and conservation, from which God cannot abdicate himself. Yet this does not prevent God from being able to communicate particular dominion to rational creatures, according to that: but the earth he has given to the children of men.[4]

2° On earth every and only man is capable of dominion. It is proved. "He alone can have a right who is capable of suffering injury ... but he alone suffers injury who suffers it unwillingly; but he ought to be unwilling not indeed by a will by which he wishes a thing to be his, but by a will by which he wishes to retain right to the thing itself, or to obligate others not to take it away. But brutes cannot have such a will, since they can know neither moral obligation nor turpitude; therefore they cannot be unwilling, just as they cannot give permission or transfer dominion for the same reason, because, since they do not know moral right, they cannot yield their own right. ... Therefore only intellectual nature, which can know objects of this kind, is capable of having dominion."[1]

3° Nor are infants incapable of dominion, nor even the insane; for the use of reason, of which they lack, is necessary only for disposing here and now of goods, or for the exercise of right (n. 589), but not for having dominion, which is founded in the nature of man and his powers, not in the actual exercise of the powers. (a) p. 475.

We must treat especially of the dominion 1° of children of a family, - 2° of wives, - 3° public and national dominion, - 4° of colleges or corporations, - 5° of the Church and clerics. But concerning the dominion of Religious it will be said below in the Treatise on States, where the vow of poverty is treated.

Notes to n. 600 - note sequence 1. (1) Kenr. Tr. X. n. 13. (2) Vol. I. n. 26. (3) Ps. 23. 1. (4) Ps. 113. 16. Notes to n. 600 - note sequence 2. (1) Lugo de Just. disp. 3. n. 1. Appendix annotation (π), to n. 600. 3°. p. 261. col. 2. Thus the common opinion. Yet there are some (among whom is also Lugo, de Just. D. 3. n. 14-16) who contend that their capacity must be derived from civil law alone.

Point I. On the dominion of children of a family.

601. ○ Children of a family are properly called in this place children of either sex born from legitimate marriage, or legitimated, and still subject to paternal power.

It is said: 1° Born from legitimate marriage, or legitimated. For the dominion of illegitimate children, if and insofar as it is not defined by civil law, is governed by natural right.

It is said: 2° Still subject to paternal power, or minors, not emancipated from paternal power. For although the obligations of children existing from natural right, and which exact offices of honor, love, and reverence toward parents, can never be dissolved, nevertheless this does not have place as to those which natural right does not impose forever, such as obedience, or which draw their origin from civil right alone.

Notes to nn. 601-604. (1) L. IV. 488. III. and 455. Cf. Mar. p. 34. n. 34-39.

602. ○ In Roman law various goods of children of a family are distinguished;[2] but since these distinctions are not found in the laws which we use, we set forth here only the dispositions of these. Hence:

603. ○ Quaer. 1° How many kinds of goods of children of a family are distinguished, and what right belongs to the father in them?

Resp. Among goods which come to a child of a family, some come from his own labor, others from another title, for example from inheritance, legacy, or donation. The father has the usufruct of these if either by law of the State,[1] or by the will of the testator or donor, this is assigned to him; but he has the administration[2] in every case, unless perhaps goods have been given or bequeathed to the son on this condition, that custody of them be committed to others and not to the father. But if the father has administration alone, the son who uses those goods against the will of the father or without his knowledge will indeed sin against the fourth precept of the Decalogue, but not against justice strictly so called: for in this case nothing of his own thing or of the fruits of the thing perishes for the father; for both the thing and the fruits of the thing, in the supposition, are the son's, not the father's. Yet in this case the son would sin against justice if the father also had the usufruct: for he would deprive the father of the part of the fruits owed to him.

The proper labor by which a son acquires goods is either private or common with the father. It will be private, if for example he carries on trade in his own name; if he exercises an art entirely diverse from the father's art; if he labors in a workshop outside the paternal house; if as a hired man he has hired out his work in his own name. Those things which the son acquires by private labor, with law forbidding this set aside,[3] or with the father's consent, whether express or tacit,[4] supposed,[5] he acquires for himself, yet with the burden of compensating the father for the expenses of food, clothing, and shelter.

What if the son exercises a common industry with the father?

Resp. Setting aside a contract, for example of partnership, the son lacks right both to a part of the gain procured by his labor, because in this supposition he conducts the father's affairs only as helper or mandatary, and, if at least his labor is already compensated elsewhere by a just wage, to a stipend: for a double wage cannot be asked for the same labor. I say: if his labor is already compensated elsewhere by a just wage, for example by the increase of inheritance through equal labor of the brothers, or by food, clothing, etc., provided to him. Hence, that is, because of defect of compensated labor, he has a right to a stipend; and therefore he can demand it as owed to him by strict right, or, if from reverential fear or from another cause he has not demanded it, he can procure it for himself by hidden compensation, if his labor was certainly not owed. Such would be the case if either from his condition he was not bound to such labor, or by an indubitably extraordinary and undue excess he labored more with the father than the other brothers.[1]

Notes to n. 603 - note sequence 1. (1) Lugo de Just. disp. 3. n. 1. (2) L. IV. 488. Notes to n. 603 - note sequence 2. (1) As in Louisiana. Civ. Code of Louis. a. 223. (2) And, by common law, this alone. Blackstone, Comm. B. I. n. 453. (3) From common law, "he" (the father) "may ... have the benefit of his children's labor while they live with him and are maintained by him." Ib. (4) "An emancipation may be inferred where the father leaves his child to manage and contract for himself, for several years." Kent. Vol. II. n. 194, note 1. Yet for the internal forum this consent can exist more easily from other indications also. (5) Yet this consent, considered according to natural right, seems to be required not by force of justice

strictly so called, but by reason of filial piety: "For the children ought not to treasure up for the parents, but the parents for the children" (2 Cor. 12. 14), and "children owe piety to parents, not works." Law penult. de obseq. parent. praest.

604. ○ Quaer. 2° Does a son have perfect dominion in movable goods given to him by parents or relatives?

Resp. 1° Affirmatively, if they are consumable by first use, because they are given absolutely to him for use, as for example money granted for amusements (pocket money). Make exception if they are given for a determined use, as money for buying clothes or books, etc.

Resp. 2° If they are not consumable by first use, such as books, clothes, etc., the son generally has, that is, outside the case of consent of the parents either express or reasonably presumed, only useful dominion of them, because parents commonly intend to confer nothing else upon them. Wherefore, if the son disposes of these things against the right granted by the parents, a burden of restitution arises.

Point II. On the dominion of wives.

605. ○ By English and American common law, the goods of a wife can be said to be of three kinds, namely dotal, paraphernal, and common.

Under the name of dotal goods (Dowry or Dower) among us comes that which, according to the laws of each State, must be left from the goods of the husband to the surviving wife, namely, by common law, the usufruct of the third part of immovables during her life.

In Louisiana dowry "means the effects which the wife brings to the husband to support the expenses of marriage."[1]

That which is termed by the civilians vidualitia, though we call it also dowry or dower, in the legal sense of the word is not a dower, but only that part of the goods of which the wife, after her husband's death, is heiress ad intestato, which, according to the common law, is the third of the personalty of the husband leaving issue, or a moiety, if he dies without issue.

Notes to nn. 605-615 - note sequence 1. (1) Kent, Vol. II. n. 273 (b). (2) Ib. n. 274. (3) Ib. (4) Ib. n. 275. (5) Ib. n. 276. Kenr. Tr. X. n. 19. (6) Kent, Vol. II. n. 277, 278. Notes to nn. 605-615 - note sequence 2. (1) Kent, Vol. II. n. 305. sq. (2) a. 427. sq.

606. ○ Paraphernalia are called those things which have been wholly reserved in the full dominion of the wife.

What these are from common law would be said almost uselessly, since the dispositions of common law concerning this matter have been changed in almost most States. Consult, if you please, Wells's Every Man, etc.[2] - But see the dispositions of common law, if you please, apud Kent.[3] - For the law of Louisiana see Civil Code of Louis.[4]

Everywhere the following can be held as paraphernalia: both 1° paraphernalia strictly so called, or the wife's personal apparel and ornaments, suitable to her rank and condition in life; and 2° that which is called "pin-money," i.e. a sum payable by the husband to the wife, in virtue of a particular arrangement, and to be applied by the wife in attiring her person in a manner suitable to the rank of her husband, and in defraying other personal expenses. Finally 3° those things also ought to be held

as paraphernalia which either by the laws of each State, or by antenuptial agreement, are reserved to the full dominion of the wife.

Notes to n. 606. (1) Civ. Code of Louis. a. 2337. sq. (2) pp. 81, 82, 242. (3) Vol. II. n. 130. sq. (4) a. 2335. 2383. sq.

607. ○ Common goods among us can be called immovables which are given simultaneously to husband and wife during the marriage, or which are bought by them together. Concerning these our law establishes: "They" (the husband and wife) "are both seised of the entirety, and neither can sell without the consent of the other, and the survivor takes the whole."[1]

Except Louisiana, where "the partnership ... of acquets or gains ... arising during coverture" (i.e. while the marriage stands) "exists by law in every marriage contract in the State, where there is no stipulation to the contrary."[1] "The community of acquets and gains ceases on the death of either party, and the survivor takes only his or her undivided moiety of the common property."[2]

608. Questions. - Quaer. 1° Can a wife distribute alms from goods that are not paraphernal?

Resp. In the affirmative, even if otherwise she has paraphernalia or her own goods, provided this is done according to the custom of other women of that place and condition. The reason is that a wife is not a slave, but a partner; therefore she ought to have a certain administration in the house of the husband. - Then the husband, merely ignorant, is deservedly presumed to consent in those things which are done by the wife according to the honest custom of the region and of her condition; and if he shows himself unwilling, such dissent is judged irrational, because a husband cannot deprive his wife of a right conceded to her by legitimate custom. - So with the common sentence, Lugo, St. Alphonsus.[3] - Moreover, if a wife were to acquire something by extraordinary labor after having spent due care upon the governance of the family; or if by thrift she were to subtract something from what has been conceded to her for solace, clothing, etc., she can likewise dispose of it for other uses, if nothing else stands in the way. So theologians from the rules of equity.

609. ○ Quaer. 2° Does a wife sin by taking something from goods that are not paraphernal in order to relieve the necessity of parents or children who were received from a prior marriage?

Resp. In the negative, if she does not have paraphernalia and the husband is unwilling to give what is necessary, because by natural right a wife is bound to feed the aforesaid blood-relations, and the husband is bound to consent to this.[4] What is said here of parents and children certain authors also extend to brothers and sisters of the wife.[5]

Notes to n. 609. (1) Kent, Vol. II. n. 183. (a) and Civ. Code of Louis. a. 2399. (2) Kent, Vol. II. n. 183. (a) and Civ. Code of Louis. a. 2405. sq. (3) L. IV. 540. (4) L. IV. 542. (5) L. IV. 542 and H. A. Tr. X. 33.

610. ○ Quaer. 3° Is a wife bound to restitution of goods received in this way, either from paraphernalia, if she has or is going to have them, or from those things which will come to her when the husband has died?

Resp. In the negative, if these goods are of small moment, because then they are held as alms (n. 608). In the affirmative, if they are of greater moment,[1] such as those whose subtraction has brought

notable detriment to domestic administration.

Note. - If the husband squanders or wastes goods to the detriment of the family, the wife will be able to hide them and reserve them for the good of the family; likewise from common goods she can disburse, or even, when the husband resists, secretly take for herself, those things by which she may procure for herself and the children from the present marriage what is suitable to their state, or avert spiritual or temporal damage from the husband or family, for example that sacred rites may be performed for the dead.[2]

Notes to n. 610. (1) L. IV. 542 and H. A. Tr. X. 33. (2) Mar. p. 49. n. 76.

611. ○ Quaer. 4° Is a husband bound to restitution who spends prodigally or badly a notable part of common goods?

Resp. Affirmatively; because in our law these goods are possessed whole by each spouse, and indeed in such a way that neither can sell them without the consent of the other, and, when either has died, the other obtains perfect dominion in them.

It is disputed as to States where community of goods is held in the meaning of French law. To us the affirmative sentence seems more probable, since the husband is only the administrator, not the sole owner of the common goods.

Point III. On public and national dominion.

612. ○ Public dominion is called the dominion of the republic over all things destined to the public and common use of citizens. Thus each State has dominion over bridges, canals, and roads.

Over roads which we are accustomed to call national, namely those which were made by authority of the supreme assembly, Congress, through various States on account of the transmission of letters and documents, the easier passage of soldiers, and other uses common to the whole nation, authority belongs to the general government. But this authority should scarcely be called by the name of dominion, since each State is supreme and would bear with difficulty dominion in the true sense of the name exercised by the general assembly.[1]

613. ○ It pleases one to call national dominion the public lands which namely the President, in the name of the Federated States, buys from the Indians by the right, as they call it, of pre-emption, with money or merchandise handed over for them. In this way it has happened that the Indian tribes have little by little withdrawn farther away; and these, each year, by a new cession of lands made for a very small price, easily supply the general treasury with a means of increasing the public treasure, by selling to new settlers the lands thus bought.[2]

Point IV. On colleges (corporations).

614. ○ Not only physical persons (individuals), but also moral persons are capable of dominion. Among these colleges (corporations) obtain the chief place.

Definition. - "A corporation is a franchise possessed by one or more individuals, who subsist as a body politic under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual." Therefore it differs from a contract of society or partnership (n. 1018).

615. Division. "Corporations are divided: 1° Into aggregate and sole. A corporation sole consists of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and specially that of perpetuity, which, as a natural person, he cannot have. A bishop ... is given in the English books as an instance of a corporation sole; and he and his successors in perpetuity take the corporate property and privileges; and the word successors is generally necessary" (in the grant) "for the succession of property in a corporation sole.[4] The corporations generally in use with us are aggregate;[5] but there are instances also in this country of sole corporations.

2° Into religious and lay.[1]

Lay corporations are again divided into eleemosynary and civil.[2]

Civil corporations ... are either public or private. Public corporations are such as are created by the government for political purposes, as counties, cities, towns, and villages. ... If the foundation be private, the corporation is private, however extensive the uses may be to which it is devoted by the founder, or by the nature of the institution."[4]

Notes to n. 615. (1) Kent, Vol. I. n. 268. (2) Kenr. Tr. X. n. 17. Kent, Vol. I. n. 259. (3) Kent, Vol. II. n. 268. p. 303. (4) Ib. n. 273. (5) Ib. n. 274.

616. How they are created. - "With us they are created by authority of the legislature," and also de facto by that of the Congress,[5] which has exercised it twice by the incorporation of a national bank.

617. The powers and capacities of corporations. - "The ordinary incidents to a corporation are: 1° To have perpetual succession, and, of course, the power of electing members in the room of those removed by death or otherwise. 2° To sue and be sued, and to grant" (except by will) "and to receive" (except also by will unless specially authorized by their charter) "by their corporate name. 3° To purchase and hold lands and chattels. 4° To have a common seal. 5° To make by-laws for the government of the corporation; this power, however, must be exercised within the limits of the charter, and in subordination to the Constitution and general law of the land, and the rights dependent thereon. 6° The power of amotion, or removal of members." But this power also must be exercised for good cause, and for some offence that has an immediate relation to the duties of the party as a corporator.

"It is now very generally the practice to specify, in the act or charter of the corporation, the powers and capacities with which it is intended to endow the corporation."[6]

618. Dissolution of corporations. - A corporation may be dissolved, 1° by statute; 2° by the natural death or loss of all the members, or of an integral part; 3° by surrender of its franchises; 4° by forfeiture of its charter through negligence or abuse of its franchises.

For Louisiana see "Civ. Code of Louis."[2]

Point V. On the dominion of the Church and of clerics.

Since the condition of the temporal things of the Church in our Federated States is altogether peculiar and because, on account of circumstances, in many things it cannot be arranged according to the norm of the sacred Canons, a fuller treatment concerning them is necessary. We comprehend the whole matter in four questions. I. Whether and of what temporal things the Church can have dominion, and in what way this is recognized by our law. II. What is the subject in which direct dominion of ecclesiastical goods resides, and what is required so that they may be legitimately acquired and held. III. To whom the administration of ecclesiastical goods pertains, and in what way it is to be conducted. IV. What are the various species of ecclesiastical goods, and what is to be observed here concerning each.

§ I. Whether and of what temporal things the Church can have dominion, and in what way this is recognized by our law

619. ○ I. The Church can legitimately acquire and possess temporal things. This proposition is of faith, as is evidently clear from the condemnation of propositions 10, 32, and 33 of Wycliffe. Cf. Syll. pp. 26. p. XLII.

II. The Church can acquire and possess not only movables, but also immovables, and indeed by divine right, both natural and positive, and independently of secular power.

III. Therefore it belongs not to secular power, but to the Church, to judge how far the right of acquiring and holding temporal goods ought to extend; and civil laws commonly called laws of amortization, excluding a special privilege conceded by the Church, are iniquitous and injurious to the Church. - But by laws of amortization are understood those civil laws by which provision is made lest the Church acquire temporal goods, especially immovables, without the consent of secular power, or at least beyond a certain quantity, lest, as they say, she become rich beyond measure.

IV. Therefore the Republic does not even have eminent dominion (n. 590) in the goods of the Church, and therefore, if it needs the goods of the Church, it is necessary that it obtain her consent.

V. Therefore the immunity of ecclesiastical goods from taxes, at least within certain limits, is also to be asserted by divine right, both natural and positive; for if this immunity were entirely denied, it would also have to be denied that the right of the Church concerning temporal goods is independent of civil power.

See these propositions more fully developed and proved, if you please, apud Craisson, Elem. Jur. Can.,[1] Devoti, Inst. Jur. Can.,[2] or Kenrick.[3]

620. ○ In what way dominion of the Church is recognized by our law. The Fathers of the Second Plenary Council of Baltimore wisely observe: "Since in these Federated States it is intact for all citizens and inhabitants to conduct themselves freely and without punishment according to the precepts of their religion, and the civil laws recognize and proclaim this; nothing at all would seem to stand in the way of our accurately observing those laws of the Church which have been passed up to this time by Councils and Pontiffs for rightly

acquiring Ecclesiastical Goods and preserving them whole and untouched." Yet they no less wisely note that these laws are not yet recognized in certain States.[4]

And indeed, in truth, the Church among us 1° is subject to a law of amortization, at least in this sense, that, unless they are handed over in property (in fee simple) to a Bishop or another, generally she can acquire and have only a determined species or quantity of immovables. 2° She is generally subject to the eminent dominion of the Republic. 3° The immunity of ecclesiastical goods is circumscribed by narrow limits; for only churches and places adjacent to them, and colleges (corporations), are accustomed to be exempted from taxes, and these not everywhere. 4° Not everywhere can she acquire and hold goods in her own name.

Notes to n. 620. (1) Ed. 1868. n. 761-764. (2) l. 2. Tit. 18 and 20. (3) Tr. X. n. 22. 24, 25. (4) a. 199. 200.

§ II. What is the subject in which direct dominion of ecclesiastical goods resides, and what is required so that they may be legitimately acquired and held

621. ○ There are three sentences concerning the subject to which direct dominion of ecclesiastical goods inheres. The first holds that it inheres in the churches themselves, or institutes, for whose use they have been acquired. The second holds that it resides with the Supreme Pontiff. The third, which according to St. Alphonsus[1] is truer and more common, holds that it exists with no man, whether public or private, but with the Catholic Church, while administration alone consists with the ministers of the Church.[2]

Notes to n. 621. (1) L. IV. 931. (2) Craisson. Elem. n. 767. Van de Burgt. De Eccl. n. 150 sq.

622. ○ So that ecclesiastical institutes may canonically acquire temporal goods, it generally suffices that those things be observed which are required among private persons for the forum of conscience. Thus, so that something may be acquired by donation, acceptance by the legitimate Superior of the ecclesiastical institute to which the donation is made suffices.

But so that they may be acquired and held among us by a civilly valid title, it is necessary that either 1° they be conceded to someone in trust, or 2° they be acquired by right of a college or corporation, or 3° they be handed over to a Bishop or to some other person in property (in fee simple).

But none of these titles is canonical or altogether safe. Not the first. For they can be conceded in trust in a double way, namely to the Bishop, or to trustees, whom the adults, whether women or men, who profess that they pertain to some religious Communion, have chosen from their own body. But to the Bishop as such, and thus also to his successors in perpetuity, generally there has been conceded only a certain species of ecclesiastical goods, namely churches and presbyteries, to be acquired in trust, and this only in certain States. - That this title is not canonical is clear even from this, that it is restricted to a certain species of goods. But experience proves that it is not altogether safe; for in political disturbances those things which are possessed in the name of the Church or of some religious community are more liable to so-called legal depredations. Yet that title is more canonical than the rest, since by force of it the Bishop possesses in the name of the Church, and through him

the dominion of the Church over her goods is recognized. It is also safer than the rest, as will be clear from what is to be said.

The worst of all is the other manner of acquiring, namely through trustees elected by the adults of some Congregation. For to these elected in this way the right will belong of repairing and changing the church, of building a new one, of erecting a pastoral house and other buildings for the use of the Congregation; of making statutes according to which the temporal affairs of the Church are to be administered; of disposing of the revenues of the church, leasing seats, choosing and removing ministers, and determining their salaries and even offices, etc. Moreover at appointed times, by majority of votes, either the Congregation itself or the college of trustees substitutes new trustees in the place of those whose trust, which has been defined to a certain number of years, expires, or confirms the old. It is sufficiently clear how greatly all these things are opposed to the discipline and even to the constitution of the Church, and this although the Bishop or Pastor is from the number of trustees, or is elected by them as President of their college, or even statutes are made by which the right of the Church is preserved. For those statutes, just like the election of the Bishop or Pastor as President, by which moreover little is obtained, can be annulled by the same majority by which they exist.

Nor can the second title be called canonical or altogether safe. For the right of a college or corporation is liable to the infidelity of directors; it can also be revoked (see n. 618), and regularly has the attached condition that goods beyond a certain defined value not be acquired for the college.

Finally neither can the third title be held canonical or safe. "For those things which," says Kenrick,[1] "have been handed over to the Bishop in property are liable to very many dangers, since they can be burdened by debt, or, if the testament is not rightly made, pass into the hands of others."

Moreover one from these three titles (or perhaps even that which exists from a contract of partnership, and concerning which below), although not canonical nor altogether safe, must necessarily be chosen, so that the goods of the Church may be protected at least in that manner in which it can be done. But which of the three is to be preferred, and what cautions must be employed so that the dangers joined with each may be removed as far as it can be done, is clear from the following statutes of the Second Plenary Council of Baltimore.

Notes to n. 622. (1) Tr. X. n. 33.

623. ○ 1° Bishops, priests, and all others "with whom goods, whether movable or immovable, given for ecclesiastical uses are held, are admonished that they take care as soon as possible that those things, in that way which in the individual Federated Provinces will seem safest, be preserved according to the civil laws for the uses designated by the donors."[1] From these words it is sufficiently clear that trustees can in no way be employed in that signification which was declared at n. 622. But if somewhere, where formerly they were brought in, they seem still to have to be tolerated, they are to be restrained within just limits, concerning which below. For Pius VII not undeservedly pronounced their right, insofar as it does not depend on Bishops, immoderate and unbridled, in letters given to the Archbishop of Baltimore on 24 Aug. 1822.[2]

2° In States in which Bishops, because of defect of another civilly legitimate title, are forced to take care that the property of ecclesiastical goods be ascribed to themselves as physical persons, their conscience is burdened by the Sacred Congregation de Propaganda Fide,[3] that by testament, which also must be drawn up if any other method whatever of holding and protecting ecclesiastical goods is brought into effect,[4] or by another legitimate instrument, they provide for the security of those goods; but let them deposit a duplicate exemplar of this testament with the Archbishop, but the Archbishop with the senior Bishop; and this within three months from their consecration. But if some Bishop neglects this, the Archbishop will remind him of his office, and report him, if he ceases for a long time, probably if he delays, to the Sacred Congregation.[5]

3° "Let them" (Bishops) "also have an inventory of ecclesiastical goods, and all titles and instruments duly arranged."[1]

4° "If it happens that they," for a longer time, "reside outside the diocese, let them leave letters of procuration" (power of attorney) "with some approved man who can preserve these goods for ecclesiastical uses."[2]

5° "We most greatly desire," say the Fathers, "that no church be erected or consecrated in the future unless it has been assigned to the Bishop in whose diocese it is to be erected, by written instrument, for divine worship and the utility of the faithful, whenever this can be done; with the privileges of Regulars" (concerning which below) "preserved whole and untouched."[3]

6° Bishops are admonished "that they not allow priests to retain with themselves in their own name those things which have been donated by the faithful for public and ecclesiastical uses, and committed to their trust."[4]

7° Religious communities, both of men and also of women, and whatever other pious institutions, are forced to provide for the security of their goods in one of the four following ways.

a) By obtaining, where it can be obtained, right of a college (Right of Corporation). b) Through a contract of partnership, by which goods are possessed in common by three or four members of the Community, so that all the partners possess that right during the time of their natural life; but, when any one of them has died, the right of possessing all the goods remains with the surviving partners, with no power having been made to any of them of alienating in his lifetime, or of leaving by testament after death, the aforesaid goods. In this case, care will only have to be taken that, when one of the partners has died, another from the members of the Community be admitted into the partnership. c) "If only the way of testament remains for transmitting goods to successors, he who possesses the goods of the Community in his own proper name must take care that immediately he perfect a testament according to the civil laws, which is to be diligently preserved in the archives of the Community."[4] d) "As to Communities" whose "goods are possessed by the Bishop, ... through the testament of the Bishop sufficient provision is made for the security" of those goods. These things according to the mind of the Decree of the Sacred Congregation de Propaganda Fide, 15 Dec. 1840.[1]

Notes to n. 623 - note sequence 1. (1) a. 187. (2) Bullar. S. C. de Prop. Fide. t. 4. p. 401. Rome. 1841. (3) Bullar. S. C. de Prop. Fide, t. 5. p. 81. Secundo. (4) Conc. Pl. Balt. II. a. 204. (5) a. 191. Notes to n. 623 - note sequence 2. (1) a. 188. (2) Ib. (3) a. 183. (4) a. 188. Notes to n. 623 - note sequence 3. (1) Bullar. S. C. de P. F. t. 5. p. 81. Secundo. n. 10. sq. Cf. Conc. Pl. Balt. II. a. 189-191.

§ III. To whom the administration of ecclesiastical goods pertains, and in what way it is to be conducted

624. ○ Administration of right, or the very right of administering ecclesiastical goods, pertains to that authority to which dominion of those goods pertains; for the accessory follows its principal; but administration is the accessory of dominion; therefore, just as the dominion of ecclesiastical goods, from the sentence of St. Alphonsus (see above n. 621), pertains to the Church, so likewise the administration of them belongs to the same.

But under the name of the Church here comes the Supreme Pontiff for the whole world; the Bishop for his diocese; Chapters and Superiors of Orders and Congregations for the goods of the Order, Province, or Convent; the parish priest for the goods of his church; and the Pope indeed with subordination to divine right, but the rest with subordination to the Pope and to the laws sanctioned for them.

But administration of fact pertains to those to whom it is legitimately committed by those to whom administration of right belongs, and is necessarily subject to the one committing it.

625. ○ In what way administration is to be conducted.

I. As to the goods of the diocese generally, the Second Plenary Council of Baltimore has these things:[2]

"It would turn very much to the solace of the Bishop and utility of the Church, if ... he named a Steward, or in temporal affairs a Procurator, lay or cleric, whose duty it would be to have care of the episcopal house in temporal matters, and also to conduct the temporal administration of churches and ecclesiastical goods at the nod of the Bishop, and to render an account to him at appointed times of all things committed to him."

II. The goods of individual churches are administered by the Missionaries set over them and the Lay Trustees.

A) As to Missionaries, Bishops are admonished by the Fathers of the Second Plenary Council of Baltimore:

1° "That they watch lest priests, either by rashly erecting or repairing churches, or by contracting debt in another way, burden the affairs of the church, or break faith to the disgrace of Religion; therefore let them exact an account at least each year, and let them not allow them to contract debt without a license given in writing, in the name or for the cause of the church.

2° That "priests be admonished not to mix their own affairs with the affairs of the church, with danger to their reputation or offense to the faithful, who easily think an injury is being done to the church. Therefore let them have a book in which all the things of the church are catalogued; and, if they themselves have contributed money for the use of the church, let this be done with the Bishop approving, and with the knowledge of trustworthy men, and let it be recorded in the book, so that the Bishop, when holding visitation, can inspect individual things and protect the rights of all."[2]

3° "Priests who administer churches whose title has been handed over to Bishops are not to establish lay trustees in them without the authority of the Bishops, or permit them to be elected by the

faithful, lest perhaps some impediment arise to the administration of them."[3]

See moreover those things which above, n. 623, 1°, 5°, 6°, we reported from the same Council.

Notes to n. 625. (2) a. 75.

626. ○ B) As to lay trustees, "that they may be restrained within due limits, in whatever way finally they are chosen" (therefore comprehended by this decree are not only those who have been constituted by the authority of the Bishops alone, but also those who were formerly constituted in that way which was mentioned at n. 622), the Second Plenary Council of Baltimore:[4]

a) Declares "that it is the universal law of the Catholic Church that all those who in any way administer the goods of the Church do this licitly only with the Apostolic See or Bishop consenting, and that in the administration of them they are subject to the authority and jurisdiction of the Bishops, or, if they are exempt, to the authority and jurisdiction of those whom the Apostolic See shall have designated."[4]

b) The Fathers extend to all the churches of these provinces, and counsel that everywhere there be observed, the following statutes of the Third Provincial Council of New York.[5]

1° "That he not be admitted into the number of the Lay Trustees concerning whom, under the election itself or a little before, it has been established that he has given his name to any secret Society, or has not received the Easter Sacraments."

2° "Let the Lay Trustees thoroughly understand that it is altogether wicked for them to divert the least part of the goods of the Church to their own uses under any title or pretext, or to strangers, except by permission of the Bishop and with the Apostolic Constitutions concerning alienation of ecclesiastical things observed."

3° "Ordinary expenses excepted, let it not be licit for the Lay Trustees to expend a sum of money beyond three hundred dollars" ($300) "upon any particular work, unless the Bishop assents in writing."

4° "Let the Lay Trustees know that the decision of naming and creating the Pastor of the church, and of retaining him in office or the contrary, rests with the Bishop. It also belongs uniquely to the Bishop himself to assign a certain sum of money to pastors of souls for their support; nor is it licit for the Lay Trustees to retain, lessen, or increase stipends of this kind."

5° "It belongs to the Pastor to designate the Organist, Singers, Sacristan, Custodian or Apparitor, Schoolmaster, if some school exists in the parish, and other men of this kind who serve the altar or temple."

6° "Let the Lay Trustees beware lest, without consulting the Pastor, they prescribe anything to the Parishioners as law or norm. But if some discrepancy should arise between the Pastor and the Lay Trustees consulting about things to be done, and they are not able by themselves to compose the dissension, the Bishop will settle the controversy, and all will obey his judgment and sentence."

Notes to n. 626. (1) a. 192. (2) a. 193. (3) a. 93. (4) a. 202. (5) a. 201.

627. ○ III. As to Regulars, they have either undertaken diocesan works to be governed, that is, works which are sustained by money and other means drawn from the diocese, for example a quasi-parish, or they have not. In the former case, in the administration of goods which pertain to those works and which cannot be proved by a written document to have been handed over to the Order for use, or is not clear of itself, they are subject to the jurisdiction of the Bishop or to the agreements entered between him and the Order. It is said: or is not clear of itself, so that movables of religious houses, for example furniture, books, etc., may be excluded. For Regulars acquire these from their own monies or monies given to them for this purpose. - In the latter case they are not subject to the Ordinary, unless otherwise it was agreed between them and the Ordinary at the threshold of the foundation.

As to Nuns, see what is to be said in the Treatise on Particular States, n. 1189.

Notes to nn. 627-637. (1) a. 370. (2) p. 319. XVIII. (3) a. 370. (4) a. 371.

§ IV. What are the various species of ecclesiastical goods, and what is to be observed here concerning each

Note. - Under the name of ecclesiastical goods in this place come not only those things which are held as such in the strict sense, but also those in the broad sense. Therefore we shall treat 1° of beneficial goods; 2° of taxes to be paid to the Bishop; 3° of the remaining ecclesiastical goods.

628. ○ A benefice is defined by Canonists: A perpetual right of receiving fruits from the goods of the Church on account of some spiritual office constituted by the authority of the Church and to be exercised in one's own name.

It is said: 1° perpetual right. But this perpetuity can be understood in a double way, namely by reason a) of the benefice, which once erected always remains; b) of the beneficiary, who obtains the right of receiving the fruits of the benefice not for a time, but as long as he shall have lived. Commonly the Doctors assert that perpetuity accepted in both senses is of the nature of an ecclesiastical benefice; yet this is not admitted by all, and Leurenius, cited by Cardinal Soglia,[1] admits only perpetuity of the former kind as essential to benefices. Bouix,[2] St. Alphonsus,[3] and others embrace the sentence of Leurenius.

It is said: 2° of receiving fruits from the goods of the Church. Ecclesiastical goods from which those fruits are received are called the dowry of the benefice, and consist either in rural or urban estates, or in pastures, woods, or similar things, or in those rights which obtain the place of fruits and in Roman Law are equated with immovable things, such as rents or annual revenues.

It is said: 3° on account of some spiritual office, as for example on account of the obligation of reciting the canonical hours, of serving some Church by administration of the Sacraments, preaching, celebration of Mass, etc. But this spiritual office is indeed the foundation and cause of the benefice, but it is not the benefice itself.

It is said: 4° constituted by the authority of the Church, namely of the Supreme Pontiff or of the Bishop.

Notes to n. 628. (1) Inst. Jur. Priv. § 81. (2) De Parocho, p. 207. (3) L. IV. 618.

629. ○ From the given definition of a benefice it is sufficiently clear that the question concerning the dominion of Clerics is almost useless as to these provinces. For goods pertaining to the dominion of Clerics are distinguished as of four kinds, namely: - 1° patrimonial, which come from paternal inheritance or from any other profane cause, for example from donation, etc.; - 2° quasi-patrimonial, which are acquired by occasion and with regard to ecclesiastical functions not attached to a benefice, for example by celebrating Mass, preaching, etc. They are also called quasi-ecclesiastical or casual, and to them pertain the Offerings of the faithful for the support of priests, as is clear also from the response of the Sacred Penitentiary given on 9 Aug. 1824; - 3° ecclesiastical, which arise from benefices of the Church; - 4° parcimonial, which a Cleric sets aside by living sparingly from the fruits of a benefice, and which he could consume by living honorably. - Now, scarcely one Parochial benefice is yet known certainly to exist in these Provinces;[1] therefore the goods of Clerics here are no others except patrimonial and quasi-patrimonial; for there can be no question of parcimonial goods where there are no beneficial goods which may be spared. Therefore our Clerics have perfect dominion of all their goods, and the question is useless for us whether they are bound to restitution when they spend badly the superfluous things of ecclesiastical or beneficial goods, and the other questions connected with it: namely, what is understood by superfluous; whether Clerics can preserve the superfluous for the future; whether a Cleric who has from patrimony whence he may live can also sustain himself wholly from the fruits of a benefice; whether also pensioners, whose pension is extracted from the fruits of a benefice, ought to expend the superfluous upon the poor. Concerning all these things, if a case were to occur as to priests arriving in these Provinces from elsewhere, where they had a benefice, or concerning our Bishops, for whom the so-called Cathedraticum is the dowry of a benefice, either St. Alphonsus[1] or Kenrick[2] can be seen.

Notes to n. 629. (1) See below n. 1608. Note 1).

630. Note. - Kenrick[3] contends that the offices which in several States are committed to a priest with the fruits of the lands which are joined to presbyteries, and likewise the pension which is paid to priests by lay trustees on account of the care of souls and is annexed to it, are to be held after the manner of benefices. But undeservedly, as indeed it seems to us. For as to the fruits of those lands, although they are immovables and given on account of a spiritual office, and committed to the trust of the Bishop or another, nevertheless they are not benefices; for the spiritual office on account of which they are given is exercised among us not in one's own name, but in the name of the Bishop. Therefore at least one of the conditions required for a benefice is lacking (see n. 628). Nor is the pension paid by lay trustees a benefice or given in place of it. Wherefore, in our judgment at least, Kenrick[4] does not rightly apply to this pension the response which the Sacred Penitentiary[5] gave concerning salaries which in France and Belgium are paid to priests by the Government. For these are paid in compensation for beneficial goods which were taken away at the time of the French disturbance, and therefore they have the same nature as the goods for which they are substituted; and no one will affirm this of a pension paid by lay trustees.

There is only one case in which among us a priest receiving revenues from those lands, or a pension paid by lay trustees, would be guilty of injustice and bound to restitution, namely if he neglected the office on account of which they are given, i.e. duties which regard the care of souls. For then the title by which they are received is lacking. Moreover, it cannot easily be defined how much is to be restored if one has neglected some duties, for example to receive Confessions or to preach the word of God. For the most part it will suffice to shake off sluggishness and show himself liberal toward the poor.

Notes to n. 630. (1) L. IV. n. 491, 492 and Q. X. among recent retractions. (2) Tr. X. n. 35. (3) Tr. X. n. 36. 37. (4) Tr. X. n. 37. (5) Apud Gury, P. I. n. 563, 564.

631. ○ Taxes to be paid to the Bishop are either ordinary or extraordinary.

Among ordinary taxes the principal is the Cathedraticum, to be paid by all parish priests, beneficiaries, and secular churches, but not by those churches of Regulars which are not subject to the Bishop. Among us the name of Cathedraticum has been transferred to the contribution to be paid for the support of the Bishop.[1]

An extraordinary tax is especially constituted by the Procuration, or that which is given to the Bishop in the name of sustenance by the churches which he canonically visits.[2] See what was said at n. 356, Resp. 3° a).

632. ○ The remaining ecclesiastical goods are A) Tithes,[3] which are none here. B) First-fruits,[4] which now have almost everywhere ceased, nor here were they ever to be given by right. C) Daily distributions, which come to Canons present in choir,[5] and concerning which among us, with no Chapters erected up to now, a question would be moved uselessly. D) Offerings, concerning which now, and indeed more fully for us, we must treat.

633. ○ The uncertain generosity of the faithful, which up to now generally has not failed, is the chief, and in very many places the only, means by which our Clergy is supported. Now:

Quaer. 1° Whether and in what way are our faithful bound to contribute to the support of the Clergy, and generally of religion?

Resp. with Kenrick:[6] "This ... ought to be persuaded to all: that it is fitting that individuals contribute something for their own part, lest priests" and religion "lack necessary support; but as long as no certain law enjoins and defines the burden, we do not dare to condemn of mortal sin him who omits to contribute an equal portion, whenever there is no danger lest priests be in need on that account, or other faithful be excessively burdened. But those who through avarice refuse to give anything, in the circumstances which we have indicated" and these circumstances occur more rarely, "seem gravely guilty and unworthy of sacramental pardon; for they violate the law of Christ the Lord concerning the support of the Ministers of the Gospel, and expose themselves and others to danger of salvation."

Notes to n. 633. (1) Devoti. Instit. L. II. Tit. XV. § III (4). Cf. Conc. Pl. Balt. II. a. 100 and Kenr, Tr. IV. P. II. n. 65. (2) Devoti. Instit. L. II. Tit. XV. §§ V.-VIII. (3) Ib. Tit. XVI. (4) Ib. Tit. XVII. §§ I. II. (5) Ib. Tit. XVII. §§ VIII.-X. (6) Tr. IV. P. II. n. 64.

634. ○ Quaer. 2° What are the principal species of offerings in these Provinces?

Resp. Comprehending those things which can be called offerings only in the broadest sense, the principal are: a) monies which are accustomed to be collected in individual parishes for determined pious causes; b) pious donations and legacies; c) contributions of various Societies; d) subsidies given in certain States by civil power to Catholic schools, orphanages, hospitals, and similar pious places or institutes; e) subsidies furnished by European Mission Societies; f) collections which are accustomed to be held during divine Offices; g) revenues from the leasing of seats or benches; h) stipends of Masses; i) Offerings properly so called, or stole fees.

635. ○ Offerings of which in n. 634 under a), b), c), d), from justice are to be spent for the special ends for which they are made. Yet limit this according to L. IV. 931. q. II.

Monies of which in the same n. 634 under a), namely those which are accustomed to be collected in individual parishes for determined pious causes:

1° Cannot be collected by a priest outside the congregation entrusted to him or in another diocese without written license of the Ordinary, and this under penalty of suspension ferendae sententiae. "But let Religious remember to bring with them the license of their Superior."[2]

2° If it is a question of giving a Mission in some parish, "the Fathers judged it would be advisable ... that before Missionaries approach collections, or even sell, either by themselves or through others, pious books, Rosaries, Crosses, Medals, and other things of this kind in congregations where Missions are made, they obtain both the previous assent of the Pastor and the approbation of the Ordinary."[3]

3° "It seems that by no excuse can there be covered the practice of procuring monies for ecclesiastical uses by those means which provide a direct occasion of sinning, are not infrequently causes of public scandal, and expose the Catholic name to the mockeries and reproaches of outsiders."[4] - Therefore the Bishops in Pastoral Letters given to the Clergy and faithful say: "We forbid all Catholics from having anything to do with them" (the Fairs, Excursions, and Picnics), "except when managed in accordance with the regulations of the Ordinary, and under the immediate supervision of their respective Pastors."[1]

4° The conscience of Bishops is burdened that they take care lest priests depart from the altar during the solemnities of Masses and go around the sacred building, asking alms from individual faithful.[2]

636. ○ The collection of money which is accustomed to be gathered during the solemnities of Masses, and the revenues of seats or benches, since they come on the occasion of the Sacrifice, pertain to the parish priest, unless there is either another custom or another intention of those offering.[3] It is clear that among us they must be held as revenues of the churches under each of these titles.

Note. - Seats or benches:

1° To lease them is not simoniacal; for although here the temporal is concomitantly annexed to the spiritual, namely to assistance at the divine Offices, nevertheless it is annexed to the same only extrinsically, since one need not necessarily assist at the divine Offices in some seat or bench, and this convenience, as entirely temporal, is worthy of a price. But "the Supreme Pontiff Pius IX declared that the practice, if it exists, of exacting money at the doors of Churches so that the faithful may

enter and be present at the divine mysteries is very displeasing to him, and he wished it to be entirely eliminated."[4]

2° To guard against most grave inconveniences and evils "it is necessary," says Kenrick,[5] "to abstain from selling benches, lest the buyers obtain full right (n. 590) in them, since it is enough that they be able to occupy them while the solemnities of Masses are performed, with the laws and rules otherwise observed."

637. ○ Concerning Mass stipends the Second Plenary Council of Baltimore established:

1° "That no one exact more, nor regularly less, than what shall have seemed opportune and just to his Bishop."[6]

2° "That foundations" of Masses, whether for a time or in perpetuity, "not be accepted without the prior assent of the Bishop, if it is a question of a secular institute, or of the regular prelate, if the foundation is made in favor of an exempt Community."[1] - But as to the stipend of these, the Fourth Decree of the First Synod of Cincinnati is commended as a norm, by which it is established "that for a private Mass there exist a principal of at least 50 dollars" ($50), "but for a sung Mass 100 dollars" ($100).[2] - The Fathers also establish that the abuse by which "public and frequent invitations to alms to be spent upon foundations of this kind, for several continuous months, are inserted in popular newspapers among other profane business," is to be removed "without delay by Bishops and prelates."[3]

3° "That in individual secular and regular churches there be a catalogue or table of burdens which have been imposed upon them in perpetuity or for a certain prefixed time, and respectively accepted; and that in the sacristy of the same place there be preserved books, in one of which perpetual or temporal burdens of this kind, but in the other manual and adventitious Masses, are inscribed, together with a faithful and distinct notation of the subsequent fulfillment of each."[4]

As to stole fees, see n. 356.

Notes to n. 637 - note sequence 1. (1) Conc. Pl. Balt. II. a. 119. (2) Ib. a. 476. (3) Ib. a. 396. Notes to n. 637 - note sequence 2. (1) Conc. Pl. Balt. II. p. CXXI. (2) Ib. a. 364. (3) Ferr. V. Oblationes, n. 13, Acta T. XII. p. 240 (2). (4) Conc. Pl. Balt. II. a. 397. (5) Tr. IV. P. II. n. 64. (6) a. 369.

§ III. On the acquisition of dominion

The fact by which dominion is justly acquired is called a mode of acquiring, and indeed original if the thing which is acquired by that fact was no one's at the time of acquisition; but derivative if at that time it was in the dominion of another. - Five modes of acquiring dominion can be enumerated: occupation; prescription; accession; contract; succession, whether legal or testamentary. Concerning the two latter we shall treat in the Treatise on Contracts.

Point I. On occupation.

638. ○ Occupation is a voluntary and external fact by which someone apprehends, or reduces into his power, a thing belonging to no one, with the intention of having it as his own. - Hence four things are required for it: two on the part of the object, namely that the thing be: a) capable of dominion (n. 592); b) belonging to no one; two on the part of the

subject, namely a) a voluntary and external fact by which the thing is apprehended; b) the intention of having the thing as his own or as the thing of him in whose name it is occupied (Mar. n. 219. 3°). A thing belongs to no one when either up to now it has been in no one's dominion, or has ceased to be in someone's dominion. Its effect is possession and dominion of the thing occupied. Hence the axiom: a thing belonging to no one becomes that of the first occupant; understand: unless, either for one forum or for each forum, there stands in the way a just law (n. 642 sq.) by which the thing is applied to another.

Occupation is either of settlements, or of animals, or of things found.

I. Occupation of settlements.

639. ○ "Since the whole orb of lands has been divinely given to the human race for habitation, it is licit for a more numerous people to acquire new regions in which it may pass its life. Indeed there is no one who denies that lands empty of inhabitants yield in this way to the first occupant. But also vast regions, which men few in number, and wild or barbarous, inhabit, can" by others "be occupied for their own utility and for the honor of the human race, so that men living almost after the manner of beasts may be brought over to human customs, to say nothing of the knowledge of the Gospel to be communicated, which is to be esteemed especially by worshippers of Christ."[1]

640. ○ This occupation of settlements, by the law of nations then in force, was for Europeans the title of dominion in the territories of our Indians; but the Federated States, by the right either of war or of compacts, succeeded into that title of the Europeans, and by force of it vindicate for themselves direct dominion in those territories, with only the right of use left to the Indians, and this by that law, that the Indians can sell it to no one except the Supreme Government, which reserved to itself the right of pre-emption of it.[2]

But if the Supreme Government, by an unjust war, or by unjustly compelling the Indians to sale, or by iniquitous violation of compacts entered with them, were to injure their right, there would sin, as is clear of itself: 1) the Supreme Magistrate by his action; 2) deputies to Congress by their vote; 3) officials of the Government by their cooperation; 4) private persons buying from the Government or accepting lands of whose use the Indians had been unjustly deprived. - Moreover officials of the Government and private persons will be able to be excused from sin more easily, since they are not bound to inquire concerning the justice of the action of the Supreme Government.

II. On the occupation of animals.

641. ○ Animals of four kinds are distinguished.

1° Wild or fierce animals, which by their nature abhor human society and enjoy natural liberty, such as hares moving in fields, fish in the sea, birds in the air.

2° Tame or domestic animals, which by their nature enjoy human society, but do not enjoy natural liberty, such as sheep, horses, etc.

3° Tamed animals, which by their nature indeed are wild, but by the industry of man have been so domesticated that they now have a custom of going away and returning home, such as doves, bees, etc.

4° Animals become wild again, which have resumed their former wild disposition after having been tamed, such as doves leaving the dovecote and living in the fields.

642. Principles of natural and of our law. - I. Wild or fierce animals, and also animals become wild again, become the property of the first occupant. - For things which belong to no one are licitly occupied by natural right, and therefore become the property of the first occupant, at least unless some positive law applies their dominion to someone else (see n. 638). But once reduced into the dominion of someone, they remain under his dominion as long as they are retained in custody and have not recovered or resumed natural liberty. But they are judged to have recovered liberty when they have so escaped custody that pursuit of them has become difficult; and then they so cease to be under dominion that they can become the property of another occupant, just as if they had never had an owner.

643. You will resolve. - A wild animal wounded or caught by a snare:

a) On another's land so enclosed that on the one hand wild animals cannot go out from it, and on the other individual animals can easily be taken, is not the property of the one wounding or snaring; because in this case the wild animals are judged to have lost their liberty and to pertain to the owner of the land,[1] and this by the same right by which wild animals enclosed in a zoological garden pertain to the owner of the garden.

b) On another's land, even enclosed, but so open that wild animals can go out from it, it is the property of the one wounding or snaring, if it has been so injured that the one injuring is morally certain that he will easily apprehend it, or so taken in a snare "that the animal cannot escape" (Kent).[1] The reason is that wild animals in this case belong to no one, since they can go out from the land, and are by no means to be held as fruits of the land; therefore they become the property of the first occupant. But in reality he must be said to have occupied them who has either so injured them that he is morally certain that he will easily apprehend them, for thus he has already morally apprehended them, or has so snared them that they are not going to escape. Therefore the owner of land of this kind cannot take prey killed or snared by another, except in compensation of damage which has been inflicted either on him through this injury of the right of hunting which perhaps he enjoys, or on the land. The rest have no right in the prey; yet often in good faith they think it licit to occupy wild animals which they find entangled, but not yet taken away by the owner. In practice, attention must be paid to this good faith of agents. Mar. p. 119. n. 229. - In doubt whether a wild animal wounded by one and apprehended by another could have escaped the one wounding it, the animal itself or its price is to be divided.

What we have resolved here concerning hunting, resolve the same, with due proportion observed, concerning fishing; for here also there is question of wild things which, unless they are so deprived of natural liberty that none can escape from the fish-pond or pool in which someone has shut them up and all can easily be caught, are things belonging to no one and therefore are the property of the first occupant or taker.

Note. - Oysters which someone has in that part of the water over which he has dominion cannot be taken by others without injustice; for they are held in a bed, from which they cannot go out and from which all are easily taken.

Notes to nn. 643-656 - note sequence 1. (1) Civil Code of Louisiana, Art. 3423. (2) Kenr. Tr. X. n. 66. Notes to nn. 643-656 - note sequence 2. (1) Kent, Vol. II. n. 357. (2) Ib. n. 359. e. (3) Kenr. Tr. X. n. 65. (4) Kent, Vol. IV. n. 424. Cf. Vol. II. n. 61. Notes to nn. 643-656 - note sequence 3. (1) Tr. X. n. 64. (2) L. IV. 569. Notes to nn. 643-656 - note sequence 4. (1) L. IV. n. 589. 590. 603. H. A. Tr. X. 69. (2) Kenr. Tr. X. 60.

644. ◦ Obligations arising from civil laws pertaining to hunting and fishing are of different kinds. Some only regulate the use of hunting and fishing, and regard, for example, the time at which hunting or fishing is permitted, and these, from the sentence of St. Alphonsus,[3] are merely penal. Others urge from natural right with respect to the proprietor of the land; and these obligate from commutative justice if the land or bed is so enclosed that wild animals or fish cannot escape and all can easily be taken by the owner of the land. Others regard obligations which arise from the right of hunting or fishing exclusively conceded to someone; and these bind from commutative justice only insofar as it is not licit for you to bring grave damage upon him who possesses that right, as if from your fishing the hope of catching a greater number of fish, which otherwise he both wished and could have caught, were diminished for him. - You are also bound concerning other damages inflicted, for example to crops.

645. Principle II. - Animals wild by their nature, but tamed, remain the property of the prior owner as long as they have not escaped his custody or lost the custom of returning; for animals of this kind pertain to the possessor both by reason of occupation and also by reason of education and detention. - But if they have escaped the custody of the owner or lost the custom of returning, they become the property of another first occupant, because they have recovered their nature and have become wild again (see n. 642).

646. You will resolve. - 1° "If a swarm of bees had flown from the hive of A, they were" (at common law) "reputed his so long as the swarm remained in sight, and might easily be pursued; otherwise they became the property of the first occupant. Merely finding a tree on the land of another, containing a swarm of bees, and marking it, does not vest the property of the bees in the finder. Bees which swarm upon a tree do not become private property until actually hived."[1]

2° Doves fleeing by their own motion, without having been attracted by fraud, become the property of him into whose dovecote they come. Otherwise, if they are enticed by fraud, for example by food altogether extraordinary or very choice, unless nevertheless custom permits this.[2]

But it will be licit, unless you can easily drive them away, to kill doves belonging to another that are gravely harming or about to harm your field, and to take them for the damage after the damage has been inflicted. For it is licit for each one to preserve his own thing, even if from this there follows indirectly to another a damage equal to the damage which the one about to be harmed wishes directly to avert from himself. But doves are not presumed to harm gravely except at the time of harvest or sowing.[1]

For Louisiana as to bees and doves, see Civ. Code of Louis.[2]

Notes to n. 646 - note sequence 1. (1) Kenr. Tr. V. n. 6. (2) Kent, Vol. I. n. 258-260. Notes to n. 646 - note sequence 2. (1) Lugo. Disp. 6. n. 72.

647. Principle III. - Tame or domestic animals remain those of the prior owner, however much they wander away; hence they cannot be occupied by another, and natural fruits perhaps perceived from occupied animals, for example eggs, etc., are to be restored. The reason is that domestic animals can never be said to have recovered their liberty, since by their own nature they have no liberty. Therefore as to them there can never be place for occupation, except by finding.

III. On the occupation of things found.

648. ○ Things which are found are of different kinds: some neither have an owner nor have ever had one, for example little stones and gems which are sometimes found on the shore of the sea; others indeed already have had an owner, but now have ceased to have one, as are treasure, vacant goods, and abandoned goods; others have an owner, but it is not known who he is, as are things recently lost.

649. Principles. - I. Things found which neither have an owner nor have had one pertain to the finder himself. Hence little stones, gems, amber, pearls, corals, etc., which are found on the shore of the sea or in the bed of rivers or adhere to rocks, are the finder's.

But those things are generally judged, according to our laws and customs, neither to have an owner nor to have had one, which are not held as parts of some land. Hence metallic veins, quarries, coal-mines, chalk-pits, sand-pits, and those in which petroleum is contained, belong not to the finder, but to the owner of the land.

650. ○ II. Goods which indeed have had an owner, but now have ceased to have one, are either treasure, abandoned goods, or vacant goods.

Treasure (treasure-trove) is a movable thing buried or hidden, of whose owner memory does not exist, so that no one can demonstrate (n. 651) that it is his. It is said: 1) Movable thing, understand: one which can be valued by price; therefore money, a coin, a little vessel, a little bell, can be matter of treasure. - It is said: 2) Buried, for example in a field, or hidden, for example in an old chest. If it were not buried or hidden, the thing would not be held as true treasure, but as lost.

Treasure by natural right belongs to the finder, because it is held as a thing belonging to no one, but not as a part of the place; hence it ought to belong to the first occupant. And since our laws decide nothing concerning it, we are governed only by this natural right. Except States where treasure found on the finder's own land, or found fortuitously on land pertaining to no one, becomes wholly the finder's; but treasure likewise fortuitously found on another's land is to be equally divided between the proprietor of the land and the finder,[1] even in conscience. L. IV. 602.

651. ○ Quaer. Can a workman, laboring in some house, if he finds in some corner of the wall or in an old chest a sum of money, retain it, or, as above, the half part of it?

Resp. Distinguish. In the negative, if signs are present from which it is judged with moral certainty that this money belongs to such a person or family; because then that money is to be reputed as recently lost. Otherwise, in the affirmative.

652. ○ Abandoned goods are goods which the owner himself rejects with the intention of abdicating from himself dominion over them. Hence they become the property of the first occupant. Of this kind are acorns, nuts, chestnuts, which remain after gathering; ears of grain, which remain after harvest; grapes, which remain after vintage has been made. For the most part also dry and dead wood lying on the ground, but not those things which are like fences, or otherwise destined to some use.

But those who cut wood in another's forests are bound concerning damage, which nevertheless here in places not yet cultivated is usually none; for it is of interest to the owners that trees be taken away for preparing the soil for wheat. But in cultivated places it is greater or less according to the circumstances. Near cities and towns wood is worth very much, as in all places in which trees are rare, for example in the immense prairies of certain western States, especially of Illinois.[2]

653. ○ Quaer. What is to be said of goods which are called derelict at sea and wrecks?

Resp. 1° "The right of acquisition, by finding, ... does not extend to goods found derelict at sea, though abandoned without hope of recovery."[1]

Resp. 2° "A wreck is understood to be goods cast or left upon land by the sea,"[2] and these are not to be judged among abandoned things.

The reason of each response is that the owner is judged to have cast away the hope indeed, but not the intention of recovering them, except in the case where expenses for recovering them would at least equal their value. Therefore for the internal forum, and outside the case where expenses for recovering them would at least equal their value, the same is to be held of them as of things recently lost; but in the external forum those who appropriate these things to themselves are sometimes punished with very great penalties.[3]

654. ○ Vacant goods are called those which someone who died intestate left, to whom no heir succeeds according to law or ab intestato. These also, by natural right, belong to the first occupant, since they no longer have any owner. But by our law two kinds of vacant goods must be distinguished. For the disposition of our laws is this: "Whenever the owner dies intestate, without leaving any inheritable blood, or if the relations, whom he leaves, are aliens, there is a failure of competent heirs."[4] In the former case, namely "whenever the owner dies intestate, without leaving any inheritable blood," our laws, at least as to movables, do not seem to obligate in the internal forum before the sentence of a judge, and we think that conscience is governed only by natural right, by which they become the property of the first occupant. In the latter case, namely "if the relations, whom he leaves, are aliens," it must be noted:

1. Goods, even immovables, in certain States, and movables in all, are distributed to heirs.

2. Where this liberality of laws does not flourish, a) a son does not violate justice by usurping the goods of his father for himself, since the right of nature favors him, or at least the custom of all nations very consonant with nature, from which a special law can scarcely derogate except in the external forum. b) Relatives usurping the goods of the deceased, if children are lacking, do not seem guilty of injustice if they distribute them among themselves in that way in which it would be done from the sanction of the law if he had been a citizen; for that the law denies that right to an alien and vindicates the goods for the State is to be referred to external governance rather than to the definition of property, and therefore it does not bind conscience, although c) if it is demanded for execution, it is necessary not to resist. d) Others who have no right, if they do not hand over the goods of a deceased man who has no surviving children to the State, but spend them for pious uses, "are not to be blamed, since they violate no one's" strict "right"; nevertheless they can in no way usurp these things for themselves, "unless it is certain to them concerning the will of the deceased to donate these things to them. e) If children survive, the goods must altogether be handed over to them, unless they are given to the treasury, or unless they are plainly unworthy and prodigal. f) If relatives are pressed by want, they are to be aided before others. g) But we would not dare to condemn him who, with relatives not in need neglected, would give the goods of the deceased to the poor," or would apply them to other pious causes: "for relatives do not have a strict right." So Kenrick.[1]

Notes to n. 654. (1) H. A. Tr. X. 71. L. IV. 604. (2) Kent, Vol. II. n. 349. (3) L. I. 145.

655. III. - Things recently lost must be restored to the owner if he is found, because the fact of losing is not a title for despoiling an owner of his thing; therefore, since things recently lost still have an owner, they must be restored to him if he is discovered.

656. ◦ You will resolve. 1° Therefore concerning a thing lost by someone, whether known or unknown, which perhaps you find, a multiple obligation can be present. For:

a) Charity can obligate you to undertake care of the thing if you foresee that otherwise the thing will in some way perish for the owner.

b) Likewise charity will require that if at some time it is certain to you concerning a thing lost or found by another, you reveal this to others when you prudently judge that this will be profitable so that the thing may return into the hands of the owner.

c) If you yourself take a thing perhaps found, by force of the contract which is called management of affairs (n. 927), or at least from charity, you are especially bound to conduct diligent care of the thing and guard it, unless by doing this you are going to suffer damage; in which case you will be able to put it back in the place where you found it.[2]

d) Likewise, if the owner of the thing is unknown to you, you are bound from justice not to hide the thing. You will violate this obligation not only if you carefully hide the thing in such a way that the owner cannot find out that the thing lies with you, but also if you do not use means suitable and proportionate to the value of the thing, so that knowledge of the thing existing with you may come to the owner.

2° Once diligence has been used which corresponds to the value of the thing found, either some hope of finding the owner appears, or not. If the former, the thing is to be preserved, or, if it cannot be preserved, its price; but if neither can be preserved, it must be spent on pious causes. For, while such hope lasts, the owner has dominion of the thing; therefore it is to be spent according to his presumed will. But if the owner appears after it has been handed over to pious causes, it is to be restored by the poor person or the one having it, if it exists in an equivalent and has not prescribed; for such a handing over seems to include this condition: unless the owner becomes known. - If the latter, which is to be judged from circumstances of time, distance, place, or impossibility of recognizing the thing, as happens in ordinary coins, the finder can now retain it for himself, since it belongs to no one. But if by chance the owner afterwards appears, nothing is owed to him, since he has lost every right. So St. Alphonsus,[1] others thinking otherwise. Hence a maidservant of an inn, who in sweeping the tavern finds some coins, while there is no hope, namely on account of the great crowd, that the owner will be found, can retain them for herself. Hence also he who retains animals which have wandered away from their owners, with diligence for finding the owners omitted, is guilty of injustice; and afterwards, if the owner cannot be found, or he himself cannot disclose the thing because of omitted diligence, he must spend the price on pious causes.[2]

3° An owner appearing is bound to reimburse to the finder or holder of the thing the expenses made so that the thing be preserved, or its owner be found.

Notes to n. 656 - note sequence 1. (1) Kent, Vol. II. n. 350. (2) Lugo. Disp. 6. n. 42. Notes to n. 656 - note sequence 2. (1) Lugo. Disp. 6. n. 42. (2) a. 519.

Point II. On Prescription.

657. Definition. - Prescription is defined: a means instituted for acquiring some right, or for freeing oneself from some obligation through the lapse of a certain time, with the conditions established by law observed.

Prescription differs from custom; for prescription is something of fact, of itself neither constituting nor changing legal right, but directly changing dominions of things or equivalent rights. But custom is something of right, because, as Suarez[1] notes, it has primarily and of itself the force of law.

658. Prescription is a legitimate mode of acquiring. - For it is not only approved by positive right, both civil and canonical,[2] and therefore has force in each forum, external and internal; but it is also very conformable to natural right and has foundation in it, since it rests wholly upon the common good, insofar as it was of the greatest interest of the common good: 1) lest dominions of certain things be long, and almost always, uncertain; 2) that there be some end of lawsuits; 3) that possessors be preserved in their possession with tranquil mind, and not themselves be held in nearly immortal fear; 4) for avoiding the sloth of owners, and the error and confusion of a long time.[3] Wherefore the Angelic says: "If someone prescribes by possessing in good faith, he is not bound to restitution, even if he knows after prescription that the thing was another's."[4]

659. ○ It is divided into acquisitive, which is also called usucapion, and by which some right is acquired; and liberative, which is simply called prescription, and by which someone is freed from some obligation. Acquisitive prescription among us is properly called

"limitation," and is referred to corporeal goods; but liberative is called "prescription," and pertains only to incorporeal things, such as servitudes. Today, however, those words are used promiscuously; more commonly, nevertheless, "limitation," and indeed for signifying each prescription.[5]

Notes to n. 659. (1) De Relig. L. 1. Tr. II. c. 13. n. 8 sq. (2) Q. 3. c. 2. caus. 16. S. Alph. L. IV. 504, 517. (3) Cod. L. VII. T. XXXIX. l. 7. Decr. L. II. T. XXVI. c. 5. (4) Quodl. XII. a. 24. (5) New Amer. Encycl. v. Prescription.

660. ◦ All who are capable of acquiring dominion can prescribe, and the same are subject to prescription, yet as to prescriptible things; therefore not only physical persons, but also moral persons, such as the Church, a community, public institutes. Yet moral persons cannot oppose prescription to others in our civil forums, except insofar as they are civilly capable of dominion.

But no one can prescribe against himself, since justice is toward another; and so, if one beneficed has already for a long time celebrated four Masses from error, although nevertheless by the tenor of the foundation he is not bound except to two, he will not for that reason in the future be bound to four. - The conditions for prescribing legitimately are: a prescriptible thing, possession, title, the required time, good faith.

I. A Prescriptible Thing.

661. ◦ The following cannot be prescribed:

a) Things which have been placed outside commerce, because they cannot even be possessed by private persons. Of this kind generally are judged those things which serve only public utility, for example streets; sacred things and sacred places, while they are sacred.

b) Things which law, whether ecclesiastical or civil, has declared imprescriptible. Thus from the disposition of ecclesiastical law the limits[1] of Parishes, just as also of dioceses,[2] and the burdens and conditions of pious foundations, cannot be prescribed.[3]

c) Things found or stolen, which are never prescribed by at least the finder, or thief, or possessor in bad faith.

d) Certain servitudes (n. 683. 2) and 684. 5°).

Notes to n. 661. (1) Jurisdiction can sometimes be prescribed. Acta T. XIII. p. 26 sq. (2) Can. 4 sq. Cause 16. q. 3. and Decr. L. 3. T. 29. c. 4. (3) Trid. S. 25. c. 4 Rf. Cf. Mar. p. 201. n. 405.

II. Possession.

662. ◦ Possession is detention of a thing or enjoyment of a right, in one's own name, by oneself, or through another who detains that thing or exercises that right in our name. Enjoyment of right is customarily called improper possession, or quasi-possession; for properly possession is accustomed to be said only of corporeal things, not of incorporeal things, of which kind is, for example, the right of electing. Possession here defined is called civil, and is distinguished from bare detention of a thing or enjoyment, which is done in another's name, as possession of a field through a tenant, and is called natural.

663. ○ Possession, so that it can induce prescription, must be:

1° Dominative, or the thing must be held, or the right exercised, in one's own name, as is said in the definition, or with the mind of an owner. Hence he who detains a thing or exercises a right in the name of another, for example as tenant, depositary, usufructuary, cannot prescribe. This is also valid concerning their successor by universal title, but not concerning a successor by particular title, as for example concerning one who holds a thing by purchase from a depositary. - Hence also acts of simple tolerance cannot be the foundation of prescription; for acts of this kind are done from the tacit or presumed consent of the owner; therefore in the name of another. Thus by title of friendship or neighborhood many things are tolerated or permitted, without some right being acquired from them. - Nor can acts of mere faculty, or of simple non-use, induce prescription. Thus from the fact that for twenty years I have not built on my land, the neighbor cannot impede me from building today. - Therefore that natural possession which was defined at n. 662 cannot induce prescription.

2° Tranquil or peaceful, i.e. not interrupted, namely by that Interruption concerning which below at n. 667 under 2°.

3° Certain, not equivocal or doubtful, so that he who possesses is morally certain that he has a right of detaining the thing or exercising the right in his own name, lest namely the condition of good faith be lacking, which is required for prescription.

4° Continued or not suspended before the required time (n. 667. 3°). - Yet he who succeeds into a thing, whether by universal title, namely from inheritance, or by particular title, for example because he bought the thing, rightly joins the time during which he himself possessed with the time during which his predecessor possessed: understand according to what is to be said at n. 670.

5° Finally, for the external forum, public, so that he against whom prescription runs can know it and reclaim, if he wishes to attend accurately. For if it were not so public, in the external forum bad faith or an intention of hiding would be presumed.

III. Title.

664. ○ Title here means a cause sufficient from law for transferring dominion, for example purchase, donation, etc. But title is distinguished fivefold: true, or one which labors under no vice; colorable, or apparent, or one which labors under hidden nullity, such as would be present if, for example, I had bought from Titius a thing which I thought belonged to Titius, although nevertheless it belonged to Sempronius; estimated, which is prudently believed to have been present, although in fact it was not present, as if a son possesses from inheritance a thing which is thought to have been bought by the father, although it was not bought; presumed, when a certain title cannot be alleged, but because of length of time is presumed to have been present; vicious, which lacks some condition established by law.

Now for legitimate prescription a true title cannot be required; for then prescription would not be necessary, since no one can prescribe his own thing. - But a vicious title cannot be alleged, because the dispositions of the law with which it is not consonant are never reputed unknown. Hence the axiom: it is better not to have a title than to have a vicious title. - But a colorable or estimated title is

required and suffices, since then good faith is sufficiently preserved. Indeed for the prescription of twenty years, which in most of our States must be called prescription "of the longest time," a presumed title suffices, or no title must be shown, since from the fact itself of tranquil possession through such an interval of time it is supposed to be present. A presumed title will also have force in conscience, if good faith has been present.

Therefore if somewhere a law, as to movables, holds possession in place of title, that will have force only for the external forum; but probably for the internal forum also, if with good faith there is also a title, at least an estimated one.

IV. The Required Time.

665. Note. - 1° What we are about to say concerning the time required for prescription in individual States cannot be applied for the internal forum to the goods of churches and pious places. - Besides a colorable title,[1] one hundred years are required for prescribing immovables of the Roman Church or of St. John Lateran; but forty if it is a question of other churches or pious places; but with sufficient probability only three if there is discussion of movables, and thirty without title.[2] But since the faithful in this matter scarcely distinguish between profane and ecclesiastical goods, you will leave them in good faith, if no hope of fruit is expected from admonition. Moreover, in these matters, the seal being saved, let nothing be done without consulting the Bishop, whose it is to bear judgment in sacred causes.[2]

2° The dispositions of our laws concerning the time required for prescription do not have force in conscience unless good faith is present in the possessor, and generally are to be held merely as denials of action against the possessor.

Notes to n. 665. (1) Schmalzg. de Prescript. n. 108. (2) L. IV. 510.

666. Questions. - Quaer. 1° What do our laws dispose concerning the time required for prescribing?

Resp. 1° Immovables or real property without title are prescribed by the space of 40 years in Maine, 30 in Alabama and Louisiana, 21 in Kansas, Nebraska, Ohio, Pennsylvania; 15 in Connecticut, Vermont, Virginia; 10 in Indiana, Michigan, Mississippi, Nevada; 7 in Florida, Georgia, North Carolina, South Carolina, Tennessee; 5 in California; 20 in the other States and Territories. So according to Wells.[3]

Resp. 2° As to movables, interest, debts, etc., we remit the reader to the laws of each State, or to Wells.[4]

Notes to n. 666. (2) Mar. p. 212. n. 427. (3) Ib. pp. 321-388. (4) Ib.

667. ○ Quaer. 2° How is prescription weakened?

Resp. By renunciation, interruption, suspension.

1° By renunciation. For generally each one can renounce his own right. But prescription ceases through renunciation not only express, but also tacit, namely that which is deduced from some fact, as if someone, notwithstanding the prescription which frees him from payment, nevertheless knowingly pays. We have said: generally; for, so that renunciation may have force, it is required: 1)

that the one renouncing be capable of alienating, because through renunciation he alienates the right of recurring to prescription. Thus individual religious cannot renounce the privileges of their Order; 2) that alienation not injure the right of creditors and of others having an interest.

2° By interruption, namely when because of an interposed impediment it ceases in such a way that it must be begun again. But this can happen in a double way: 1) naturally, which happens in two ways, namely: a) if someone is cast down from possession and has been deprived of enjoyment of the thing through that time which the laws of the individual State or sometimes the judgment of a judge establish; b) if bad faith supervenes; 2) civilly, if a lawsuit is juridically moved, and the interpellation has not been rejected by the judge. Likewise if the debtor or possessor of the thing recognizes the right of him against whom prescription is made.

3° By suspension, or dormition, when namely an impediment is present which, unless it is removed, prevents prescription from proceeding further. But an impediment can generally be called whatever stands in the way of someone's being able to watch over his own affairs and protect his own rights, according to that: "prescription does not run against one not able to act." Moreover an impediment can exist either on the part of persons, or on the part of some external cause.

On the part of persons. - Thus our laws generally dispose: "Minors, married women, persons out of the United States (and generally out of the State), insane or imprisoned, may bring action within the times of limitations after such disability is removed." In Canon Law, a church is equated with minors when it lacks a rector or superior.

On the part of an external cause. - If the administration of justice, with tribunals closed, is altogether suspended, so that a private person cannot protect his own right, as for example could happen in time of war.

668. ○ Quaer. 3° Are prescriptions of brief time valid, by which someone is freed from paying a debt?

Resp. 1° In the negative, if it is a question of the first debtor and he, as must be supposed, knows that payment has not been made, since good faith altogether requires ignorance of the debt.

Resp. 2° In the affirmative, as to successors of the first debtor, at least by particular title (see n. 670. q. 2°), if they were ignorant of the debt of the author.

V. Good Faith.

669. ○ Good faith here is understood as that affection or persuasion of the mind by which someone prudently, or without ignorance gravely culpable theologically (n. 744), judges that the thing which he possesses is his, although in reality it is not.

I. This good faith is altogether necessary for acquiring dominion from prescription. For he who adverts that he possesses another's goods, by that very fact immediately contracts the obligation of restitution; and by natural right, and also positive right whether divine or human, a thing belonging to another cannot knowingly be either stolen or retained. This is also clear from Lateran Council IV,[1] and also from Rule of Law 2 in the Sixth, which reads thus: "A possessor of bad faith will prescribe at no time."

Yet he who thinks the thing is his through ignorance slightly culpable, or a possessor of venially bad faith, can prescribe more probably, since in law[2] only mortally bad faith is condemned.[3]

Therefore dispositions of civil laws, insofar as they do not expressly demand good faith, have no force in the internal forum, and are to be held as a mere denial of action or recourse as to the creditor.

II. But good faith is required not only for acquisitive prescription, but also for liberative, because for each the same authorities and reasons urge equally. - Nevertheless according to many theologians and jurists good faith is not required so that you may be freed from some rustic passive servitude, for example of way; or rather one must say that then good faith consists in this, that you place no obstacle by which another is impeded from the use of his right. The reason is that for prescription of this kind no act of the one prescribing is required, but only non-use on the part of him to whom the right of servitude belongs, whom the one prescribing is not bound to admonish, during the running time of prescription, that he use against him the right of servitude, for example a way. Yet others deny; and certainly it must be denied concerning urban servitudes, for example concerning the passive servitude of dripping. For against these servitudes prescription is not made without some positive act of the one prescribing, which without good faith would be unjust.

Notes to n. 669. (1) L. II. Decr. T. XXVI. c. 20. (2) Ib. (3) L. IV. 511.

670. Questions. - Quaer. 1° Does an heir prescribe who doubts concerning the good faith of his predecessors?

Resp. In the affirmative, supposing that he has used due diligence for resolving the doubt. The reason is that bad faith must not be presumed, at least ordinarily and of itself; for no one is presumed evil unless he is proved. - Hold the same in general concerning one who legitimately succeeds into some possession. - But he who is certain of the bad faith of his predecessor does not prescribe.

Quaer. 2° Does the bad faith of a predecessor, unknown, always impede a successor from prescription?

Resp. 1° In the affirmative, if the heir succeeds by universal title, i.e. such that comprehends the universality or an aliquot part of the goods, for example half of the whole, as has place in the institution of an heir properly so called. The reason is that by a fiction of law an heir by universal title is judged to be one moral person with the author, succeeding into all his obligations and burdens.

Resp. 2° In the negative, but only from the time at which he succeeded, if he succeeds by another title than the aforesaid, as obtains in legacies, in sale, and in other contracts. The reason is that then he is not judged to constitute one person with the predecessor.

Quaer. 3° Does the bad faith of a predecessor harm a mediate heir?

Resp. In the affirmative, more probably. The reason is that he is judged to make one person with the predecessor.[1]

Notes to n. 670. (1) L. IV. 512.

Point III. On Accession.

671. Definition. - Accession ("the right of accession") is that mode of acquiring dominion by which that becomes ours which either is joined to things already ours, movable or immovable, or is

produced from our things themselves, movable or immovable, whether by industry or by nature itself.

Division. - Accession is divided in three parts, namely into natural, artificial, and mixed.

1° Accession is natural when one thing is born from another by nature alone, as a lamb from a sheep, or is produced, as milk and wool; or when one thing is joined naturally to another, as land which gradually, not suddenly, accedes to another's bank by water.

2° Artificial, when from the matter of another a new thing is made, as if from another's wool you make a garment, from another's wheat bread, or a chalice from another's silver; or when another's things are joined to one's own, as if you paint another's house; or are confused together, as if you mix your wine with another's wine; or are commingled, as if you commingle your grain with another's grain.

3° Finally accession is mixed when at the same time both by nature and by industry one thing is joined to another, as plants placed in another's land, seeds scattered in another's field, or conversely.

672. Principles. - I. Natural accession happens either by birth or by alluvion.

By birth, or when an animal conceived from a male belonging to another is born to you. He who has the mother has right to all animals born from it. Hence the axiom: "The offspring follows the womb."

Concerning alluvion note these things from Kent.[1] a) "If a fresh water river, running between the lands of separate owners, insensibly gains on one side or the other, the title of each continues to go ad filum medium aquae; but b) if the alteration be sensibly and suddenly made, the ownership remains according to the former bounds, and if the river should then forsake its channel and make an entire new one in the lands of the owner on one side, he will become owner of the whole river, so far as it is enclosed by his land. ... c) If soil be formed out of the sea or a river by slow and imperceptible alluvion and accretion, it belongs to the owner of the adjoining land. d) Islands situated in a river ... belong to the person who owns the land on that side of the river to which they are nearest, though, if they be situated in the middle of the river, they would belong in severalty to the owners on each side, according to the original dividing line or filum aquae, continued on from the place where the waters begin to divide."

673. ◦ II. As to artificial accession, "the English" (as also the American) "law will not allow one man to gain a title to the property of another upon the principle of accession, if he took the other's property wilfully as a trespasser."[2] But if accession happens in good faith, then:

a) If from the matter of another a new thing is made, which is called specification, the following rule is valid: "If A should make wine out of the grapes, or meal out of the corn of B, or make cloth out of the wool of B, or a bench, or a chest, or a ship out of the timber of B, the most satisfactory decision, according to the Institutes of Justinian, is, that if the species can be reduced to its former rude materials, the owner of the materials is to be deemed the owner of the new species"; yet the price of his labor must be paid to the craftsman, if, as is supposed, he acted in good faith and the work is useful to the owner. "But if the species cannot be so reduced, as neither wine nor flour can be

reduced back to grapes or corn, then the manufacturer is deemed to be the owner, and he is only to make satisfaction to the former proprietor for the materials which he had so converted."[1] Thus indeed by English law, and generally also by American law.

Louisiana uses French law, from which the owner of the matter can reclaim the new species by paying the price of the labor. Yet if the price of the industry far exceeds the price of the matter, the craftsman can retain the species made by himself, with the price of the matter paid. If the craftsman acted in bad faith, he will be bound to repair the damages inflicted on the owner of the thing.[2]

b) If another's things are joined to one's own:

1. If they are joined, and so coalesce that they cannot be separated, which is called adjunction, then the whole composite belongs to him whose thing has the character of principal, while the other thing added has the character of accessory, according namely to the saying: "The accessory follows the principal."[3] Yet the owner of the thing which is judged principal must compensate the other for the accessory useful to himself. - Thus a usufructuary who has painted the walls of a house cannot destroy the painting with detriment to the walls. On the other hand, if on another's canvas a painter displays a beautiful image, the canvas becomes his, provided he pays its price: "For it is ridiculous that a painting of Apelles ... should yield in accession to a very cheap tablet."[3] Nevertheless it is not easy sometimes to define what ought to be judged principal and what accessory, and some of those things which formerly were held as principal must now be called accessory. Thus, if someone wrote on another's paper or parchment either a poem or any work whatever, by Roman law it yielded to the owner of the thing; yet this would be absurd today, since paper is of cheap price and the work is now esteemed the principal.
2. If another's things are confused with one's own, which is called confusion and has place when liquids or liquefied things of the same or another species so come together that no part can be assigned which does not participate in each, or are commingled, commixture is spoken of and is referred to solids, then by English common law, which is also American, the whole confused or commingled thing yields to him to whom the one confusing or commingling voluntarily inflicted injury, according to the general principle reported above concerning artificial accession from bad faith. Yet the one confusing or commingling probably is not bound to yield the whole before sentence.[1] "But this rule is carried no further than necessity requires; and if the goods can be easily distinguished and separated, as articles of furniture, for instance, then no change of property takes place. So, if the corn or flour mixed together were of equal value, then the injured party takes his given quantity and not the whole. ... But if the articles were of different value or quality, and the original value not to be distinguished, the party injured takes the whole. It is for the party guilty of the fraud to distinguish his own property satisfactorily, or lose it. No court of justice is bound to make the discrimination for him."[2]

"Where" the goods "of two persons are so intermixed that they can no longer be distinguished, each of them has an equal interest in the subject as tenants in common, if the intermixture was by consent,"[3] or happened by chance.[4] Therefore then it will have to be divided pro rata of the quantity proper to each, and this by the judgment of a judge, unless the parties agree among themselves. - In the other cases, and even in those in which confusion or commixture has been made in bad faith,

before sentence the owner of the more excellent matter can preserve the whole heap, with due compensation made. For then the other's part is held as accessory to your thing.[5] But if the things mixed or confused are inseparable and about equal, the composite belongs to each owner, and, as above, either it or its price after sale is to be divided.

Notes to n. 673 - note sequence 1. (1) Vol. III. n. 428. (2) Vol. II. n. 363. Notes to n. 673 - note sequence 2. (1) Vol. II. n. 364. (2) Civil Code of Louisiana, Art. 520 sq. (3) Inst. L. II. Tit. 1. § 34. Notes to n. 673 - note sequence 3. (1) L. IV. 499. (2) Kent, Vol. II. n. 365. (3) Ib. n. 364. (4) L. IV. 498. (5) Ib.

674. ○ III. The species of mixed accession are building, planting, and sowing. Concerning this, outside the case of bad faith, in which case by English and our law the same is to be resolved as concerning bad faith in artificial accession, the common verses have force:

Whatever is planted, sown, or built upon,
All yields to the soil, if nevertheless it has taken root.

Kent clearly explains these things thus.[2] "If A builds a house with his own materials upon the land of B, the land, said Pothier, is the principal subject, and the other is but accessory; for the land can subsist without the building, but the building cannot subsist without the land, on which it stands; and, therefore, the owner of the land acquired" (according to Roman law), "by right of accession, the property in the building. It is the same thing if A builds a house on his own land with the materials of another; for the property in the land vests the property in the building by right of accession, and the owner of the land would only be obliged ... to answer to the owner of the materials for the value of them."

"The same distinctions apply to trees or vines planted or seed sowed by A in the land of B. When they take root and grow, they belong to the owner of the soil, and the other can only claim, upon equitable principles, a recompense in damages for the loss of his materials."

Note. - "In most new States very many are found who, occupying lands without title, have cultivated them and erected buildings on them. Concerning men of this kind, who are called squatters, the laws are to be consulted; for the principles just alleged do not have force concerning them. For the most part the laws favor them, lest lands lie uncultivated; wherefore the owner gives a title to them, with a moderate price accepted, or satisfies them for labor and expenses."[3]

Notes to n. 674. (1) L. IV. 498. (2) Vol. II. n. 362. (3) Kenr. Tr. X. n. 74.

ARTICLE II: ON USE AND USUFRUCT

675. Definition. - Use (use) is the right of using another's thing, with its substance preserved, both as to form and as to matter. He to whom use belongs is called a user; but he to whom dominion of the thing belongs is called proprietor.

It is said: 1° right; for here we are treating of use of right, not of use of fact, which is nothing other than actual use of another's thing, revocable at the nod of the one conceding it, such as is the use of Religious as to things of the community handed over to them for use by a Superior or by the rule.

It is said: 2° of using, by which is signified 1) that the right belonging to the user extends only to those things which are necessary for daily use to him and his family, and to children about to be born

to him, and guests, according to his condition. Hence, if a user at the beginning of the year has received those things which are necessary to him for the whole year and dies before the end of the year, his heirs must restore to the proprietor that which remains. - 2) That the user cannot transfer his right to another, for example by leasing a house to another, or by yielding the use of a horse to another; for use is judged to have been conceded to him and his own only, until it is clearly evident that a broader faculty was given to him.

It is said: 3° with its substance preserved, both, etc. Hence the user 1) cannot change the thing of which he has obtained the use even into a better form; 2) is bound to preserve the thing whole, i.e. in that state in which he received it, with the exception, as is clear of itself, of things which are consumed by first use.

676. Definition. - Usufruct (usufruct) is the right of at once using and enjoying another's thing, just as the proprietor himself, with its substance nevertheless preserved, both as to matter and as to form. The usufructuary is called the one to whom usufruct belongs.

It is said: 1) the right of at once using and enjoying, just as the proprietor himself. By these words is signified the principal difference which intervenes between use and usufruct. For the usufructuary has not only the use, but also full dominion of the fruits, so that he can dispose of them at his nod, whether by himself or through another; for he is judged to act the person of proprietor as to useful dominion of the thing.

It is said: 2) with its substance nevertheless preserved, both, etc. Hence the usufructuary: 1° must restore the thing to the owner in the state in which it ought to be found after good administration; 2° cannot change the thing, even for the better. Hence, if a pleasure-estate is given to him, he could not destroy unfruitful trees serving pleasant walks so that perhaps he may make kitchen gardens. Wherefore "if the tenant for life," who among us is equated with a usufructuary, "should, by neglect or wantonness, occasion any permanent waste to the substance of the estate, whether the waste be voluntary or permissive, as by pulling down houses" (voluntary waste), "suffering them to go to decay from the want of ordinary care" (permissive waste), "cutting the timber unnecessarily, opening mines, or changing one species of the land into another, he becomes liable, on a suit by the person entitled to the immediate estate of inheritance, to answer in damages, as well as to have his future operations stayed."[1]

Notes to n. 676. (1) Kent, Vol. IV. n. 76.

677. Division. - Usufruct is divided:

1° Into proper and improper. The former is constituted in things not consumable by first use, and concerning it the definition properly treats. But the latter is in things consumable by first use, such as bread, wine, etc. It is called improper or quasi-usufruct, because things consumable by first use cannot be preserved, and therefore through the use of them the substance of the thing does not remain preserved, as is required for usufruct. Yet usufruct can be had in these insofar as someone can consume things of this kind, and then restore to the owner the valuation of them.

2° Into usufruct by particular and universal title. The former is constituted in one or several movable or immovable things, yet determined, for example in such or such designated houses or lands. The

latter is founded in the totality, or an aliquot part, of all the goods of the proprietor. Thus by common law a wife has usufruct of the third part of the immovables of her deceased husband.

3° Into legal, which is constituted by law, for example for a wife in the third part of the immovables of a deceased husband, and conventional, which is constituted by contract, for example by donation.

678. ○ The rights and burdens of a usufructuary, convention being set aside, in general are:

I. Rights. - 1° That he can perceive all fruits, whether natural or industrial, and make them his own, whether he has gathered them by himself or through others. Hence the usufructuary of a flock has right to the wool; the usufructuary of land to hay, crops, stones, willows, and all fallen trees, or trees which, when cut, grow again from stumps and roots. But fruits are understood to be gathered when they have been separated from the soil or from the thing. - Hence if a usufructuary dies, the fruits indeed mature but not yet separated from the soil or from the thing will not pertain to his heirs, but to the proprietor, without any compensation of cultivation, etc., being made. - But if the heir of a usufructuary about to die has gathered immature fruits, he is bound to restore them to the proprietor; for neither could the usufructuary himself gather immature fruits. - But he has a right in all civil fruits, for example the price of the leasing of a house or field, which nevertheless are not judged to be acquired except from day to day; therefore they belong to the usufructuary only in proportion to the time through which the usufruct endures.

2° That he can sell, donate, lease, and hand over fruits in pledge, for he who enjoys through another is judged to enjoy by himself, yet without damage to the proprietor. Therefore "tenants for life have power of making underleases," but only "for any lesser term."[1]

II. Burdens. - 1° That he preserve the substance of the thing, according to what was said at n. 676. Therefore he is bound to ordinary or moderate repairs by which the thing is preserved whole, but not to extraordinary ones. Hence also the usufructuary of a flock is bound to substitute other heads from the offspring in place of heads dead, unless he has the usufruct of individual heads separately and not of all collectively.[2] For the same reason he cannot tear out fruit-bearing trees, and is bound to substitute other trees in place of dead trees;[3] but "it does not please that trees overthrown by force of storm ... be substituted."[4]

2° "If the estate be charged with an incumbrance" (or taxes), "the tenant for life is bound, in equity, to keep down the interest" (or the amount of the taxes) "out of the rents and profits."[1]

Notes to n. 678 - note sequence 1. (1) Kent, Vol. IV. n. 74. (3.) (2) Just. L. II. T. I. § 38. (3) Leg. XVIII. de usufructu. (4) Inst. de rer. div. § 38. Notes to n. 678 - note sequence 2. (1) Kent, Vol. IV. n. 74. (4.)

679. ○ Usufruct and use cease: 1° by natural death of the usufructuary or user; 2° by the appointed time; 3° by the destruction of the whole thing; 4° by consolidation, i.e. if the usufructuary or user becomes owner of the thing; 5° by every kind of change, for example if a meadow becomes a pond; 6° by abuse, by which the thing becomes worse through the fault of the one using; 7° by non-use, with prescription acceding, if meanwhile the proprietor uses it; 8° by renunciation of the usufructuary, provided it is not done in fraud of creditors. But legal usufruct is extinguished in the manner defined by the law itself.

ARTICLE III: ON SERVITUDE

680. Definition. - Servitude (servitudes, services, easements) is a right belonging to a third party in another's thing, by force of which the owner of the thing is compelled to suffer something in it or not do something, for the utility of the third party.

It is said: 1) right in a thing; for it is proper to a servitude to adhere to a thing, and therefore with the thing itself it passes into whatever possessor.

It is said: 2) another's; for the advantages which the owner perceives from his own thing he perceives by right of dominion, not by right of servitude.

It is said: 3) by force of which the owner of the thing is compelled to suffer something in it or not do something. To suffer; for example, that a third party lead water from his land. - Not to do, for example, that he not build his house higher. Hence servitude is a diminution of dominion, a part of which is taken away from him who owes the servitude, and accedes to him to whom it is owed; and therefore there is added: for the utility of the third party.

Therefore servitude is taken either actively, and it is the right which someone has in another's thing so that it may serve him; or passively, and it is the subjection of another's thing so that something be done in it or not done, for the advantage of another.

681. Division. - Servitude is divided:

1° By reason of origin into natural, which flows from the position of places, and thus the owner of a lower estate cannot throw up a bank so that the waters of a higher estate no longer flow down through his land; just as neither can the owner of a higher estate do anything so that the flow of waters be increased unusually. Legal, which arises from law, and conventional, which arises from contract.

2° By reason of mode into continuous and non-continuous. The former can endure without an act of man, such as the course of water through land. The latter cannot endure without an act of man, such as to draw water from a well existing on another's land. - Moreover into apparent, which is openly declared by an exterior sign, for example a door or window, and non-apparent, which lacks such a sign, as for example the prohibition of building in some place.

3° By reason of object into personal, which is owed by a person to a person, and is proper to a slave toward a master; mixed, which is owed by a thing to a person, of which kind are use and usufruct; and real or predial, which is owed by a thing to a thing and to which alone the definition given above fits, and concerning which alone we treat here. The thing or estate to which servitude actively inheres is called the dominant estate; that to which it inheres passively, the servient.

Real or predial servitude is subdivided into urban and rustic, according as it turns to the utility of an urban or rustic estate. An urban estate is called every building erected for the sake of dwelling, whether in a city or in a village, and the garden annexed to it. A rustic estate is called a field, vineyard, meadow, stable of animals separated from the house.

There are four urban servitudes: 1° that a beam be admitted into your wall (Right of support); 2° that dripping be received upon your building (Right of drip); 3° that a wall not be raised higher (Right of

light and air); 4° that a window not be opened in a wall.

Among rustic servitudes some are called named, because they have received a name in law; others unnamed, which lack a special name in law. - The named are path, cattle-drive, road, which three come under one name, Right of way, and aqueduct (Right of drain).

682. ○ The rights and obligations of servitudes generally depend upon the nature of the thing, upon law, and upon convention. But especially these are established: 1° He who actively has right to a servitude can carry out all works which are necessary for using and conserving it. 2° If the land for whose utility the servitude has been constituted is divided, the servitude is owed to each part of that land. 3° The owner of the servient estate can do nothing by which the use of the servitude can be diminished; and in turn he to whom the servitude is owed can do nothing by which the condition of the servient estate becomes heavier. Thus natural equity bears.

683. ○ Servitudes are constituted:

1. By mutual convention of the parties, which can be called conventional. But they are constituted in this way: a) By title, for example donation. But only the owner of the estate, not the usufructuary, whose consent is nevertheless required whenever it is of interest to him, can impose a servitude upon a thing. But if two have common dominion of a thing, neither can induce a servitude without the consent of the other. - Nothing prevents a mode or condition from being added to the contract, for example that I draw water from the well of my neighbor only at certain hours. - b) By partition of an estate to which they inhere, if it is a question of continuous and apparent servitudes. But this will be present if, for example, the owner of two neighboring estates has dug a channel in one of them so that he may lead water into the other, and sells this other one without mention being made in the contract of sale concerning the aqueduct; for the servitude of aqueduct will exist actively in the estate sold, passively in the one not sold.
2. By prescription, at least if there is discussion of continuous and apparent servitudes. Among the English twenty years suffice; this law has been received among us, although not in all States altogether. Therefore let each one consult the laws of his own State.
3. By law, and then they are called legal, of which kind among us is, for example, that a public way be left free alongside a canal.

Note. - 1° The right which is called Right of light and air cannot be acquired by prescription in the States of New York, Connecticut, Massachusetts. The practice in almost the other States agrees; for, as Kent observes: "By such a prescriptive claim the value of vacant lots with old and low buildings upon them, would be destroyed, if substantial buildings could not be erected on them, lest they might obstruct the lights of some building in an adjoining lot which has stood for twenty years."[1]

2° "The right of free and pure air, as incident to the estate, is under the protection of the law. If, therefore, anything offensive be erected so near the house of another, as to corrupt or pollute the air (or probably even as to render the enjoyment of life there uncomfortable), it becomes a nuisance and an action lies for the injury."[1]

3° Concerning path, cattle-drive, and road (Right of way), anyone among us, without another title, can obtain that right by authority of the court, insofar as there is need, so that he may come from his own land to a public road or city. But the damage which the owner of the estate through which passage is sought will be able to undergo will have to be compensated.

Notes to n. 683 - note sequence 1. (1) Kent, Vol. III. n. 448. Notes to n. 683 - note sequence 2. (1) Kent, Vol. III. n. 448.

684. ○ Servitudes are extinguished: 1° By the appointed time having elapsed, if they exist for a time, or by the condition being fulfilled, if they were conditional. 2° By express or tacit renunciation of the proprietor. 3° By consolidation, by which the owner of the dominant estate becomes at the same time owner of the servient estate, or conversely. 4° If they no longer serve, for example if the spring from which you could draw water dries up. Yet if things are reduced to the former state, the servitudes revive, unless prescription stands in the way. 5° By prescription, or non-use through the time required for constituting servitudes by prescription (n. 683. 2).

The rights and burdens which exist between neighbors are akin to servitudes, and regard:

685. ○ I. Walls common to two houses (Party-walls). "If there be a party-wall between two houses, and a) the owner of one of the houses pulls it down in order to build a new one, and with it he takes down the party-wall belonging equally to him and his neighbor, and erects a new house and new wall, he is bound, on his part, to pull down the wall and reinstate it in a reasonable time, and with the least inconvenience; and if b) the necessity of the reparation of the old wall be established, the neighbor is bound to contribute ratably to the expense of the new wall. But he is not bound to contribute to the building of the new wall higher than the old one, nor with more costly materials. - If c) the owner of a house in a compact town finds it necessary to pull it down, and remove the foundations of his building, and he gives due notice of his intention to the owner of the adjoining house, he is not answerable for the injury which the owner of that house may sustain by the operation, provided he remove his own with reasonable and ordinary care. d) The common use of a wall separating adjoining lots belonging to different owners is prima facie evidence that the wall, and the land on which it stands, belong equally to the different owners, in equal, undivided moieties, as tenants in common."[1]

686. ○ II. Hedges (division fences). "The legal obligation of the tenants of adjoining lands to make and maintain partition fences, where no prescription exists, and no agreement has been made, rests entirely on positive prescriptions by statute; and trespass will lie against the owner of cattle entering on the grounds of another, though there be no fence to obstruct them, unless he can protect himself by statute, or prescription, or agreement. The public have no rights, even in a public highway, but a right of way or passage; and if cattle be placed in the highway for the purpose of grazing, and escape into an adjoining close, the owner of the cattle, unless he owns the soil of that part of the highway on which he placed his cattle, cannot avail himself of the insufficiency of the fences in excuse of the trespass."[2]

Notes to n. 686. (1) Kent, Vol. III. n. 437. 438. (2) Kent, Vol. III. n. 438. 439. Cf. Wells' Every Man, etc. p. 236 seq.

687. ○ III. Waters which run near fields or through them (Running waters). "Every proprietor of lands on the banks of a river has naturally an equal right to the use of water which flows in the stream adjacent to his lands, as it was wont to run (currere solebat), without diminution or alteration. No proprietor has a right to use the water, to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct while it passes along. (Aqua currit et debet currere ut currere solebat.) Though he may use the water while it runs over his land as an incident to the land, he cannot unreasonably detain it, or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors he cannot divert or diminish the quantity of water which would otherwise descend to the proprietors below, nor throw the water back upon the proprietors above, without a grant or an uninterrupted enjoyment of twenty years, which is evidence of it."[1]

Notes to n. 687. (1) Kent, Vol. III. n. 439.

SECOND PART: ON VIOLATION OF RIGHT OR ON INJURY

CHAPTER I: ON INJURY IN GENERAL

688. Definition. - Injury is the violation of strict right.

Division. - It is 1° formal or material, according as it is done knowingly and voluntarily, or without knowledge or consent.

2° Grave or light, according as from it damage absolutely or relatively grave, or altogether light, is caused.

3° Direct or indirect, according as it is intended in itself, or only foreseen and permitted in the cause (n. 6. 8).

Notes to nn. 688-694. (1) I Cor. 6. 10.

689. Principles. - I. There is a natural precept promulgated and sanctioned by God, forbidding that the strict right of another be injured; hence every injury is opposed to natural right. For since someone has been made the legitimate owner of certain goods, necessarily he ought to have an inviolable right in them; otherwise his right would be illusory, or would not be a right, which involves a contradiction.

II. Injury, or the wounding of another's right, is a grave sin from its kind. The reason is that it is gravely opposed to right reason, to good order, and to the divine law.

III. No injury is done to one knowing and willing; because one who wills yields from his right, and therefore does not wish the right to be observed. Understand this, provided it is a question of a right from which one can yield; and hence:

Except those cases in which a man cannot yield his right, however willing he may be, either because it is of itself inalienable, or because it cannot be yielded without injury to others. Thus a married man cannot by his own consent prevent the violation of his wife from being adultery, because nature demands that conjugal right be altogether inalienable. Add, for Christians, the right of the Sacrament, which cannot be violated. Cf. prop. 50 among those condemned by Innocent XI, p. XVI.

690. Resolutions. - 1° Injury is done to one consenting because of fraud or fear unjustly struck into him, because in reality he either gives no consent, or does not give it freely, but only in order to redeem himself from an unjust vexation.

2° He likewise sins against justice who kills another asking it; the reason is that God has reserved to Himself dominion over human life. Man, however, is merely a usufructuary, who therefore cannot abdicate from himself the right to life; hence if not a man's right, certainly God's right is violated.

3° A usurer does injury to the borrower paying usury, just as a seller does to the buyer conceding a price above the highest for the merchandise; for neither of these is judged to wish to make a gift. Therefore there is lacking a title by which dominion either of the exacted usury or of the excess in the price is transferred.

4° The torturers did injury to the martyrs, even if the martyrs desired death and bore it gladly.

691. Questions. - Query 1° What matter is judged grave or light in injury?

Resp. That matter is judged grave which, from its own nature or from the estimation of men, is apt to cause in another a sadness difficult to settle, or to dissolve mutual charity. - Thus Lacroix,[2] and others. The reason is that, since the end of justice is to promote common peace, public tranquillity, and mutual love by the conservation of rights, that matter is deservedly judged grave which, from its own nature or from the estimation of men, can dissolve mutual love with loss of common peace, or can cause a sadness difficult to settle.

I said: from its own nature, etc.; because in establishing a general rule that must be attended to which commonly happens among men using a temperate judgment and affection, and not what the tumult and intemperance of the affections suggests in those circumstances; for justice follows the guidance of reason and the dictate of prudence.

Query 2° Can injury be inflicted effectively upon another by a merely internal act?

Resp. Affirmatively. Because sometimes by an internal act alone the strict right of another can be injured. - This is clear from the example of rash judgment, by which, according to the common opinion, justice toward one's neighbor is violated, since each one has a strict right to the good estimation of himself among individuals. - Recall what was said n. 537. - Moreover, in this case there is no special difficulty; since, when merely internal injury inflicts no external damage upon the injured party, no exterior reparation is to be made, but only the imprudent judgment of the mind must be rejected.

Notes to n. 691. (2) n. 979.

692. ○ Query 3° Can an internal act of itself effect that an external act become unjust?

Resp. 1° Negatively, if the external act of itself does not injure the strict right of another, notwithstanding a depraved intention of harming in the agent. The reason is that where no right is injured, there can be no injury. Hence one refusing through hatred to succor another does not sin against justice, unless he is bound by office. - Thus most commonly. - Lugo[1] against a few.

Resp. 2° Likewise negatively, when the agent has a right directly to place the external act which is harmful to another, even if he acts from the intention of harming. The reason is that a depraved intention cannot make unjust what of itself is just, since it cannot change the nature of the external act. Hence a judge condemning from hatred a murderer to the death merited does not sin by an external act against justice; nor a merchant selling his wares at the lowest price, in order to deprive other merchants of profits; nor one who dismisses a maidservant, the conditions of the agreement made with her being kept, although he acts with an unjust mind, for example in order to punish her because she did not wish to consent to his lust. Thus Lugo.

Resp. 3° Also negatively, if the external act is only an accidental or occasional cause, but not the per se cause of the neighbor's damage. Thus the intention of a murderer killing another for this reason, that his crime may be imputed to an innocent man, will not effect that his action is the cause of the innocent man's damage.[2] (n. 746. 2°.)

Resp. 4° Affirmatively, however, if the external work is indifferent to harming or not harming, the direct right of the agent being set aside; for then the intention of harming determines the external

work, so that it becomes damaging. Therefore you do not indeed sin against justice by receiving a thing from the hands of a thief, so that you may restore it to the owner; otherwise, however, if you receive it in order to keep it. Resolve the same concerning a servant receiving the master's money: for he will not be unjust if he receives it in order to buy something for the use of the family; but he will be, if he steals it in order to spend it for his own uses. Nor do you do injury to a friend by taking his book in order to run through it in passing; otherwise, however, if in order to steal it. Nor will he be called a thief who takes another's money, without damage to that other, for his own uses, with a mind firmly determined to restore it as soon as possible; although that manner of acting, by which he exposes himself to danger of injustice and usurps the thing without the owner having been informed, must be disapproved.

From this head very many bankers have sinned, usurping money entrusted to them, even with the intention of returning it; which, nevertheless, being frustrated in hope, they were not able to accomplish.[3]

Resp. 5° Affirmatively also, if the intention comes forth into an unjust means by which someone is deprived of a good probably to be obtained (n. 757. q. 15°), as if someone intending to harm a creditor were to kill this creditor's debtor.[4]

Notes to n. 692. (1) p. 19. n. 100. (2) L. IV. 636. (3) Kenr. Tr. X. P. II. p. 328. n. 118. (4) L. IV. 633, 634.

CHAPTER II: ON INJURY IN SPECIES, OR ON SINS AGAINST JUSTICE

Here only injuries in goods of fortune are to be treated, namely theft and its species. - For enough has been said concerning other injuries, namely in goods of the body, of honor, and of reputation, in the Treatise on the Fifth and Eighth Precepts of the Decalogue.

It must be treated 1° concerning the nature and gravity of theft; 2° concerning the causes on account of which theft ceases to be such.

ARTICLE I: ON THE NATURE OF THEFT

693. Definition. - Theft, taken generically, is the taking away of another's thing while the owner is reasonably unwilling.

Division. - Theft is thus distinguished:

1° Theft simply, if it is done secretly. - 2° Robbery, if it is done while the owner is positively resisting (morally or physically). - 3° Sacrilege, if it is done concerning a sacred thing.

694. Principles. - I. Theft, by whatever name it is called, is a grave sin from its kind, because of itself it is gravely opposed both to charity and to justice, and in Sacred Scripture it is numbered among the sins which exclude from the kingdom of heaven. For thus the Apostle Paul says:[1] Neither thieves, ... nor the rapacious shall possess the kingdom of God.

II. Sacrilegious theft and robbery constitute a species of malice diverse from theft: the former because besides justice it violates religion; the latter because to the unjust taking away of another's thing it adds injury inflicted upon the person. But the other modes, or the other objects of theft, do not change the species, because through them the nature of the damaging is not changed.

Notes to n. 694. (1) D. 8. n. 79 et D. 18. n. 98.

695. Questions. - A. Concerning theft grave of itself. - Query 1° What matter is judged grave in thefts of outsiders?

Resp. 1° According to the common opinion, this matter is not to be looked at absolutely in itself, but relatively to the various conditions and necessities of men, so that a graver matter is required for grave sin in theft against a rich man than against a poor man. The reason is that the gravity of theft, like the gravity of any injury, depends especially upon the greater or lesser privation, pain, and reluctance of the will which he from whom it is stolen suffers; but now no one fails to see that the same matter causes sadness now light, now grave, according as the owner from whom it is taken is rich or poor. - Thus commonly with S. Alph.[2] against some, who contend that matter, whether grave or light, must be looked at absolutely in itself, and that it consists in that which is required for the daily support of an honorable man or of one moderately rich.

Yet some absolute matter must be determined, which it is never licit to pass beyond without grave fault; otherwise, if complete proportion had to be preserved among all conditions, surely the greatest

quantity would be required for grave matter when someone steals from a very rich man. But this would certainly yield to the harm of society. - Hence:

Resp. 2° According to S. Alph.,[1] and with attention to the circumstances of this region and of our times, it will be grave approximately - relatively 1) to beggars, $0.50, and less if some poor man would not collect so much daily; 2) to diggers and similar laborers, $1.00; to artisans and merchants of slender fortune, $1.25; 3) to those moderately rich or living from their own incomes, $2.00, but less if from their own they live wretchedly; but relatively to the absolutely rich, for example merchants sufficiently wealthy, $2.50 or $3.00; 4) to a wealthy community, $5.00, or even, if it is very wealthy, $7.50; 5) to the very rich, $10.00, which sum indeed can be judged absolutely grave.

In practical doubt, generally that which does not reach $2.50 or $3.00 is not to be reputed grave.

Resp. 3° The value of a sacred thing, as to the physical species estimable by price, for example of a chalice, is the same as that of a profane thing; otherwise, as in Relics, its dignity and rarity must be considered,[2] or the special prohibition of the Church (n. 1730).

Notes to n. 695. (2) L. IV. 526.

696. ○ Query 2° What matter is required, so that thefts of wives, children, and servants become grave?

Resp. 1° It is certain that in thefts of a wife and of children more is required than in thefts of outsiders; because the father of the family is less unwilling, or at least less reasonably unwilling, in the former case than in the latter, and often he is unwilling more as to the mode (that it is taken secretly) than as to the substance;[3] but no general rule can be assigned. For the matter must generally be defined from the various circumstances of persons or conditions. Thus S. Alph.[4] with others resolves that a son does not sin gravely who steals two or three scuta from a rich father (today and among us, I think, he would say $10 or 15).

Resp. 2° For servants it depends also upon the greater or lesser liberality of the masters, upon the quality or situation of the thing stolen, for example if it is edible or not, guarded or open, etc. According to the common opinion, through small thefts committed by servants in foods and edible things which are not usually kept carefully, generally one does not arrive at mortal sin, provided these things are not sold or carried out of the house, or taken in extraordinary quantity, or are of extraordinary price.[1] But if servants steal money or things carefully guarded, a greater quantity is not required for grave sin, because masters then are not less unwilling toward them than toward others.

Query 3° Must the circumstance be explained by a son, that he stole from his father?

Resp. Negatively, because theft regularly is not directly and gravely opposed to piety, as for example hatred is. I say: regularly; for it is otherwise if the father would suffer much from it concerning his state. Scav.[2]

Notes to n. 696. (1) L. IV. 528. (2) L. IV. 532. (3) H. A. Tr. X. 32. (4) L. IV. 543.

697. Questions. - B. Concerning theft grave by accident. - Query 4° In how many ways does theft of matter light of itself become grave by accident?

Resp. 1° By the intention of arriving at grave matter (n. 703. 2°); 2° by conspiracy, where many conspire among themselves and the little thefts of individuals gathered together constitute grave matter (n. 701. 702); 3° on account of grave damage coming to the owner from a light theft (n. 703. 3°); 4° by multiplication, concerning which in the questions n. 697-700.

Query 5° Do multiplied small thefts suffice to constitute grave matter?

Resp. 1° Affirmatively - whether it is a question of thefts committed against the same person, because united they can easily bring grave damage upon the owner; or it is a question of thefts committed to the damage of diverse persons, because, if not to individuals taken singly, certainly they bring grave damage to the community. Cf. prop. 38 condemned by Pius V.

Resp. 2° By multiplication they coalesce into grave matter either physically or morally. Physically, if they are conserved and the heap becomes grave; for then another's property is retained in a notable quantity. Morally, if indeed they are consumed, but between them there intervenes an interval which is morally or proportionately estimated as brief. - S. Alph.,[3] Lugo.[4]

Notes to n. 697. (1) H. A. Tr. X. 34. (2) Tom. II. n. 773. (3) H. A. Tr. X. 26. (4) Disp. 16. n. 37.

698. ○ Query 6° Do small thefts also coalesce if a great interval is placed between them?

Resp. Negatively, according to the more common opinion. The reason is that, when a great interval has been posited, small thefts are not judged to be morally united by the common estimation of men, nor therefore do they constitute one object in the genus of morals. Moreover, then grave damage inflicted upon the owner does not appear, since he can scarcely perceive it; and thus he is not judged gravely unwilling.[2]

Query 7° When is the interval judged great?

Resp. To S. Alphonsus[3] the opinion teaching that thefts no longer coalesce beyond the space of two months is more pleasing, even if they were approaching matter as it were grave. But if it is a question of little thefts whose matter each time is very small, he considers a month or even a fortnight as a great interval. - Except, as I said above n. 697. q. 4° and 5°, if an accumulation is made or there is the intention of arriving at a grave sum.[4]

Notes to n. 698. (1) L. IV. 530. (2) Ibid.; H. A. Tr. X. 26. (3) L. IV. 530. (4) L. IV. 530.

699. ○ Query 8° When does matter become grave in small thefts?

Resp. 1° If small thefts are made from the same person at diverse times, or by diverse persons at the same time, the matter will be grave when this exceeds by half the sum commonly required for grave theft. - Thus commonly.

Resp. 2° If small thefts are made from diverse persons, and discontinuously, grave matter of itself will be judged present when it is double the sum commonly required for grave theft.[4]

Query 9° Does retraction of the will prevent following little thefts from being united with preceding ones?

Resp. 1° Affirmatively, if the retraction was efficacious, that is, if in fact the things previously taken have been restored, because once separated they now no longer exist here and now. - Thus

commonly.

Resp. 2° Again affirmatively, if the subsequent theft were done from some particular motive; for then it would not seem efficaciously to destroy the preceding will of restoring. Or even if the thief expressly and seriously proposes again at the same time to restore the things previously stolen; which, nevertheless, can scarcely be admitted in practice, since one who seriously proposes restitution does not here and now repeat thefts. - Negatively, however, where this will seems in some way to be revoked by a new theft; for in this case nothing prevents a notable sum from being retained, and the thefts coalescing into one.

700. ○ Query 10° Does he sin gravely who, after grave matter has been completed, still steals some light thing?

Resp. It is disputed. An opinion, very probable, denies it, the intention of arriving at a new grave sum being set aside. The reason is that that little theft does not seem to be referred to the grave sum already completed, but rather to a new one, which the thief then begins and pursues. - Thus S. Alph.[1]

701. ○ Query 11° Does he sin gravely who by a light theft completes grave matter begun by others with the same person?

Resp. 1° Negatively, if he did not know that little thefts had been committed by others, because he is not conscious of grave damage inflicted upon the owner. - Thus all.

Resp. 2° Negatively, at least more probably, even if he knew that nearly grave damage had been perpetrated by others, nevertheless with the case of conspiracy set aside. The reason is that this man taking a little thing neither is per se the cause of grave harm, nor is he the cause that the others accepted other things. Therefore the grave damage which the owner suffers ought in no way to be imputed to him. - Nor say that such a thief sins as gravely as a murderer inflicting death by a light blow upon a man already struck by others with innumerable light wounds; for death is owed to this last wound, which otherwise would not have followed. But the matter is otherwise in the case of theft; for by the last little theft no notable calamity or damaging is added. - Lugo,[2] and others commonly, against Bonacina and others.

702. ○ Query 12° If many, without common counsel but by example, commit light thefts, so that the total damage is grave, do individuals sin gravely?

Resp. More probably negatively by reason of justice, although they can sin against charity. The reason is that example is not a per se cause, but only an occasional cause, of the damage. - Thus S. Alph.[3] and others more commonly against some.

Notes to n. 702. (1) L. IV. 588. (2) D. 16. n. 53 sq. (3) L. IV. 537.

703. Resolutions. - 1° "Probably," says S. Alphonsus,[1] "those who would eat fruits in others' vineyards" or orchards, "provided they are not rare and of great price, can be excused at least from grave sin, if they do not carry them out in great quantity; for in this kind of things, which are too exposed, a greater quantity is required for constituting grave matter."

2° If a thief, intending to arrive by little thefts at a grave sum, renews this intention as often as he steals, as often as he steals he sins gravely. The reason is that the external act derives its malice from the internal act, which is gravely sinful.[2] Say the same of him who steals a small quantity with the intention of taking a notable quantity. Recall what was said n. 225. 8°. a).

3° He who takes from an owner a trifling thing very dear to him, for example a rare and singular flower, the first fruits from a tree destined to honor some special man, and foresees at the same time that the owner is to be gravely afflicted by such a loss, sins gravely against charity; but against justice lightly, unless perhaps grave damage seems likely to follow from it.

4° Merchants using false weights sin gravely, although each time they defraud in small matter; because they intend to arrive at grave matter, or certainly know that they will arrive at it.

5° Tailors and their servants sin lethally against justice, when by retaining for themselves or selling fragments of cloth which remain over, otherwise still useful to the owners, they have arrived at grave matter. Except unless in some place a custom prevails that less be paid and the fragments remain to the tailors; or unless it is established that wealthy owners do not wish the fragments to be restored to them, or care little about them.

6° They must be accused of theft who by deceitful beggary (not those who truly beg with exaggeration), or by going about with fabricated reasons, draw money from citizens. Yet those are not to be condemned who have a certain modest amount of money placed in a savings bank, in order to provide for old age and infirmity, lest they be forced to withdraw into a public poorhouse, or so that funeral expenses may be paid, meanwhile collecting alms from private persons whoever they may be, or from pious societies.

collecting alms, so that provision may be made for daily necessities. Indeed, that little money which they keep saved would shortly be spent, and they themselves would be a burden either to pious societies or to hospices. It must be said otherwise if they have money which is sufficient for the support of life. These things likewise can be understood of those who deposit a modest sum of money with a friend, when they betake themselves to a hospice, so that, if afterward it happens that they leave it, they may not lack every aid, or, if they die, their bodies may be committed to burial.[1]

7° Concerning youths educated gratis in seminaries, or at the expense of private persons, with that hope that they will serve the ecclesiastical ministry, it must be held that they commit fraud if they enter seminaries without the intention of dedicating themselves to sacred duties, and with this purpose only, that they may be imbued with letters or indulge leisure; and therefore that they are bound to repair the damage. It is not necessary, however, that they be altogether certain of their vocation; for holy leisure is conceded to them for this reason, that they may have more mature counsel concerning so great an undertaking. But they ought neither rashly to enter nor to remain in sacred buildings after they have cast off hope and purpose. But if by their own fault they bring it about that they are held unworthy, they do not seem for that reason bound to make restitution, whenever the mind of defrauding was lacking; for donors are not to be judged to have placed the condition of restitution on account of sluggishness or other customary faults.[2]

8° Those who dig out coals are prohibited from carrying them away for their own use, unless a certain price has been paid; nevertheless, from the convenience of the thing, it easily happens that each one takes the coals necessary for his family. That custom indeed must be reprehended, but

restitution does not seem to be exacted, since there is so great an abundance of coals there, and the owners are scarcely to be judged altogether unwilling; for they do not use solicitude to detect thieves. Those who carry away some coals for their own use from the banks of canals and rivers, where coals are deposited from boats, sin, and indeed gravely if they take a great abundance; not so if a few, especially those which lie scattered here and there. Moreover those who have been accustomed through the whole winter, or another long time, thus to take coals for themselves are guilty of grave theft, and ought to make satisfaction according to an equitable estimation of the damage. But often it is very difficult to send the price safely to the owners. The same must be said concerning those collecting wood which another cut for his own use, or carrying away what another procured for himself; for it is a grave fault of theirs to take an abundance for themselves without the owner's permission.[1]

Notes to n. 703. (1) Prax. Conf. 42. (2) Elench. 2. quest. ref. q. 6.

ARTICLE II: ON THE CAUSES ON ACCOUNT OF WHICH THEFT CEASES TO BE SUCH

A twofold cause is assigned: 1° necessity; 2° hidden compensation.

§ I. On Necessity

Necessity is one thing extreme, another grave, and another common. Extreme is called that in which life itself is endangered, or a most grave evil threatens; grave, however, that in which life is led very burdensomely; common, however, that in which poor beggars commonly are situated.

704. Principles. - I. A man can in the extreme necessity of himself or of his own use another's goods, as much as is sufficient for freeing himself from such necessity, supposing that other means licit of themselves and morally possible are not present. The reason is that the division of goods, in whatever way it has happened, cannot derogate from the natural right which belongs to each one, that he provide for himself while he labors under extreme necessity. Therefore in such a case all things become common; and so one taking another's thing in order to help himself takes a thing truly common, which he makes his own, as happened before the division of goods. Therefore he does not commit theft. - S. Thom.,[2] S. Alph.[3]

II. In order that someone may be able to steal another's things, grave necessity does not suffice, nor a fortiori common necessity; for in these circumstances owners are reasonably unwilling, and otherwise an easy entrance would lie open to plunderings. It is confirmed from Prop. 36 among those proscribed by Innocent XI, p. XVI.

Notes to nn. 704-707. (1) L. III. 33. (2) L. IV. 520. (3) Disp. 16. n. 154.

705. Resolutions. - 1° It is not licit for a poor man placed in extreme necessity to take more than is necessary for himself.[4] Hence if the use alone of the thing suffices, for example of a horse, when the necessity ceases the obligation of restoring remains.

2° If one extremely in need has elsewhere, in reality or in probable hope, whence he can pay, he cannot take another's thing except with the burden of restitution; because necessity does not demand

that he be relieved by the ownership of a thing, who can sufficiently be relieved by a thing received as a loan for consumption or for use.[1]

3° But one who in extreme poverty consumed another's thing is bound to nothing after the use of the thing, if he had no probable hope that he would ever be able to restore, even if afterward he comes to a better condition.[2]

4° The things which are said concerning extreme necessity can also be said concerning necessity quasi-extreme or most grave. But such necessity is judged to be present when someone is in probable danger of incurring death, of losing some principal member, of falling into perpetual captivity or infamy, or of undergoing a very hard penalty or a most grave or perpetual illness. For in these cases extreme necessity is already morally present.[3]

5° A rich man hiding his things, or using other industry, lest he succor a poor man, when the poor man's necessity has ceased, is not bound to restitution, because on the one hand the rich man is bound from charity only in this case; on the other hand necessity, even extreme, confers upon the poor man a right to the use of another's thing only so long as the necessity itself presses.[4]

6° But one who by force would impede a poor man from taking some thing for himself in such a case would sin against justice, as will be clear from the things to be said below, and would be bound to compensate the damages thereby coming to necessary heirs; but if none have come to these, when the necessity has ceased, and thus the poor man's right, the burden of restitution also ceases.[5]

Notes to n. 705. (1) Kenr. Tr. III. n. 177. (2) Ibid. 178.

706. Questions. - Query 1° Can someone steal the thing of another not only for succoring his own necessity, but also another's?

Resp. Affirmatively, with S. Thom.[6] and others commonly. The reason is that then he in some way bears the place of the needy person, and shows that he loves his neighbor as himself. Except, however, if he could have given his own thing; in which case he seems bound to restitution, if he gave another's thing, because then he could not determine another's thing for fulfilling the precept of almsgiving when his own was at hand.[1]

Notes to n. 706. (1) Kenr. Tr. III. 179. (2) 2. 2. q. 66. a. 7. (3) L. IV. 520. (4) H. A. Tr. X. 15.

707. ○ Query 2° Can he be said to be situated in extreme or quasi-extreme necessity who is to be killed by robbers unless he hands over such a sum of money, or he upon whom perpetual or most grave captivity threatens, or another similar misfortune?

Resp. Not a few affirm with S. Alph.[2] and Lugo.[3] The reason is that that necessity consists in a most grave or extreme danger which threatens when someone has been reduced to the greatest misery, or is just now about to die, not only from want of food, but from any other cause. Hence in these cases it is licit to provide for oneself from another's goods.

Query 3° In what necessity is it licit for a wife and children of the family to receive food from a husband or father who is a thief?

Preliminary note. a) The necessity of the wife or of the children of the family can be either extreme, and that either temporal or spiritual, as for example if daughters are exposed to danger of

prostitution, or sons to injustices, unless they are nourished by the father who is a thief; or quasi-extreme, suppose grave danger either of an illness morally certainly mortal, or of an unjust, grave, and morally irreparable infamy; or grave, that is, such in which the things necessary for a justly acquired state would be lacking.

b) That from which the family is nourished will be either that very thing which has been taken by theft, or the same in species, for example money of the same value, or something else.

c) The thief will be able to restore from goods already justly acquired, or not.

d) The wife and children of the family can be nourished from their own goods or not; and likewise they earn something for the family or nothing at all. These things having been noted beforehand:

Resp. 1° If the family is not nourished from the thing stolen or from a thing the same in species, and nevertheless the thief can restore from goods already justly acquired, it licitly receives from him even those things which are not necessary either for life or for state. The reason is that then neither is another's thing received, nor is impotence of restitution induced in the thief from what is received. - Resolve the same, although the thief cannot restore from goods already justly acquired, and although wife and children spare their own goods, provided that a) by their labor they earn for the family as much as is furnished to them in food by the thief, and b) they are not nourished from the stolen thing itself or from a species the same as it. The reason is that by receiving what they earn they do not induce in the thief a greater impotence of restitution.

Resp. 2° In necessity, whether temporal or spiritual, and whether extreme or quasi-extreme, if they do not have their own things, they can receive, even from the stolen thing, everything which is required for relieving that necessity. This is clear from principle I. n. 704.

Resp. 3° In grave necessity they can receive that which is necessary for state, provided a) they cannot provide for themselves from their own goods (and indeed the wife, even if she could); b) they receive nothing from the stolen thing or from a species the same as it; c) the creditors of the thief are not situated in the same necessity. The reason is that grave necessity of oneself or of one's own excuses from restitution, as will be said below. - It is said: they receive nothing, etc. For from money which is the price of the sale of a stolen thing, or from a thing bought by stolen money (n. 960. q. 2°), or from coins or things belonging to others which the thief has mixed with his own in the way I said n. 673. b). 2), they can receive, since those things are the thief's.[1]

Notes to n. 707. (1) H. A. Tr. X. 15. (2) Ibid. n. 15. (3) Ibid. n. 15. (4) L. IV. 520. q. VI. (5) L. IV. 520. (6) 2. 2. q. 66. a. 7.

§ II. On Hidden Compensation

Hidden compensation is the recovery of a thing owed to me through occupation of a thing of the debtor, done without this debtor's knowledge.

708. Principles. - I. Hidden compensation can sometimes be just and licit, if it does not lack the required conditions, that is, if no injury is done to the debtor, nor any disturbance of the order of right follows, nor of the Republic. But these three can be present. And 1° No injury is done to the debtor; for by hypothesis in such compensation you receive only that which is certainly yours, or what is owed to you from strict justice. - 2° There is no disturbance of the order of right, since it is supposed either that the judge cannot be approached, at least not without

notable inconvenience, or that he cannot restore his right to the injured party. For that is not said to be omitted which would be sought in vain. - 3° There is no disturbance or damage of the Republic; for enough is provided for it by the cautions to be placed in the conditions. - Thus S. Alph.,[1] Lacroix,[2] etc.

Notes to nn. 708-712 - note sequence 1. (1) L. IV. 528. (2) L. IV. 524. Notes to nn. 708-712 - note sequence 2. (2) D. 16. n. 91. (3) Ibid.

709. ○ II. But the required conditions are the following: 1° That the debt be from justice, morally certain, demandable. From justice, not from charity alone or gratitude. - Certain; for in doubt the principle is valid: The condition of the possessor is better. Therefore in doubt compensation is illicit and unjust. - Demandable ("due").

2° That the debt cannot be recovered otherwise, at least not without grave inconvenience. For if the creditor can by mere petition or recourse to a judge obtain what is owed to him, by compensating himself he does injury to the public power, and therefore sins against legal justice (n. 712).

3° That the thing be taken in the same species, if it can be done. Otherwise the debtor's thing is exchanged without his consent, and therefore unjustly.

4° That it be done from a thing of the debtor. Otherwise it would be done with damage to a third party, as would happen if it were done from a thing deposited with the debtor or lent to him for use.

5° That damage to the debtor be guarded against, namely by taking care that the debtor or his heirs not be exposed to the danger of paying twice, if perhaps they are going to restore. Hence if that case is in some way foreseen, they must be warned in some manner, for example through a fictitious renunciation or condonation, etc. But if, after the compensation has been made, they restore, it will have to be restored to them again.[3]

Notes to n. 709. (1) Payone Spic. Can. Diss. II. C. 1. H. A. Tr. X. 115.

710. Questions. - Query 1° Can servants, workers, officials of the government, municipality, etc., judging that the salary is below the work furnished by themselves, use hidden compensation?

Resp. Negatively, at least speaking generally, with the common opinion. It is established 1° from proposition 37 condemned by Innocent XI, p. XVI. 2° From reason; for they would act against the agreement, since they consented to the lesser price, and from elsewhere nothing is owed to them except the price concerning which agreement was made. Besides, if that were licit, the way would be opened to innumerable thefts; for servants would easily persuade themselves that wages are less than just, and thus no security would remain for masters. - The same must also be said, from parity of reason, concerning all workers, artisans, and merchants who would wish to recur to compensation under the pretext of the cheaper price for which they hired out their works or sold their wares.

I said: at least speaking generally; because a servant can compensate himself up to the lowest price. 1° If he is compelled by force or fear to consent to an unequal price. 2° If compelled by necessity he consented to it, provided nevertheless that the master would not have found other servants already justly, that is, within the limits of a just price, at least the lowest, at the same cheap price, or did not receive this one asking from mercy. 3° If unwillingly he is burdened with works not owed. 4° If the master is judged to consent to compensation, as for example can happen in the case of those who

among us are called "horse-car conductors"; namely, it is supposed that by most masters those men are hired below the lowest price for this reason, that they know that they are to be defrauded by most, and that the masters are not willing (which besides they would will unreasonably) to deprive honest conductors of due salary because they protect themselves from dishonest ones. But in determining their salary, "conductors" should especially attend to the number of hours which they spend in the service of their masters, and to the salary which is given by the hour to workers of their condition. Meanwhile they must be exhorted to seek another trade, on account of the danger of injustice to which they expose themselves.

Query 2° At least can a servant who increases the works owed compensate himself?

Resp. 1° Negatively, if he acts thus by his own choice, because then he is judged to condone his work in order to conciliate the favor of the master to himself.

Resp. 2° Affirmatively, if he increases the works from the will of the master, whether express or tacit, because then the worker is judged worthy of his wage by right.[1] - But what compensation is just can sometimes be left also to the judgment of the servant, if he is fearful of God and prudent, and the danger of self-love is absent; which nevertheless will happen very rarely.[2]

711. ○ Query 3° Can he use hidden compensation who is condemned by a judge to pay a debt which he certainly did not contract, or to which he certainly has already made satisfaction?

Resp. Affirmatively, because the sentence of the judge is unjust, as being founded upon a false presumption of fact, and therefore cannot bind in conscience. For although one must always stand by the sentence of the judge in matter of law, unless it is a question of a law or sentence evidently unjust, it is otherwise, scandal being set aside, if the judge certainly errs concerning a fact which from error he thinks true. From another source, moreover, the judge does not have the faculty of transferring dominion; nor can one who has obtained a favorable sentence, even after the error has been detected, keep the thing adjudged to him. - Thus commonly.

712. ○ Query 4° Does he sin gravely, and against justice, who compensates himself without first having recourse to the judge?

Resp. 1° He does not sin of itself against justice, provided he takes only as much as is owed to him; nor therefore is he bound to restitution. The reason is clear, because, this compensation having been made, equality is restored between him and the debtor. I said: of itself; because sometimes detriment could follow for the debtor from deprivation of some determinate thing, for example a horse, a precious thing, etc. - Lugo,[2] and others.

Resp. 2° Nor does he sin gravely, speaking generally; because ordinarily from this inversion of order neither grave scandal nor grave disturbance of the Republic follows. - Lugo.[3]

Resp. 3° He does not sin in any way if recourse to the judge is difficult, if there is danger of scandal, or extraordinary expenses, etc., because then recourse is morally impossible.

Admonition. - Confessors should not easily advise compensation, and should rarely even permit it. But to compensation already made, to which none of the necessary conditions is lacking, it is licit so

far to connive, that the penitent not be bound to restitution.

To recover one's own thing, even by employing moderate force, is licit, whether when the unjust robber is caught in the very delict, or when the thing has not yet been put in safety; indeed it is licit if it has been put in safety by the robber, provided it is movable and still exists in species. For in the former hypothesis you use the right of defense (n. 471. 1°); in the other, neither is the right of the robber injured nor is the order of right passed over. Mar. p. 333. n. 185.

Notes to n. 712. (1) L. IV. 521. (2) n. 959. (3) L. IV. 521.

THIRD PART: ON RESTITUTION

SECTION I.

ON RESTITUTION IN GENERAL.

It must be treated 1° concerning the obligation of restitution; 2° concerning the roots of restitution; 3° concerning the circumstances of restitution; 4° concerning the causes excusing from restitution.

CHAPTER I: ON THE OBLIGATION OF RESTITUTION

Restitution, as to the name, sounds the same as the placing of a thing into its former state. As to the thing, it is the reparation of injured strict right.

713. Principles. - I. Restitution in reality, or at least in vow, in grave matter is necessary for salvation by necessity of precept.

1° It is established from the principles set out above, n. 587. For commutative justice necessarily requires that violation of another's right cease; but it cannot cease except through restitution. Therefore.

2° It is established also from Sacred Scripture. Thus: But if you say to the wicked man: You shall surely die; and he does penance for his sin and does judgment and justice, and that wicked man restores the pledge and gives back the robbery, ... he shall live and shall not die.[1] - And: Behold the wages of the laborers who have reaped your fields, which has been kept back by you, cries out; and their cry has entered into the ears of the Lord of Sabaoth.[2]

3° It is established from the unanimous consent of the Holy Fathers. Thus S. Aug.[3]: "The sin will not be forgiven unless the thing taken is restored, when it can be restored." - These words of the Holy Doctor are inserted into the Canon Law;[4] and from this comes rule 4 of law in the Sixth: Sin is not dismissed unless the thing taken is restored.

I said: in reality or in vow; for restitution is not necessary for salvation in reality by necessity of means. Therefore if it is impossible in reality, it does not stand in the way of salvation; but no one can be excused from restitution in vow. And whoever has injured another's right must always have a firm purpose of restoring when he can; otherwise he would retain affection for an evil thing, and thus would be situated in habitual sin. - Thus all. - Hence S. Augustine in the text just cited says: "when it can be restored."

Notes to n. 713. (1) Ezech. 33. 14. 15. (2) Epist. S. Jac. 5. 4. (3) Ep. 153 ad Macedonium. n. 20. (4) c. 1. causa 14. qu. 6.

714. ○ II. The precept of restitution is radically negative, in execution affirmative. The first reason is that the precept of restitution is immediately founded in the obligation of not violating another's right, or in the obligation neither of taking nor of retaining another's thing. But this obligation is radically negative, as is clear, and therefore it presses always and for always, that is, it presses at every moment until restitution has been made. The second reason is that the obligation of not taking or retaining another's thing, in which the precept of restitution is radically founded, cannot be fulfilled without therefrom being made a positive action by which that which is his own is returned to the owner.

III. There is no obligation of restitution except on account of violation of strict right, or of commutative justice; otherwise, however, on account of violation of the right of uprightness simply. The reason is that restitution effects that the thing owed to the neighbor equal the right of him unjustly violated. But now this cannot be done when the discussion is of violation of the right of uprightness. For if someone injures the right of his Superior or neighbor, by denying obedience to the

former and the offices of charity to the latter, that violation cannot be strictly repaired, because a new act of obedience or charity would not repair the violated right, but would only satisfy the precept which always presses: namely, of obeying a Superior and of relieving one's neighbor in straits.

715. Questions. - Query 1° Is one unable to restore from goods of the same order bound to restore from goods of a diverse order?

Resp. More probably negatively. The reason is that no comparison is given between goods of a diverse order; therefore neither can compensation be given. And indeed it could never be determined how much arithmetically would have to be restored, since between goods of a diverse order there is no common measure. - S. Alph.,[1] Lacroix, etc., ... and others more commonly.

Nevertheless some others affirm it, because, they say, one who cannot repair the whole damage is bound at least to compensate the part which he can. - S. Th.[2]

Yet by vindicative justice it can be imposed by a judge or by a Superior that for injury concerning one genus of goods, for example concerning the good of reputation, someone furnish something in goods of another order, for example money. More probably, however, this is only by reason of penalty, not by reason of justice, unless this also has been voluntarily injured at the same time, as if damages in goods of fortune were foreseen from defamation. The injured party, moreover, has a right of denouncing before the judge the one from whom he has received injury, and so of accepting money from that man in order to omit denunciation. Thus, for example, a woman violently oppressed by someone can summon the violator before the judge, or exact money from the worthless man in order to renounce her right.

716. ○ Query 2° Is an obligation of restitution induced from an action injurious only affectively, but not effectively, to another's right?

Resp. Absolutely negatively, because no real injury is inflicted upon the neighbor, although the agent sins by an internal act against justice. Hence the malevolent judge pronouncing a sentence which he thinks unjust, if in reality it is just, must be exempted from the burden of restitution; or one who seizes a thing which he thinks another's, while it is his own.[3] Recall what was said above n. 692.

Query 3° Are sins multiplied by delay of restitution?

Resp. More probably negatively, if the evil will of not restoring perseveres habitually, or is not morally interrupted.[4] Recall what was said n. 224. B.

Notes to n. 716. (1) L. IV. 627. (2) 2. 2. q. 62. a. 2. (3) L. IV. 584. (4) L. II. 40.

717. ○ Query 4° Do little thefts committed from diverse persons oblige to restitution UNDER GRAVE SIN if they have arrived at grave matter, and must restitution be made to the owners themselves also UNDER GRAVE SIN?

Resp. to the 1st. Affirmatively, because the precept of not stealing not only forbids damage to be inflicted upon another, but also forbids that someone unjustly become richer from another's thing. - Thus commonly. See n. 721. 4°.

Resp. to the 2nd. More probably negatively. The reason is that by hypothesis no owner has suffered grave injury. - Therefore, even if the owners are known, restitution can be made, without grave injury to anyone, to the poor or to pious places; indeed, if a reasonable cause comes in, for example the urgent necessity of the poor, etc., even venial sin will also be absent.[1] But if the owners are unknown, restitution must be made under grave sin to the poor or to pious places.[2]

Query 5° Is he bound UNDER GRAVE SIN to restore who in small thefts did not sin gravely, but from inadvertence arrived at grave matter?

Resp. Affirmatively; because although he did not sin gravely by stealing, he is nevertheless an unjust possessor of grave matter, and therefore will sin gravely by retaining the stolen thing. This is valid even if the thefts were committed from diverse persons; otherwise that man could become rich unjustly from another's thing without grave sin, which from what has been said is not licit.

718. ○ Query 6° Is a thief who stole a grave sum of money bound to restore it entire under grave sin?

Resp. Negatively. For he is bound under grave sin to restore only that which completes grave matter, because when this has been restored, the matter retained is no longer grave. Hence someone can be bound under grave sin to restore light matter; but then the obligation arises not from the light thing, but from the grave quantity.[3]

719. Resolutions. - 1° He who is situated in inability to restore another's thing or its value must always have a firm purpose of restoring when he can, and meanwhile procure, if he can, something by which he may satisfy his obligation as soon as possible.

2° If someone cannot restore the whole, and it is a question of a divisible thing, he is bound to the part which he can. For the injured person has a right to the individual parts, just as to the whole.

3° He who has inflicted light damage upon the neighbor is bound to restitution toward the injured owner under light sin and with inconvenience proportionate to the thing; for a light injustice must be repaired under light sin, just as a grave one under grave sin. Yet more easily then there can be a reason excusing from restitution, especially from that to be made to the owner himself. But if it is a question of a very slight thing, any difficulty whatever will suffice so that restitution can be made to the poor.[4]

4° He is deservedly held unworthy of absolution who refuses to promise restitution; who leaves to his heirs the care of restoring, while he can do it by himself; who, burdened with debt, incurs expenses of this kind in food, clothing, servants, ... on account of which he foresees that afterward he will be unable to pay his debts. - The same must be said of him who, enjoying good fortune, does not wish gradually to diminish his state in order to satisfy creditors. - Indeed, regularly that man is not to be absolved, to whom restitution before absolution is morally possible, before he has restored; for experience teaches that after absolution restitution is very rarely made.

5° The confessor must act cautiously with the dying who are bound to restitution. But he will be able to proceed thus: 1° If the penitent seems to be in good faith, and there is not time left for prudently warning him concerning his obligation, or it is foreseen that the warning will not be useful, the warning being omitted, he is to be absolved. 2° But if fruit from warning is hoped for, or if the

penitent is not in good faith, he will have to be admonished firmly and gently at the same time concerning the obligation of restitution, and helped to carry it out immediately. 3° If the obligation is hidden and cannot be fulfilled immediately, the sick man will have to be induced to commit a sum of money to the confessor, or rather, if it can be done, to a faithful man, so that afterward it may be secretly entrusted to the creditor; or to leave that sum in a will to him, or, where prudence does not dissuade it, or law does not render it void (as it renders it void in Louisiana[2]), to the confessor, mention of restitution being omitted. 4° If the obligation is not hidden, nor can it be fulfilled immediately, let the confessor cause it to be certainly done by the heirs, whether by a schedule to be handed to the creditor, etc.

Notes to n. 719 - note sequence 1. (1) L. IV. 584. 595. (2) Ibid. (3) L. IV. 553. (4) L. IV. 534. Notes to n. 719 - note sequence 2. (1) L. IV. 682. (2) Civ. Code of Louis. a. 1489.

CHAPTER II: ON THE ROOTS OF RESTITUTION

720. ○ The roots of restitution are called the causes from which the obligation of restoring arises. But they are taken from a threefold head, namely 1° from acceptance of another's thing; 2° from unjust damaging; 3° from unjust cooperation, which nevertheless, as to the thing, falls back into one or the other of the preceding.

ARTICLE I: ON THE ACCEPTANCE OF ANOTHER'S THING

721. General Principle. - The owner alone of the thing has per se the right of possessing it, nor does he lose dominion of the thing into whosever hands it may at last come. - It is said, per se; because any other possessor, even one of good faith, has the right of possessing the thing only by accident and from invincible error. - But from this general principle these four very well-known axioms flow of themselves.

1° The thing cries out for its owner, that is, to the owner belongs the strict right of pursuing his thing, in whatever state and in whosever possession it may be, by a real action, which they call juridical vindication.

2° The thing fructifies for the owner; because use and fruition are necessarily included in the idea of perfect dominion.

3° The thing naturally perishes for the owner; because, with the object of dominion disappearing, dominion itself also vanishes. If nevertheless it still exists in an equivalent, the owner can seek that equivalent by a personal action.

4° No one ought to be enriched unjustly from another's thing; in other words: The measure of restitution is the quantity of another's thing detained without cause. The reason is clear; for to the owner alone of the thing belongs the receiving of utility from the same.

But these principles, besides the fact that sometimes according to diverse laws of places they receive diverse application, are moreover modified according to the diverse condition of the possessor. For one can possess another's thing either with good faith, or with bad faith, or with doubtful faith. Therefore it must be said 1° concerning the possessor of good faith; 2° concerning the possessor of bad faith; 3° concerning the possessor of doubtful faith.

§ I. On the Possessor of Good Faith

A possessor of good faith is he who invincibly does not know that the thing possessed by him is another's, or prudently judges that it is his own, for example because he acquired it by a title of itself transferring dominion, suppose inheritance, legacy, donation, or purchase. But it is supposed that he has not yet prescribed the thing possessed; for otherwise he would no longer be the holder of another's thing, but of his own.

722. Principles. - I. A possessor of good faith, as soon as he knows that the thing possessed by him is another's, is bound to restore it to the owner, still existing in whole or in part or in its

advantage; otherwise he retains another's good while the owner is reasonably unwilling, and therefore violates his strict right. - Thus all.

II. A possessor of good faith is bound to absolutely nothing, if, while good faith endures, he consumes, loses, or even destroys another's thing, provided he has not become richer from it. For he is not bound by reason of the thing received, which no longer exists; nor by reason of unjust acceptance, consumption, or destruction, because he possessed the thing in good faith. This is valid also if he deliberately destroyed the thing, or if it perished from his negligence. The reason is that he inflicted injury upon no one by destroying or neglecting the thing which he believed to be his own. It is confirmed also by positive law. For thus by Roman Law: "He who neglected as if his own thing is subject to no complaint."

I said: provided he has not become richer from it; because that in which he was made richer would succeed in the place of the thing. But it is against natural right that someone be enriched with the injury of another, according to rule 48 of Law in the Sixth. - In doubt whether he has become richer, he is bound to nothing. L. IV. 603; H. A. Tr. X. 55.

723. Questions. - Query 1° Is a possessor of good faith bound to restore the fruits which he perceived during good faith?

Resp. The fruits must be distinguished. For 1° some are natural, which by the benefit of nature come from a thing without any estimable work of man, as grasses, etc. 2° Others are industrial, having arisen from man's work without any estimable productive concurrence of the thing. 3° Others are mixed, or partly natural and partly industrial, as crops. 4° Others are civil, which are not fruits properly so called, but are held as such by Law through a certain analogy with true fruits, as the price of leasing a house.

I say: 1° A possessor of good faith is not bound to restore merely industrial fruits (under which probably also interest by occasion of a loan is included. L. IV. 759), since by reason of industry they belong to the possessor.

I say: 2° From natural right a possessor of good faith must restore all other fruits, whether natural or civil, still existing, and, insofar as he has been made richer from them, even those consumed, expenses and labors nevertheless being deducted. The reason is that from natural right fruits belong to him to whom the fruitful cause itself belongs, since they come from the thing itself, according to the axiom: The thing fructifies for the owner. (g) p. 481.

Appendix annotation (g), to n. 723. p. 300. col. 2. Where the civil law attributes to a possessor of good faith all fruits perceived up to the day on which the action of eviction (n. 988) was begun against him, in the forum of conscience he seems able to use the favor of this law no less than the benefit of prescription. Natural fruits are judged perceived when they have been separated from the fruitful thing, for example from branches or roots; civil fruits are judged to be received by days, so that they fall to the possessor of good faith according to the proportion of time through which he possessed another's thing in good faith. Marres, p. 252. n. 30. 31.

724. ○ Query 2° To what is a possessor of good faith bound if he has given another's thing to another?

Resp. He is bound to nothing if he has not been made richer at all, as follows from the things said above in principle II. Otherwise he must restore that in which he has been made richer, as is established from principle I.

Query 3° Once the donation has been made and the error detected, is he bound to warn the donee, that he restore the thing to the owner, or the owner himself, that he may be able to recover his thing?

Resp. He is certainly bound from the general principle of charity, if he can furnish this without grave damage to himself.[1] Whether also by reason of justice? There are those who affirm it on account of the obligation which the author of even merely material injustice incurs. See n. 749. q. 3°.

725. ○ Query 4° To what is a possessor of good faith bound if he has sold to another a thing bought from a thief?

Resp. 1° In the case of eviction, that is, if the owner has vindicated his thing from the buyer (n. 988), the seller is bound to return the price to the buyer. The reason is that the sale is altogether void from natural right. Therefore, when eviction intervenes, the contract must be resolved, and the buyer acquires recourse by the fact itself against the seller; for by handing the thing over to the buyer he implicitly obligated himself to repair the damage, if perhaps eviction would be future. Except: 1) If the seller has not been made richer from the price (in the sense to be declared below n. 989). 2) If the profit which he perceived by selling is the fruit of industry. 3) If in good faith it was expressly agreed concerning not restoring the price.[2] - The same must be said if another's thing has passed into the hands of various possessors by an onerous title. For if the last possessor is compelled to return the thing to the owner, both he and the individual buyers have the right of pursuing their seller, so that they may recover the price paid. - Yet this is not valid, that is, the seller, in no respect made richer from it, is not bound to restore the price to the buyer if the buyer spontaneously, or not evicted, restores the thing to the owner and thus impedes the seller from being able to recover his price.[1]

Resp. 2° Outside the case of eviction the seller is bound to nothing unless he has been made richer from the sale. The reason is that the sale of another's thing with good faith is not held in law as altogether void. For although through it dominion of the thing is not transferred to the buyer, dominion of the price is nevertheless transferred to the seller. And this man indeed, even if later he detects that the thing sold is another's, in the case in which he can no longer recover the price for which he bought the thing, is not bound, with grave damage to himself, either to warn the owner so that he may be able to recover his thing, or to indicate to the buyer that the thing is another's. The reason is that he no longer has the thing, nor was he the formal cause that the owner was deprived of his thing.[2] Cf. what was said n. 724. q. 3°.

726. ○ Query 5° To what is a possessor of good faith bound if he has sold to another a thing received gratuitously?

Resp. 1° In the case of eviction the same resolution is valid which was given in the preceding case, n. 725. Resp. 1°.

Resp. 2° Outside the case of eviction, when namely the thing cannot be recovered by the owner, whether because the last possessor consumed it, or because he no longer appears, the seller,

according to the common opinion, must pour back to the owner the whole price received from the buyer, if and insofar as he has been made richer from it. The reason is that one truly made richer from the price suffers no loss on its occasion; while on the contrary the owner, unjustly despoiled of his thing, is compelled to undergo the whole damage of the thing. Hence this man must be preserved harmless from the profit which the seller perceived without any title.[3]

727. ○ Query 6° If someone in good faith bought another's thing at a moderate price and sold it at a greater price, is he bound to return the profit perceived to the owner?

Resp. 1° Negatively, if that profit is to be attributed to extraordinary industry, for example if he went to another place by notable labor in order to find a suitable occasion of selling the thing more dearly, etc. The same must be said if, during the time of detention, the thing was made better by the care of the holder.

Affirmatively, on the contrary, if the thing increased from its own nature or from the common estimation of men, but not from the industry of the holder, because in that case it increases for the owner.

Resp. 2° In other cases, however, it is controverted. Some affirm it, because the possessor has been made richer from that profit. - Billuart, etc.

But others deny it more commonly and more probably, because that whole profit seems to be the fruit of the possessor's industry. - Thus Lugo,[1] and others sufficiently commonly, as Billuart admits.

Notes to nn. 727-738 - note sequence 1. (1) L. IV. 569. (2) H. A. Tr. X. 74. 97. Notes to nn. 727-738 - note sequence 2. (1) L. IV. 620. (2) D. 13. dub. 9. (3) L. IV. 620. (4) Ibid. (5) Disp. 17. n. 20. Notes to nn. 727-738 - note sequence 3. (1) L. IV. 620. (2) Ibid. Notes to nn. 727-738 - note sequence 4. (2) Ibid. Notes to nn. 727-738 - note sequence 5. (1) H. A. Tr. X. 78. (2) L. IV. 621. (3) Ibid. 622. Notes to nn. 727-738 - note sequence 6. (1) L. IV. 570. (2) L. IV. 618.

728. ○ Query 7° To what is a possessor of good faith bound if he has sold another's thing and it perished in the hands of the buyer?

Resp. 1° If he had the thing by an onerous title, more probably he is bound to nothing. For 1° he is not bound by reason of the thing, since he no longer has it; 2° nor by reason of damage, since he is not the culpable cause why the owner can no longer vindicate it for himself; for he bought and sold in good faith.

Resp. 2° If he had the thing by donation, it is controverted.

The 1st Opinion teaches that the price must be restored to the buyer. For the seller cannot keep it, positing that from it he has become richer. From elsewhere he is not bound to return it to the owner, because the thing perished for the owner. Moreover, if the first possessor was of bad faith, as often happens, he is bound concerning the value of the thing toward the owner. From elsewhere, however, unless by law the sale of another's thing was perhaps valid, the buyer has the right of recovering his money. - Bouvier, Carriere, etc.

The 2nd Opinion holds that the price, still existing in itself or in an equivalent, must be restored to the owner. The reason is that, since he has been unjustly despoiled of his thing, he must be made harmless. But since the thing no longer exists, it is equitable that he receive that by which the thing is represented. But it is represented by the price which the seller has. Besides, the nullity of the sale

in no way harms the buyer; because it harms him no more than if the contract were valid. But if it were valid, he could repeat nothing. Except if the thing would equally have perished with the owner, for example from an intrinsic defect; for then it would have perished for him.

The 3rd Opinion says that the seller can retain the price for himself, because he does not have to restore it either to the owner or to the buyer. And 1° not to the owner, because the thing perished for him in every case; 2° not to the buyer, because the money which the seller received does not precisely represent the thing, but rather the obligation which he took upon himself of preserving the buyer harmless in the case of eviction. But the buyer was not evicted; therefore the seller can retain the price by reason of an abandoned thing. This opinion counts few patrons, and does not seem sufficiently probable. See S. Alph., L. IV. 609. under 5.

Since the 1st and 2nd opinions are equally probable, the seller can restore either to the owner or to the buyer. Except: 1) if the thing would equally have perished with the owner, for example from an intrinsic defect or from age; for then in reality it would have perished for him; 2) if the owner had already been preserved harmless by the thief or another possessor of bad faith. In each case the buyer alone would have right.

729. ○ Query 8° What must be done if among various possessors of good faith one of bad faith was present?

Resp. That circumstance changes in no respect the condition of the other possessors, whatever place in the series that possessor finally occupied. For the same obligation lies upon each one toward the owner as if that possessor had been of good faith, since his bad faith in no way redounds to the others. But that man must be treated as will soon be said concerning possessors of bad faith.

Query 9° What must be done if a possessor of good faith indeed detects that the thing possessed by him is another's, but the owner does not appear?

Resp. Concerning this it must be established as concerning a thing found. - Recall what was said n. 655. 656.

730. ○ Query 10° Can a possessor of good faith subtract necessary expenses which he has undergone in conserving or increasing the thing?

Resp. He can deduct all necessary expenses; indeed also useful expenses, namely those which conserve the thing and make it better; otherwise the owner would receive more than what is his own. But not pleasurable expenses; because it is not equitable that the owner pay expenses which bring no utility to himself. Understand according to the things to be said n. 732. III.

But among expenses there are not to be computed fortuitous events, nor damages caused by accident. Thus, for example, if in cultivating another's field your horses have perished, the value of the horses cannot be deducted, but only the estimation of the work done by the horses for the cultivation of the field.

731. ○ Query 11° Can one who in good faith bought a stolen thing return it to the thief in order to recover the price?

Resp. 1° Negatively, if the owner appears asking from him his own thing; for then he must return it to him, even with the loss of his own price, because by natural right the owner can occupy his own thing wherever he finds it. Yet an action is given to the buyer against the thief. (h) p. 481.

Resp. 2° If the owner is indeed known, but unaware of the thing, the buyer, with another way of indemnification shut off to himself, can send the thing back to the thief, so that he may recover the money; both because the buyer is not bound to preserve the thing for the owner with his own damage, and because no one is forbidden an action which of itself is necessary and directed to repairing his own damage, although indirectly and by accident damage may come from it to another.[1]

Resp. 3° If the thief, or another seller, does not appear, or does not wish to return the money, the buyer, the owner being known, cannot sell the thing to others, nor convert it to his own uses so that he may preserve himself harmless, because he is not the owner of the thing; but he must return it to the owner, notwithstanding the loss of the price. But he preserves recourse against the seller. But if he cannot find him, the damage must be undergone by himself. (h) p. 481.

Appendix annotation (h), to n. 731 R. 1°. and R. 3°. p. 302. col. 2. If anywhere the civil law establishes that a thing bought in good faith in a forum or public market, or from him who is accustomed to sell things of this kind ("a sale made in market overt"), must be restored to the owner only after the price has been paid, the owner who refuses to pay the price cannot recover the thing and is deprived of the right mentioned under Resp. 1°, and the buyer is not held by the obligation of which there is discussion under Resp. 3°.

§ II. On the Possessor of Bad Faith

A possessor of bad faith is he who knows that the thing which he accepts or possesses is not his own.

732. Principles. - I. A possessor of bad faith must restore the thing itself in individual, if it exists, or in equivalent if it does not exist, and besides, if you except industrial fruits, all that in which he has been made richer, as was said concerning the possessor of good faith.

II. He is bound besides to compensate every damage inflicted upon the neighbor from unjust acceptance, even if he has not been made richer. The reason is that by an acceptance formally unjust and per se efficacious of damage, he violated the neighbor's right. But commutative justice requires that the violated right be repaired integrally. Therefore...

III. He can nevertheless retain all industrial fruits and deduct expenses both necessary and useful; indeed even merely pleasurable ones, where they can be separated with the substance of the thing untouched, unless in penalty of the delict he has been condemned to lose the expenses.[2]

Notes to n. 732. (1) L. IV. 609. 610. (2) L. IV. 601. 800.

733. Questions. - Query 1° Is a thief who has stolen a thing otherwise certainly about to perish, for example by fire, bound to restitution?

Resp. Affirmatively, the expenses made with the price of the work used to free the thing from danger nevertheless being deducted. The reason is that that thing did not cease to belong to the owner, although it was exposed to the greatest danger. Except, if he destroyed the thing; or even probably, if the thief consumes a thing remaining in certain danger, for example edible or drinkable things

already about to perish by fire; because fault alone does not oblige to restitution where damage did not intervene.[1] - Lessius.[2]

734. ○ Query 2° Is the thief bound to restitution if the stolen thing perished with him?

Resp. When the thing perishes, the obligation of restoring remains or ceases according as, while it perishes, the theft should still or should not be called the efficacious cause of the damage; for fault alone does not produce an obligation of restitution where in fact damage has not followed from it. Hence:

1° The value of a thing perishing with the thief, whether by his own fault or another's fault, or even by fortuitous event, must be returned whenever, if left with the owner, it either would not have perished, or would not have perished except by the injury of another; for then the cause of the damage truly is the thief, who besides by stealing the thing took upon himself its whole risk.[3]

2° Resolve the opposite if, without anyone's fault, it perished with the thief, whether from its intrinsic defect or by fortuitous event, whenever it would equally, namely at the same time and by a common danger, have perished with the owner; for then not the theft, but the defect or the fortuitous event itself is the efficacious cause of the damage. - Thus commonly.[4] Lugo,[5] against Concina, etc.

I said: a) without anyone's fault; for if the thief or another consumed or destroyed the thing, even one certainly about to perish soon in a common danger, before that danger, the theft is again rightly judged the efficacious cause of the damage. Except probably if this common danger, in which the thing, without hope of salvation, would have perished even with the owner, was already previously known to threaten; for the thing, considered in that state and previously known, becomes of no value or certainly of very slight value to the owner. See n. 733.

I said: b) if the thing would have perished at the same time with the owner; because if it would have perished earlier, then it was saved for the owner from the earlier danger, and had to be restored to him. And therefore by not restoring, the thief remained the efficacious cause of the damage. Resolve the same if it would have perished later with the owner, because the personal action of repairing damage is not taken from the owner by a following danger. Nevertheless probable in this case is the opinion of S. Alph.,[1] excusing a thief from restitution if the thing would have perished equally with the owner in the same common danger, and in that case holding him bound only, by reason of delay, to restore the fruits which the owner would have perceived from the thing. The reason is that delay was indeed the cause why the owner is deprived of fruits, but not why he is deprived of the thing, of whose loss the danger was the cause.[2]

I said: c) by the same common danger, because where the danger is diverse, even if simultaneous (fire and inundation), the destruction is rightly attributed to the thief, since without his theft the thing would not have been exposed to this danger.[2] (i) p. 481.

Appendix annotation (i), to n. 734. p. 303. col. 2. Where the civil law does not free a thief from the civil obligation in the cases in which we have said in this number that he is freed by natural law, that is, if the civil law obliges him, in whatever way finally the thing perished in his possession, this burden of restitution will have the character of a penalty, which is to be undergone from obedience only after the sentence of a judge. Marres, p. 255. n. 34.

735. ○ Query 3° To what is a possessor of bad faith bound when the thing has had various value during the time of detention?

Resp. Let the general rule be: A possessor of bad faith should not become richer from another's thing. - The thing, if it increases, increases for the owner. - Let the damage unjustly inflicted be compensated to the owner. - Hence:

1° A thing made worse with the thief (a younger horse taken, but now growing old) must be restored according to the value which it had when it was taken.

2° If the thing increased with the thief (a lamb into a sheep), it must be restored as it increased, expenses (n. 732. III.) being deducted.

3° If the thing increased with the thief and afterward decreased, the thief is bound to return the whole greater price, even in that case in which the owner would have consumed the thing at the time of lesser price; for the thing increased for the owner, and the thief, by not restoring then, was the cause of that greater damage. H. A. Tr. X. 78.

4° If the thief consumed the thing at the time of lesser price, although it was to be preserved by the owner until the time of greater price, he is not bound to restitution of the increase, provided he restored the price at that time at which the owner could have bought a similar thing for himself at that same price.[1] See n. 738, 3°.

5° If the thief sold or consumed, at the time of greater price, a thing not to be preserved by the owner, he is bound to return that price to the owner, although the owner would have done something else with the thing; because the thing increases for its owner.[2]

In practice, since nearly all the aforesaid circumstances do not become known, for the most part only compensation of the value which the thing had at the time of theft is to be urged.

736. ○ Query 4° Besides the stolen money, must the thief also restore INTEREST (the interest)?

Resp. Affirmatively, if it is established or presumed - as today, if the sum of stolen money is sufficiently notable, it almost ought to be presumed - that the owner would have perceived that gain, because this man must be made altogether harmless with respect to the possessor of bad faith. Otherwise, however, probably in the other hypothesis, because it is not established that the owner has a right to that increase.

Query 5° Are they bound to restore who, in order to receive alms, pretend that they are poor; or true paupers who say that they are upright, when they are not?

Resp. to the 1st. Affirmatively. The reason is that these have no right to alms; for those who bestow them intend to assist true paupers only. Therefore restitution must be made either to the giver, or at least to true paupers. More probably it suffices if restitution is made to paupers. Yet restitution does not seem to be urged if it is a question of very modest alms, such as are given door to door; because those bestowing them are less unwilling with regard to them. - Thus commonly.[3]

Resp. to the 2nd. Negatively, generally, because need alone, not uprightness, is the condition to which the donor attends or is presumed to attend. - Thus commonly.

Notes to n. 736. (1) L. IV. 601. (2) Ibid. (3) L. IV. 607. 608. 609 sub 5.

737. ○ Query 6° What if another's thing has passed through the hands of several possessors of bad faith by donation or sale?

Resp. 1° As to the thing, it must be restored by him who still holds it, or has changed it into another value, or has consumed it, or in any way lost it. But if this one is lacking, the robber is bound. But if neither has satisfied his debt, the others must pay the price of the thing by equal portions. Finally, in default of the rest, each one is bound to the whole.

Resp. 2° As to the fruits and damages of the thing, individuals are bound to compensation for the part of the time during which each one detained the thing. But if the others do not compensate for their part of damaging and fruition, reparation of the whole damage lies upon individuals; namely, each one of them is bound to repair the damages, not those which followed before he himself became possessor of another's thing, but those which followed afterward. - Thus commonly.

Query 7° Can he who knowingly buys another's thing from a thief return it to him in order to recover the price?

Resp. It is controverted. S. Alph.[1] affirms; because although this man sinned by buying the thing in bad faith, yet after the purchase he has a right, not otherwise than a possessor of good faith, to rescind the contract. Nor does he, by returning the thing to the thief, place it in a worse condition than that in which he himself found it, from which besides he was certainly not bound by justice to free it.

738. Resolutions. - 1° A possessor of bad faith is bound not only to compensate the damage emerging for the owner from the lack of his thing, but also every profit ceasing in confused manner at least foreseen; namely not only that which the owner in reality lost on account of the lack of his thing, but also that which he would have perceived in a licit manner.

2° He who transported stolen grain to another place, where he sold it for more than the owner was going to sell, is not bound to assign the increase of price, as being sought by his own special industry (n. 732. III), to the owner.[2] - For the same reason, if he sowed the same grain in his own field, he is bound only to return similar grain, so that the owner be preserved harmless. Likewise he who places another's eggs under his own hen to be brooded over is bound only concerning the value of the eggs.

3° If someone has stolen wheat which the owner was preserving to be sold at a time of greater price, and consumed it at a time of lesser price, he is bound to restore that price which the owner was expecting, unless perhaps restitution is made so early that the owner can buy similar wheat at the lesser price and reserve it without inconvenience until the time of greater price.

4° If someone has killed a stolen lamb, or has consumed another thing of this sort taken by theft, he is bound to pay only that money (at least more probably) which corresponded to the value of these things at the time of killing or consumption, unless perhaps the owner could not at once have bought a thing of the same value with the same money, and at the same time wished to preserve that thing so that he might obtain a greater sum of money from its sale.[1]

5° The assessment of the quantity to be restored, on account of the cause alleged in this number under 1°, often can be made only according to the judgment of a prudent man. Besides, when it is a question of theft of a small and very common thing, as of a hen, etc., this alone, or its value, must be

returned; for there can be no question of damage emerging or profit ceasing, while the owner could easily buy a similar thing. (j) p. 481.

Notes to n. 738. (1) Disp. 17. n. 20. Appendix annotation (j), to n. 738. p. 305. col. 1. "When restitution of another's thing must be imposed, the confessor should not compute with the penitent too anxiously the sometimes very uncertain price both of the thing itself and of its fruits, and the expenses to be deducted, either perhaps spent or perhaps incurred for labor and industry; nor should he scrupulously estimate damage of any kind perhaps brought upon the owner; but, after looking at the circumstances, in the name of the owner whose affair he usefully manages, he should compose the matter from what is equitable and good with the unjust possessor: 1° lest by asking too much and obtaining nothing, he harm rather than favor the owner; 2° because he can reasonably presume that the owner, so that he may recover his thing more certainly, does not demand the last farthing in the restitution owed to him; 3° because unjust possessors are not usually foreseeing every damage inflicted, not even in confused fashion. "Prudence requires that the confessor also attend to the good faith and mind of the penitent, more or less ready to make due restitution; he should also note, as de Lugo warns (D. 17. n. 53), that it can happen that an unjust possessor who was of bad faith by reason of the thing has nevertheless perceived the fruits in good faith and either consumed or destroyed them." Marres, p. 257. n. 39.

§ III. On the Possessor of Doubtful Faith

A possessor of doubtful faith is he to whom a positive doubt arises whether the thing which he accepts or possesses is his own or another's.

739. Principles. - I. A possessor of doubtful faith, whether he has doubted from the beginning or only in the course of possession, is bound to inquire seriously, so that he may lay aside the doubt. The reason is clear; otherwise he exposes himself to danger of retaining another's thing from his own culpable negligence.

II. If, after diligent inquiry has been made, the doubt perseveres, more probably he can retain the whole thing, if before the doubt arose he possessed in good faith. The reason is that in an equal cause, or doubt, the condition of the possessor is better; and possession begun with good faith creates of itself the greatest presumption concerning the justice of the possession, and gives to the possessor a certain right which, unless it is overcome by other stronger reasons or presumptions, ought to prevail both in the internal and in the external forum. - S. Alph.,[2] Lugo,[3] Lacroix,[4] Carriere,[5] and others commonly, against some who say that the thing must be divided according to the proportion of the doubt.

III. If doubt preceded possession, a distinction must be made. For one who began to possess in doubt by despoiling another of his possession is bound to restore the whole thing to the prior possessor when it is not established that this man began to possess the thing in bad faith; because in an equal cause his condition is better, as being that of the possessor. - Lugo,[1] Carriere.[2]

But one who received the thing by another title, for example of purchase, and after diligent examination still doubts whether he from whom he received it is its owner, must restore, according to the proportion of the doubt, to the probable owner, or to the poor, if the owner is unknown. The reason is that possession begun with doubtful faith does not favor him, and therefore he cannot retain the whole; nor from elsewhere does it seem equitable that he be bound to restore the whole, since there is doubt whether the thing is another's. - S. Alph.,[3] Lugo.[4]

Notes to n. 739. (2) L. I. 35. (3) D. 17. n. 86. (4) n. 563. (5) n. 1094.

740. Questions. - Query 1° To what is he bound who accepted some thing in bad faith, thinking it was another's, and afterward doubts whether the thing is his or not?

Resp. He is to be equated to him who began possession with doubtful faith; for the prior false estimation is found, and therefore is not to be attended to in the solution of the case. Therefore weigh whether by his possession he despoiled another or not, and resolve according to what was said in principle III.

Query 2° What if such a possessor neglected to inquire from the beginning, and afterward the owner of the thing can no longer be found?

Resp. More truly, something must be restored to the poor according to the proportion of the hope which the owner could have had of recovering his thing. Generally that hope does not reach half the price, but is of much lesser value.[5] - Lugo, Lacroix.[6]

741. ○ Query 3° To what is a possessor of doubtful faith bound if he neglected to inquire and the owner appears?

Resp. Generally, after the beginning of the doubt, he must be treated as a possessor of bad faith; therefore he must be bound not only to return the thing to the owner, but also to repair all damages to him. - Carriere.[7]

He seems to be excepted who began possession in good faith and afterward, when doubt arose, neglected to inquire, thinking that the owner could be found only with greater difficulty; for he would be equated to a possessor of good faith.

Notes to n. 741. (1) D. 17. n. 80. (2) n. 1100. (3) L. IV. 625. (4) D. 17. n. 80. (5) L. I. 37. (6) n. 564. (7) n. 1088.

742. ○ Query 4° To what is he bound who occupied a thing possessed even by an uncertain owner, as he knew; likewise he who first occupied a thing while doubting whether it had been abandoned by the owner?

Resp. to the 1st. The thing must be divided equally with the probable owner; for possession favors neither one. Cf. n. 60. 3°.

Resp. to the 2nd. If, after inquiry has been made, no earlier owner of the thing, not even probable, can be detected, he can have the thing as truly abandoned by the owner, and then, after doubt has been laid aside, acquire it for himself by legitimate occupation in good faith.[1]

Query 5° Is a possessor of doubtful faith who began to possess in good faith bound to restitution if, after inquiry has been made, he finds that the thing is more probably another's?

Resp. More probably negatively, because from certain possession a morally certain right arises. Moreover, until another proves his certain right, the axiom is valid: The condition of the possessor is better. But the other can prove a certain right, that is, one morally such, only by most probable reasons.[2]

Query 6° Is a debtor, in doubt concerning the completed payment of a debt, bound to pay integrally or in part?

Resp. See n. 803.

743. Resolutions. - 1° If you have possessed another's thing in good faith, and, when doubt supervened and remained after inquiry, relying upon the principle of possession you consumed it, but afterward the owner unexpectedly appears, you will be bound to restore only that in which you have been made richer.[3]

Note. - 1) As long as it remains morally possible that a certain owner may afterward appear, the aforesaid possessor ought to be so disposed in mind that, if afterward before the time of prescription the owner is certainly detected, he restore the thing to him, or if he has consumed or alienated it, its price, and this even if he has not been made richer. Thus Lugo[4] against some. 2) The same possessor ought, if he sells the thing, to warn the buyer concerning the existing doubt and the danger of eviction.[5]

2° They are not to be exempted from restitution who buy things from thieves or fraudulent bankrupts while doubting concerning the legitimate possession of these things, and purposely inquire nothing lest they have certitude of fraud; for these act not with doubtful faith but with bad faith, since affected ignorance is equated to knowledge. Mar. p. 260. n. 47. III.

3° "Croix notes, l. 3. p. 2. n. 562, with Vasq., Laym., Pal., Sanch., Mol., etc., and Roncaglia thinks it not improbable, ... that when a possessor (even one who began to possess with doubt) has had the thing from a possessor of good faith, if afterward diligence becomes impossible, he is bound to restore nothing; for he then legitimately succeeds into all the right of that man." S. Alph. L. I. n. 57. Notat II.

Notes to n. 743. (1) Mar. p. 259. n. 43. 2°, 3°. (2) L. I. 35. (3) L. I. 35 et L. IV. 607. 608. (4) D. 17. n. 80. (5) D. 1. 36.

ARTICLE II: ON UNJUST DAMAGING

744. ◦ An unjust damager is called one who injures another's right and harms the neighbor in his goods, without thereby of itself becoming richer.

A twofold fault is distinguished by which damage can be inflicted, namely theological fault and juridical fault. - Theological fault is that which includes an offense of God, that is, formal sin, whether mortal or venial. - But juridical fault is the damaging omission of diligence prescribed by law, whether this is a formal sin or not.[1]

But juridical fault, from the common interpretation of Roman Law, is either gross, or slight, or very slight. Gross fault is the omission of diligence which men commonly are accustomed to employ in similar affairs, as if someone, leaving his workshop for a longer time, leaves the door and chests open, and anyone can easily carry away money or merchandise. Slight fault is the omission of diligence which more prudent and more diligent men are accustomed to employ; as if the same man, going away a little, neglects to carry with him the keys of the chest, which it is not at all likely that another, in his absence, will seize for stealing. Very slight fault is the omission of diligence which is usually employed only by the most prudent and most diligent; as if the guard of a house, who when about to go to bed bolts all the doors, neglects to search the individual places, lest perhaps a thief lie hidden.

Notes to n. 744. (1) L. IV. 549.

745. Principles. - I. An unjust damager is bound to restore 1° the whole equivalent of the thing damaged; thus, for example, if someone culpably burns another's house, he must repay its entire price to the owner; 2° the whole equivalent of the damages foreseen besides the damaging of the thing, if any have come from it. Hence, for example, if a craftsman is compelled to omit his accustomed work for some time because you destroyed the instrument necessary to him, and you foresaw this, you are bound to compensate him not only concerning the value of the instrument, but also concerning the profit ceasing.

The reason for this principle is clear from what was said n. 587 and 713. For the injured owner must be made wholly harmless. But for this it is not enough if the damager pays to him the intrinsic price for the thing, when the other has suffered other detriments from the privation of his thing, since he would not recover everything which he lost from the unjust damaging. Nor does it stand in the way that no advantage came to the damager from the damage; for the whole reason of restitution must be sought not from utility perceived concerning another's thing, but from damage inflicted.

746. ○ II. That a damaging action induce an obligation of restitution, by natural right a threefold condition is required, namely that it be 1° unjust, 2° the efficacious cause of damage and indeed certainly efficacious, 3° theologically culpable.

1° Unjust. For the obligation of restitution necessarily supposes the strict right of another violated. But strict right cannot be violated except through an unjust action, or one opposed to commutative justice, according to what was said above n. 587, etc.

2° The efficacious cause of damage, namely 1° that the action per se influence the damage, so that this is judged truly to follow from it; 2° that it can be imputed to such an agent. The reason for each is clear. For an action can be imputed to no one unless it is his own; nor can the detriment of an action be ascribed to anyone unless his action was the true and efficacious cause of the detriment, physically or morally.

But this happens when an action is placed which from its own nature or from the circumstances has a morally certain connection with damage. Hence 1° a merely occasional cause of damage does not suffice for restitution, because it is not an efficacious cause, but only the occasion of an efficacious cause. Hence if, on the occasion of theft perpetrated by you, another was accused and condemned, you are held by no obligation of repairing his damage. - Nor 2° does an accidental cause suffice for restitution; for this is one which, considered in itself or with attention to the circumstances, does not have a probable connection with the event, and so is not to be called an efficacious cause. Hence, if you hand a sword to Titius without probable foresight of his abuse of it, you are not guilty of injustice if he perpetrates murder with that sword.

And indeed certainly efficacious; for the obligation of restitution cannot be present unless the cause of it is certainly established.

3° Theologically culpable. For there cannot be an obligation of restoring in the forum of conscience unless in the same forum an injury has been committed, nor can conscience be bound by an obligation of repairing an injury which it did not itself inflict; otherwise even those sleeping and the insane, if they inflicted some damage, would be held to restore in conscience, which is absurd. Moreover there is no injury in the internal forum where there is no theological fault; for to injury

there is required a will of harming, at least indirect, or some foresight, at least confused, of unjust damage. Therefore, etc.[1]

747. ○ III. Yet even from merely juridical fault there arises an obligation of legal justice or obedience of repairing damage; but only after sentence, and that a just one. 1. The obligation arises, since the law establishing it, as made for the common good (n. 129. R. 2°) and favoring all equally in advance, is just; wherefore the injured party safely appeals to it, even if he certainly knows that the injurer is guilty of no theological fault. 2. Legal justice etc., because that obligation is imposed by right of jurisdiction. 3. Only after sentence, since that obligation has the species of penalty, and it would be hard to oblige the guilty man to take it upon himself spontaneously without theological fault. 4. And a just one (see n. 129. R. 1°).[2] Mar.[3] (K) p. 482.

Notes to n. 747. (1) L. IV. 550 sq. et H. A. Tr. X. 39, 42. (2) L. IV. 554. (3) p. 267. n. 59. III-V. Appendix annotation (k), to n. 747. p. 307. col. 2. "He who has suffered damage by the juridical fault of another can with safe conscience ask for its repair, even after imploring the sentence of a judge, although he knows certainly that the other acted without theological fault, because anyone can lawfully use a faculty granted to him by a just law." Marres, p. 267. n. 59.

748. Questions. - Query 1° Are you bound without theological fault concerning damage inflicted by you upon another's thing detained from contract, for example of deposit or loan for use?

Resp. There is a twofold probable opinion.

The Opinion which to S. Alph.[4] is very probable affirms absolutely that theological fault is required. The reason is that merely juridical fault does not suffice for inducing an obligation in conscience, as is established from what was said above in principle II, unless a special agreement has intervened. But the existence of an agreement of this kind is in no way established; indeed, it is not presumed that the contracting party wished in conscience to take upon himself under grave sin so great an obligation with juridical fault alone.

Notes to n. 748. (4) L. IV. 554. Notes to nn. 748-757. (1) L. IV. 587. (2) H. A. Tr. X. 51. (3) L. IV. 584. (4) L. I. 62; H. A. Tr. X. 7. 18. (5) p. 557.

749. ○ Query 2° Is someone without theological fault bound concerning damage inflicted in fulfilling an office, as if a physician gave a harmful remedy, a judge an unjust sentence, an advocate false counsel, a confessor a resolution damaging to a penitent or to another?

Resp. Probably negatively, as in the preceding question. The reason is 1° because the obligation of restoring on account of merely juridical fault in an office, or in a quasi-contract, cannot be proved either from natural right or from the convention of the parties; 2° because such an obligation would be harmful to the public good; for from this it would happen that upright and God-fearing men would be kept from undertaking the affairs of others, and also from public offices. S. Alph.,[1] Billuart,[2] Lacroix.[3]

Query 3° Is he bound to restitution who inculpably indeed placed a cause of damage, but afterward did not impede it, although he could have impeded it?

Resp. Affirmatively. The reason is that each one is bound from justice to impede his own action from harming the neighbor; therefore he is also bound to impede the evil following from his action from

persevering, but not with equal damage to himself.[4]

Hence 1° one who inculpably set fire to another's house, when he notices the danger of the fire, is bound from justice to impede it, if he can. 2° Likewise a pharmacist who sold poison by mistake for medicine is bound from justice to warn the buyer. 3° Likewise one who by mistake said something grave against another's reputation is bound afterward, when the error is known, to correct it; and if he does not do so, he sins gravely and is obligated to reparation of all damages which come from this.

Notes to n. 749. (1) L. IV. 555. (2) Diss. 8. a. 7. (3) n. 184. (4) L. IV. 564 ex Lessio, etc.

750. ○ Query 4° Must damage following from a cause culpably indeed placed, but already retracted when the damage is inflicted, be repaired?

Resp. Affirmatively, unless with the perverse will the influence of the cause also has been taken away. Thus, for example, if someone voluntarily gave poison to another, and afterward cannot impede its effect, however much, repenting of the deed, he may wish it, he will be bound to repair the damages coming from the homicide. The reason is that he who placed the cause of the damage always goes on efficaciously influencing it. - Thus commonly.

Query 5° Must damage indeed inflicted BY ACCIDENT, but while attending to an illicit work, be repaired?

Resp. Negatively, because that damage is not voluntary, since it was not foreseen even in confused manner. Nor does it matter that the action was illicit; for this pertains nothing to the notion of justice. Thus a cleric who, while attending to hunting against the prohibition of the Church, kills a man instead of a wild beast, is no more guilty of injustice than a layman who would have done this. Indeed damage inflicted by accident need not even be repaired, even if it happened on the occasion of an unjust action, because it has no connection with that action. Hence he is not bound to restitution who killed Titius, whom he did not at all see nor know to be present, while he was aiming a gun at Caius. - Thus most commonly. - Lugo,[1] S. Alph.[2]

751. ○ Query 6° Are you bound to repair damage which by mistake you inflicted upon someone while you intended to harm another, for example if you burn the house of Caius, which you think is the house of Titius your enemy?

Resp. They deny it with S. Alph.,[3] Lugo,[4] Lacroix.[5] The reason is that the action was not voluntary toward the damaged person.

Query 7° Is one who gravely damages, yet with light theological fault, bound to restore under whatever fault, even very slight?

Resp. More probably negatively, because proportion is lacking both between grave obligation and light fault, and between light obligation and a grave thing. - Otherwise, if someone, prudently fearing damage from his action, voluntarily admits juridical fault to which according to the nature of the thing he was bound; for this man is guilty of grave theological fault.[6]

Notes to n. 751. (1) D. 8. n. 72. 82. (2) H. A. Tr. X. 39. (3) L. IV. 629. (4) D. 17. n. 75. (5) n. 200 sq. (6) L. IV. 551. 552.

752. ○ Query 8° Is one who inflicted grave damage through several venial faults deliberately committed bound under grave sin to repair that whole damage?

Resp. 1° Affirmatively, if the damage inflicted is upon the same person, although the damager did not sin gravely. The reason is that here he is bound to repair the whole damage voluntarily and freely committed. But the whole damage was freely inflicted, and besides it is grave in the hypothesis; therefore that whole must be repaired under grave sin. - Lugo,[1] etc.

Resp. 2° More probably negatively, however, if small damages were inflicted upon diverse persons. The reason is that on the one hand no one suffers grave damage, and on the other hand the damager does not become rich from another's thing. Hence the present case differs from the similar question related above n. 717. q. 4°, because a thief becomes rich from small thefts, but not a damager.

Query 9° Is one who from invincible error thinks that the damage inflicted by him is much less than it really is bound to restore that whole damage if afterward he recognizes the true price; for example, if someone throws into the sea another's gem worth 100, while he believes it to be worth only 10?

Resp. Probably he is bound to restore only according to the proportion of the damage known; because the damage which is invincibly unknown is not judged willed. - S. Alph.,[2] Carriere,[3] against others.

Yet an obligation of repairing the whole damage will be given if, when because of suspicion of a greater price, at least arising in confused manner, the whole damage becomes voluntary.

753. ○ Query 10° Is an owner bound to repair damage inflicted upon the neighbor by his animals?

Resp. 1° Affirmatively, if from theological fault he neglected to watch over the animals. For each one is bound by natural right diligently to guard his animals lest they inflict damage upon others, just as he ought to guard against detriment coming to the neighbor from his own actions.

Resp. 2° But, theological fault being set aside, he is not bound before the sentence of the judge, as is clear from principle II. n. 746; but after sentence has been pronounced, as is established from principle III. n. 747. - But by the laws according to which sentence is commonly given among us, animals inflicting damage are held until satisfaction is made to the injured party, and by public authority they are sold if the owner neglects to redeem them. But if the owner of the estate often omitted to enclose it lawfully, he can recover nothing; but he himself will be bound to repair the damage if the animal wounded or killed.[4] Cf. n. 686.

Query 11° Is that man bound to restitution who by his bad example induced others to inflict damage, if he foresaw the efficacy of the bad example?

Resp. The more probable opinion denies it, because one who gives bad example is not the cause of the damage, but a mere occasion. For an evil action of itself does not tend to this, that it excite others to imitate it. Therefore the other damagers are determined wholly from themselves to inflicting the damage. S. Alph.,[1] Salmant., Laymann, Sanchez, Lugo, etc.

Notes to n. 753. (1) D. 8. n. 69. (2) L. IV. 613. (3) n. 1093. (4) Kenr. Tr. X. n. 185.

754. ○ Query 12° Is he bound to restitution who doubts whether he himself was the cause of damage?

Resp. There can be doubt: 1. whether a cause of damage was given, for example whether you calumniated someone; whether you were the cause of damage or only the occasion; 2. whether damage truly came to someone, suppose from your detraction; 3. whether damage which actually followed arose from that cause, for example from the calumny, or from elsewhere; 4. whether, if many were the cause of damage in the same way, for example by adultery, the effect (offspring certainly adulterine) is to be attributed to this or that adulterer. In all these doubts the obligation of restitution is to be denied; and indeed in the 1st and 2nd according to the common opinion; in the 3rd according to a sufficiently probable opinion; and in the 4th according to the more probable.[2] The reason is that in each hypothesis it is a question of a doubtful obligation, by reason either of the cause or of the effect.

Except, as to the 4th doubt, if the second adulterer, knowing adultery to have been committed by another, had intercourse with the adulteress, noticing that he by his second adultery becomes the cause of uncertainty whether support can be exacted from the first adulterer. But the reason indeed is not valid for the earlier adulterer, who would think nothing concerning future adulteries. And for the second to be bound, it is further required that he notice that damage which can come from his adultery; because nevertheless this advertence will be very rare, the obligation of this adulterer also will be very rare. - 2° If several adulterers from common counsel perpetrated adultery.[2]

Notes to n. 754. (1) L. III. 45. et L. IV. 537. (2) L. IV. 658. Mar. p. 275. n. 73-76.

755. ○ Query 13° Are you bound to repair damage coming to someone on the occasion of your unjust action, for example if you stole, and the theft is imputed to him?

Resp. 1° Certainly negatively, if you did not foresee that damage. This is clear from what was said above in principle II. n. 746.

Resp. 2° Also more probably negatively, although you foresaw this damage. The reason is that your action, placed with the foresight alone of the damage, must be held not as the per se cause of it, but only as the cause by accident. It is established also from the second principle, ibid. Except if at any time the circumstances were such that they morally proximately influence the grave suspicion and condemnation of another. - S. Alph.,[1] Lacroix,[2] etc., against others.

Resp. 3° Indeed probably it must also be denied, although you acted deliberately so that your action would be imputed to him, because this action is always only the cause of the damage by accident and not per se; for from its nature it did not efficaciously influence that damage. For a depraved intention does not effect that the work is unjust which of itself is not unjust with respect to a third party. Yet it must be excepted if someone used those means which would furnish a very grave suspicion for accusing another, for example if he dressed himself in his clothes to perpetrate homicide, threw away these stained with blood, etc. - S. Alph.,[3] Lessius, Vogler, against others.

756. ○ Query 14° Is an unjust distributor of offices bound to restitution?

Resp. 1° More probably he is bound to nothing toward the worthy person passed over, the case of competition being set aside, because he violated the strict right of no one. - S. Alph.,[4] and others commonly.

Resp. 2° By reason of the election of an unworthy person he is certainly bound toward society concerning all damages thence coming. The reason is that there is judged to be present an agreement of strict justice between society and the elector, by which the latter is bound not to elect unworthy ministers. - Thus commonly.[5]

But more probably he is bound to nothing by reason of the election of one less worthy, although he can sin gravely. The reason is that society is not judged to oblige electors by the title of commutative justice to elect the worthier.[6]

757. ◦ Query 15° Is he bound to restitution who impeded another from the obtaining of some good or benefit?

Resp. 1° Affirmatively, if the neighbor has a strict right to obtaining the thing, as if you impede a creditor from obtaining payment.

Resp. 2° If the neighbor does not have a strict right to obtaining the thing, a distinction must be made. 1° It must be affirmed if this is impeded by unjust means, for example force, fraud, calumny, fear, etc. Namely, then he is obligated to compensation of damage according to the judgment of a prudent man, according to the certitude or probability which the other had of obtaining that good, provided nevertheless he is worthy and could have obtained that good without injustice; for if he were unworthy, the one impeding would not be bound except to restitution of reputation, if perhaps he injured this unjustly.[1] 2° It must be denied, however, if it is impeded by means just in themselves, for example persuasion, prayers, etc. The reason is that then no right of the other is violated, neither in itself nor in the means. - Thus commonly.[2]

Query 16° Are you bound to restitution if from an evil intention, for example from hatred, yet with means of themselves unjust set aside, you turn another away from the obtaining of a good to which he does not have a strict right?

Resp. More probably negatively. The reason is that no injury is inflicted upon the neighbor. For evil intention does not suffice for injury, but there is required an external action which is the true and efficacious cause of unjust damage. - S. Alph.[3] and others more commonly against others.

Query 17° Must someone in danger prefer another's thing to his own, so that he is bound concerning damages if he does not prefer it?

Resp. The contract by force of which he has another's thing either yields for his utility only, or for the utility of the other only, or for the utility of both. If the first, as if he received the thing by loan for use, he ought to prefer that thing to his own, or, if his own is much more precious, to make the owner harmless concerning the price of his thing, because for his benefit alone the thing of another was brought into ruin. - If the second, as for example if I received the thing by deposit, a distinction must be made. If this is much more precious, I ought to conserve it; nevertheless I can exact compensation of the whole damage which I suffered by preserving it. If my thing is equally precious, I am not bound to prefer another's thing to mine, since I retain it for the utility of that man alone.[4] If the third, as for example if as a broker (agent) I have been hired for a price to sell another's thing, there are those who think that, other things being equal, I can prefer my thing, since charity does not oblige me to prefer another's thing to mine in equal necessity; but others think that some compensation is owed to the other party, which seems more just to Varceno.[5]

Notes to n. 757. (1) L. IV. 635. (2) n. 175. (3) L. IV. 686. (4) L. V. 106. 107; H. A. Tr. XII. 87. (5) H. A. Tr. XIII. 87.

758. Cases. - 1° Didacus at night puts away in a corner of the house a very precious crystal vase of Caius, by which no one was soon going to pass, intending to place it in a safe place very early in the morning. But Basilius, entering the house that same night without light, strikes against the vase and breaks it. What is the law? - Resp. Neither Didacus nor Basilius is bound to restitution, because on the part of each theological fault is lacking; for neither thought about damage or the danger of it. Indeed neither one would be bound if he had foreseen some very remote danger, because in morals attention is not paid to mere possibility.

2° Quirinus, intending to steal cloth, enters a workshop at night and lights a candle, employing diligence to avoid every danger of fire; but by an unexpected event, namely the leap of a cat, the candle is thrown into straw, and in a short time the whole workshop is burned, and the thief barely escapes unharmed by taking flight. What of Quirinus? - Resp. He is bound to nothing, because he in no way foresaw the danger. Indeed he is not bound concerning the cloth which he wished to steal, even if he had seized it, because even that damage is involuntary; nor is the seizure of the cloth the cause of the damage, nor did the carrying of the candle create a proximate danger of fire when sufficient caution had been employed. Yet if the thief had not only seized the cloth, but had consummated the theft by withdrawing it from the power and custody of the owner, when by accident, for example by the lit candle, the cloth was burned, he would be bound concerning it, as is said concerning any stolen thing which perishes by fortuitous event with the thief. - Thus Lugo,[2] Lacroix.[3] Cf. n. 734. 1°.

3° Pomponius, impelled by a mind of revenge, while seen by no one, discharged a shot at a goat of Marri grazing peacefully in the estate of the owner; but instead of the goat, which was unharmed, he struck and killed a cow of Marinus lying behind a hedge, while he was wholly ignorant of it. To what is Pomponius to be obligated? - Resp. To nothing. For he is not bound to anything for the aforesaid goat, since it remained unharmed; nor for the cow, since he in no way foresaw its damage. But what if the cow belongs to the same owner? The difficulty increases, since the damager truly intends to inflict damage upon such a person; for although he does not destroy the thing specially intended, since in general he wishes to harm the enemy, the damaging action which he places seems formally injurious to the same owner. Nevertheless, standing in the rigor of the principles, he can still more probably be excused, if in no way, not even in confused manner, did he foresee this other damage. For it can be said that it happened merely by accident; nor does the depraved intention of harming the same man make the damage of a thing wholly unknown become voluntary. It is otherwise, however, if, wishing generally to harm the enemy as much as he could, he had known somewhat in confused manner various objects to be damaged. Recall what was said n. 746 and 755.

4° Sidonius, seeing Justin passing by and thinking that he is Titius, says to his companions: Look, that man is not the standard-bearer of the scrupulous! ... But he is a worthless man, a thief, fornicator, and drunkard. Query: What must Sidonius do when the error is detected? - Resp. He must retract the things said before the same companions, although involuntarily he said these things against Justin; and if he does not do so, he will be bound to repair all damages which follow from the defamation. Cf. n. 749. q. 3°.

5° Babinus, by repeated prayer and flatteries, yet with all deceit set aside, induces Roger, who is dying, to tear up the will already made in favor of Paul, so that he himself, or a friend or blood-relative, may be constituted heir. But Babinus is determined to do this, besides his own advantage or that of a friend, from inveterate hatred which he cherishes against Paul. Is Babinus guilty of injustice? - By no means. For although on account of hatred he has sinned gravely against charity, nevertheless more probably he has not injured the virtue of justice, because he has violated no strict right of Roger. The same would have to be said if someone from hatred had turned the testator away from constituting Paul heir, so that anyone else would be constituted in his place. - Recall what was said n. 757. q. 15°. q. 16°.

6° a) John intercepts letters by which Paul seeks some office, and thus impedes him from obtaining that office. b) Peter, the secretary of the Governor, sets aside a little the letters by which Caius was demanding some office, so that the office meanwhile may be conferred upon Titius. c) Iphigenius reads letters sent to Cornelius and opened by accident, and uses the knowledge derived from this for his own advantage, but without any damage of Cornelius. d) Antony, a secretary hired by Hubert for a price, uses knowledge received on occasion of his office to the detriment of Hubert, or even of those who wrote letters to this man. To what are John, Peter, Iphigenius, Antony bound? - John, Peter, and Antony are bound concerning the damage respectively toward Paul, Caius, Hubert, or those who wrote letters to this man, since they used unjust means to impede them from the obtaining of a good. And indeed John and Peter are bound to compensation to be estimated according to the reason of the hope which shone upon Paul and Caius of obtaining the office. But Iphigenius is bound to nothing, since he inflicted no damage.

7° Charles persuades the Governor to choose Patrick rather than Kilian, otherwise certainly to be designated, for an office. To what is Charles to be obligated? To nothing, provided that in persuading he used no fraud, calumny, or other unjust means. (n. 757. q. 15°.)

8° Hilary a) from hatred toward Philip induces the notary that in favor of Philip an act not be done before him, which otherwise will be invalid; b) in order to harm Bertha, otherwise to be instituted heir by Caius, he craftily removes the secretary, or another suitable person for drawing up a will, lest the dying Caius use his work, who will scarcely have the work of another. Is Hilary guilty of unjust damaging? He certainly is in the former case, because, since the notary by force of his office was bound to furnish his work to Philip, who, as is supposed, asked for it, he deprived Philip of his strict right. Resolve the same of itself in the latter case. I say: of itself; for since everywhere among us the will of a dying man can obtain force also in another way, namely by declaring it before witnesses, there will scarcely be an obligation of restoring to Bertha, unless force was employed by Hilary lest the will be made in any manner in which it could be valid.

9° Felix a) detains a messenger lest a business useful to Ferdinand be transacted; meanwhile he uses the occasion for his own utility. b) Elsewhere he hires all the post-horses in the town for a price lest the same Ferdinand betake himself to a certain place, where he would have made an immense gain. Is Felix bound to make Ferdinand harmless? A distinction must be made. If by force or threats he detained the messenger or hired the post-horses, affirmatively. If only by persuasion or art, negatively, unless the messenger had been hired by Ferdinand, or by another contract ought to have conducted Ferdinand's business.

ARTICLE III: ON UNJUST COOPERATION

Cooperation toward the damage of a neighbor can be done in nine ways, of which the first six are positive, the three latter negative. All are contained in the following verses:

Command, counsel, consent, flatterer, recourse,

Participating, silent, not preventing, not manifesting.

That cooperation may induce the obligation of restitution, it must, like any damaging, be unjust, the efficacious cause of damage and indeed certainly such, and theologically culpable (n. 746). Hence he who influences only the mode of inflicting damage is bound to restore only insofar as that mode was harmful to another, or was the certainly efficacious cause of damage. Cf. n. 764. q. 4° and Mar. p. 278. n. 79, 80.

§ I. On One Commanding

759. ○ One commanding or mandating is called he who induces another, whether by explicit or implicit command (for example by silence, which is equivalent to consent), as one set over him; or by force, threats, or prayers; or by express or tacit contract, to inflict damage in his name, that is, for his utility or favor (and thus he is distinguished from one counseling), upon another.

One commanding is bound to repair every damage commanded and inflicted by force of the mandate; otherwise, however, if he only ratifies damage already done. The reason is that in the former case, but not in the latter, he efficaciously influences the damage.

760. Questions. - Query 1° Is one mandating bound to restitution if he revoked the mandate before the damage was inflicted?

Resp. Negatively, if the revocation becomes known to the mandatary before execution of the mandate; otherwise, if for any cause whatever it does not become known at all or becomes known too late; because in this case, but not in that one, he influences the damage (n. 750. q. 4°).

Query 2° Is one mandating bound concerning damages which come to the mandatary in the execution of the mandate?

Resp. Affirmatively, if the one mandating compelled the other by fraud, force, or unjust fear, or if an agreement concerning indemnity preceded; but not even in this case is he bound concerning damages coming to the mandatary by his own fault or by accident (which no one furnishes), unless he also promised to furnish against accident. Otherwise, negatively.

Query 3° Is one mandating bound to repair damage which the executor from invincible error inflicted upon another?

Resp. Negatively, provided the error does not almost follow spontaneously from the mandate itself because of the difficulty of the thing commanded (Mar. p. 280. n. 86). The reason is that the true cause of the damage is the error of the mandatary, not the mandate.

761. ○ Query 4° Whether and when must one mandating also warn him whom he commanded to be harmed?

Resp. Negatively, at least from justice, if he has already efficaciously revoked the mandate. Otherwise affirmatively, provided a much greater inconvenience, for example danger to reputation or liberty, does not threaten him from the warning. For what removes the obligation of repairing damage also removes the obligation of guarding against it. But the obligation of furnishing for damage inflicted is to be fulfilled as soon as it can be. Mar. p. 279. n. 84.

§ II. On One Counseling

One counseling is called he who by counsel, prayers, promises, suggestion of a motive, or showing of the way or means of harming has induced another to inflict damage.

762. Principles. - I. One counseling sins against justice as often as knowingly and willingly he furnishes unjust counsel by which another is efficaciously induced to inflict damage unjustly; because the damage is imputed also to him. It is established also from proposition 39 condemned by Innocent XI, p. XVI.

II. One counseling who in good faith gave damaging counsel, when the truth is known, is bound to retract it, and indeed from justice, whenever without equal damage to himself he can retract. This is clear from what was said n. 749. q. 3°.

III. But one counseling is not bound to restitution if the executor would, without that counsel, just as well and in the same way have inflicted the damage; because then the counsel did not efficaciously influence the damage. Otherwise, however, if the executor was moved at the same time by the counsel of the other, although the damage would have happened even without this counsel; for in fact he would truly be an efficacious concause.[1]

763. Questions. - Query 1° Is one counseling bound to restitution who revokes his counsel before the execution of the damage?

Resp. 1° Negatively, if the counsel was naked, that is, simple, because through revocation the whole force of the counsel is taken away. - Thus commonly.

Resp. 2° If the counsel was clothed, or founded upon motives, it is controverted. According to S. Alph.[2], sufficiently probably also negatively, provided that in the retraction other motives have been employed, at least equally efficacious, for example of eternal salvation, against others, whose opinion he calls indeed more probable, yet not far more probable. Except if you showed to a thief determined to inflict damage the way of entering the house, which otherwise he would not have found, or something similar; because your cooperation then was truly efficacious, especially if you foresaw[3] that the thief was not going to change his depraved purpose, unless nevertheless you warned him to whom damage threatens, to which in the case you are bound.[3]

Query 2° Is one counseling a lesser evil in order to avert a greater evil bound to restitution?

Resp. Negatively, if it is a question of the same person, because the counsel favors him; otherwise, however, if it is a question of another to whom otherwise damage would not have been inflicted. For

this latter, outside the case in which he is bound from charity to undergo this damage (n. 279. 305. q. 1°), is judged reasonably unwilling.

Notes to n. 763 - note sequence 1. (2) D. 17. n. 50, 88. (3) n. 165 sq. Notes to n. 763 - note sequence 2. (1) L. IV. 561. (2) L. IV. 559. (3) L. IV. 559.

764. ○ Query 3° Is one counseling evil to another who notices it bound also concerning the damages which this man has suffered by executing the depraved counsel?

Resp. Negatively, of itself. The reason is that he inflicted no injury upon him, since no injury is done to one knowing and willing. - It is otherwise, however, if the one counseling has so circumvented the executor with frauds or sophisms that this man did not notice the iniquity of the counsel.

Query 4° Is one counseling only the mode of an unjust action bound to restitution?

Resp. Negatively, if the mode is merely accidental, as are commonly the circumstances of time, place, and means. Otherwise, however, if the mode in some way redounds into the substance, for example if it increases the damage, etc.[1]

Query 5° Is one persuading that damage be inflicted more quickly bound to restitution?

Resp. Negatively, if he is certain that the other is determined to evil and that he is not going to change his depraved mind; otherwise in the other hypothesis.[2]

765. ○ Query 6° Is one counseling bound to restitution primarily or only secondarily?

Resp. Of itself, he is bound only secondarily, because the executor is principally acting, as being one who is judged to act in his own name and for his own utility. But if the counsel is useful to the one counseling, this man will be bound primarily; otherwise if it is useful to the executor alone. But if it is useful to each, or if from the damage inflicted useful advantage came to neither, each will be bound according to proportion and in solidum.[3]

Query 7° Is one giving harmful DOCTRINAL counsel (or not only impulsive counsel) from gravely culpable ignorance bound to restitution, and how?

Resp. 1° If the one giving counsel does this from his state or office, for example an advocate, physician, confessor, etc., he is bound to restitution concerning the unjust damage which follows from his counsel, whether toward the one seeking counsel or toward him against whom it is given. The reason is that from a tacit contract the consulter has a strict right to the due knowledge and diligence of that man.

Resp. 2° If the one counseling is not such a person as by reason of his office or state professes skill, 1° he is not bound toward the one seeking counsel, unless from deceitful counsel, or unless he affects great skill which he lacks. 2° Nevertheless he is obligated toward a third person who suffers damage from this, if he himself knew his own lack of skill and foresaw, at least in confused manner, the damage to follow.[4]

Notes to n. 765. (1) L. IV. 563. H. A. Tr. X. 46. (2) D. V. 568; H. A. Tr. X. 46. (3) L. IV. 568. (4) L. IV. 560. 4 L. IV. 564.

766. Resolutions. - 1° Women, common people, and others generally, whose insufficiency is known, if they do not deceitfully affect skill, are bound to restore nothing to those who have sought

counsel from them. Nevertheless they are bound toward others to whom damage has been inflicted from their counsel, if they sufficiently foresaw that damage; for they are guilty, when by giving rash counsels in those things which they do not know, they expose themselves to danger of injuring an unwilling innocent person.[1] - But what if someone through, for example, newspapers, or otherwise publicly, affects great skill in healing some disease, or attributes to some medicine, otherwise harmless, an almost extraordinary or more general power than it has? From custom those sayings do not obtain full faith, nor will he be guilty of injustice, unless he either lacks ordinary knowledge, or omits ordinary diligence, or because of falsely thought knowledge exacts a salary, or because of medicine not extraordinary exacts a price above the common one.

2° If by persuasion or exhortation you have been the cause that greater damage be inflicted than otherwise would have been inflicted, you are bound only concerning the excess of damage. Hence if to a thief separately determined of himself to steal $100 you persuaded him to steal 200, more probably you contract only the obligation of restoring 100.

3° If two together counsel theft to Peter, who, induced by their counsel, steals, each is bound to restitution; for although Peter would have stolen even if only one of them had counseled, nevertheless in fact each by his own counsel influenced it, and by that very fact each was the cause of the theft. - S. Alph.,[2] Lugo.[3]

4° Physicians, pleaders, confessors, and the rest who from office are counselors, only moderately learned, who in a difficult matter give counsel by which another is harmed, are bound to restore, even if they are not ignorant that they are unequal to solving, treating, etc. the more difficult cases. Likewise, even if they are equal to their office, if they treat difficult matters without a mature examination having been premised according to the gravity of the thing, provided that at least in confused manner they attended to the obligation of investigating the matter more thoroughly and to the damage that would arise from their negligence; because all these harm others by culpable ignorance.[4]

Notes to n. 766. (1) L. IV. 534. (2) L. IV. 563. (3) D. 19. n. 2-12. (4) Mar. p. 283. n. 94.

§ III. On One Consenting

767. Principles. - I. One consenting is bound to restitution whenever knowingly and freely he either gives consent or carries a vote, by which he efficaciously influences the damage of another. I say: influences; because one who, seeing damage done or hearing that it has been done, only approves it, without moving another to harming, sins only internally against justice. I say: efficaciously; because if he did not efficaciously influence the injury, he would not be bound to restitution. Resolve the same if, fraud or special agreement being set aside, by his vote he impeded another from the obtaining of a good to which he had no right.

II. He is not bound concerning the damage who authentically revokes a sentence or vote previously given before the wickedness is consummated; nor one voting in good faith, although, as was said above n. 749. q. 3°, when the error is detected he is bound from justice to revoke his vote, if time permits him this and he can do it without grave inconvenience.

768. Questions. - Query 1° Is one consenting bound to restitution who gives an unjust vote if other votes already sufficient for the damage are not lacking?

Resp. 1° It is certain that all consenting are equally bound to restitution if they gave votes by agreement, since, after conspiracy has been entered into, there is one moral action of all. Likewise if they are carried secretly.

Resp. 2° It is also certain that all consenting contract the obligation of restoring when they carried the vote at the same time; because, since none was then earlier or later, the sentence resulting from the sum of the votes is deservedly attributed to the individual voters.

Resp. 3° It is likewise certain that those are not excused from restitution who first give a vote before the number has been completed, even if they foresee that others who consent will not be lacking, because they truly influence the damage. For although without them it was to be inflicted, nevertheless through them it is in fact partially inflicted. - Thus commonly. - Lugo.[1]

Resp. 4° But whether, conspiracy and simultaneous collection of votes being set aside, the last voters can be excused from the obligation of restoring when the number of votes required for the definition of the business has already been fulfilled, is controverted. S. Alph.,[2] Lugo,[3] and several others affirm, because voters of this kind are in no way the cause of the damage, since it had already been sufficiently prepared and determined by others. - I say: "for the definition of the business." For it would be otherwise if the vote were consultative, or (because by it the number of votes is increased) if it were foreseen to influence the sanctioning of an unjust thing which otherwise would be prohibited. (p) p. 475.

Notes to n. 768. (1) D. 19. n. 17. (2) L. IV. 566. (3) D. 19. n. 17. Appendix annotation (ρ), to n. 768. R. 4°. p. 315. col. 2. Likewise otherwise, if by his vote he could recall the previous voters from an unjust sentence. But in doubt it ought by no means be presumed that the previous voters will be recalled from an unjust sentence if they culpably carried it; otherwise, if by inculpable error. L. IV. 566. § fin.

769. ○ Query 2° In doubt whether your vote was among the earlier and necessary ones for inflicting the damage, are you bound to restitution?

Resp. The true opinion, according to S. Alph.,[1] teaches that anyone is bound according to proportion; and when the others do not restore, that you are bound to the whole. The reason of the former is clear of itself. The reason of the latter is that by your vote at least you made worse the right which the injured party had of recovering from the other voters the damage inflicted. The case would be if the votes had been cast secretly.

Query 3° Do you contract the obligation of restoring if you do not cast a vote when you can cast it?

Resp. 1° Negatively, if the right of giving the vote was conceded to you for your mere favor or grace; because then you inflict no injury upon another.

Resp. 2° Affirmatively, if it would have to be given from office, and its omission was the efficacious cause of grave and unjust damage. - Lugo and others commonly. (l) p. 482.

Appendix annotation (l), to n. 769. q. 3°. p. 315. col. 2. Hence, supposing theological fault and efficacious influence, he is liable to restitution who abstains from giving a vote when he ought to give it from office, by which he is to protect the public or private good, for example a judge in a tribunal, members of a college which must provide for the good of the Republic, State, County, Municipality (members of Congress, of Legislatures, County commissioners, Members of city

councils), or also members of a college to which the private affairs of others are to be managed, as trustees of a moral body, society, etc.; because by taking up that office they have obligated themselves by a tacit contract, and therefore from strict justice, to manage the affairs of others and forestall the harm of others. The right of electing magistrates, where it has been granted, as among us, is an Office and not only a privilege; for society has the right that only worthy magistrates be set over it, and the office of appointing these has been entrusted to citizens by legitimate authority. Therefore those who abstain from giving a vote can sin, yet not against commutative justice, but against legal justice, and accidentally against religion, in the case in which by not excluding an unworthy man they harm it. But that they sin in fact, it is required 1° that a worthy man whom they may elect can be found; 2° that they foresee that by abstaining they effectively promote the election of an unworthy man; 3° that they are not excused from giving a vote by a sufficient reason, for example by notable harm threatening them from it. Marres, p. 295. n. 117. 118; 4° that, as more often happens, they do not invincibly ignore this obligation of theirs, for example holding their right only as a privilege.

§ IV. On the Flatterer

770. ○ A flatterer is called one who by praising, flattering, whispering, censuring, or exaggerating injury moves another to causing damage. Concerning the flatterer these things must be held:

1° He who has induced another to inflict damage by proposing praise or otherwise ignominy to follow is bound concerning the damages. For such cooperation has the character of counsel, namely when motives for acting, of themselves commonly efficacious, are proposed. Wherefore the flatterer is subject to altogether the same obligations as one counseling, concerning which see above n. 762 and following.

2° Those who so represent to a man affected by injury the magnitude of this injury that he, being moved, takes revenge, are bound to restore, provided they noticed at least that damage would probably follow.

3° But he is not bound to restitution who approves or ratifies a deed already perpetrated, unless he is the cause why restitution is not made, or new damages are inflicted.[2]

Notes to n. 770. (1) L. IV. 566 coll. H. A. Tr. X. 50. (2) L. IV. 567.

§ V. On Recourse, or on One Receiving, or Furnishing Recourse

771. ○ 1° One receiving, namely one who knowingly and freely furnishes security and convenience to a malefactor as malefactor, so that he may either inflict evil more confidently, or not repair it after it has been inflicted, is bound concerning the damages thence coming. For thus he determines efficaciously and unjustly the will of the thief in the purpose either of stealing, or of not restoring, or of stealing again, or makes it firmer.

2° Likewise merchants and especially innkeepers are bound to restitution who receive thefts of children of the family, servants, etc., or conceal them, or are even accustomed to vindicate them for themselves as the price of merchandise, drinking-bouts, etc.

3° Among those receiving are not to be counted those who receive at home friends or blood-relatives who are malefactors; nor those who hide them under hope of amendment, or show them the way by which they can flee, when they are being sought for prison or for death.[1]

§ VI. On One Participating

One participating is twofold: one in the prey, another in the damaging action. Hence the following things must be established.

772. Principles. - I. One participating in the prey is bound to restitution of the part which he received and detains with himself; this is clear from what was said above concerning the possessor of bad faith.

II. One participating in a damaging action through formal cooperation, or such as truly concurs with the evil will itself of the one damaging (cf. n. 303), for example by protecting him; by accepting a small gift from him so that you do not cry out while he inflicts damage; by making him more certain concerning the time or more convenient mode of placing the damaging action - is always bound to restitution. The reason is that in this case there are present the three conditions which are required for a damaging action to induce the obligation of restitution, namely the action is unjust, the efficacious cause of damage, and theologically culpable.[2] See what was said n. 746.

III. One participating in a damaging action through material cooperation is excused from sin and from restitution if he acts from a just and proportionate cause (n. 306). But a cause of this kind will be:

a. In cooperation toward damage of life, equal damage of your own life, as if you handed over the sword to one about to kill at his request, while otherwise you yourself would be killed; for no one is bound to impede the damage of another (even if the other is in extreme necessity) with equal damage to himself. Thus the more common opinion (S. Alph. L. IV. 571. 697. Istr. e prat. C. X. 56, although otherwise in H. A. X. 56. 116.). As is clear of itself, excepted is an action which would be immediate cooperation in the killing action itself, or the co-killing of another with another; for this would be formal cooperation from the end of the work (Istr. e prat. ib.).

b. In cooperation, whether immediate or mediate, toward damage in goods of fortune, a just and proportionate cause will be damage to you of a higher order, that is, of life, of members, or grave damage of reputation. The reason is that the one suffering damage, in this case, as to your cooperation would not be reasonably unwilling. - But he would be if your damage were only of equal order.[1] Except 1° if the inequality is excessive, as if by stealing little from others you can preserve yourself harmless in great things. But in that case you are bound to restore the value of the thing taken to the owner, since it is a question of a thing in the same genus, and equivalently you possess what belongs to another;[2] 2° if one cooperating toward damage in goods of fortune can and wishes to repair those things; 3° if the damage in goods of fortune without the cooperator would have been equally and certainly inflicted by the agent through himself, and in this case he neither sins nor is bound to restitution. The reason of the exceptions is that otherwise the owner would be unreasonably unwilling.[3]

Notes to n. 772 - note sequence 1. (1) Gly. 208. (2) H. A. Tr. X. 52. Notes to n. 772 - note sequence 2. (1) L. IV. 569. 571. (2) Scav. T. II. n. 675. (3) L. IV. 571.

§ VII. On the Silent, the One Not Preventing, the One Not Manifesting, or on Negative Cooperators

Negative cooperators are those who do not impede damage which by at least tacit agreement they are bound to impede. They are commonly called the silent, the one not preventing, the one not manifesting. 1° The silent is he who does not speak, does not cry out, does not forewarn the one to be damaged, while he is bound to this by office or contract. 2° The one not preventing is called he who does not furnish help which he can, and from justice ought to furnish, lest damage be inflicted. 3° The one not manifesting is called he who, while he can and from justice ought, does not manifest the malefactor to the injured owner or to the Superior, and by this reason is the cause why the injury is not repaired. Moreover, the same principles and the same moral applications fit all these cooperators.

773. Principles. - I. No one by reason of damage not impeded is bound to restitution unless he is bound by agreement to impede it; for one who is not driven by agreement to impede damage is obligated from charity alone, whose violation does not oblige to restitution.

II. All who are obligated by agreement to impede the damage of another, if they culpably neglect this, are bound to restore; for from justice they ought to impede damage. Therefore if they omit it, they sin against justice and consequently are obligated to repair the damages.

III. That one cooperating negatively be bound to restitution, it is necessary that he could have impeded the damage without grave inconvenience; because neither contract nor positive law is accustomed to oblige with grave burden (at least for the most part, n. 137. § fin.).[1]

774. Questions. - Query 1° Is a confessor bound to restitution if from grave negligence or ignorance he omitted to warn a penitent concerning restitution to be made?

Resp. More probably negatively. For although from office the confessor is bound to instruct the penitent well, and therefore sins gravely if he omits this when it is necessary, nevertheless he is not bound to this from justice toward a third party. Except if the silence of the confessor is equivalent to approval; for example, if, having been questioned, without sufficient cause he so declines a response that the absence of obligation is suggested to the penitent. - S. Alph.,[2] Lugo, Suarez, and others commonly.

Query 2° Are servants bound to restitution when they culpably do not impede damages which are inflicted upon the master?

Resp. More probably negatively as to damages inflicted by other servants or domestic persons, unless the matter was specially committed to them by agreement, namely at least tacit, for example the key of the wine-cellar handed to them. - More commonly and more probably affirmatively as to damages inflicted by outsiders. - The reason is that in the former case, because of foreseen quarrels, they do not seem to have taken this burden upon themselves in the contract of hiring work, but they do seem to have done so in the latter.[3] Yet today, since to each one his works are usually entrusted by a contract diligently circumscribed, neither can this be admitted generally. Wherefore attention must be paid to this contract,[1] or, failing it, to custom.

775. ○ Query 3° Is a superior bound to repair damage inflicted by his subjects (workers, servants, children, wife)?

Resp. 1° For the civil forum see Kent.[2]

Resp. 2° As to the internal forum, theological fault being supposed: a. Affirmatively, if the obligation of guarding against damage has also been taken upon himself by agreement, at least tacit, for example if a master committed work to be done by agreement, to be executed by the workers subject to himself; or if someone from public office ought to impede the damages of others.[3] b. Likewise affirmatively, if, seeing damages to be inflicted by subjects or knowing them already inflicted, he is silent, and the circumstances are such that by his silence, as a flatterer, he efficaciously influences the inflicting or repeating of the damage. c. Negatively in the other cases, where it is a question of a prelate who ought to watch over his subjects only from piety; for violation of this can induce guilt of grave fault indeed, but not the obligation of restitution. But if in the cases concerning which under c, the civil law decrees damage to be furnished by the one set over, this disposition of the law will pertain to legal justice, nor will it oblige before sentence.[4]

776. ○ Query 4° Is he bound to restitution who by omission of a vote did not prevent an unjust sentence?

Resp. Distinguish between the right of a vote from office and of a vote from privilege or from mere favor, according to what was said n. 769. q. 3°.

Query 5° Is he bound to restitution who accepted money from a thief so that he would be silent, if he ought not to cry out from office?

Resp. More probably negatively, at least of itself. The reason is that he could be silent because of the thief's prayers without injustice, since he is not bound from justice to cry out. Therefore by parity he can be silent without injustice because of gifts promised or handed over. - Lugo, Tamburinus, etc. - But it would have to be said otherwise if he accepted money so that he would watch whether anyone approached; because then he would positively cooperate with the theft.

Query 6° Are guards who do not denounce damagers bound to compensate all damages and also to pay the fine?

Resp. to the 1st. Affirmatively, of itself, because they are constituted to impede damages; except if it is a question of matters of lighter moment, for which, from custom and the presumed will of the owner, secret admonition suffices.

Resp. to the 2nd. More probably negatively, on account of contrary practice, with which common sense agrees. The same must be said concerning a judge not imposing, or a magistrate not demanding, a punitive fine. Except if denunciation of the damager has been made before the judge.

CHAPTER III: ON THE CIRCUMSTANCES OF RESTITUTION

The chief circumstances of restitution are contained in this verse:

How much will you restore? to whom? in what order? in what way? when?

ARTICLE I: HOW MUCH IS TO BE RESTORED?

777. ○ The quantity of restitution must be measured from the quantity of the thing accepted, or from the quantity of the damage inflicted, or from the influence upon the injury of the neighbor.

Since special difficulties occur concerning solidarity alone, we shall treat specially of it alone.

On Solidarity.

Definition. - Solidarity, or the obligation of restoring in solidum, is the burden incumbent upon the individual cooperators of repairing the whole damage inflicted.

Division. - A twofold solidarity is distinguished, namely 1° absolute, which has place when someone is bound to repair the whole damage; 2° conditioned, when individual cooperators are bound to restore for other failing cooperators.

778. Principles. - I. Any one of the cooperators concurring efficaciously toward damage, so that this whole can morally be ascribed to him, is bound to restitution in solidum, that is, integrally, whether absolutely or at least conditionally. The reason is that each one is the efficacious and unjust cause of the whole damage, and therefore must repair the whole. - Vogler[2] and others commonly.

II. But the whole damage can certainly be ascribed to some cooperator in a twofold case, namely 1° as often as his cooperation is necessary, although not sufficient, for inflicting the whole damage; for example, if you furnish a vote necessary for an unjust sentence; 2° as often as cooperation is done from an efficacious conspiracy by which the damagers so efficaciously excite themselves to the damage that, if individuals did not concur, the damage would not happen.[1]

III. Whoever is the principal cause of damage is bound to restore in solidum absolutely; but the other equal cooperators, or secondary causes, are bound only conditionally. The reason is that the principal agent, such as one mandating, a leader, etc., by the fact itself takes upon himself absolutely the whole burden of repairing the damage, since he himself inflicts it primarily, and does not use others except as instruments for damaging the neighbor. But who must be called the principal cause will be said below.

But as to secondary causes, S. Alph.[2] rightly warns that in practice it is rarely expedient to warn the uneducated or oblige them to repair the whole damage, although they are certainly bound in solidum; because, he says, "with difficulty do these persuade themselves that they are bound to restore the part taken by their companions. Indeed, it can be sufficiently presumed that the owners themselves, to

whom restitution is owed, consent that they restore only the part taken by them, since otherwise it is greatly to be feared that they restore nothing if they are obligated to the whole."

"Hence it is," the Holy Doctor continues,[3] "that the confessor should exhort any one of those men (especially if he is of a conscience little meticulous) that he restore what he owes, without explaining the quantity, but remitting it to the dictate of his conscience."

779. Questions. - Query 1° Are you bound IN SOLIDUM in doubt whether you influenced the whole damage?

Resp. More probably negatively with the common opinion, because a certain burden cannot be imposed for an uncertain obligation.[4]

Query 2° Are you bound IN SOLIDUM in doubt whether the others restored their part according to proportion?

Resp. The opinion denying this is by no means approved by S. Alph.[5] In negative doubt I think that others must be presumed to have satisfied their debt.

Query 3° Is there given an obligation of restoring IN SOLIDUM where cooperation indeed influences the whole damage of an indivisible thing, but is not of itself sufficient, nor necessary, nor proceeds from strict conspiracy; for example if four carry away a beam which even three would have carried away?

Resp. Probably negatively, because, since the whole reason of obligation is influence upon the damage, that ought not to be greater than the influence itself. From elsewhere, if someone by his work concurs only to part of the damage, for example of the devastation of a garden, but concurs with others to the whole damage so far as the remaining part of the garden had already been devastated by others, and he destroys what he found left whole by them, this man certainly is not bound to repair except the part of the damage of which he was the author. Therefore, by parity, one who concurs partially toward indivisible damage is bound only partially to the reparation of the damage, because he placed a partial cause.[1] - Lugo.[2]

Notes to nn. 779-790 - note sequence 1. (1) L. IV. 584. 595 et H. A. Tr. X. 28. Prax. 44, 8. (2) H. A. Tr. X. 67. 69. (3) L. IV. 534. q. I. Notes to nn. 779-790 - note sequence 2. (2) n. 172. (3) 2. 2. q. 62. a. 8. (4) L. IV. 696 sub 3. H. A. Tr. X. 17. L. V. 152. Notes to nn. 779-790 - note sequence 3. (1) H. A. X. 60. Mar. p. 300. n. 125. II. (2) L. IV. 581. Notes to nn. 779-790 - note sequence 4. (1) L. IV. 581. Notes to nn. 779-790 - note sequence 5. (1) L. IV. 684. 685. (2) L. IV. 688. (3) L. IV. 689. (4) L. IV. 691. (5) L. IV. 691. Notes to nn. 779-790 - note sequence 6. (1) L. IV. 690. (2) L. IV. 687. Coll. L. V. 71. (3) L. IV. 692. (4) Ibid. (5) General Bankrupt Law, Sec. 35. apud Wells, p. 599. (6) L. IV. 692.

780. ○ Query 4° Are you bound IN SOLIDUM if your action was indeed sufficient for inflicting the whole damage, but in no way necessary, nor proceeded from conspiracy; for example if you set fire to another's house at the same time with several others?

Resp. It is controverted. Not a few affirm probably, indeed also more probably, because where your action was sufficient for the damaging effect, in reality the whole damage must be ascribed morally to you and to the individual others. Roncaglia, Sanchez, Salmant., etc. - But others deny probably, because, although the damaging action was sufficient for the whole damage, nevertheless it did not have anything but a partial influence upon it, since it was neither necessary nor common with others

from conspiracy. Therefore it is not the moral cause of the whole damage. Nor does it matter that it is a question of an indivisible thing, because the cooperation is not extended to the whole damage. Yet understand this whenever without your concurrence the damage would nevertheless have happened; otherwise even your action would have to be called necessary for it. - Sporer, Navar., etc. - S. Alph.[3] has each opinion as probable.

781. Resolutions. - 1° If one of the cooperators has repaired the whole damage, the others are freed from every debt toward the creditor; but he who restored the whole has recourse against the other damagers equally obligated, or such that each is bound according to his proportion, as reason plainly demonstrates.

2° If to a thief who, on account of efficacious motives, is already altogether determined to steal, you suggest a new motive which adds stimulus to him, you are not bound, when the other cooperators fail, to repair the whole damage, because your motive did not influence the substance of the damage.

3° Indeed probably, on account of the same reason, you ought to repay nothing from justice, if you only induce another to inflict damage somewhat more quickly or more readily.

ARTICLE II: TO WHOM IS RESTITUTION TO BE MADE?

782. ○ Restitution must be made to him whose right has been injured. Wherefore:

1° To the one suffering damage (who is also called the creditor), if it is owed on account of damage given.

2° If it is owed on account of unjust detention of another's thing: a. To the owner himself, if the thing was taken from the owner. b. Not to the owner, but to the just possessor (for example the borrower for use), if the thing was stolen from him; for this man's right of possession was injured. Resolve the same if there is doubt whether he possesses justly, because in doubt presumption favors the possessor. But to the owner, not to the possessor, if the latter is probably going to abuse the thing with injury to the owner.[1]

3° When the owner, or, as above, the possessor, is dead, the thing must be restored to the heirs, who either ab intestato or by testament have succeeded into the rights of the deceased; nor can it be expended for the repose of the soul of the deceased, unless from the express or at least presumed will of the heirs, not however of the deceased, since now they, not he, have dominion or possession of the thing.[2]

4° If after diligent inquiry the owner is doubtful, either the doubt turns among a few, or among many. If the former, restitution must be made to them according to proportion, or the presumed owners must be induced to a composition. If the latter, for example because someone selling in some city defrauded many in weight or price, restitution must be made, and indeed under grave sin, either to those defrauded or to the poor of that place, or for pious causes useful to that same place; but under light sin only to those defrauded (and to these not even under light sin, if a reasonable cause is present), suppose by increasing in the same way the weight or measure, or by diminishing the price toward ordinary buyers, who are presumed to have been damaged, if it can easily be done.

5° If the owner is plainly unknown, or if, although known, he nevertheless can be approached neither immediately nor mediately in a moral manner, a distinction must be made: for either another's thing, acquired in good faith, is possessed, or in bad or doubtful faith. If in good faith, then one must act as in things recently lost, whose owner cannot be found (see above n. 656). But if in bad faith, the possessor must wholly despoil himself of such a thing and spend it for a pious work or the utility of the poor. For it is unlawful that malice profit a thief or a possessor of bad faith.[1] If finally in doubtful faith, the doubt persevering after due inquiry, the thing must be spent partly for the poor or pious causes, and partly can be retained. Cf. n. 739.

6° If no one of the owners has been gravely injured and they are known, restitution must be made under grave sin to the poor or to pious causes; under light sin to the owners, and not even to these under light sin if a reasonable cause excuses. I said: 1° under grave sin to the poor or to pious causes. The reason is that by becoming notably rich from another's thing, he has inflicted grave damage upon the republic. I said: 2° under light sin to the owners; for to each of those he has inflicted only light damage.[2]

Note for practice. - To those obligated to restitutions to the poor or to pious causes, it is prudently declared that they satisfy if they give those things which they are accustomed to contribute toward the support of the poor, churches, etc., which is not owed, with that intention that they satisfy the obligation of restoring. Except if the sum to be restored is so great that usual contributions of this kind do not equal it.

Notes to n. 782. (1) L. IV. 573. (2) n. 342.

783. Questions. - Query 1° When your creditor has been compelled to make a cession of goods, must you restore to him or to his creditors?

Resp. Generally speaking, to him in whose hands, after the cession of goods has been made, the administration and custody of those goods remains. For to this one alone restitution or payment of debts can and ought to be made, so that, if it is made to another, it is not valid and perishes for the one paying, if perhaps the thing handed over does not come into the hands of the administrator. Wherefore if it were a question of debts which are kept hidden by him who cedes his goods, the debtors of that man would cooperate in his fraud if, the cession of goods being known, they paid the debt to him; for which reason they would not be safe even in the forum of conscience, and could be sued in the external forum to pay again. Yet sometimes you could restore to your creditor, for example if the debt is small, if he is upright, and you believe that he is going to restore it to the creditors; likewise if he is situated in grave necessity and greatly needs that debt to live, because, as theologians commonly teach, one ceding goods can subtract those things which are altogether necessary for living. - S. Alph.,[3] Gousset.[2]

784. ○ Query 2° To whom ought a debtor FROM DELICT restore if the injured owner cannot be found?

Resp. According to the common opinion, he must restore to the poor or to pious causes. The reason is that by common sense the unknown owner is judged to be represented by the poor or by pious causes; for such is presumed to be his will whenever he cannot recover his thing unjustly taken away or damaged. - Thus S. Thom.[3] Concerning this there is certainty from Canon Law as to usurious and

simoniacal profit. The canon law seems also to be extended by custom to the other cases: but custom is the best interpreter of laws. Therefore it appears that some law of nations has been introduced concerning this.

Some say that the debtor can spend these things for any public utility, even profane. But in practice one must stand by the general custom. But never can the possessor of bad faith, nor the unjust damager, retain the debt (unless, as is clear from S. Alph.[4], he himself is truly poor), because from right, whether natural or positive, at least customary, restitution must be made to pious causes. L. V. 71. H. A. Tr. X. 17.

ARTICLE III: IN WHAT ORDER IS RESTITUTION TO BE MADE?

The order of restitution can be looked at both on the part of those who ought to restore, when many have cooperated in the same damage, and on the part of those to whom restitution must be made.

§ I. On the Order of Restitution Among Cooperators

785. ○ To assign the order of restitution in solidum among cooperators in the damage of another, it must be inspected whether the cause of the damage is principal, or primary; whether secondary, or subordinated; or finally collateral, or equal. For cooperators can concur in damage either in the same mode or degree, or in a diverse mode.

Principles. - I. If all concurred in the same mode, individuals ought equally to restore in solidum conditionally. Three by common and efficacious conspiracy burn buildings of the price of 3000. Individuals owe 1000; if two cannot or will not pay 1000, the third will owe 3000.

II. If they concur in a diverse mode, 1 the holder is bound, under whom are also the receiver of the prey and the participant; 2 the one mandating; 3 the executor, under whom also is the participant in the damaging action; 4 the other positive causes; 5 the negative. A master commands a servant to steal or inflict damage; this man, doubting whether he should obey, is moved by the counsel of a friend to obey; and, while the guard of the house does not impede, he takes the thing away and hands it to another to be guarded lest it be detected. First the holder must restore; when he restores, the rest are freed from every obligation. But if he does not wish to or cannot, the master is bound; in his default the servant; when both fail, the friend; when the rest are neglectful, the guard.[1]

786. Resolutions. - 1° Secondary causes are bound to nothing if the principal cause restored or obtained remission of the debt; for secondary causes are bound only in default of the principal cause, whose obligation has ceased.[2]

2° If one of the less principal causes restores, the principal cause is bound to make it harmless, because the less principal acquires the creditor's right against the principal.

3° If the creditor releases the secondary cause from obligation, the principal cause is not for that reason freed, because the obligation of the principal cause is independent of the obligation of the secondary cause. Indeed, although the creditor remits to one of the secondaries, the other secondary causes are not for that reason free from the obligation of restoring their own part, unless the condonation was altogether full, or such can deservedly be presumed. - Lugo, Vogler, S. Alph.[1]

4° If one of the equally obligated causes has restored the whole debt, the others are bound to repay a part to him, because each ought to satisfy according to the proportion of his fault. But if one could not or would not restore his own part, the rest ought to divide it among themselves.

5° One counseling or consenting is not bound of itself before the executor; for this man is bound first, because the executor, when the one mandating fails, is the principal cause of the damage. - Yet see the exceptions concerning which n. 765. q. 6°.

§ II. On the Order of Restitution as to Creditors

787. ○ Here it is to be treated only of the case in which the debtor is unable to satisfy all his creditors; otherwise no order in paying debts must necessarily be observed.

But creditors are 1° some privileged, who from a privilege of positive law have the right of seeking their debt before others; 2° others hypothecary, who from the title of mortgage or of security founded in the goods of debtors have the right of obtaining payment immediately after privileged creditors; 3° others common, who enjoy no benefit of privilege or mortgage.

788. Principles. - I. Before all things, privileged debts must be paid. But privileged debts are known from the laws of each State. Of this kind among the rest are taxes to be paid to the State, County, Municipality.

II. In the second place satisfaction must be made to hypothecary creditors, the order of time being observed, according to Rule 54 of Law in the Sixth: He who is prior in time is stronger in right.

III. Finally, in the third place common debts must be paid, as having no right of preference.

Another's thing existing with the debtor, for example in deposit, lease, loan for use, or to be sold, must before all debts, however privileged, be restored to its owner; for that thing existing in species cries out for its owner. Likewise (by Roman law) a thing bought on credit, the price not having been paid, nor pledge of the price given.[1]

789. Questions. - Query 1° Are debts from delict to be paid before debts from contract?

Resp. More probably negatively, but all are equally to be paid according to proportion, because by no right is it established that the former are to be preferred to the latter.[2]

Query 2° Must debts from an onerous title be paid before debts from a gratuitous title?

Resp. Affirmatively, because one who promises gratuitously always places the tacit condition: if I am able to furnish it conveniently; nor can he expend goods gratis with prejudice to a creditor from delict or from contract. - S. Alph.[3]

Query 3° Must poor creditors necessarily be preferred to rich creditors?

Resp. Negatively, unless they are in extreme or grave necessity, in which case the rich creditor is bound from charity to come to their aid. The reason is that the poor have no right of preference; and the right of the rich man is as strict as that of the poor man, since commutative justice does not attend to persons.[4] Yet it is probable that they can be preferred.[5]

Query 4° Are creditors prior in time to be preferred to later ones?

Resp. It is controverted. The first opinion denies it, because the law assigns no preference among these debts; but from natural right all creditors are equal, since individuals have right only in the person of the debtor, which alone is obligated equally to individuals, but not in his goods. For if the goods of the debtor were obligated, the creditors would already have dominion of them, nor could the debtor sell them, which is false.

The second affirms, because one prior in time ought to be stronger also in right. - Thus Lugo, Salmant.; and S. Alph.[1] says this is more probable, although he holds the former opinion as probable.

Notes to n. 789. (1) L. IV. 579. (2) L. IV. 579. (3) H. A. Tr. X. 55. (4) L. IV. 579. (5) L. IV. 579.

790. ○ Query 5° Are certain creditors to be preferred by the debtor to uncertain or unknown ones?

Resp. It is probably disputed on each side. Those who affirm say that certain things are owed to the owners by natural right, uncertain things to the poor by positive right only; which the patrons of the other opinion deny, who contend that restitution must also be made to the poor according to proportion, since this is presumed to be the will of the creditors, that what cannot be restored to themselves be restored to the poor.[2]

Query 6° Is it licit to pay one who asks first, although he is later in time?

Resp. 1° Affirmatively, if he asks juridically, because the legitimate sentence of the judge confers the force of privilege upon the creditor. - Thus all. - S. Alph.[3]

Resp. 2° More probably affirmatively also if he asks outside judgment, because he has a personal action against the debtor, and by asking for the whole debt he pursues his own right; but the other creditors ought to bear the cost of their own negligence.[4] - Since the law which moderated cession of goods in the whole Federation[5] has now been abrogated, let each one now consult the Statutes of his own State concerning the time within which payment accepted by a creditor is invalidated, who could have known the unstable state of his debtor.

Query 7° Whether can a debtor, knowing his own state to be unstable, satisfy integrally even one not asking?

Resp. Negatively, because, since all creditors are equal in right, and none among them pursues his right, and therefore no one becomes stronger in asking through diligence, natural equity demands that integral restitution not be made to someone with prejudice to the others. - S. Alph.,[6] Lessius, and others commonly. - And also this restitution, if it is made by a debtor who knows his own state to be unstable,

unstable, within which time before a requested cession of goods it may be invalidated, the general law having now been abrogated,[1] let each one learn from the Statutes of his own State.

Query 8° Is a creditor who in this case accepted payment bound to restitution toward the other creditors?

Resp. The opinion more serious to S. Alph.[2] affirms, because he has no right that he be paid integrally with detriment to the others; hence he is bound to satisfy them according to proportion.

Notes to n. 790. (1) L. IV. 596 sub 3. 4. Mar. p. 301. n. 128. (2) Mar. p. 302. n. 129.

ARTICLE IV: IN WHAT WAY IS RESTITUTION TO BE MADE?

791. ○ Generally it can be said that it is required and sufficient that restitution be made in that way by which violated justice is fully repaired, or repaired to equality, and thus the injured owner is made harmless. Hence 1° of itself, for example the obligation of repairing scandal being set aside, it is not required that it be made openly; indeed, often it cannot be made thus, when the reputation also of the one restoring must be consulted.

2° It is not necessary that restitution be made by the debtor himself, but it can be made by another, provided the thing is returned to the owner. It can sometimes be made through a confessor. Yet great caution is then needed, both that the seal of Confession remain uninjured, and that the penitent, in the case in which some suspicion against the probity of the confessor would have to be feared from some part of it, know that satisfaction has in reality been made to the creditor.

3° It is not necessary that restitution be made while the owner notices; because this is not required in order that he be harmless. Hence the debtor can restore, for example, by increasing the weight or measure in selling, or the work owed in laboring, and in six hundred other ways.

Notes to nn. 791-797 - note sequence 1. (1) H. A. Tr. X. 104. 105. (2) L. IV. 678. (3) H. A. Tr. X. 104. 105. Notes to nn. 791-797 - note sequence 2. (1) L. IV. 680. (2) L. IV. 680. 704. (3) L. IV. 680. 704.

792. Questions. - Query 1° Is restitution made through a simulated donation valid?

Resp. Affirmatively, at least more probably. The reason is that for payment it is not required that the debtor externally confess that he is paying. Hence the debtor satisfies whenever he pays even in those circumstances in which the creditor thinks that a gift is being made to him. - Thus the common opinion. - Carriere,[3] etc., against Billuart.

Query 2° If a creditor, moved by gratitude, repays another gift to him, must this be restored to him?

Resp. Affirmatively. The reason is that that donation is not fully voluntary and spontaneous, as a merely gratuitous donation must be essentially; for it proceeds from an opinion of antidoral obligation or of gratitude, which rests upon a false foundation. - Thus Carriere, against Tamb., etc.

Query 3° In what place, and at whose expenses, must restitution be made?

Resp. 1° If the obligation of restoring is from a thing accepted and retained in good faith, restitution is not necessarily to be made in another place than that in which the thing now exists; nor is such a debtor bound to transmit the thing at his own expense elsewhere, where the owner perhaps now dwells. The reason is that he is not bound to restore the owner into the former state, from which he did not cast him down by formal injury.

Resp. 2° If the obligation of restoring has arisen from delict, restitution must be made in the place in which the owner would have possessed the thing if it had not been taken away, lest this man undergo damage from the injury of the debtor. Yet the expenses which the owner also would have made can be deducted; and if this man has expended more than the debtor has now expended, even that excess of price which is owed to the peculiar industry of this latter can be retained.

Resp. 3° If a thing must be paid from contract, one must stand by the clauses attached to the contract, if agreement was made concerning the place and mode of transfer. Otherwise attention must be paid to the special laws according to the diversity of contracts, or, if these are silent, to the custom of places.

Notes to n. 792. (1) Wells. p. 599. (2) L. IV. 693. (3) n. 1265.

793. ○ Query 4° Must a debtor from delict also pay expenses for sending back the thing to the owner, if those expenses exceed the value of the thing itself?

Resp. 1° Affirmatively, if the excess is not very notable, because both the debtor, by committing injustice, took such a burden upon himself, and the owner is not bound to suffer the loss of his thing. - Thus commonly.

Resp. 2° More probably negatively, however, if those expenses would be greatest with respect to the value of the thing to be sent back. Then, from the presumed will of the creditor, restitution would have to be made to the poor. For right reason and charity dictate that the creditor cannot exact that restitution be made to him with any expenses whatever. - Thus Lugo,[1] Billuart,[2] S. Alph.,[3] who says that this is the most common opinion.

But theologians do not agree how great the debtor's loss ought to be for him to be excused from restitution to the owner himself. They hand down this rule sufficiently commonly: When, other things being equal, the damage which the debtor will suffer exceeds the damage of the creditor only twofold, it is not sufficient that the owner be deprived of his thing. But if it exceeds this proportion, it suffices that restitution at least be deferred, or, if it would be deferred in vain for that end, be made for pious causes. - Thus Lugo,[4] S. Alph.,[5] etc. Today, however, this controversy can scarcely have place because of the ease of transferring at least the price of the thing elsewhere. (o) p. 475.

Appendix annotation (σ), to n. 793. p. 324. col. 1. I said: other things being equal. St. Alphonsus explains this in these words (L. IV. 598. § Secunda sententia, at the end of the §): "Yet Lugo himself, n. 188, and Croix, n. 373, with Illsung and Haunold, rightly warn that the damage of the creditor and of the debtor must be weighed comparatively to the subject: for it can happen that damage of ten coins with respect to a poor debtor is far greater than damage of one hundred with respect to a wealthy creditor; and so conversely."

794. ○ Query 5° Must a debtor restore again if he sent the debt through a faithful person, and it perished by accident or by the fault of a third party?

Resp. 1° A debtor from possession of good faith is bound to nothing; because, fault and agreement being set aside, the thing perishes for the owner, who is the creditor himself. Yet he would be bound after the sentence of the judge, if juridical fault had intervened.

Resp. 2° A debtor from contract is bound to nothing, if it is a question of another's thing existing in nature, accepted as a loan for use or deposit, etc., because the thing perishes for the owner, unless otherwise agreed. It is otherwise if it is a question of a thing owed in genus; because the debtor preserves dominion in it until it has come to the creditor, and he must answer for accidents of the price or thing transmitted until it is handed into the hands of the same.

Resp. 3° A debtor from delict is not freed from restitution and remains bound to it so long as he has not truly made the owner harmless; because he always remains the culpable cause of the damage

which this man suffers. - S. Alph.,[6] however, does not dare to condemn those excusing a debtor of this kind who sent back the thing owed through a confessor, yet he very much doubts concerning the probability of their opinion.

Except a threefold case, in which the debtor is exempted from every burden, namely 1° if the owner designated the person through whom, or the mode by which, he wishes the thing owed to be sent to him; 2° if the creditor indeed did not choose the person or mode, but left to the debtor the liberty of choosing whom or what he wished, provided one prudent and faithful is chosen; 3° if the person or mode was designated by law or by the judge. - Therefore the confessor who has taken upon himself the burden of restoring for a penitent will prudently ask the owner by what means he wishes the thing to be sent to him.

795. ○ Query 6° In what way must restitution be made for damages inflicted upon the Republic?

Resp. It can be done in various ways, namely 1° by letters, even anonymous, to the treasurer either of the Supreme Government, or of the State, or of the County, or of the place, according as restitution must be made to the Federated States, or to the State, County, or some special place, with notification of restitution required from him in the Newspaper destined for this. 2° By restoring to those who were unjustly injured by the Supreme Government, State, etc. (n. 802). 3° If it is a question of restitution owed to the Supreme Government, by buying and destroying paper marked with the sign of the Republic (Stamps of all kinds), or paper money (Greenbacks).

Query 7° What mode of restitution in many cases is rightly suggested to wives, children of the family, servants, and workers bound to it toward husband, parents, master?

Resp. That, if another mode cannot easily be had, they repair the damage inflicted by greater frugality, more diligent care of the household property, supererogatory labor, etc.

ARTICLE V: WHEN IS RESTITUTION TO BE MADE?

796. ○ I. As to any debts whatever, generally restitution must be made as soon as it can be done without grave inconvenience. For natural right requires that you not retain another's thing while the owner is reasonably unwilling.

Hence 1° one who culpably defers restitution remains in continuous sin and cannot be absolved. Moreover, if damages come to the owner from the delay of restitution, or profit ceases, he is bound to compensate these things.

2° One who defers restitution a little, for example for 20 days (L. IV. 679), without grave inconvenience to the owner, is not easily, from this precise reason, to be condemned of mortal sin, indeed not even of venial sin if there is some cause of deferring, for example hope of a more convenient occasion, etc.[1] - Yet recall what was said n. 719. 4° concerning absolution regularly not to be conceded to those who, when morally they can, do not restore before absolution.

3° One who would wish to restore in parts, when he can easily restore the whole, would not be absolved; because the owner is reasonably unwilling even in this. The same must be said of him who, when he can restore during the course of life, nevertheless defers until death; or who, being

constituted in danger of death, would reject without sufficient reason the obligation of restoring upon his heirs. - Recall what was said n. 719.

II. As to debts from injury; all damages which followed from delay must be compensated, even when the delay was inculpable.[2] Cf. n. 797. Query.

But whether extraordinary damages also must be compensated, or those which do not necessarily follow from delay of restitution, is controverted. - It seems probably to be denied, because these damages could not have been foreseen, nor therefore can they be imputed. S. Alph. does not treat the question.

797. ○ III. As to debts from contract, generally one must stand by the conditions attached to the contract concerning time or concerning other circumstances, unless it is prudently presumed that the will of the other contracting party is otherwise.

Hence 1° restitution, or rather payment, must be made at the time concerning which agreement was expressly or tacitly made.

2° The debtor can anticipate, if the term assigned to payment is in his favor, as ordinarily happens; otherwise, however, if the same term turns to the utility of the creditor, as for example in furnishing money with profit to be perceived.

3° If the term has not been fixed, according to the opinion of many the debtor without sin at least grave can generally wait until he is warned by the creditor, unless nevertheless this man takes damage from it, or from fear does not dare to warn, or from forgetfulness or inability omits the warning, or the debtor obligated himself with an oath; for an oath of itself obliges as soon as possible.[3]

4° If the debtor has a just cause of deferring, he is not bound to compensate damage coming from delay.[1] - Thus commonly.

Query. Is he who delayed restitution from a just cause bound to compensate profit ceasing or damage emerging?

Resp. He is bound when the debt comes from delict; because although he did not sin by deferring restitution from a just cause, nevertheless from the preceding injury he is truly the unjust and culpable cause of that damage, and therefore that damage must be repaired by him. - Thus commonly, with S. Alph.[2] against others. - But if the debt comes from contract, he is not bound; because then the debtor is not the unjust and culpable cause of that damage, since he is by no means supposed to be in culpable delay, and so it does not appear by what title he is bound to this.[3]

Notes to n. 797 - note sequence 1. (1) L. IV. 677. Mar. p. 304. n. 137. II. Notes to n. 797 - note sequence 2. (1) n. 185. (2) Diss. 8. a. 16. (3) L. IV. 598. (4) D. 20. n. 190. (5) L. IV. 598. (6) L. IV. 704.

CHAPTER IV: ON THE CAUSES EXCUSING FROM RESTITUTION

798. ○ I. They excuse for a time: 1° physical impotence, namely when the debtor has nothing whence he may restore; 2° moral impotence, or grave difficulty of restoring, whether on account of present necessity or on account of damage that would follow from restitution. And this indeed excuses as often as the one restoring would have to undergo damage much graver than the advantage which the creditor would perceive from restitution; for the order of charity demands that the creditor then consent to a delay of restitution. Therefore this impotence would be present to him who could not restore a) without danger either of his own soul or of his own, for example of prostitution, or of life or reputation, provided the loss of reputation outweighs the damage of the creditor; b) without damage exceeding double the value of the thing to be restored, provided nevertheless that the creditor is not going to undergo equal damage from the delay of restitution (but profit ceasing to the debtor from restitution does not excuse, unless the damage to the creditor from delay would be light); c) without notably falling from his justly acquired state, as if an honorable citizen could not restore unless he had to live in the manner of workers.[4]

Several except if the debtor culpably, for example by games and revels, has thrown himself into such necessity. - Thus Laymann, Lacroix, Busemb. with others. But S. Alph.[1] says: "Notwithstanding this, whenever a debtor would fall from his justly acquired state, to me and to other learned men it seems hard to oblige him to integral restitution. Moreover, S. Anton., Sporer, Elbel rightly note that in such a case the debtor is always bound to diminish expenses, so that he may be able to restore at least what he can."

The debtor can also regularly, even if the state was unjustly acquired, restore gradually when otherwise he would lose a good of a higher order, for example reputation, provided nevertheless that the loss of reputation is not very slight with respect to the damage of the creditor.[2]

Notes to n. 798. (4) H. A. Tr. X. 117; L. IV. 598. 697. I. g. Ref. 25. 698. q.

799. ○ II. They excuse in perpetuity: 1° remission, or condonation, of the debt on the part of the creditor; but it is required that the creditor be able to condone, and have dominion and administration of the thing owed to him; likewise that the remission not be made by force or fraud, but altogether freely and spontaneously. 2° Compensation, either improper or proper or legal. The former is either hidden or manifest (n. 708 sq.). Therefore you are freed from restitution if, for example, you procure for your creditor an equivalent advantage, suppose through gratuitous service furnished by a physician, etc. - Legal compensation is that by which a creditor, in order to recover a debt from someone, retains for himself a thing of the same price owed by himself to the same person; which will be licit if it is a question of a sum of money or a fungible thing (for example wheat) of the same kind, demandable on each side at the same time. Example: on the 1st of the month I owe you 100 for wine sold to me by you, and you on the same day owe me one hundred for buildings leased by me to you. 3° Prescription (n. 668). 4° Destruction of

the thing, but only in the cases in which the thing perishes for the owner (n. 722. 734. 955. 3° etc.).[3]

Notes to n. 799. (1) H. A. Tr. X. 118. (2) L. IV. 698. 10. (3) L. IV. 700. Mar. p. 306. n. 141.

800. Questions. - Query 1° Is a debtor bound to restore if he is situated in the same necessity, whether grave or extreme, with the creditor?

Resp. 1° If the creditor is already found in grave necessity, and the debtor by restoring would fall into that necessity, he must restore according to all.

2° If each is already found in grave necessity, it is disputed. More probably he is excused from restitution which is not owed from delict (n. 797. 4°); indeed probably also if from delict, because the debtor then by restoring would subject himself to much graver damage, since from grave necessity he would have to slip into quasi-extreme. Except if the thing itself still exists in species, or if the creditor precisely through that taking away was thrown into grave necessity. - Thus commonly.

3° If each is in extreme necessity, more probably restitution can be omitted; because then all things become common. - Except, as immediately above 2°, if precisely on account of that withdrawal (for example of a plank in shipwreck), the owner (in the case posited, he who first occupied the plank) was thrown into extreme necessity, because to take from someone a thing necessary to himself for life is the same as to kill him.

801. ○ Query 2° Is he bound to restore who accepted and consumed another's thing in extreme necessity?

Resp. 1° If he has his own things elsewhere, affirmatively; the reason is that even in the time of necessity he is not truly impotent.[1]

2° The same must be said if, in act indeed, he has nothing, but he has in probable hope; because one suffering necessity of this kind is sufficiently provided for through borrowed money without interest.[2]

3° If no hope shines in act, he is not bound; because then he made the thing his own. - Thus the more common theologians. - Except if he did not need absolutely that particular thing, or if only the use of his thing was necessary to him, for example of a horse for fleeing a murderer.

Query 3° Is he excused from restitution of a debt who, unmindful of the debt, gave something gratuitously to his creditor?

Resp. A twofold opinion is given:

The 1st Opinion denies it. The reason is that what is given gratuitously cannot be held as payment of a debt. - Thus Sanchez, Vogler.

The 2nd Opinion affirms, with Lacroix,[4] Tamb., etc. The reason is that each one is judged to wish first to satisfy the obligation of justice rather than mere liberality. The first opinion is more common and very probable; but the second is not without its probability, says S. Alph.,[5] and he says it is sufficiently probable whenever, as must be presumed, the debtor, if he had been mindful of the debt, would by no means have given.[6]

Query 4° Can one burdened with debts enter religion, and is he freed from debts if he has entered?

Resp. to the 1st. Negatively, if in a short time, that is, within two years, he can have whence he may pay;[1] otherwise, more probably of itself, if he must wait for a notable time, or even if from a brief stay in the world there threatens a probable danger of falling into sins or of losing vocation. But on account of uncertain debts no one is bound to defer entrance, not even for a short time, since nothing is so pious as to dedicate oneself and all one's things to God.[2] ... Yet if the debts are of great moment, such an entrance, although valid, is prohibited as illicit by Canon Law. This disposition of Law, however, does not comprehend nuns, who in odious matters do not come under the name of religious, nor those burdened with uncertain debts, nor those who without grave fault have been made impotent for restitution, nor debtors by reason of donation.[3] Moreover, Superiors would imprudently receive debtors against whom creditors can have a civil action.

Resp. to the 2nd. 1° Religion is not bound to pay these debts from its own goods, as is clear; nor to give the religious permission to work so that he may satisfy them, except, while nothing stands in the way, from charity.[4] But the goods which the debtor, having entered Religion, handed over to it are subject to restitution, because Religion succeeded into them with the burden attached to the same. Thus Varceno. 2° The religious is bound to pay them from goods which he had before profession, or which come to him by legacy, if he emitted only simple vows; otherwise, however, if he was solemnly professed. - Thus commonly.

Notes to n. 801 - note sequence 1. (1) H. A. Tr. X. 129. (2) L. IV. 520. (3) L. IV. 520. (4) n. 452. (5) L. IV. 700. (6) H. A. Tr. X. 120. Notes to n. 801 - note sequence 2. (1) The opposite opinion of S. Th. is also sufficiently probable to S. Alph. H. A. XIII. 27. (2) L. IV. 71. (3) L. V. 71. (4) Ibid.

802. ○ Query 5° Is he freed from restitution who pays the debt to the creditor of his creditor; for example, I owe $100 to you, but you owe 100 to Titius; do I satisfy by paying 100 to Titius?

Resp. Affirmatively, of itself and with attention to commutative justice alone; for I, by paying to your creditor that which you owe to him, acquire the right which he had of demanding his debt from you. Hence the right which I have in you is equivalent to the right which you have in me, and compensation is made. For your creditor can transfer his right to me, or I can buy it, just as anyone else who owes you nothing. - S. Alph.,[1] Billuart,[2] and others commonly.

I said: 1° of itself, because I am not freed if perhaps you are still compelled to pay, or if you have privileged or hypothecary creditors.

I said: 2° with attention, etc.; because such payment, if it is made without cause, will be illicit on account of the order of right which it is necessary to observe. But there is a sufficient cause if the creditor can in no other way recover his debt.

803. ○ Query 6° Is a debtor freed in doubt or probability of payment?

Resp. Negatively, in negative doubt, as is clear. But affirmatively, if payment is either uniquely probable or far more probable. Again negatively, according to S. Alph.,[3] in strict positive doubt, since the debt is in possession, which therefore will have to be paid integrally or in part, according to the doubt. But if the creditor himself also doubts, payment must be made according to the proportion of

the doubt, because then neither certainly possesses (n. 60. II. under 3°). "Yet Layman adds that he would not dare to condemn the creditor if he exacted the whole."[4]

804. ○ Query 7° Does reasonably presumed condonation excuse from restitution?

Resp. Affirmatively, at least more probably, because retention of another's thing is not unjust unless it is done while the owner is unwilling. But it is not done while the owner or creditor is unwilling, if it is done from his reasonably presumed will. Thus children are often excused who have stolen from parents a sum not great for the condition of the parents; servants who have consumed common edible things or otherwise taken things of this kind of small price; wives sometimes from furnishing damage inflicted upon common dominion. But abuse in this matter must be guarded against as much as possible, lest thus a door be opened to innumerable injustices, and condonation, as odious, must be interpreted strictly. Hence in doubt it must be presumed that the owner does not consent to be despoiled of his thing.[5]

Notes to n. 804. (1) L. IV. 700. (2) Diss. 8. a. 14. § 1. (3) L. IV. 700 in fine et L. I. 34. (4) L. I. 34. (5) L. IV. 700. Mar. p. 305. 306. n. 139. 140.

SECTION II.

ON RESTITUTION IN SPECIES.

Here it must be treated concerning restitution on account of damage inflicted upon the neighbor in the goods 1° of the soul, 2° of the body, 3° of fortune in certain cases.

CHAPTER I: ON RESTITUTION ON ACCOUNT OF DAMAGE IN GOODS OF THE SOUL

Generally each one is bound from justice to repair damage which he has efficaciously and unjustly brought upon the neighbor in goods of the soul, both natural and supernatural, provided that this damage can be repaired in the same order. For no one has a less strict right not to be injured in goods of this kind than not to be injured in goods of fortune.

805. Resolutions. - I. As to damage in supernatural goods:

1° He who by force, lie, fraud, or unjust fear induced someone into lethal sin is bound under mortal sin from justice to reparation of the damage, by taking away the force or seduction, by manifesting the error, etc. But one who without force or fraud, but only by counsel, induced someone to sin lethally, is indeed bound from charity to revoke that counsel, but not from justice, because no injury is done to one knowing and willing.

2° He who by deceit induced another into error, especially practical, from which grave damage can arise to him in matter of morals, is bound from justice to repair the damages which come from it, and therefore with all care to remove him from error. Say the same concerning speculative error about the articles of Faith.

3° He who by force, grave fear, or fraud impeded someone from entrance into Religion, or induced one already entered to desert Religion, is bound from justice to remove the fraud and deceit; for each one has a right not to be unjustly impeded or drawn away from the obtaining or possession of so great a good. He is likewise bound to repair damages caused to the monastery or Order through the departure of a professed religious, or even more probably of a novice.[2]

4° He who inculpably placed a cause of damage in spiritual goods, for example preaching false things in a moral matter which he thought true, is bound to the same thing as a material damager who can still impede the damage. Recall what was said n. 749. q. 3°.

Notes to n. 805. (1) L. IV. 660. 661. (2) L. IV. 662.

806. ○ II. As to damage in natural goods:

1° He who deprived another of memory, reason, etc., through poison, a love-potion, etc., is bound from justice to repair everything which is reparable from the damage unjustly inflicted.

2° He who by fraud impedes another from learning a science, an art, ... or from teaching others, is bound to dispel the fraud and to repair temporal damages which have arisen from it.

3° He who from office ought to teach an art or science is bound to correct errors, if he has admitted any of some moment. The same obligation also lies upon him if from negligence or levity he has mixed probable things with improbable.

4° But if someone gratuitously and without the obligation of agreement or office were to teach badly, that is, without any or with slight progress of the pupil, from negligence or ignorance, fraud and

deceit being set aside, he would not be bound to reparation.

5° He who inculpably placed a cause of damage in natural goods is bound to the same thing as he concerning whom in the next preceding number under 4° it was said.

CHAPTER II: ON RESTITUTION ON ACCOUNT OF DAMAGE IN GOODS OF THE BODY

Namely 1° on account of homicide, 2° defloration, 3° adultery.

ARTICLE I: ON RESTITUTION ON ACCOUNT OF HOMICIDE

807. ○ From homicide and mutilation a threefold damage can arise: spiritual, when the victim is deprived of the sacraments or of time for due preparation; natural, from life or members lost; temporal. From the first there exists an obligation of charity, as far as one can, of helping the soul of the killed person; indeed, according to distinguished theologians,[1] also of justice, if that damage was foreseen in confused manner, for it is a question of a good from whose obtaining the killed person was impeded by an unjust means. Cf. n. 805. 1°. - For natural damage, since it cannot be estimated by price, more probably nothing is owed; nevertheless the confessor fittingly imposes something for penance or from equity. - Temporal damage is either of the injured person himself or of others.

Damage exists for the injured person himself: 1 on account of expenses for the healing of the wound; 2 on account of damage emerging and profit (pure, namely "clear gain") ceasing for the time during which the wounded man could not attend to his accustomed work or business. Both this (if it was foreseen) and that (unless they have been condoned by the dead person[2]) must be furnished: a. by any heirs whatever of the dead person; b. by the heirs of the killer or wounder; for the former succeed into the rights of the dead person, the latter into the burdens also of the killer or wounder. - On account of funeral expenses, since they would have had to be made at some time, nothing is owed, unless perhaps, on account of a killing inflicted outside the homeland, they had to be greater.

The others to whom damage can exist are understood of themselves only to be parents, wife, and children, insofar as they actually are deprived either of support or of profit to be perceived, with attention to the hope of life and the condition of the deceased. - Only, that is, not brothers, sisters, and the other blood-relatives, since not these, but only those constitute one moral person with the deceased, namely the family, so that by homicide damage is directly inflicted unjustly only upon them. Wherefore not even the one killed could condone to the killer the reparation of this damage. Nor are creditors of the deceased understood here; because if by his death they are frustrated of payment of the debt, this follows from the killing only by accident and remotely. - Of themselves, because if someone kills another, not I say foreseeing, but intending by this very murder to damage the brothers or creditors, or to impede the making of a will, the damage must be furnished. Cf. n. 692. 5° and (r) p. 475. - In reality, because if, for example, the wife has married equally advantageously, or she, the parents, children are supported by a friend of the killed man, no reparation of damage is owed to them as to support, since it was in fact not inflicted.[2]

Reparation of damage inflicted by homicide perpetrated without theological fault is also licitly sought from a judge. Cf. n. 747. III.

Notes to n. 807. (1) Lugo D. 11. n. 3. (2) That condonation is not contained in deposition of hatred. Notes to nn. 807-815. (1) Mar. p. 401. n. 303. Lugo, D. 13. n. 37-40. (2) L. IV. 656. Appendix annotation (τ), to n. 807. p. 329. col. 2. Crolly, de Juris alieni violatione n. 1269, explains the matter very well by this argument of common sense: "If ... Caius should say to Julius: Do you think that it is therefore not lawful for me to kill Marcus, who has violated my daughter, because he owes you money, Julius can reply" (and this response of common sense will indeed be consonant with those principles of theology on which St. Alphonsus relies): "I do not say to you, that it is therefore not lawful for you to kill Marcus because he owes me money, but that it is not lawful to do it in such a way that you prevent me from obtaining my just debt" (credit?).

808. Questions. - Query 1° Does an obligation of justice remain in the heirs if a murderer is punished with death without having repaired the damages?

Resp. Affirmatively. For penalty satisfies vindicative justice, but not commutative justice. Therefore heirs must pay debts from commutative justice, unless the injured parties do not complain, provided nevertheless that the thing does not exist or the damage is not very grave.[3]

Query 2° Is he bound to restitution who kills another by exceeding the mode of just defense, or the MODERATION OF BLAMELESS DEFENSE?

Resp. Affirmatively, if he deliberately exceeded, because the invader has a right not to be unjustly killed; therefore the killer, by knowingly exceeding the limits of just defense, commits grave injury. - Thus the common opinion. S. Alph.,[3] with Lugo,[4] against some older authors cited by the same Lugo.[5]

Query 3° Is he bound to anything who kills another in a duel?

Resp. More probably negatively, whether he was the one provoking or the one provoked. For no injury is done to one knowing and willing, when the right can be remitted; but even one accepting the fight both willed and could remit temporal damage. Therefore... S. Alph.,[6] Lugo,[7] etc.

Others say that the one provoking is indeed bound to restitution if he killed the adversary, but not the one provoked. - But others obligate each one. But these opinions are not to be attended to in practice.

Query 4° To what are those bound who have ownership of railways and of ships which are moved by steam, if, the rules of prudence not having been observed, someone is killed or wounded in them?

Resp. They are bound to pay as much as the judge by equitable judgment decrees to be paid; and they sin and are bound to restitution if by fraud, deceit, and gifts, as often happens, they induce the judge to bring an unjust sentence.

Notes to n. 808 - note sequence 1. (2) L. IV. 659. (3) L. IV. 659. Notes to n. 808 - note sequence 2. (3) L. IV. 588. (4) D. 11. n. 65. (5) 23. n. 29. (6) L. IV. 585. (7) D. 10. n. 65.

ARTICLE II: ON RESTITUTION ON ACCOUNT OF DEFLORATION AND FORNICATION

809. Principles. - I. For merely natural damage, or for the injury of bodily integrity and the loss of virginity, nothing, at least more probably, is to be restored; because that damage cannot be compensated by money.[1] Hence, agreement being set aside and no other damage having

followed, for example because the crime lies hidden, or the woman has married honorably, has professed religion, or has died at a premature age, nothing is owed.

II. Even for temporal damage which has followed from base intercourse, nothing, except the education of the offspring, must be restored when the woman consented to the solicitation; for no injury is done to one knowing and willing.[2]

III. If the deflowerer violated the girl by force or fraud, he is bound to repair all damages coming from it to her or her parents. Yet, if Marriage was not promised, he is not bound to marry her, unless the damage can in no other way be repaired or he has been condemned to this in penalty. But he is bound only for part of the damage who, through moral force alone, suppose threats, reverential fear or fear of infamy, very importunate prayers, touches and kisses, elicited the consent of the girl.[3]

810. Questions. - Query 1° Is the violator bound to marry the girl violated under promise of marriage?

Resp. The common opinion, and according to S. Alph.[4] altogether to be held, affirms. The reason is 1) because otherwise the damage cannot be repaired adequately; 2) because the unnamed contract Do, that you may give, etc., is then perfected when the handing over of the thing or the furnishing of the work is done; and then the reason and force of laws which render base agreements void ceases. For the obligation which is then contracted by the other party is not base, nor does it drive one to a base thing. - Yet note the following.

I. If the promise was not the motive cause of the woman's consent, it, as any other gratuitous promise (n. 872 sq.), will have to be interpreted.

II. If it was the motive cause, it obliges from justice, unless excusing causes are present. Hence the obligation ceases: 1. If the outcomes of a very bad marriage are feared, for example on account of the lighter disposition of the girl, hatreds and quarrels of the families, etc., because in these cases the promise, as being concerning an illicit thing, was invalid. 2. If the man afterward discovers that the girl had already been deflowered before or had afterward fornicated with another. The reason of the former is that there is no obligation of furnishing to a corrupted woman what was promised to a virgin; of the latter, because faith is not to be kept with one breaking faith. 3. If, as is clear, the girl herself rejects marriage. 4. If an impediment of marriage is present, the obligation ceases, because it is impossible of fulfillment, if in it there is either never or rarely dispensation; because it is concerning an illicit thing, if the woman is non-Catholic (yet in this case, under the due conditions, dispensation must be sought, if the woman, otherwise honorable, suffers danger to her reputation on account of the man's delict). The obligation holds, and that even with grave inconvenience, if dispensation is usually granted in the impediment, whether an agreement of seeking dispensation is supposed or even set aside. Otherwise if (the agreement being set aside) the fornicator inculpably did not notice the impediment and cannot remove this without grave inconvenience (which nevertheless today scarcely exists). The reason of each is that one who has taken upon himself some obligation by an onerous contract is bound, even with grave inconvenience to himself, to remove impediments which he knows or culpably does not know to stand in the way of fulfilling this obligation; but not those to which (the agreement being set aside) he inculpably did not attend. 5. From a fictitious promise, as from damaging fraud, an obligation exists equally as from a true one. But it does not

exist in the case in which the fiction could easily have been perceived by the woman, for example from ambiguous words or from known notable disparity of condition; for then she wished to be deceived and is to be judged to have consented freely.

Compensation made in another way than through marriage is required and suffices: a) Very probably, in the case under 5, if the woman was ignorant even of the fornicator's disparate condition, because justice obliges only to equality, and the woman was not seeking consent of so great a value; b) In the case under 3, if it does not stand through the girl that she enters into nuptials, for example the parents impeding them. Then compensation made in another way suffices, as is clear of itself; more truly, as it seems to S. Alph., it is required, because the promise was made principally for repairing damage; c) In the case under 4, if (the agreement concerning seeking dispensation being set aside) the fornicator did not inculpably notice the impediment of marriage and cannot remove the impediment without grave inconvenience. Resolve the same if dispensation is denied. The reason is that it is always true that damage was unjustly given.

Notes to n. 810. (1) L. IV. 640. (2) L. IV. 641. (3) L. IV. 642. H. A. Tr. X. 92. (4) L. IV. 642.

811. ○ Query 2° Is the violator bound to anything toward the parents of the violated woman, if she freely consented to the sin, for example because they must increase her dowry?

Resp. Most commonly negatively, since the girl is mistress of her body, not the parents. Wherefore, since she is not bound toward them concerning damage, neither can the violator be bound concerning it. Except if this man, by spreading abroad the violation, brought infamy upon the girl, in which case he is bound concerning every damage arising to the girl and the parents from the infamation.[1]

Query 3° To what is the violator bound toward spurious offspring?

Resp. 1° If he oppressed the mother by force, he is bound to all expenses of nourishment and education. The reason is clear from what has been said. Yet in his default, the mother ought to undertake care of the child, although she admitted no fault, because she is the mother. But then she preserves recourse against the corrupter, who is bound to compensate to her all expenses which she made on occasion of the offspring.

Resp. 2° If the woman consented to the sin, by natural right both parents are equally and in solidum bound to those expenses. As regards the Fed. States, Smith notes:[3] "The ... duties of parents of bastards are regulated to a great extent ... by local statute."

ARTICLE III: ON RESTITUTION ON ACCOUNT OF ADULTERY

812. Principles. - I. Each adulterer is bound in solidum to repair all damages of the family, if the crime was voluntary on each side, because the whole is imputed to each. Hence 1° all expenses which the husband sustained in nourishing and educating the offspring must be restored. But if these expenses are compensated by the labor of the spurious son, damage which afterward must be repaired is not in reality given to the father. 2° If the illegitimate son with legitimate or other innocent heirs (but not those of the adulteress alone) has already received the inheritance, compensation according to proportion must be made to these.[1]

II. The adulteress must restore from paraphernal goods (and, if surviving the husband, from goods coming to herself) to husband and children through donations, through contract, testament, etc. If she does not have them, let her administer the family more diligently, be more sparing in private expenses, and work more diligently insofar as state permits.

III. If the woman consented by force or fear, the adulterer alone is bound; but he who by contract took all damage upon himself is bound in the first place.

813. Questions. - Query 1° Is a woman bound to reveal her crime if she cannot repair the damage in another way?

Resp. Negatively, speaking generally. The reason is 1° because commonly this revelation cannot be made without great infamy, and often also not without danger of death, or perpetual hatred, or other grave evils; 2° because with difficulty could she repair the damage even by it, especially since the son, except in the case in which the mother as adulteress would be condemned in the external forum, is not bound to give faith to her. Except: 1) if the mother is of lost reputation; 2) if by manifesting herself to the spurious son she would probably hope that the son would believe her and would cede the goods, nor would there be feared further great infamy or vexation of the mother; 3) if she could avoid the damage by manifesting herself only to the husband. But the cases of these exceptions, especially of the second and third, are very rare, not to say metaphysical.[2]

814. ○ Query 2° What in doubt whether the offspring is of the husband or of the adulterer, or from this adulterer rather than from another?

Resp. to the 1st, more probably, adulterers are bound to nothing, because the damage is not established.[3]

Resp. to the 2nd. Negatively; see n. 154.

Query 3° Must those things be restored which are given or left to a spurious person because he is thought legitimate?

Resp. Negatively, unless either the spurious person knows himself to be such (n. 894), or some unjust means is used so that another be impeded from obtaining those gifts (n. 692. R. 5°), for example if the adulteress, knowing that some rich man is going to give to the children of her husband, substitutes the spurious child.[1]

Notes to n. 814. (1) L. IV. 642-650. H. A. X. 93-98. Mar. p. 396. n. 293-297. Kent. Tr. X. 222. (2) L. IV. 641. Dub. 2. (3) n. 129. (p).

815. ○ Query 4° If wealthy adulterers or fornicators send offspring to a foundling hospital, are they bound to repay the expenses?

Resp. It is controverted. The opinion more probable to S. Alph.[2] denies it, because foundling hospitals have been erected for all indiscriminately abandoned infants, who are cast off by parents. Nor does it stand in the way that aids are supplied by the Government or by the Municipality for these little children, because these are assigned for abandoned children generally, without attention being paid to the parents. Moreover hospices of this kind have been instituted for this end, that illegitimate children be freed from the danger both of eternal and temporal death, to which

illegitimate children of the rich are also exposed. In practice parents are to be exhorted that, at least under the title of penance, they contribute something to the foundling hospital.

Notes to n. 815. (1) L. IV. 659. Mar. p. 401. n. 302. (2) L. IV. 653. 654. (3) L. IV. 657.

CHAPTER III: ON RESTITUTION ON ACCOUNT OF DAMAGE

In goods of fortune in particular cases, namely 1° as to taxes; 2° as to military service.

ARTICLE I: ON TAXES

816. Definition. - Tax is all that which is imposed by legitimate power commanding citizens to be paid for sustaining the common burdens of the republic.

Division. - Today that division of taxes especially obtains by which they are distinguished into direct and indirect. Those are called direct which immediately affect the person or his goods. Of this kind are real taxes, which are imposed upon fields and houses, and those which in some places are imposed upon the person and commonly are called personal, and those which in some regions are established upon movable wealth, and other things of this kind.

Indirect are those which fall immediately upon some action concerning some things, and mediately upon the persons who perform concerning those things an action which falls under the law imposing the tax, suppose they sell, buy, consume, introduce, etc., according as purchase, sale, consumption, introduction, etc., is taxed by law. To these are referred those things which in some provinces must be paid for right of succession, for recording of contracts, etc.

Notes to nn. 816-827. (1) Mar. p. 302. n. 225.

817. ○ Conditions required for the justice of a tax. Three are commonly recounted.

1° That it proceed from legitimate power, namely from that which is supreme in the republic; from the supreme Congress among us for the whole Confederation, but within the limits fixed by the Constitution;[1] from the legislative Assemblies of each State for the respective State, and, from faculty conceded to them by the supreme power of each State, from the colleges of Municipalities and Counties for the inhabitants of Municipalities and Counties.

2° That it be established from a just cause, namely of necessity or common utility.

3° That it be divided in due proportion. But this requires a) that, when the cause of the tax regards all equally, those who are richer be more burdened, and those who have lesser means pay less. But if the cause does not regard all equally, those whom it regards more must be more burdened. b) That proportion also be observed to the things upon which the tax is imposed. For if it is imposed upon an immovable thing, it ought not to exceed a moderate quantity, considering its fruits and the labors and expenses which are made concerning that thing. But if it is imposed upon movable things which are sold and bought or made by art, care must be taken lest such be things of this kind, or so great be the tax, that it redound to a greater burden of the poor, or of artisans, or of merchants, than they can conveniently sustain for supporting life and family.

818. ○ Obligation of the law of taxes in conscience. Laws which concern taxes, looked at generally, according to the opinion which S. Alph.[2] calls most common and more probable, are not merely penal, but oblige in conscience.

It is deduced 1° from Scripture.[3] 2° It is clear also from reason; for the Prince is bound to bear the burdens of the Republic; therefore by parity subjects are bound to furnish the means necessary for promoting the common good. But of the patrons of this opinion, some teach that this obligation belongs to commutative justice, while others that it arises from legal justice, and that therefore those defrauding taxes are not bound to restitution, which exists from commutative justice alone.[1]

Nevertheless there are not lacking those who judge tax laws universally merely penal. After the reasons of these have been set forth, S. Alph.[2] says: "But whether, on account of these reasons, which moreover do not seem contemptible, it" (the affirmative opinion) "is sufficiently probable, I leave to the wiser." And in the Hom. Apost.[3] he concludes: "Yet notwithstanding this, I do not omit to advise the first" (denying) "opinion." - But the principal reason of those Doctors rests upon the universal custom of accepting and interpreting the law otherwise; to which today this is added, that the supreme moderators of empires nowhere appeal to conscience, indeed nowhere to the religion of peoples, but while they enlist for themselves innumerable armies of guards, overseers, and collectors for exacting duties and other taxes, they seem altogether to trust more in them than in the conscience of subjects. Cf. what was said n. 178.

Notes to n. 818. (1) Art. I, Sect. 8. 9. (2) L. IV. 615. 616. (3) Matth. 22. 21. Rom. 13. 5-7.

819. ○ Practice to be observed with penitents as to tax laws.

The patrons of each opinion almost agree as to these things:

I. It is not expedient that the confessor ask penitents who are silent in Confession concerning taxes whether they are guilty of any defrauding, lest perhaps he uselessly inject bad faith into those who are in good faith.

II. "But speaking generally concerning all customs-duties, Lugo[4] thinks that peoples must be warned to pay taxes, but after the fact they are not to be compelled to restitution of tax defrauded, if probably they persuade themselves that in so great a multitude of customs-duties they have paid something unjust, or have contributed competently to public necessities." Thus S. Alph.,[5] reporting the opinion of Lugo, without reproving it by even a little word.

Notes to n. 819. (1) L. IV. 616. (2) L. IV. 616. (3) H. A. 51. (4) D. 36. n. 43. (5) L. IV. 616.

820. ○ III. The following are not to be urged to restore taxes:

1° Those from whom they were not asked, and this from custom legitimately received, beyond which laws do not oblige. Hence tolls which are paid for a bridge, for a public road, do not necessarily have to be furnished before they are asked. Therefore if there is no collector who asks the toll, while a merchant passes with all fraud set aside, he does not sin against justice by paying nothing. Thus S. Alph.[1] nearly reports the opinion of Sanchez, without reproving it.

2° Those who place secretly the action which falls under tax, so that the appointed collector does not come into knowledge of it, so that by thus evading the asking of the tax, its payment also is evaded; as when someone purposely hides merchandise which he carries into a region, and for which duty would have to be paid, or carries it in through trackless places and at inconvenient hours, or secretly sells merchandise, for which sale likewise tax would have to be paid. The reason is that if taxes are so received by the republic that they are not owed unless asked, why will someone not be able to hide

himself lest they be asked from him? The collectors themselves, or those whose interest it is, ought to keep watch lest someone, for example, sell his goods secretly; for others are not bound to bring it about that their contracts come to the notice of tax-farmers or others. Molina with others cited by Lugo[2] holds this opinion, and other learned men cited by Sanchez,[3] who calls it probable, and S. Alph.[4] reports it.

3° Those who, when interrogated by collectors about what merchandise they carry or have sold, etc., lie by declaring less than the thing is; because when the tax-collector could proceed with the highest rigor by verifying the thing, if he does not do this, he sufficiently indicates that in the case he does not ask taxes with the highest rigor, and that he holds himself content with the declaration made. And Sanchez[5] again calls this probable, and Molina holds it according to Lugo.

4° Those who do not pay taxes only doubtfully just, whether the doubt is negative (yet joined with some presumption concerning the injustice of the tax), or positive. The reason is that the Rules, "One must obey the Superior commanding in doubt," and "The law in doubt is presumed just," cannot be applied in the matter of taxes. Not the former, because all Doctors admit that a subject is not bound to obey in doubt when the precept (in the case, of paying a tax) is too difficult, or brings grave damage to him. Not the latter, since presumption fights against tax laws; for as many and very grave Doctors say, there are few taxes in which all the conditions necessary for their justice actually concur.

5° Those who are so poor that, if they paid the taxes, they could not feed themselves and their own, either because they perceive moderate profit from their business, or because they are burdened with numerous offspring, or because they are burdened by debts, or because they are hindered by other necessities. For natural right demands that someone feed himself and his own before paying taxes. Cf. S. Alph.[1]

6° Those who do not pay duty on things serving for the proper use of themselves and of the family.[2] - I would add:

7° Those who against the power exacting taxes have a just title of compensation, and

8° Those who by force of ecclesiastical immunity, still in force (n. 112), are not bound to pay taxes.

Notes to n. 820. (1) L. IV. 616. (2) D. 36. n. 44. (3) Consilior. L. II. cap. 4. dub. 10, n. 11. 12. (4) L. IV. 616. (5) Ibid. 16.

821. ○ IV. The following must be condemned:

1° According to the common opinion of the Doctors, those not paying real taxes imposed upon lands and fields, provided nevertheless that the conditions required for the justice of the tax are certainly present. But a tax is called real which is not imposed only by reason of the person.

2° Those who would compensate themselves after a sentence of the judge, at least a definitive one, from which appeal cannot be made, and which cannot be weakened by any remedy of law.

3° Those who in any way corrupt those appointed to exact taxes, or judges to whose tribunal some tax case is brought; for they sin at least by cooperating in the sin of these.

4° Those who violently resist ministers exacting duties; for these sin 1° against obedience: He who resists power, resists the ordinance of God.[3] - 2° against legal justice; for the law which regards taxes,

even if it were sometimes held as merely penal, nevertheless gives to rulers a certain right to exact the fine if subjects are caught in fraud.

5° Those who through right and wrong practice defrauding as some kind of trade, and wander day and night even armed with a mind of resisting; for men of this kind become rebellious citizens and most harmful to society.

6° Nor must those be indulged who, although they never resist nor have a mind of resisting, nevertheless devote every zeal and work to the art of defrauding, and have it as a profession of life; for these are not rarely exposed at least to dangers of fortune and also of soul. - Cf. what we said 7. concerning Oath n. 374. 9°.

Notes to n. 821. (1) L. IV. 616 in fine. (2) Ibid. Quer. IV. (3) Ad Rom. 13. 2.

822. Questions. - Query 1° Do overseers sin against justice as often as they do not exact a tax?

Resp. Affirmatively, of itself generally, and indeed gravely in grave matter. The reason is clear, since they obligated themselves to watch properly and to exact taxes diligently. Wherefore, if they fail in their office, they are bound to restitution toward the Prince or Republic. - Thus commonly.

I said: generally, because according to several, those appointed to exact duties are not always to be condemned when at times they act more benignly in a light matter, especially with the poor, or even with those who otherwise pay diligently, or carry things for their own use.

Query 2° Are the same overseers bound also concerning fines which they ought to have inflicted upon those not paying the tax, or concerning the value of the merchandise itself, if at any time it ought to have fallen into confiscation, especially when tax-collectors could have inflicted such a penalty of themselves without another process and culpably did not do so?

Resp. Not a few probably affirm, because, they say, those guards in the case truly are the cause of damage which he feels who had a right to that profit which was decreed through the penalty; for through their fault he does not perceive it.

Yet the more common opinion denies it, because these guards are bound by force of office only to receive duties and to watch lest these be defrauded, but not to inflict fines upon those thus defrauding. Therefore they are not bound to restore these, even if by their negligence they are not paid, because the guards do not sin against justice in this. La Croix,[1] Lugo,[2] Gousset.[3] This is also valid for the case in which the guards themselves could inflict fines by themselves; for even for this case the reasons brought forward seem to militate, and, by dissimulating or conniving with defrauders, as Lugo argues, l. c., they seem only to take upon themselves that damage which others inflict, and to constitute themselves as authors of that damage. Therefore they will not be bound to a greater restitution than if they themselves alone were truly authors of that damage.[4] Cf. n. 776. q. 7°.

Notes to n. 822. (1) Lib. III. p. 2. n. 48. (2) D. 37. n. 102. (3) n. 1000. (4) L. V. 196 sub 3. n. 237. § An autem.

823. ○ Query 3° Are the overseers who consent to defrauding bound to restore in the first place, or those defrauders themselves who corrupt the overseers?

Resp. In the stricter opinion concerning the payment of a tax in conscience, the response to the question seems easy, and it must be said that guards are bound to restore only in the second place,

and only after those who induced those guards to permit defrauding of the tax. But in the less strict opinion they seem to be bound in the first place.

Query 4° To whom must restitution be made, if at any time it must be made by reason of a tax defrauded?

Resp. To the injured party; therefore either 1° to the Federated States, the particular State, Municipality, County, in the manner in which we said n. 795. q. 6°; or 2°, if to these it cannot safely be made from some cause, to pious causes; or 3° to the tax-farmers, if it is a question of duties which the State, Municipality, or County has leased.

ARTICLE II: ON DAMAGE INFLICTED ON OCCASION OF MILITARY SERVICE

824. Principles. - I. Soldiers are bound to nothing by reason of damage inflicted through a common action, unless the injustice of the war is established for them, because they are not formally unjust damagers. - Recall what was said concerning the Fifth Precept of the Decalogue, n. 480. q. 2° and following.

II. But soldiers in an evidently unjust war are bound concerning all damages which they inflicted through private action; and individuals are bound according to proportion concerning damages inflicted by the whole army, unless perhaps they were compelled to fight from grave fear. - See above concerning the unjust damager n. 746 and following, and concerning one participating n. 772. III.

III. But leaders or Princes are bound primarily and in solidum concerning the whole damage inflicted by the army, because they are truly commanding; or, if they did not command the damage, nevertheless they were bound to impede it by office.

825. Questions. - Query 1° Are individual soldiers, in default of the others, bound in solidum concerning the whole damage inflicted by the army?

Resp. More probably negatively, because individuals are not the cause of the whole damage, but only of a part. Moreover in practice they would be excused from absolute inability. - Lugo with others. Cf. n. 779. q. 3°. n. 780.

Query 2° To what are conscripted deserter soldiers bound?

Resp. 1° From obedience or from legal justice they are bound to return to the standards, supposing namely the justice of the law of conscription.

Except a) if they would meet grave danger to salvation, for example if means of confessing would not be at hand, etc., as can happen in some places; b) if, returning, they would be punished with death or other most grave penalties; c) if the war is evidently unjust.

Resp. 2° But certainly deserters are bound to no restitution, whether the law requires others in their place or not; because at most they injure legal justice, and probably (n. 827) they cooperate not unjustly toward the damage of others.

826. ○ Query 3° To what are those bound who hired themselves out for others and then deserted military service?

Resp. They cannot retain the price received, because a reason for retaining the money is lacking for them, since it is spent only on account of the burden of military service. Therefore they must restore it, and indeed to him from whom they received it in the case in which this man had to undergo military service or procure another soldier. Otherwise, to pious causes. Hence you easily resolve to whom those called "Bounty-jumpers" ought to restore.

827. ○ Query 4° To what are those designated by lot for military service bound, who withdraw themselves from it, or obtain exemption without true causes?

Resp. It can scarcely be denied that the opinion of those is probable who hold that the law of conscription is unjust. For, they say, it is not necessary for the common good, since the republic can sufficiently provide for its security by hiring soldiers for pay. Besides, they say, that law is opposed to distributive justice, since it imposes such a burden only upon those families having young men fit for military service. The probability of this opinion standing, the right of the Superior (of the Republic) commanding conscription becomes doubtful. But a Superior in doubt whether he exceeds his own power is not to be obeyed in a case in which, as in the present matter, the thing commanded is very difficult or exposes the subject to danger of grave damage.[1] Therefore those concerning whom in the Question are not to be compelled to restitution, whether they corrupt magistrates or physicians so that they be declared invalid by them, or deceive magistrates by lies, frauds, or previous mutilation, or desert the standards.

He to whom this opinion would seem improbable should take care not to urge the burden of restitution against conscripts imprudently, since most by no means think that injustice is committed, and otherwise they are rarely going to comply with admonitions.

Those conscripted by lot who desert the standards after they have obligated themselves by oath to military service sin, as is clear of itself, against religion. Yet for the most part they are exempted from the obligation of returning to the standards, which is implicitly contained in this oath, on account of the causes brought forward n. 825. q. 2°. They also sin on account of the lies, frauds, and mutilation by which they exempt themselves from military service; but not on account of injustice either toward the republic, if this must hire others in their place for pay, or toward those who by law would have to supply their place, because they use their own right, and that, as was said, practically certain. Nor do they sin by corrupting magistrates or physicians, since they redeem themselves from a vexation which, probably and therefore practically certainly, is unjust. Nor do the corrupted magistrates or physicians seem obligated to restitution either toward the republic or toward the corrupters; not toward the republic, because they seem to be equated to tax-collectors not exacting taxes which for a grave reason are judged unjust; nor toward the corrupters, because the price of a base work (in the case, of a lie), after it was furnished, can be retained (n. 834. q. 6°).

Query 5° What if a sufficient number of soldiers cannot be hired for pay?

Resp. 1° Even in this case the law will be unjust as to clerics (n. 112), and, if the law prohibits hiring another in one's place, as to those who are prepared to hire another.

Resp. 2° With these excepted, the rest from commutative justice must abstain from all fraud. The reason is that although the law by which military service is commanded, even in this case, obliges toward the republic from legal justice alone, nevertheless by force of the aleatory contract or of the

drawing of lots an obligation of commutative justice arises toward those with whom the lot is drawn. Wherefore also physicians and magistrates exempting someone without just cause in this case, on account of the quasi-contract violated, which they entered into with the republic, must restore to it, and indeed in the first place; but the corrupters, as cooperators, in the second. But concerning the damage which was inflicted upon those who, by the frauds of those drawing lots with them, had to undertake the burden of military service, those who employed those frauds are bound in the first place, in the second place the physicians and magistrates corrupted by these, or favoring them.

Notes to n. 827. (1) L. I. 98. L. V. 47.

TREATISE ON CONTRACTS

It must be treated 1° concerning contracts in general; 2° concerning contracts in species.

FIRST PART: ON CONTRACTS IN GENERAL

828. Definition. - A contract is an agreement through which one or several obligate themselves toward one or several others to give, do, or omit something.

Division. - A contract is chiefly distinguished:

1° Into unilateral (unilateral) or bilateral (bilateral). The former is made when one or several obligate themselves toward one or several not obligated, as in the contract of gratuitous promise. The latter is had when one or several obligate themselves toward one or several likewise obligated, as in exchanges.

2° Gratuitous or of beneficence, which is also called imperfect; or onerous, which is also called perfect. It is also called synallagmatic from the Greek words syn (with) and allasso (I exchange). A gratuitous contract is called one from which only one party receives an advantage (whether mutual obligation arises from it or not). But onerous is one from which each party receives an advantage. Therefore this division does not fall back into the preceding. For there are given gratuitous contracts from which mutual obligation is given, as loan for use, deposit, loan for consumption, etc.

But an onerous contract is again subdivided into commutative and aleatory. It is commutative if one contracting party gives a thing in one species and the other gives an equivalent thing or one of a diverse species. It is aleatory (contingent) if one gives a thing, but the other contracting party gives not a thing, but the probable hope of obtaining some thing; which hope, since it can fail, causes a contract of this kind to present the likeness of a game of chance.

3° Solemn (contract by deed or specialty) or simple (simple contract), according as it requires special formalities of law or not. Simple is subdivided into written (written) and verbal (verbal). (v) p. 475.

4° Named or unnamed according as it has a proper name, as for example sale, or lacks a proper name, for example I give that you may give, I do that you may do, etc. (p) p. 475.

5° Naked or clothed. A naked contract is called one from which in the external forum action is not given. Such is that which lacks the form required by law, but not precisely that in which the form prescribed by law has indeed been observed, but which cannot be proved in the civil forum because of defect of witnesses or instruments, and from which on account of this cause action is not given by accident. A clothed contract is one which besides the obligation of conscience produces an action in the civil forum.[1]

6° Formal or express (express), or virtual or tacit (implied). The former is one which is made by words, writings, or other signs explicitly manifesting consent. But the latter is one whose consent into the agreed thing does indeed exist really, but is manifested only implicitly by some saying or deed. Thus a physician exercising his art is judged to promise that he will do that which his profession requires. This contract is also commonly called a quasi-contract.

7° Real, which is not perfected in its species except by the handing over of the thing concerning which agreement is made, of which kind are pledge, loan for use, deposit, etc.; and consensual, which is completed by the consent alone of the contracting parties duly exhibited, of which kind is lease.

8° Pure or non-pure. Pure is so called when it is simple and burdened by no adjunct; non-pure, when it has something adjoined.

9° Of good faith and of strict right. That of good faith is one in which the judge can moderate many things from the equitable and good, namely those things which according to good faith are judged to be contained in the contract; such are purchase, lease, hire, management of affairs, mandate, deposit, pledge, partnership. Of strict right is that in which the judge is altogether bound to the words of the contracting parties, yet in such a way that they serve their manifested intention; such are testament, loan for consumption, donation. This pertains to the forum which they call "court at law"; but the former to the forum which is called "court of equity or chancery." In the forum of conscience equity is especially regarded.

10° In action (in action or executory), if it must afterward be committed to execution; or in possession (in possession or executed), if it is already committed to execution. "If, for instance, one person sells and delivers goods to another for a price paid, the agreement is executed, and becomes complete and absolute; but if the vendor agrees to sell and deliver at a future time and for a stipulated price, and the other party agrees to accept and pay, the contract is executory, and rests in action merely."[1] From this contract there is given a right to the thing and a personal action; from that one, a right in the thing and a real action.

Notes to n. 828 - note sequence 1. (1) Crolly, De Contr. n. 1-4, 25. Notes to n. 828 - note sequence 2. (1) Kent, Vol. II. n. 450. Appendix annotation (υ), to n. 828. 3°. p. 337. col. 2. "The agreement is either under seal or not under seal. If under seal, it is denominated a specialty, and if not under seal, an agreement by parol; and the latter includes equally verbal and written contracts not under seal." Kent, T. II. n. 450. Appendix annotation (φ), to n. 828. 4°. p. 337. col. 2. "These" contracts "are divided by the civilians into four species. 1. Do, ut des: as when I give money or goods, on a contract that I shall be repaid in money or goods for them again. Of this kind are all loans of money upon bond, or promise of repayment; and all sales of goods, in which there is either an express contract to pay so much for them, or else the law implies a contract to so much as they are worth. 2. The second species is, facio ut facias: as when I agree with a man to do his work for him, if he will do mine for me; or if two persons agree to marry together, or to do any positive acts on both sides. Or it may be, to forbear on one side on consideration of something done on the other, as that in consideration A, the tenant, will repair his house, B, the landlord, will not sue him for waste. Or it may be for mutual forbearance on both sides; as that in consideration that A will not trade to Lisbon, B will not trade to Marseilles; so as to avoid interfering with each other. 3. The third species of consideration is, facio ut des: when a man agrees to perform anything for a price, either specifically mentioned, or left to the determination of the law to set a value to it. ... 4. The fourth species is, do ut facias: which is the direct counterpart of the preceding. As when I agree with a servant to give him such wages upon his performing such work: which we see is nothing else but the last species inverted; for servus facit, ut herus det, and herus dat, ut servus faciat." Blackstone's Comm. T. II. n. 445.

829. ○ In every contract three things are to be distinguished, namely essence, nature, and accidentals. 1° To the essence pertain those things without which the contract cannot exist. Thus, for example, in the contract of sale three essentials are given, namely thing, price, and consent. If one is lacking, there is no contract. If in place of price, for example, another thing is given, it will no longer be a contract of sale, but of exchange. 2° To the nature pertain those things which, although not expressed, are nevertheless understood to be comprehended in the contract from law, or custom, or equity, although they are not essential; for example security furnished against eviction of the thing sold, which could be excluded by the contracting parties without the sale being invalid. But if the condition is not expressed, the seller ought to furnish security for the thing sold. 3° Accidentals are called those things which can be adjoined to a special contract by

agreement, without being judged adjoined by law or by the nature of the thing; for example such a delay of price, or other things of this kind. - Bouvier, etc.

These things having been premised, it occurs to treat 1° concerning the requisites for contracting; 2° concerning the obligation of contract; 3° concerning the modifications of contracts.

CHAPTER I: ON THE REQUISITES FOR CONTRACTING

Three things are required: 1° apt matter; 2° capable subject; 3° legitimate consent.

ARTICLE I: ON THE MATTER OF CONTRACT

830. ○ The matter of contract generally is things and deeds, or all those things which can fall under man's dominion, and concerning which the contracting parties have free administration.

The matter of contract ought to enjoy these conditions, namely it ought to be possible, existing, honorable, proper to the contracting party, certain, estimable by price.

1° Possible, both physically and morally; because no one can be obligated to the impossible. Therefore no one can be obligated to avoid fortuitous events, since this is impossible. Hence if someone takes them upon himself, he obligates himself only to repair damages coming from them.

2° Existing, either in reality or at least in certain hope, or probably going to exist; otherwise no right could be had in it, as being something estimable by no price.

3° Honorable and licit in itself, that is, prohibited by no right; because no obligation can be given to a dishonorable and prohibited thing. But for the validity of a contract it is enough that the matter be substantially honorable; for a contract can be valid, although illicit on account of some accidental circumstance.

4° Proper to the contracting party; for no one can transfer to another a right which he himself does not have. Hence the sale of another's thing is invalid, at least as to the transfer of the thing, although not always as to the transfer of the price.

5° Certain and determined, whether in individual, or in quantity and quality; otherwise the contract would be illusory, as if I promised someone, for example, any animal whatever, or grain in general. For I would satisfy the promise by giving a gnat or one grain of wheat, which would be absurd.

831. Questions. - Query 1° Can you accept a price for your action already owed to someone from justice, if the same action can profit another, with the right of the prior one to whom it is owed uninjured?

Resp. Affirmatively. The reason is that you do not injure the right of the former, with whom you had contracted, and you furnish yourself useful to the latter. Thus, for example, if Titius has hired you to go to a certain place for the sake of transacting some business, you can also be hired by Peter to make that journey for transacting a new business, provided the later mandate does not harm the former. See L. IV. 862.

Query 2° Can a price be accepted for a thing owed, not indeed from justice, but from another virtue, for example if you accept money to fast in the time of Lent?

Resp. Affirmatively, at least more probably, because that price then by donation acquires a right which it previously lacked.[1] Nevertheless, it is supposed that the action or thing to which the donee is bound is estimable by price; otherwise the contract would be invalid. Hence he would be bound to restitution who exacted money for showing the way to a man passing by, when he can show it without any labor or loss of time; for that action is not estimable by price.

Query 3° Is the contract valid if the matter is only partly possible?

Resp. Affirmatively, if the thing is divisible in itself and contract was made concerning it divisibly; otherwise, if it is indivisible or agreement was made concerning it indivisibly. Hence, for example, if you bought 100 measures of wheat, so that the contract is not perfect unless the thing has been handed over, and 50 perish, the contract still holds for the remaining 50. But if you promised a watch, and learn that you have only a partial right in it, your promise will be null.

Notes to n. 831. (1) L. IV. 713.

832. ○ Query 4° Can a merely spiritual thing be the object of a contract, whether gratuitous or onerous?

Resp. to the 1st. Affirmatively. For nothing in natural right stands in the way, since agreements of this kind have nothing disordered; nor does divine right, since God has permitted, indeed commanded, the gratuitous communication of spiritual things. Thus from the obligation of fidelity you can promise prayers, Masses, Relics, etc.

Resp. to the 2nd. 1° Affirmatively, if the thing is spiritual on each side and no prohibition of the Church stands in the way, because then no simony can be present in the exchange, since there is no comparison of a spiritual thing with a temporal one.

2° Negatively, however, if a merely spiritual thing is on one side, but a temporal one on the other; because no comparison between the spiritual and the temporal can be given, as is established from what was said concerning Simony, n. 352 and following.

833. ○ Query 5° Can the matter of an onerous contract be a temporal thing annexed to a spiritual thing?

Resp. 1° Affirmatively, if it is annexed antecedently, the prohibition of the Church in particular cases being set aside, provided nevertheless that the price is not increased because of the spiritual thing annexed. - See what was said concerning Simony, ibid.

Resp. 2° Negatively, if it is annexed consequently, at least from ecclesiastical Law. But this question chiefly regards benefices.

Resp. 3° But if it is annexed concomitantly, distinguish: 1° Negatively, if it is annexed intrinsically and necessarily, because then the temporal thing has no value independently from the sacred thing, such as is the labor of the priest in celebrating, absolving, etc. - 2° Affirmatively, however, if it is annexed extrinsically, as was said concerning Simony, ibid.

834. ○ Query 6° Must a thing received from a base contract always be restored?

Resp. 1° Before the placing of the base work, affirmatively; because the dominion of this thing has not been validly transferred. - Thus all.

Resp. 2° After the placing of the work, it is controverted. A twofold probable opinion is given.

The 1st Opinion, common and more probable to S. Alph.,[1] says that the price can be accepted and retained, indeed also must be given from justice. The reason is 1° because there intervenes there a twofold contract: one absolute, namely concerning a base work to be placed for a price, and this is void; the other conditioned, concerning the handing over of the price if the base work has been placed, and this, when the condition has been fulfilled, becomes valid. For once the work is placed, there now arises the contract, I give that you may give, whose nature demands that always, as often as one contracting party has furnished his own part, the other be bound to fulfill his own if he can do so licitly. 2° Because although the base action, insofar as illicit, is worthy of no price, nevertheless, insofar as laborious, ignominious, dangerous to the agent, it has a price.

The 2nd Opinion, sufficiently probable, denies it, from Rule of Law 18 in the Sixth: What does not stand by right from the beginning is not confirmed by the passage of time.[2] Our law agrees.[3]

Therefore for the internal forum the possessor must be favored. But according to the patrons of each opinion, and Resp. S. Poen. (Scav. T. II. n. 393), the price of prostitution can be retained.

Query 7° Whether, if a man has given something to a woman in order to seduce her, can she, after consent has been denied, retain the thing?

Resp. Affirmatively, because no agreement concerning sin to be perpetrated intervened, and therefore the donation must be held altogether liberal, since the woman promised absolutely nothing on her part.[2] Yet the one accepting will with difficulty be excused from the sin of scandal and cooperation,[3] if she knows with what mind the donation is made.

Notes to n. 834 - note sequence 1. (1) L. IV. 712. Vind. P. III. q. XV. Ed. 2a. q. XVI. (2) H. A. X. 128. (3) Kent, Vol. II. n. 466. Notes to n. 834 - note sequence 2. (2) L. V. 69. q. 1 et H. A. IV. 81. (3) L. V. 81.

ARTICLE II: ON THE SUBJECT OF CONTRACT

835. ○ I. By natural right all and only those who have free use of reason can contract, because these alone can transfer dominion of their own goods and take up obligations. Hence the following cannot contract: 1° infants not yet possessing the use of reason; 2° the insane and the mad; 3° the perfectly drunk.

II. By positive right, besides the use of reason and the free will of contracting, which are required by natural right, it is also required that the contracting party have free disposition of goods, and not be declared by law incapable of making contract. But those unable to contract, at least in many things or firmly, are 1° minors; 2° wives; 3° those civilly dead; 4° interdicted persons; 5° aliens. A few things concerning each.

§ I. On Minors

836. ○ Minors (minors, infants) are called those who have not reached the age fixed by law, so that, the authority of the father or guardian assigned to them being set aside, they are

able to act civilly. By the law in force among us, anyone who has completed the twenty-first year is held as major. In many States women born 18 years ago, in some 16 years, are majors. Let each one consult the laws of his own State.

Minors are some not emancipated, but others emancipated. The former are simply subjected to the authority of father or guardian. But the latter are those who have been freed from the aforesaid authority through the benefit of emancipation; but they are freed either by the deed of the father permitting the minor to administer and contract for some years, or by sentence of the judge.[1]

Notes to n. 836. (1) Kent, Vol. II. n. 193. 194. note 1.

837. ○ In most, not to say in all, of our States, the principal statutes of the civil laws concerning the contracts of minors are nearly these:

1° "No minor can bind him or her self by contract for anything except necessaries, - such as food, clothing, or education, and for which the parent had failed to provide. If he or she contracts for other than necessaries, on attaining his or her majority, the contract is voidable at his or her option."

2° "Every contract made by a minor which is to his or her injury, is void; but a contract which is clearly to his or her benefit, is good; and any contract that is uncertain, whether injurious or beneficial, is voidable or not, as he or she may choose."

3° "If a minor be coaxed, cajoled, or forced into an unwilling contract, he or she may repudiate the same on becoming of age."

4° "If a minor obtain goods on the pretence that he or she is of age, and then refuse payment on the ground that he or she is or was not then of age, the creditor cannot recover the value of the goods, but he can have the minor so guilty punished for fraud."

5° "When a minor executes a contract, and pays money, or delivers property on the same, he cannot afterward disaffirm such contract and recover the money or property, unless he restores to the other party the consideration received from him for such money or property."[1]

6° A minor emancipated cannot contract beyond the limits of his emancipation.

838. ○ Kent explains the relation of guardians to minors in nearly these terms.[2]

1° "He cannot act for his own benefit in any contract, or purchase, or sale, as to the subject of the trust."

2° "The guardian of the estate has no further concern with or control over the real estate than what relates to the leasing of it, and the reception of the rents and profits, and it is his duty to place the ward's land upon lease. ... If he neglects to put the ward's money at interest, but negligently, and for an unreasonable time, suffers it to lie idle, or mingles it with his own, the court will charge him with simple interest, and, in cases of gross delinquency, with compound interest. ... Every guardian ... is bound to keep safely the real and personal estate of his ward, and to account for the personal estate, and the issues and profits of the real estate; and if he makes or suffers any waste, sale, or destruction of the inheritance, he is liable to be removed, and to answer in treble damages."

3° "He cannot sell without the authority of the Court of Chancery. He may sell the personal estate for the purposes of the trust, without a previous order of the court. ... The power resides in the Court of Chancery to change the property of infants from real into personal, and from personal into real, whenever it appears to be manifestly for the infant's benefit."

839. Resolutions. - 1° A minor can with safe conscience use the benefit of the law, the case of bad faith being set aside, since the law was made in his favor.

Nevertheless he cannot seek rescission so that he be exempted from restitution of money which he received as a loan for consumption and squandered, although he carried back no profit from it;[3] for he is bound to fulfill the obligation which he certainly knew while he was seeking the money. From elsewhere, it must be attributed to his fault if he perceived no advantage from it.

2° He who contracted with a minor can stand by the contract until nullity is invoked by the minor, or by his father or guardian. Yet private petition suffices so that he is bound to rescission when the injury is altogether open.

3° The minor alone, both by himself and through others by whom he is represented, can seek rescission of contract. Hence those who contracted with him cannot oppose his incapacity.

4° A minor can no longer impugn an act performed in minority when, already having become major, he has ratified it; because he was fully fit to contract when he ratified the act.

Notes to n. 839. (1) Wells, p. 240. 241. (2) Vol. II. n. 228-231. (3) Gousset n. 747.

§ II. On Wives

840. ○ By our law a wife can contract:

1° Concerning goods of which she has perfect dominion (see n. 605 sq.). Yet she cannot hand them over to her husband by Common Law unless a) by a written instrument she has testified her free consent, and b) while the man is not present, she has been questioned concerning it.[1]

2° As to those things which are necessary for her condition and decent support, except nevertheless the case in which either with an adulterer, or otherwise without grave cause, she has departed spontaneously from the home of her husband (n. 445. 3°).

3° Where, as is permitted to her in certain States, she attends to public and separate commerce.

Notes to n. 840. (1) Kent, Vol. II. n. 166. 167.

841. Resolutions. - 1° If a wife contracts without the consent of the husband with injury to his rights or goods, the contract is altogether void. But a wife of bad faith, although in that case she cannot obligate the husband, is nevertheless bound to repair damage inflicted upon another.

2° Nullity of the wife's contract can be invoked by the man in conscience, even if he has not suffered injury properly so called, because the nullity is sanctioned chiefly for his favor.

3° The wife herself can also invoke the nullity of the contract, as it seems, although the law does not intend precisely to favor her; because there does not seem a sufficient motive for excluding her from

the benefit of the law, provided she did not deceive the other party. - But she must return everything in which she has become richer, and things must be restored into the same state as they were before the contract, provided she herself was not injured and deceived. But often by reason of deceit she must be excluded from the benefit of the law.

4° A wife who asks money from another as a loan for consumption for her husband, obligating herself to restore it in default of the husband, is bound to restore if the man cannot or will not make restitution; for she was the cause absolutely determining the contract. Therefore she must fulfill the obligation freely taken up, especially when the man is dead; otherwise she would become of bad faith. A fortiori a wife must restore money borrowed by herself for her own utility, without the husband's knowledge. For thus natural equity cries out.

§ III. On Those Civilly Dead

842. ○ A very rare case among us, since civil death exists from the crime alone of high treason (high-treason). It does not deprive of the right of contracting.

§ IV. On Interdicted Persons

843. ○ Interdicted persons are those who by sentence of the judge are declared incapable of exercising civil acts on account of a state of weakness, or dementia, or madness. Interdiction ceases when the cause ceases; and its cessation ought to be established by certain testimonies.

Moreover the nullity of contracts entered into by interdicted persons can indeed be opposed by them or by those conducting their cause, but not by those who contracted with them, just as was said concerning minors. Yet tribunals favor one who sells merchandise to an insane person without knowing the insanity. - Sometimes the faculty of contracting is taken away from drunkards, and the whole administration of their goods is committed to another.[1]

Notes to n. 843. (1) Kent. Tr. XI. n. 6.

§ V. On Aliens

844. ○ I. An alien (alien) is one who lacks the right of a citizen of the Federated States. But a citizen is one who either was born in the Federated States, or has furnished those things which are required by law so that he enjoy the right of a citizen (naturalization) (see Wells[1]), and likewise his minor children residing here at that time.

II. Aliens are held as citizens:

1° As to those things which regard commerce (for commercial purposes); for "the place of domicile determines the character of a party as to trade." See Kent's Comment.[2]

2° As to contracts concerning movables.[3]

3° Within the five years which immediately precede their admission to the right of citizenship, as to necessary use of immovables.[4]

III. Aliens acquiring dominion of immovables are exposed to the danger that either they or their heirs may be deprived of them. Yet today laws everywhere dispose more mildly concerning them.[5]

Notes to n. 844. (1) p. 116. (2) Vol. II. n. 49. 50. (3) Ibid. n. 62. 63. (4) Ibid. n. 62. (5) Ibid. n. 54-56. 61.

ARTICLE III: ON THE CONSENT REQUIRED

1° its qualities; 2° the opposed defects.

§ I. On the Qualities of Legitimate Consent

845. ○ Consent ought to be external, internal, mutual, free and deliberate.

1° External, that is, manifested, because it ought to be made known to the co-party; but it cannot be made known to the other party unless it comes forth exteriorly by some visible sign.

2° Internal, because the obligation of a contract arises from the will alone of the contracting party. - Thus commonly.

3° Mutual, because a contract is an agreement of two or several; hence, if it is onerous, cession and acceptance are required on both sides. If it is gratuitous, cession is required on one side and acceptance on the other.

4° Free and deliberate, so that the contracting party is not only master of himself, but also acts with that deliberation which is required for grave sin; otherwise the will would be imperfect, and therefore the act imperfect, which could not produce a perfect obligation.

846. Questions. - Query 1° Is a contract valid which has been entered without the mind of obligating oneself, or without the mind of fulfilling it?

Resp. to the 1st. More probably it is not valid, because the condition appended is contrary to the substance of the contract.[1]

Resp. to the 2nd. The contract is valid. The reason is that the will not to fulfill can stand together with the will to obligate oneself.[2]

Query 2° Must the consent of each party be elicited simultaneously?

Resp. Negatively, because the consent of one once given, and not revoked, morally perseveres, so that, when the consent of the other accedes, the contract is at once perfected.

847. Resolutions. - 1° He who fictitiously consents to a contract is bound in the forum of conscience to render the deceived party unharmed, and, if no other means of repairing the injury is available, to furnish internal consent and to stand by the contract.[3]

But if the contract fictitiously entered has been committed to execution, no dominion has in fact been transferred. "Whence, by reason of the thing accepted, the deceived party must be held as a possessor of good faith, but the deceiver as a possessor of bad faith."

2° If I offer you my house for sale for $100, and you accept, the contract is perfected, not when you internally consent, but when your acceptance comes forth externally to me through some sign. But

my consent is sufficiently intimated to you by the fact that I offer you my house for the stated price.

3° If you contract with me through a procurator, the contract is perfected when your procurator accepts, even though you have not yet accepted, because the acceptance of your procurator is morally yours.

4° Silence is regularly regarded as consent if the matter is favorable to the one silent. Hence Rule of Law 43 in the Sixth: He who is silent seems to consent.

5° If Paul says before John: I give $100 to Peter; and if John, unbidden, reports this to Peter, and the latter says: I accept; Paul is not judged obligated; because the intimation of the promise was not made to Peter by Paul's mandate, who moreover showed nothing else by the reported words except the mere purpose of giving.

Notes to n. 847. (1) L. IV. 710. (2) Ib. 172. II. (3) H. A. Tr. X. 93.

§ II. On Defects Opposed to Consent

The principal are error, fraud, force, and fear.

Point I. On Error and Fraud.

848. ○ Error in contracts can turn 1° about the substance of the thing, as if you buy copper for gold; 2° about the nature or species of the contract, for example, if you take a lease for a sale; 3° about the quality or accidents of the thing, as if a horse is slow while it is reputed swift; 4° about the person, for example, if someone should give to Peter, wishing to give to Paul; 5° about the motive, for example, if you should give something to Caius on account of poverty or piety, while he is rich or impious.

Yet error about quality, although accidental, can be the cause of the contract.

849. Principles. - I. Every error about the substance of the thing or the nature of the contract renders the contract null. The reason is that then there is no consent, which regards an altogether diverse thing.[1]

II. Error about quality alone does not of itself invalidate a contract, at least if, with the error known, the contract nevertheless would have been entered. For consent wholly voluntary about the principal object of the agreement is had. But if, with the error known, the contract would not have been entered, it is controverted, as we shall say at once.

850. Questions. - Query 1° Does error about quality giving cause to the contract void the contract, whether onerous or gratuitous?

Resp. 1° More probably negatively as to onerous contracts, because such an error impedes neither knowledge nor consent as to the substance of the thing. But otherwise scarcely any contract would be valid, which would cede to the subversion of human commerce. Except, 1° if the quality is expressly intended as a condition without which not, because then it passes into the substance of the thing; 2° if the error was invincible and the thing is still intact; but if the thing is no longer intact, or has

already been fulfilled by the other party, you can rescind the contract in conscience, if the matter is of great moment, even though the other party was not conscious of the error.[2]

Resp. 2° As to gratuitous contracts, more probably affirmatively. The reason is that such contracts by their nature require a full voluntary and complete spontaneity; but this was plainly lacking when the cause moving to donate is supposed to be absent. - Thus commonly against some, who moreover admit that contracts of this kind are rescindible at the will of the donor thus deceived. See St. Alphonsus.[1]

Query 2° Does error about the person invalidate a contract?

Resp. 1° Negatively, speaking generally, as to onerous contracts, because in these an error of this kind is merely accidental; and it is indeed of little interest both to the seller to whom he sells the thing, provided he receives a suitable price, and to the buyer from whom he buys, if the thing is suitable to him. The contract of marriage must be excepted, in which the consent affects the very person, who becomes at once both the contracting party and the object of the contract itself.

Resp. 2° Affirmatively, for the most part, as to gratuitous contracts, because in these the person of the donee is usually specially intended by the donor. Yet the circumstances of things must be considered, from which the will of the benefactor can better be known.

Notes to n. 850. (1) L. IV. 714. (2) L. IV. 715. H. A. Tr. X. 124.

851. ○ Query 3° Does error about the motive invalidate a contract?

Resp. 1° Affirmatively, if the error falls upon the final motive: for example, if you should give alms to Titius because you judge him poor, when he is rich; for your consent as to the very substance of the thing is lacking.

Resp. 2° Negatively, if the error falls only upon an impelling motive; for example, if you should give alms to Peter, a poor man whom you believe very upright, when he is less upright; for this error is merely accidental.[2]

Notes to n. 851. (1) L. IV. 715. 737. (2) L. IV. 737 et H. A. Tr. X. 132.

852. Resolutions. - 1° If a priest at night buys cloth for himself, thinking it to be of black color, while it is green or violet, the contract is not valid, if he expressly declared that he wanted cloth of black color; for although color in itself is a mere quality, in this case it passes into substance, and therefore the error becomes substantial.

2° If, when you wish to buy Catawba wine, California wine is offered, the contract is valid of itself, notwithstanding error or fraud, because the error is not substantial. But justice is injured accidentally if Catawba is dearer; and therefore the seller will be liable to restitution. But if the price of each wine is equal, or if the price is diminished according to the proportion of the excess, the seller will be immune from injustice, although not from the sin of lying. I have said: of itself; because the error could easily be substantial, as for example if the buyer by express words had bound his intention to Catawba wine for a certain end, to which any other wine would not conduce.

3° Fraud differs from simple error in this, that the error arising from fraud was produced by devices applied to this end. Error which of itself would not be sufficient to void a contract can give place to

nullity, if fraud has intervened on the part of the other contracting party, who besides is bound to damages arising from the fraud.[2]

Point II. On Fear.

Fear is 1° either grave or light; 2° induced by an intrinsic or extrinsic cause, necessary or free, just or unjust; 3° struck in order to contracting, or to another end. - Recall what was said in n. 15 and following.

853. Principles. - I. Any fear whatever so disturbing the use of reason that it excuses from grave fault utterly voids by every right the contract which follows from it. The reason is that then the consent required for contracting is lacking, whether fear altogether takes away the use of reason, or so impedes it that the consent cannot be called full and perfect.

II. No contract from fear arising from an intrinsic cause, or from a necessary or natural cause, is invalid, unless perhaps he who contracts from fear was not master of himself. The reason is that no injury is inflicted on the contracting party, and from elsewhere he preserves sufficient liberty. The same must be said if fear has been struck by a free cause, or by a man, from a just cause; hence a seducer, driven by grave but just fear to marry the girl whom he seduced, contracts validly.

III. Betrothals excepted, which on account of the greatest liberty that they require from their nature are rescindible, more probably no contract entered from light fear is rescindible. The reason is that light fear from whatever source is reputed as nothing in law, since it can easily be contemned. - Otherwise very grave inconveniences would follow in human commerce, since light fear is most frequent. Lugo contradicts, however, with others, whose opinion is not called improbable by St. Alphonsus.[1] Yet except marriage and religious profession, which, in the opinion of all, are not invalidated by light fear.[2]

854. Questions. - Query 1° Does grave fear unjustly struck by the co-party in order to contracting void the contract, if it does not at all disturb reason?

Resp. 1° In the opinion of all, and also by our law,[3] contracts of this kind are rescindible, whether they are gratuitous or onerous. (x) p. 476.

Resp. 2° Whether they are void by natural right, there is given a threefold probable opinion. According to St. Alphonsus, the very common and more probable opinion is negative, since fear does not simply take away the voluntary.

By Law, however, acts elicited from grave fear are invalid where it is a question 1° of Marriage, and more probably also of betrothals; 2° of handing over goods of the Church and renunciation of a benefice; 3° of a vow and religious profession; 4° of ecclesiastical jurisdiction and absolution from censures; 5° of election of a Prelate.[4]

Appendix annotation (x), to n. 854. Resp. 1°. p. 345. col. 1. "If the contract be entered into by means of violence offered to the will, or under the influence of undue constraint, the party may avoid it by the plea of duress." Kent's Comm. T. II. n. 453. "If a person be under an arrest for improper purposes without a just cause, or where there is an arrest for a just cause, but without lawful authority, he may be considered as under duress." Ib.

855. ○ Query 2° Is a contract entered on account of reverential fear rescindible?

Resp. More probably negatively, because it does not seem of itself a sufficient cause of rescinding a contract, unless at the same time it includes grave fear, for example of long-lasting indignation, etc. ... Likewise not even most importunate entreaties constitute grave fear, unless perhaps they are joined with reverential fear toward a Superior.[5] Sanchez, Salmanticenses, and others commonly.

Query 3° Is a contract void, or rescindible by private authority, if grave and unjust fear is struck by a third party alone for extorting consent, so that the other party is not participant in the injury?

Resp. It is controverted. The 1st Opinion affirms, because by reason of the injury, even inflicted by a third party, the thing remains obligated to the prior owner, and consequently passes with that burden to any persons whatever. - Billuart, and, as it seems, St. Alphonsus, L. IV. 719, who besides adheres to this opinion if it is a question of Marriage. L. VI. 1045 sq.

The 2nd Opinion denies, because, since neither party has inflicted injury, no reason of natural right is present why the contract should be void and why it could be rescinded at the will of one, the other being unwilling. - Lugo.[1]

Notes to n. 855. (1) L. IV. 715. (2) L. IV. 718. coll. H. A. Tr. X. 125. (3) Kent. Vol. II. n. 453. (4) L. IV. 716. H. A. Tr. X. 125. Tr. XVIII. 3. (5) Ib. 717. coll. L. VI. 1056.

856. ○ Query 4° What if grave fear was indeed unjustly struck, but not for extorting consent?

Resp. It is controverted, but it seems it must be distinguished thus: 1° If the fear was struck by the other of the contracting parties, the contract is not valid, or at least is rescindible, because one striking fear is bound to remove all inconveniences which arise from the injury.[2] Except Marriage. 2° Otherwise, if fear comes from a third party, because none of the contracting parties inflicted injury; but the third party who inflicts fear cannot take away the obligation of the contract by consenting to its rescission, since the contract was not entered with him: nevertheless he is bound to induce to rescission, so that he may avert injury from the innocent party, if this one wishes. Hence the purchase of a sword made from fear of your enemy is valid. Lugo[3] excepts marriage, which nevertheless according to the principles of St. Alphonsus[4] is not to be admitted. Others also except gratuitous contracts, because thus better provision is made for the innocent party, and the other cannot complain, since he is deprived of profit alone, and remains in the state in which he was before; and just as he himself would not wish to be obligated in those circumstances, so neither ought he to obligate the other.

Notes to n. 856. (1) D. 22. n. 117. (2) Ib. n. 176. (3) Ib. n. 178. (4) L. VI. 1045 sq.

857. Resolutions. - 1° If you threaten someone caught in theft that you will denounce him to the injured master, or to the guard, or to the judge, unless he promises a certain gift to you, the promise holds, and you are not bound to return the gift accepted, unless perhaps by the judgment of a prudent man it seems excessive. This is also true even if you had not had the intention of denouncing him, but only of frightening him, because you would cede from your right of doing this; which is estimable by price.

2° If Titius struck fear into you, so that you might hand over some thing to Caius, the contract is at least rescindible. For if Caius, at the time when he accepts the thing from you, knows the injury inflicted upon you, he is judged to strike fear through Titius. But if he knows it afterward (according

to the 1st opinion, n. 855, q. 3°), he would be assimilated to a possessor of good faith, who is bound to restore as soon as he discovers that he has another's thing.

3° If someone prepares damage for you from mere malevolence, and therefore asks nothing from you; but you spontaneously promise money, that you may escape unharmed, you are not bound to hand it over; because, although fear was not struck in order to contracting, nevertheless the contract has as its object only the cessation of unjust vexation; but the vexer cannot sell this cessation: therefore whatever he thus acquires, he receives as a possessor of bad faith, and therefore ought to restore it.

4° If a traveler oppressed by a robber has called a man passing by to aid, promising him money, the promise is valid; because fear is not its cause, but only the occasion; and from elsewhere the aid furnished by the passerby is estimable by price. Yet if the sum was enormous, it would have to be diminished.

CHAPTER II: ON THE OBLIGATION OF CONTRACT

The obligation of a contract is the bond by which someone, by force of the contract, is bound to something to be given, done, or omitted.

858. Principles. - I. Any contract rightly entered produces an obligation in the forum of conscience, at least on the part of one of the contracting parties; because in a contract some right is attributed to one or to each party; but to every right there corresponds its own obligation; therefore, etc.

II. A contract rightly entered, unless laws establish something else for the particular case, has force only between the contracting persons alone, or others who either hold their place or have cause with them, such as heirs, mandators, etc. The reason is that no private person can impose a burden or confer a benefit on another unwilling person, nor do contracts have force except from the private will of the contracting parties.

III. A contract rightly entered obligates not only to that which is expressed in the pact, but to all consequences which equity, law, or usage demand according to the nature of the agreement. The reason is that contracting parties are judged to act with good faith, and therefore to will not only what is expressly included in the stipulation, but also what is wont to arise from it.

Hence the intention of the contracting parties must be carefully investigated, if it can be clearly and expressly established. But if it remains obscure and ambiguous, it can be explained both from the matter of the agreement, and from the usage of places, and from the character of the persons. Finally, if after all things have been weighed the doubt cannot be removed, an amicable transaction is to be advised.

859. Questions. - Query 1° To what extent does a contract liable to rescission obligate?

Resp. That contract can be called conditionally obligating, namely if nullity is not invoked. The reason is that the legislator, for the good of peace, did not wish that contracts of this kind should be judged invalid and be invalid, except when their nullity was expressly invoked and obtained. This follows from what was said concerning contracts of minors, wives, and interdicted persons, n. 836 and following.

Query 2° Are contracts valid, and do they obligate in conscience, which of themselves are valid, but which were entered without the formalities prescribed by civil law for their validity?

Resp. There is a threefold probable opinion.

The 1st Opinion affirms, because by natural right the consent alone of the parties suffices for inducing an obligation, and human law does not take away the natural obligation between persons otherwise capable, although it denies civil action.

The 2nd Opinion denies, because laws invalidating the aforesaid contracts are founded on a presumption not only of fraud, but also of common danger; for the common good demands that an

occasion for any frauds whatever be taken away; and therefore the law can and ought to take away also the natural obligation of an invalid contract in the external forum.

The 3rd Opinion holds that in these contracts the possessor is to be preferred until by sentence of the judge he is condemned to make restitution. - Thus St. Alphonsus,[1] who adds "that this opinion is altogether to be held in practice, from the fact that, since possession attributes a certain right, the possessor cannot be despoiled of the thing unless the right of the other is established."[2]

Notes to n. 859. (1) L. IV. 711. (2) Cf. nevertheless n. 863 of this Compendium.

860. ○ Query 3° How does the obligation of contracts cease?

Resp. The obligation of contracts ceases 1° By payment, or by the performance of any thing owed, or also by the execution of a promised or otherwise owed deed.

2° By novation, or the substitution of a new debt for the old debt, which is thus extinguished; for example, I promised to give you ten casks of wine each year; now I agree with you that I am no longer bound to give wine, but $1,000: then the obligation of giving wine is extinguished.

3° By condonation, or the act by which the creditor remits the debt to his debtor from full liberty. For anyone can cede from his right in all those things which do not regard the public good, provided he was not incapable of contracting.

4° By compensation, or fictive and reciprocal payment, which has place when persons are debtors toward one another in turn.

5° By confusion, which has place when the obligation of the debtor and the right of the creditor are united in the same person, for example, if the creditor becomes heir of his debtor, or the debtor of his creditor, or the same person becomes heir of the creditor and of the debtor at the same time.

6° By destruction or loss of the thing owed, which sometimes frees the debtor from obligation, as in merely gratuitous contracts, and sometimes in others, where no fault of the debtor occurs. But sometimes it does not free, for example, if it has happened through the fault of the debtor, or if he was in culpable delay ... etc.

7° By rescission, or rescindibility, which has place when a contract consisting of essential conditions is dissoluble on account of some defects. That contract is valid until it is rescinded, as was said above.

8° By prescription, concerning which it was said above, Treatise on Justice, n. 657 and following.

861. ○ Query 4° Does cession of goods free from full payment?

Resp. 1° Negatively as to voluntary cession, a special agreement between the creditors and the debtor being excluded by force of which the latter is altogether freed. The reason is that the creditors have not been made altogether unharmed, and therefore there still remains an inequality to be repaired; and although creditors then compound with the debtor concerning only a certain part to be paid, still they act thus because they cannot have more, nor on account of this do they renounce the right which they have to full payment if the debtor can ever pay.[1]

Yet there are some today who think that, on account of the wholly changed nature of commerce, departure can be made from the opinion of former theologians. For commerce, as they say, today is carried on chiefly on credit, and almost wholly rests on credit. Hence creditors, foreseeing that some out of their many debtors will not be solvent, in order to keep themselves unharmed, have become accustomed to demand a greater price and also a greater addition for money for merchandise sold on credit, as is usual. They add that among those conducting commerce it is judged tacitly agreed that, from an unfortunate debtor ceding his goods, they require nothing beyond that about which agreement was made. Finally, they say, the law freeing the debtor in advance favors all, so that the same benefit which today comes from it to Peter with the damage of Paul will after perhaps some time come to Paul with the damage either of Peter or of another. The wiser will see how much these things are worth, and whether, at least taken together, they render that opinion probable; and they will rightly reply: creditors, although they foresee in general that some out of their debtors will not be solvent, do not foresee this in the individual case and as to each one; for to those whom they would foresee would not be solvent they would neither sell on credit nor furnish money; that nothing is certain concerning that tacit agreement among merchants; but that the civil law, although it uses those words: "forever discharged from all debts and claims,"[2] cares little about conscience and intends nothing else than to deny action to the creditor. - Meanwhile it is most certain that those are bound to restitution, as formally unjust damagers, who by their own grave fault have come into that necessity, namely of ceding their goods.

Resp. 2° Negatively also as to judicial cession; for the privilege of cession consists only in this, that an unfortunate debtor of good faith can no longer be pressed judicially; therefore, if he acquires new goods, he ought to satisfy the creditors up to full payment.[3] Except if, from the circumstances of things, the creditors seem to condone all the old debts.

Query 5° Can one who is about to cede his goods secretly reserve anything to himself?

Resp. 1° Certainly he sins against justice if, beyond those things which are left to him by the law in each State (by the exemption laws[1]), he retains things of great value, because he inflicts damage on the creditors.

Resp. 2° If, however, those things which are left to him by law do not suffice for the sparing sustenance of himself and his own (i.e. of children, father, mother, and wife), and therefore he also retains other things necessary for such sustenance, he is not to be disturbed. Thus from natural right, from which civil laws in such a case would unjustly derogate. Cf. Gousset.[2]

Notes to n. 861. (1) L. IV. 699. (2) Wells, Every Man, etc. p. 598. (3) L. IV. 699.

862. ○ It is useful to add in this place from Kenrick several cases in which justice is violated and the obligation of restitution is contracted by those who burden or have burdened themselves with debt.

The 1st is of those who contract debt with the intention of never paying it; as sometimes happens to buyers of merchandise, who, after money has been obtained from its sale, flee away.[3]

The 2nd is of those who rashly contract it, with no probable hope shining forth that they will be capable of paying; for it is not licit to risk with damage to others, or to seek profit.[4]

The 3rd is of those who neglect to pay it with detriment to creditors, which they are bound to repair, whenever by their own fault they refuse to satisfy them at the time assigned, even if they use the benefit of the law; for if from this it happens that creditors suffer a loss of goods, satisfaction must be made to them; otherwise, if fault is absent: for then the damage must be judged to happen by chance.[5]

The 4th is of those who, using various artifices, induce creditors to remit part of the debt, lest they lose the whole, or lest payment be deferred longer, or lest they be entangled in lawsuits: but those who obtain from creditors a remission of part because of anticipated payment, the creditors being driven by no necessity but consenting freely, can be excused, since custom so carries it, and the convenience is worth very much by common estimation.[6]

The 5th: the wife who makes excessive expenses in buying clothing, or in another way, and the sons who squander money given to them, cooperate with the injustice of husband and father, if they know that the husband and father is not equal to paying. Yet see n. 707, q. 3°.

The 6th: whenever someone knows himself unequal to paying, nor hopes that he can increase his estate by trading, he is bound to leave business, his goods having been handed over for the payment of debt; for no one is permitted to trade with the damage of another. Often, however, merchants are excused, to whom for the most part some hope shines forth.[1]

The 7th: those who have received goods or money to be hidden at their place, on this condition, even tacit, that they would aid the debtor thereafter.[2]

The 8th: those who, after their things have been transferred to others by a fictitious title, use the benefit of the law in order to free themselves from debt, become guilty of perjury and injustice; for they emit an oath by which every fraud of this kind is denied.[3]

Notes to n. 862. (1) See them, if you wish, in Wells, p. 288 sq. (2) n. 772. (3) Tr. X. n. 205. (4) Ib. (5) Ib. (6) Ib.

863. ○ Query 6° When does a law invalidating a contract bind conscience already before the sentence of the judge?

Resp. When the invalidation is founded either in a definitive law of dominion [(3) p. 484], or in the baseness of the pact (n. 834), or (which is often difficult to discern) directly in the motive of the public good.[4]

Notes to n. 863. (1) Tr. X. n. 206. (2) Ib. n. 210. (3) Ib. n. 210. (4) De Angelis l. 1. t. 35. 4°.

CHAPTER III: ON THE MODIFICATIONS OF CONTRACTS

By the name of modifications are designated certain clauses adjoined besides the nature and essence of contracts, so that they now strengthen, now also increase or determine, now suspend or destroy the obligation of those same contracts.

The principal modifications of contracts are 1° oath; 2° modes; 3° conditions. - Concerning these three we must treat briefly.

ARTICLE I: ON AN OATH ADJOINED TO A CONTRACT

864. ○ An oath, as it is taken here, is the calling of God as witness of those things which are promised by contract. The obligation of an oath differs from the obligation of a contract also in this, that the obligation of an oath affects and binds immediately the person of the swearer, whence it does not pass to heirs; but the obligation of a contract confers on the other a strict right, or right of property, affecting the goods of the contracting party, and therefore the whole obligation passes to heirs.

865. Principles. - I. Contracts void by natural right are not strengthened by an oath. The reason is that an oath is an act altogether extrinsic to the contract, and therefore can in no way supply its force. Hence the axiom: An oath follows the nature of the act.

II. Nor are contracts ipso facto void by positive right strengthened by an oath if they are invalidated directly on account of the public good. The reason is that then the oath would be against the common good, and therefore an immoral bond, which God, the author of society, cannot sanction. But those void only in favor of the promisors must indeed be observed from the virtue of religion until the oath is relaxed, yet not from justice.[1]

III. An oath is always invalid whenever it cannot be observed without sin of the one swearing. The reason is that an oath cannot be a bond of iniquity, nor can it obligate against good morals. - Thus all Theologians.

866. Questions. - Query 1° Does an oath strengthen contracts, not indeed those void by positive law, but those only rescindible?

Resp. According to the mind of St. Alphonsus,[2] it must be answered that the oath and contract must be observed from the virtue of religion (not from justice) even in the case in which rescindibility was introduced with regard for the public good. Thus he says a contract must be observed by a minor who swore that he would restore a loan for consumption, although the dissolubility of this contract was introduced with regard for the public good. It is also clear from the Response to the Question immediately following.

867. ○ Query 2° Are oaths extorted by fear valid for strengthening contracts void by fear?

Resp. The more common Opinion, and by far the more probable to St. Alphonsus,[3] affirms, in the case in which the law does not at the same time void the contract on account of the public good. The reason is sought from the 3rd Principle. But he who swore thus can either obtain relaxation of the oath, or, after the performance of the thing concerning which contract was made, seek it back in judgment, or secretly compensate himself for it.[1]

Notes to n. 867. (1) L. IV. 177. (2) Ib. 174. 177. 787. (3) V. d. Velden-Piatn. 71. (1). (2). T. I. p. 176. 177.

ARTICLE II: ON MODES PREFIXED TO A CONTRACT OR ON NON-PURE CONTRACTS

868. ○ A mode is an adjoined quality, for the most part not suspending the contract, but adding something as a burden or favor of one of the contracting parties.

Modal contracts are chiefly made 1° to a day, - 2° under a cause, - 3° under a penalty, - 4° under demonstration, - 5° under disjunction.

Resolutions. - 1° The mode must be observed from justice, unless it is repugnant to the substance of the contract.

2° Its violation ordinarily, and unless it has been agreed otherwise, does not void the contract, because it is held as something merely accidental. Hence an annual legacy made to someone with a burden to be paid in favor of the poor must be paid, although that burden is not satisfied: but one must insist by remedies of law that satisfaction be made for it. Kenrick.[2]

3° If the mode is base or impossible, it is held as not adjoined; nor is the contract invalid unless the mode is repugnant to its nature, or unless the will of the contracting party was altogether restricted to it.

4° In a contract to a day, the obligation arises at once, but the effect is suspended to the determined day.

5° In a contract under a cause (because), or under demonstration (I sell this, or so much), error does not invalidate unless it pertains to the essence of the thing.

6° If the error is in the quantity, the whole thing is owed if the quantity was designated demonstratively; but if taxatively, as they say, the excess of quantity is not owed. Moreover a thing is judged designated demonstratively if the thing is expressed in the first place, and afterward its quantity: for example, I leave to Titius my field of thirty acres; but taxatively, if the quantity is expressed in the first place, then the thing; for example, I leave three gold pieces in such a box. But the circumstances of things must be weighed.

7° In a contract under penalty, that is, whenever a penalty is imposed on the one withdrawing, this penalty is owed from justice, if it is sought, at least if the contract was culpably not fulfilled. Yet the penalty ought to be moderate; otherwise it would not obligate.

8° In a contract under disjunction, for example, I promise an ox or a horse, no determined thing is owed, and the payment of one removes the whole obligation. The choice of the thing of itself pertains to the debtor.

ARTICLE III: ON CONDITIONS APPENDED TO A CONTRACT

869. ○ A condition is a quality adjoined to a contract, which for the most part suspends it until it is fulfilled. It is usually expressed by the particle: if, unless, provided ... etc.

Manifold is the condition which can be appended to contracts, namely 1° express or tacit; - 2° concerning the present or the future; - 3° possible or impossible; - 4° necessary or merely contingent; - 5° honorable or dishonorable; - 6° potestative or casual, according as it is in the power of the contracting party or is not; - 7° positive or negative; - contrary to the substance of the contract, or not.

870. Resolutions. - 1° All conditions must be fulfilled in that sense in which the contracting parties are prudently judged to have willed to obligate themselves.

2° A condition concerning a base or impossible thing renders a contract null both by natural and by civil right. The reason is that no one can obligate himself to something base or prohibited. Yet donations inter vivos and through testaments are excepted in Civil Law, in which base conditions are held as not adjoined. - The same must be said concerning a base or impossible condition adjoined to matrimony, provided it is not contrary to the substance of the contract. - Thus from Canon Law. Hence, if someone should leave money or fields to someone on the condition that he profess heresy, or imbue his children with heresy, the legacy will be valid, although he does not wish to fulfill that impious condition. Moreover civil tribunals for the most part hold the will of the testator ratified. [1]

3° A condition concerning the present or past does not suspend the obligation, but at once either brings it in or does not induce it, because it either exists or does not; therefore here and now the contract is either valid or null.

4° A condition ought to be fulfilled not only equivalently, but in its proper form. Some except the condition, if you marry, which they say is fulfilled by entrance into Religion; for otherwise the condition would be base. St. Alphonsus[2] admits this if it is a question of a legacy left to a determined person and it is not established that the testator had another mind, as would be established if the condition was determined to some person, for example, if you marry Paul; because then a just and honorable reason can be present. But if it is a question of a legacy left to indeterminate persons, certainly the more probable opinion for him is the one denying this, and that on account of the disposition of Civil Law.[3] Yet our tribunals will command the condition in each case to be fulfilled in its proper form.

5° Potestative conditions, or those which depend on the will of one of the contracting parties, are judged fulfilled not only when that is furnished which was enjoined as the condition, concerning which there can be no controversy, but also even if it is not furnished in reality, namely when the one who obligated himself either 1° impeded the condition from being fulfilled; or 2° was impeded by another from satisfying the condition.

Notes to n. 870. (1) Kenr. Tr. XI. n. 18. (2) L. IV. 930. (3) Auth. de Sanctiss. Episc. § Hoc quoque.

SECOND PART: ON CONTRACTS IN SPECIES

And 1° concerning gratuitous contracts; 2° concerning onerous contracts.

SECTION I.

ON GRATUITOUS CONTRACTS.

Namely 1° concerning promise; 2° concerning donations; 3° concerning loan for use and precarium; 4° concerning deposit; 5° concerning mandate and management of affairs; 6° concerning loan for consumption.

CHAPTER I: ON PROMISE

871. ○ Promise is a contract by which someone freely and spontaneously obligates himself to furnish or omit something gratuitously in favor of another. The conditions required for the obligation of promise are:

1° That there be present the will of obligating oneself, at least virtual and implicit, which anyone is judged to have who seriously wills to promise, even if he does not advert to the obligation.

2° That the consent of the same promisor be fully free and spontaneous, and therefore that every error and fraud about the substance and final cause, and every unjust coercion or fear, be absent. Cf. n. 853, III.

3° That the promise itself be manifested outwardly and accepted; since every pact ought to consist in the mutual consent of two or several into the same object; and from elsewhere no one is judged to will to obligate himself toward someone unless that one accepts.

872. Questions. - Query 1° What and how great is the obligation of a promise once accepted?

Resp. It is controverted among Theologians. There is given a threefold probable opinion, according to St. Alphonsus.[1]

The 1st Opinion holds that a promise, of itself, obligates only under venial sin and from mere fidelity. The reason is that a gratuitous contract obligates only by the bond of fidelity, and fidelity does not seem to obligate under mortal sin, if other inconveniences are absent.

The 2nd Opinion says that a serious promise in a grave matter obligates under grave sin from justice, independently of the intention of the promisor. The reason is that a gratuitous promise is not of a diverse order from an onerous promise by reason of obligation.

The 3rd Opinion, the more common and more probable, teaches that the obligation of a promise depends on the intention of the promisor. Whence, if he intends to obligate himself from justice, he is obligated under mortal sin in grave matter; but if he intends to obligate himself only from fidelity, he is obligated only under light sin. Moreover, for grave matter in a promise they require a quantity fourfold greater than in mortal theft.

But it is certain that a promise by accident obligates from justice if one's neighbor suffers damage from the promise not observed, and that under grave or light sin according to the measure of the quantity of the damage. For example, I promised to give you a loan for consumption, which you gravely need, and you, trusting me, did not provide for yourself from elsewhere; or I took care that my son be educated, because you promised me the expenses, which afterward you refuse.[1]

And these things indeed concern promise properly taken. For more often promises, such as are commonly made, obligate neither from justice nor from fidelity, because the one promising does not intend to obligate his faith strictly, but merely to announce his purpose.

Notes to n. 872. (1) L. IV. 720.

873. ○ Query 2° What in doubt, whether someone wished to obligate himself under grave or under light sin according to the patrons of the third opinion?

Resp. More probably one must stand for the minimal part, because in doubt a certain burden is not to be imposed, especially in a promise, which requires the greatest spontaneity.[2] Except, as above, a promise seriously made and accepted in a grave matter, which by accident can obligate under grave sin from justice; as if there intervened the reason of grave damage coming to one's neighbor from the promise not observed (n. 872, § But it is certain).

Query 3° Can someone accept a promise through another?

Resp. Affirmatively. Someone can accept a promise through anyone chosen for that, or through a familiar, because he is judged to constitute morally one person with him. He can also accept a promise through another who conducts his care, for example, a father for a son of the family, a Religious for a monastery, a Prelate for his Church, a wife for her husband.

Query 4° When does the force of an accepted promise cease?

Resp. 1° If the promisee spontaneously condones, or cedes from his right. - 2° If the thing promised becomes illicit or useless. But if it was prodigal, it will obligate to observing what is not prodigal; but in an indivisible thing nothing is owed.[1] - 3° If the promisee does not stand by his own promises. - 4° If the state of things or persons is so changed that the promise does not seem to comprehend that event. - 5° If the cause which moved to promising in no way subsists.

Notes to n. 873 - note sequence 1. (1) L. IV. 720. (2) Ib. Notes to n. 873 - note sequence 2. (1) L. IV. 735. L. VI. 851. § Tertia.

874. ○ Query 5° Whether, or how far, does a promise obligate, if before execution the promisee or the promisor dies?

Resp. to the 1st. Distinguish. It obligates in no way if the promise was made principally in favor of the promisee; because, he being dead, the end intended in the promise ceases; but otherwise, if the promise was made chiefly with regard to the family of the promisee, or his heirs.

Resp. to the 2nd. When the promisor has died, a promise clothed with the due conditions is to be fulfilled by his heirs, because every real obligation ought to pass to heirs in the same manner and by the same title by which the promisor was obligated. Therefore the heirs will be held under grave or under light sin, from justice or fidelity, just as the promisor was held while he lived. Yet they will be able to be freed from every obligation if from the circumstances of the thing, or from signs, it is manifest that the promisor wished to obligate only himself personally. - Lugo, Reuter, etc.

Resolutions. - 1° Those things which are promised by a master to servants, beyond the annual stipend, as to be given at some time or left in the manner of a legacy, are often mere purposes. But if they are promises, they are made either only from gratitude, for example, for service faithfully furnished, or from justice, say, because of undue industry or work. If the master, before the promise is fulfilled, dies unexpectedly, in the former case it will not be licit to carry off the thing promised by occult compensation, since a strict right does not arise from fidelity; but it will be licit in the latter case, because in this case a strict right is born from the promise.[1] Besides, in this case the promise is

deservedly judged a remunerative donation, which imports the payment of a debt rather than a gratuitous cession (n. 876).

2° One subscribing to a formula by which money is requested for erecting a church or some pious work signifies, according to the tenor of the formula, either a purpose, or a promise of giving, or a donation afterward to be executed. One not paying the money, in the first case, of himself sins in no way; in the second, venially; in the third, gravely. For the internal forum, the obligation is to be determined from the declaration of the penitent concerning the sense in which he understood or intended it, for example, merely courteously.[2]

Note. - A promise by our law is a naked contract (n. 828, 5°); but it is clothed if it rests on a consideration estimable by price. (y) p. 476.

Notes to n. 874. (1) Lugo, D. 23. n. 100. Mar. p. 337. n. 100. (2) Van de Burgt, De Eccl. n. 317. Appendix annotation (ψ), to n. 874. p. 352. col. 2. "A valuable consideration is one that is either a benefit to the party promising or some trouble or prejudice to the party to whom the promise is made. Any damage, or suspension, or forbearance of a right, will be sufficient to sustain a promise." Kent, T. II. n. 465. "The rule, that a consideration is necessary to the validity of a contract, applies to all contracts and agreements not under seal." Ib. n. 464.

CHAPTER II: ON DONATIONS

ARTICLE I: ON DONATION IN GENERAL

875. Definition. - The contract of donation, or of gift-giving, is an agreement by which someone gratuitously grants to another, accepting it, the dominion of his own thing or of his own right. - Whence for the contract of donation a promise of giving is not sufficient, but actual giving is altogether required, and that gratuitous, i.e. a giving which, without debt on the part of the giver and without burden of repayment on the part of the receiver, is voluntarily granted from liberality; indeed in such a way that the giving, insofar as it recedes from liberality, so far also falls short of the perfection and notion of donation.

Notes to nn. 875-882. (1) De Contr. n. 811. (2) Sess. 25. c. 16. (3) L. IV. 722.

876. Division. - It is divided 1° into strictly so called or merely gratuitous, and remunerative or antidoral. The former is that which is made with every obligation whatever, both of justice and of gratitude, altogether excluded on the part of the giver, and therefore is wholly founded in his liberality. The latter is that which is made from some obligation, not indeed of justice, but of gratitude, namely for remunerating some benefit received from the donee. - Therefore each donation agrees in this, that it is not owed from justice, and consequently cannot be rigorously or legally exacted. And in such a broader sense each donation can be called gratuitous. But the difference of each is in this, that a donation strictly so called or merely gratuitous excludes every debt, even of gratitude, and therefore proceeds from mere liberality; while a remunerative donation is founded in a debt of gratitude, and therefore falls short of mere liberality. Whence according to the opinion of many, a remunerative donation, properly speaking, is not a donation. Hence it will be permitted more probably to infer:

a) That, when in law, whether Ecclesiastical or our civil law, donation simply is prohibited, as for example the donation of Religious is prohibited in Ecclesiastical Law and the donation of spouses between themselves in civil law, a remunerative donation is not on that account judged prohibited of itself. For a prohibition of this kind, as odious, according to common rules of interpretation, must be restricted to donation properly and strictly such; but merely gratuitous donation alone is properly and strictly donation, not remunerative donation.

b) That, when in Law some certain formality is prescribed for donation simply, the same formality does not on that account of itself seem prescribed for a remunerative donation; for such a prescription, like the prohibition mentioned above, is odious and consequently must be restricted to donation strictly so called, unless the contrary is sufficiently expressed by the legislator. Yet it will be safer to observe the formalities, since the sentence of the judge very often depends on the mode in which he considers the case in fact.

Finally, as to remunerative donations it deserves to be noted with Cardinal de Lugo[2] that "there can also be a remunerative donation when you give nothing to him from whom you received the benefit, but with regard to him you give to others who pertain to him."

877. ○ It is divided 2° into pure and non-pure or qualified. Pure is that which is made without any limitation; non-pure or qualified is that to which some limitation accedes, namely some condition (n. 869, 870) or some mode (n. 868), by which word the imposition of some burden is usually understood, for example, of paying certain debts of the donor.

A non-pure donation is for the most part called mixed, i.e. partly gratuitous and partly non-gratuitous, and in truth it is such whenever it is made under a mode or under a condition burdensome to the donee.

Yet it must carefully be noted here that the burdens imposed on the donee cannot be so great that they compensate his advantages; because then every species of donation would vanish, as is clear from what was said above under n. 875; but those burdens ought to be so moderate that, notwithstanding them, the giving itself can morally be called, at least from the beginning, gratuitous and profitable to the donee.

878. ○ It is divided 3° into perfect, which is also called real in English and our Law, and imperfect, which is also verbal. Perfect is called a donation joined with the handing over of the thing donated, which is as it were the consummation of the donation; imperfect is called a donation not joined with the handing over of the thing donated, but only with the obligation of handing it over in its own time. Yet here for practice it must be noted that an imperfect donation often seems to be present, when it is not really present. Namely it happens more frequently that he who, the words used being considered, at first sight seems to donate, in reality simply wishes only to promise. But if he wishes only to promise, there will indeed be a contract of promise, regularly obligating from fidelity to donate; but not a contract of donation, not even of an imperfect donation.

879. ○ Donation is divided 4° into donation inter vivos and donation in prospect of death; this division is very celebrated in Jurisprudence, and therefore claims great attention for itself.

A donation inter vivos is that by which someone so donates that he wills the thing donated, while he is living, to become irrevocably the property of the donee. The word irrevocably imports that the donor cannot seek back the thing donated at his own pleasure, but only in cases expressed by law.

A donation in prospect of death is that by which someone, with regard to his own death, so donates that he wills the thing donated, while he is living, to be able to be sought back at pleasure, and therefore to become irrevocably the property of the donee only when he has died.

Whence donation inter vivos and donation in prospect of death agree in this, that each is a contract, as defined above in n. 828, namely an agreement by which someone gratuitously grants to another, accepting it, the dominion of his own thing or of his own right; but they chiefly and essentially differ in this, that donation inter vivos of itself is irrevocable, while donation in prospect of death can of itself be revoked by the donor at pleasure up to his death. Therefore, in order to discern in practice whether some gratuitous giving, made by the donor and accepted by the donee, is inter vivos or in prospect of death, it matters not so much to attend whether the donation was made in the time of illness or while the donor's death was imminent (for it is certain that a donation inter vivos can be

made even by a dying man); but it suffices to attend carefully whether the donation was made irrevocably, or revocably up to the donor's death. In the first hypothesis there will be a donation inter vivos, even if a dying man donates; but in the other there will be a donation in prospect of death, even if a healthy man were to donate. - For a clearer understanding of these things let the following questions be set down.

880. Questions. - Query 1° What sort of donation is present in this case: Titius, dangerously sick, gives to Caius, consenting and accepting, a certain sum of money on this law, that it ought to be returned to himself if he seeks it back before his death; but he gratuitously cedes it to Caius if he has not sought it back before death?

Resp. Without doubt it is a donation in prospect of death, since it is revocable at the pleasure of the donor up to his death.

Query 2° What sort of donation is present in this other case: Peter, laboring under a grave illness, gives to John, consenting and accepting, $100, but with a resolutory condition added, that the thing donated is to be returned to himself if by chance he recovers?

Resp. It seems it must be resolved that such a donation is inter vivos, because it is truly made irrevocably (i.e. not revocably at the will of the donor), and a resolutory condition is simply added, whose fulfillment (namely recovery) does not depend on the will of the donor.

Query 3° In what chiefly do a donation IN PROSPECT OF DEATH and a LEGACY, or donation through testament, agree, and in what do they differ?

Resp. They agree in this, that each is revocable at the pleasure of the giver up to his death; but they differ especially in this, that a donation in prospect of death, since it is a contract, requires that it be accepted by the donee before the death of the donor; while on the contrary donation through testament is neither properly a contract, nor requires any acceptance before the death of the testator.

These things having been premised, now we shall strive to explain individually and with attention to our civil Law the several requisites of a valid donation, which are six in number, namely: a) that the donor be capable of donating, b) that the donee be capable of acquiring, c) that the thing be apt matter of donation, d) that the donation be made in due form, e) that it be accepted in the due mode, and f) that it be of itself irrevocable. Whence:

§ I. Who Can Donate

881. ○ Anyone can donate who is incapable of it neither in fact nor in law.

But he is incapable in fact who, when the donation is perfected, either is not sound in mind, or does not act with sufficient liberty.

Incapable in law are:

1. For donation inter vivos: a) minors not emancipated according to what was said in n. 837, unless it is a question of things of small moment. b) Wives according to what was said in n. 840. c) Spouses between themselves, unless either the donation is moderate, or certain solemnities are employed, and the rights of creditors are saved. Thus a husband can hand over

his goods to some persons for the wife's use, for an equitable cause. In what manner a wife can donate to her husband was said in n. 840, 1°. d) Interdicted persons according to what was said in n. 843. e) He who is not solvent, if he donates in fraud of creditors.

2. For donations in prospect of death, all and only those who cannot make testament, concerning whom below, where Testaments are treated, n. 911.

882. Questions. - Query 1° Do the aforesaid dispositions of our law obligate in conscience?

Resp. Excepting the case of one donating in fraud of creditors, negatively, at least in practice and gravely, whenever those incapable by donating do not notably injure anyone and unjustly damage him. Yet Moralists rightly warn that wives donating without the consent of their husbands regularly furnish grave scandal to their husbands. Whence a confessor must most carefully beware lest he indulge too much wives who are liberal beyond measure, but rather should exhort them that, as much as can be done with justice, charity, and the good and honor of the family saved, they accommodate themselves to the will of their husbands.

Query 2° Does civil law concerning donations also touch FOR THE INTERNAL FORUM donations TO PIOUS CAUSES?

Resp. A donation to pious causes is spiritual matter and therefore subject to the jurisdiction of the Church; hence in practice the following rule holds: In pious dispositions for the internal forum Canon Law is to be observed, in which regularly in this matter account is had only of natural and divine right, as La Croix notes.[1]

Yet here in particular it is necessary to note: from the Council of Trent,[2] Novices in a Religious Order are incapable of donating their goods by donation inter vivos, whether to the monastery or to others, unless with the permission of the Bishop or his Vicar within the 2 months immediately before solemn profession; indeed even their donations made within that time with due permission are not otherwise understood to obtain their effect unless profession follows. - The Holy Synod wisely established this, lest perhaps a Novice, once despoiled of his goods, emit profession unwillingly.

Say the same, according to the opinion which is called truer and common by St. Alphonsus,[3] concerning those who, in bad faith, receive from one who is not solvent, with damage to creditors; and these are bound to compensation of the damage which thence comes to the creditors. For just as the one donating in the case injures justice by rendering himself unequal to paying his debts, so also the donee injures it, who positively cooperates in the unjust action of the donor with the prejudice of the creditors. For donation does not consist in the will alone of the donor, but also in the will of the receiver, without which the donation cannot be perfected; and therefore, although the donee is not the motive cause, nevertheless in reality he is a truly influent and efficacious cause of the alienation of the thing to the damage of creditors.

But if donations of this kind were performed altogether in good faith, and did not fall under the dispositions of the law concerning cession of goods, then I would not wish to blame one who would retain what had thus been received; since civil law in favor of commerce indulges many things to those acting in good faith.

Notes to n. 882. (1) L. V. 21. (2) Disp. 28, Sect. 9. n. 141.

§ II. Who Can Acquire from Donation

883. ○ Those are capable of acquiring from donation who are not constituted incapable by law of receiving donations. Nor are infants, the insane, or others lacking the use of reason to be held incapable, since they are capable of dominion, and can accept or occupy things through others, for example through parents, guardians, etc., according to what was said in n. 600, 3°. Hence the following cannot acquire from donation:

a) All receiving from those who, whether in fact or in law, are incapable of donating, n. 881. But those receiving from those who are incapable in fact do not acquire from donation in either forum. The others are to be treated for the internal forum according to what was said in n. 882, Query 1° and 2°.

b) Those who were not conceived at the time of donation, or, as to testament, at the time of the death of the testator.[1] Concerning the exception of substitution it will be treated below (n. 898).

c) Communities, unless they have been endowed by civil authority with the right of acquiring, and only to the extent to which they have been endowed with it. But Colleges (corporations) cannot acquire by testament, unless and insofar as this is specially granted to them in the Charter by which they are constituted.[2] (n. 617, 2°). The things which we say here concerning communities are not to be attended to for the internal forum if it is a question of communities which are subject to the Church; for neither can laws of amortization, such as are those by force of which those communities are incapable of acquiring unless they are endowed with that right by the civil authority, prevail over the rights of the Church. See what is to be said below where informal testament to pious causes is treated, and what was said in n. 882, Query 2°.

d) In Louisiana "doctors of physic or surgeons, who have professionally attended a person during the sickness of which he died, cannot receive any benefit from donations inter vivos or mortis causa made in their favor by the sick person during that sickness. To this, however, there are the following exceptions:

1. Remunerative dispositions made on a particular account, regard being had to the means of the disposer and to the services rendered.
2. Universal dispositions in case of consanguinity.

The same rules are observed with regard to ministers of religious worship."[1]

Notes to n. 883. (1) Kent, Vol. IV. n. 412. (2) Ib. n. 507. Notes to nn. 883-888. (1) H. A. Tr. X. 130.

§ III. What Can Be Donated

884. ○ Generally speaking, all goods can be donated, i.e. things or rights of the donor.

It is said: generally speaking; for in certain hypotheses they are not valid, or at least not licit, matter of donation; and thus:

1. In the hypothesis that the donor has children, that which is required for their necessary sustenance will be illicit matter of donation by natural right.

2. In the hypothesis that the donor is a married man, the dowry of the wife will not be apt matter of donation. Cf. n. 605.

3. In the hypothesis that the donor is unequal to paying his debts, none of his goods will be apt matter of donation, since no one, as they say, can be liberal unless he has been freed. Cf. n. 881, 1), e).

§ IV. What Form Is Prescribed by Our Law for a Valid Donation

885. ○ 1. For donation inter vivos a perfect or real donation is required and suffices; but an imperfect or verbal donation does not suffice.[2] Cf. n. 878.

2. For donation in prospect of death there is required either a solemn contract (n. 828, 3°) or writing, or the handing over of the thing, or a trustworthy document of this handing over.[3]

Query. What must be established for the internal forum concerning the value of an informal donation?

Resp. Distinguish. Either it is a question of a donation to pious causes, and it is valid for the internal forum (cf. n. 882, q. 2°), or of a donation to profane causes, and it seems that the sentence of the judge is required for it to be invalidated for the internal forum; for it scarcely seems able to be supposed that the law wished to impose so hard a burden on subjects, that they should be bound in conscience, of their own accord, and without any intervention of the judge, to renounce favors offered to themselves, and this only on account of defect of some formality. Whence for practice, and unless a verbal or imperfect donation is a promise rather than a true donation (n. 878), we think it must be established that donees, with every fraud excluded, can licitly acquire from an informal donation and retain what has been accepted, until those whose interest it is juridically seek the invalidation of such a donation.

§ V. In What Mode Donation Ought to Be Accepted

886. Preliminary Notes. - From the very definition of the contract of donation it is manifest that, for its essence, it is altogether required that the donation be accepted; indeed in such a way that before acceptance it produces of itself no obligation, and consequently can be revoked by the donor at pleasure. What has not been accepted is not judged donated. Thus, St. Alphonsus testifying,[1] the common opinion, founded especially on this argument: that no one can transfer his right or dominion into another unless the other wills to accept it and in fact accepts it. For although anyone by his will alone can lose his own right or dominion, nevertheless he cannot by his will alone effect that it pass into another, since for this the consent of the other is necessarily required, i.e. the union of the will on the part of the one accepting with the will on the part of the one transferring.

887. ○ These things having been noted beforehand concerning the necessity of acceptance for a valid donation, the legitimate requisites of acceptance must now be set forth.

The 1st is, that the donation be accepted by the donee himself or by a third party who legitimately conducts his place. The 2nd, that acceptance be made while the donor is living.

888. Questions. - Query 1° What is required that a donation in favor of an absent person be valid?

Resp. Donation, just as also promise, made to an absent person through letters written expressly to him, or through a messenger or procurator, ought to be accepted before the messenger or him who represents the donor, or through other letters sent to the donor on the part of the donee; otherwise it cannot be established that there is mutual consent of donor and donee into the same agreement.[2]

Query 2° What if the donor, a messenger having been sent, has revoked the donation?

Resp. 1° If the donor revokes the donation before it is accepted, and the revocation becomes known to the messenger whom he sent, now the messenger can effect nothing further; since all power of offering or handing over has been taken away from him.[1]

Resp. 2° But if the revocation does not become known to the messenger before execution, then it must be distinguished: either he behaves only in the manner of a messenger reporting the donation of another, or handing over the thing, or he has a mandate of making the donation. If the former, by the revocation made the subsequent donation is voided, because consent on the part of the donor is altogether lacking. If the latter, his acts are valid, and the donation can be validly accepted. For one mandating is bound to hold ratified that which, by force of the mandate, has been done in good faith in his name.

Notes to n. 888 - note sequence 1. (1) Civ. Code of Louis. a. 1489. (2) Kent, Vol. II. n. 438. 439. (3) Ib. n. 447 and note 2.
Notes to n. 888 - note sequence 2. (1) L. IV. 726. (2) H. A. Tr. X. 130.

889. ○ Query 3° What must be held concerning the acceptance of donation TO PIOUS CAUSES?

Resp. Abstraction being made from merely civil dispositions, which do not touch the value of a pious donation for the internal forum, the proposed question must be solved with a distinction, namely:

Either it is a question of a donation which is made immediately to God and which therefore puts on the nature of a vow and is usually called from a vow; for example, I promise or donate to God this sum of money for an altar to be erected in a Church for the celebration of Mass;

Or it is a question of a donation which is made immediately to the Church itself or to a pious cause; for example, I donate this sum of money, not immediately to God Himself, but to the Religious Institute itself for the care of the sick.

If the first: the donation is valid of itself without any acceptance on the part of the Church or the pious cause, because then the donation, as was said, behaves in the manner of a vow, which is judged to be accepted at once by God Himself.

If the second: more probably, according to the opinion of several Authors, acceptance is necessary for the value of the donation; because then the donation behaves in the manner of a contract, which is not perfected without the consent of each party. Yet they add that this acceptance can validly be made in the name of the Church by any particular person whatever.

But if, concerning donations of this kind to pious causes, a doubt occurs about the intention of the donor, namely whether the one donating wished to donate immediately to God, or to the pious cause, in practice this rule, handed down by St. Alphonsus[1] from Lugo, is to be held: in such a doubt it

must be presumed that the one donating had the intention of donating immediately to God, or the intention of vowing; because according to what commonly happens in pious causes the will of the donor is borne primarily into God, and from what commonly happens a solid presumption stands.

Moreover, where such are the circumstances of things that a place remains for obscurity, the Ordinary is to be consulted, to whom from the Council of Trent belongs a special care of pious dispositions.

890. ○ Query 4° Is a donation valid if the donor dies before acceptance?

Resp. Negatively, if he gave only a mandate of making a donation. But St. Alphonsus does not judge the opposite improbable.[2] Affirmatively, probably, if the donation has already been made, and the one donating before death sends a messenger or letter to manifest it.

Query 5° If the donee has died before acceptance, can his heir accept the donation?

Resp. More probably negatively, because the heir indeed succeeds to the real rights of the deceased, but not to personal rights, of which kind is the right of accepting a donation; unless perhaps he is the son of the donee, because then it would be presumed that such was the mind of the donor, as some admit, if not by strict right, at least from a certain equity.

Query 6° Does a sworn donation, but not accepted, obligate?

Resp. Negatively, because an oath follows the nature of the act; but a donation before acceptance is not firm. Therefore[3] ...

§ VI. In What Sense Donation Ought to Be Irrevocable; and in What Cases It Can Be Revoked

891. ○ 1° Any donation inter vivos whatever can be revoked before acceptance.[4] (e), p. 471.

2° A donation in prospect of death can be revoked a) if the donor repents; b) it is revoked ipso facto if the donor either donates the thing to another, or if he gave it with regard to some imminent danger from which he feared death, for example in grave illness or when battle was imminent, and escaped the danger; c) it is revoked by law itself if the donee dies before the donor.

3° A donation inter vivos perfected and accepted cannot be revoked by our law; but by natural right it is revocable if the conditions adjoined to the donation are not fulfilled, which, as is clear of itself, is valid concerning donation to pious causes. Yet here for practice it deserves to be noted that a pious donation which can truly and properly be called conditional occurs more rarely, although perhaps some burden to be fulfilled has been adjoined to it, say: the burden of celebrating certain Masses. The reason is: because a pious donation of itself and from its nature is usually made primarily and principally on account of the worship of God, the good of the Church, etc., indeed in such a way that the burden adjoined is only a secondary motive, on which the consent of the donor does not depend nor is limited. Whence a pious donation with a burden adjoined regularly will not be a donation under a condition, nor therefore can it be revoked by title of a condition not fulfilled; but ordinarily it will be only a donation under a simple mode, which does not render the pious donation revocable, although that mode ought to be observed from justice, as will be clear from the things now following. See n. 868.

Notes to n. 891. (1) L. IV. 726. (2) H. A. Tr. X. 130. (3) L. IV. 727. (4) L. IV. 725. 727. Appendix annotation (ε), to n. 891. 1°. p. 357. col. 2. Someone perhaps will have wondered that I said nothing about the revocability of a donation after its acceptance. The reason why I said nothing is that those causes on account of which Roman Law decrees that even an accepted donation can be revoked (see these, if you wish, in St. Alphonsus(4)) are not acknowledged by English Law. "The English law," says Kent,(2) "does not indulge in these refinements" of the Roman law, which indeed, if I may say what I think, is to be regretted. Therefore among us, "when the gift is perfect by delivery and acceptance, it is then irrevocable, unless it be prejudicial to creditors, or the donor was under a legal incapacity, or was circumvented by fraud."(3) Yet Louisiana does not use English Law. See "Civil Code of Louisiana."(4)

ARTICLE II: ON THE VALUE OF A DONATION UNDER A MODE, OF AN ALLECTIVE DONATION, AND OF A DONATION ON ACCOUNT OF A FALSE CAUSE

A. On the Value of a Donation Under a Mode.

892. ○ By donation under a mode is understood a donation made with the addition of some burden, to be fulfilled by the donee in its own time, without nevertheless that fulfillment being a sufficiently expressed and properly so-called condition. Now, it is certain that the donee, once such a donation has been accepted, is bound in conscience to observe the mode imposed, and that he is bound to restore proportionately if by his own fault he has not observed the mode.

But, the mode not having been observed, the donation is neither invalidated nor can it be revoked by the donor. Yet one must insist by remedies of law that it be observed.[1] See n. 868. (w) p. 476.

Notes to n. 892. (1) L. IV. 734 in fine. Kent, T. IV. n. 126. Appendix annotation (ω), to n. 892. p. 358. col. 1. "Though an estate be conveyed, it passes to the grantee subject to the condition, and laches are chargeable upon the grantee, even though such grantee, or his assignee, be an infant or feme covert, for non-performance of a condition annexed to the estate." Kent's Comm. T. IV. n. 126.

B. On the Value of an Allective Donation.

893. ○ By allective donation here is understood a donation made by the donor for this end, that the donee not indeed be obligated, but nevertheless be excited and enticed to furnish something, for example, a donation made to a girl for eliciting her consent into illicit intercourse. - As regards the value of such a donation, see what was said in n. 834, q. 7°.

C. On the Value of a Donation on Account of a False Cause.

894. ○ By donation on account of a false cause is understood a donation made on account of a cause, whether present or past, which is thought certainly to be present, although in reality it is not present; for example, a donation made to Peter as to a poor man, while he is not poor, or a donation made to Peter as to a poor and upright man, while in reality he is indeed poor, but by no means upright. - As to the value of such a donation, it will be permitted to establish these things:

a) If the principal cause is false, the donation of itself is invalid, and the donee ought to restore the thing donated, unless perhaps it can reasonably be presumed that the donor after the fact is no longer unwilling that the donated things be retained. And thus, in the first example adduced, a donation

made to Peter as to a poor man, so that poverty is the principal cause, when poverty is lacking, of itself falls, and therefore the things accepted by Peter must be restored to the giver or at least to others truly poor, unless it were permitted to presume otherwise concerning the will of the donor after the fact (n. 736, q. 5°).

b) If the secondary cause is false, the donation of itself does not seem invalid, but it can be revoked by the donor; but the donee himself, if he was the cause of the error, is bound to disclose the error, unless the donor is so affected that he can be judged not to wish to revoke, even if he knew the error. And thus, in the second example adduced, a donation made to Peter, principally as to a poor man and secondarily as to an upright man, poverty existing but uprightness lacking, of itself does not seem void, but only revocable; but Peter, if he was the cause of the error, namely by pretending that he was upright, while he is by no means upright, ought to disclose the error, unless it is permitted to presume otherwise concerning the will of the donor, as ordinarily happens in the matter of alms, in which poverty alone, but not uprightness, is usually considered as cause or condition (n. 736, q. 5°).

From what has been said it is clear that, for resolving cases of this kind of donation on account of a false cause in practice, one must carefully notice: a) what was the expressed intention of the donor in making the donation, and b) what is, or at least what is rightly presumed to be, his will after the fact. Cf. St. Alphonsus.[1]

Notes to n. 894. (1) L. IV. 21.

ARTICLE III: ON HEREDITARY SUCCESSION

Note. - Here it would have been necessary to treat only that hereditary succession which exists from TESTAMENT, since this alone can be referred to donation; but concerning that which is called LEGAL or FROM INTESTACY, it would have been necessary to treat in the Treatise ON RIGHT AND JUSTICE in that place where discourse is had concerning the various modes of acquiring dominion. But, since one is intimately connected with the other, and many things are common to each, it has pleased us to treat each in this place.

PRELIMINARY MATTERS.

A. On the Notion and Division of Hereditary Succession.

895. Notion. - Hereditary succession (hereditary succession) is a mode of acquiring, either from the disposition of law, or from the last will of the deceased (legitimate testament), the dominion of the goods and rights which the deceased had at the time of death. - There is no inheritance of a living man.

The very universality of goods and rights which are acquired through hereditary succession is called inheritance; the part of individual heirs: portion.

Division. - From the adduced description of hereditary succession there spontaneously flows its very well-known division into legal and testamentary.

Legal succession, which is also called succession from intestacy (succession by operation of law, or ab intestato), is that by which the goods and rights of the deceased are acquired from the disposition of law, without the cause of testament.

Testamentary succession (by testament or will) is that by which the goods and rights of the deceased are acquired from his last will, or legitimate testament.

B. On the Notion and Division of Heirs.

896. Notion. - By the name of heirs (heirs), in our law, come those who from law or testament succeed to the goods and rights of the deceased by universal title, i.e. who from law or testament acquire either the whole inheritance or at least some quota of the inheritance, say a half, a third part. But those who from testament succeed to the goods and rights of the deceased by particular title, i.e. who from testament acquire only some determined things, for example, a house, a field, all movable goods, all immovable goods, the usufruct of all or certain goods; these are not called heirs, but legatees (legatees). -

897. Division. - Heirs are usually distinguished:

a) Into legal heirs or heirs from intestacy (heirs by operation of law, or at law, or right heirs, or lawful heirs or by descent or ab intestato, or simply heirs), who are called to the inheritance from law; and testamentary or instituted heirs (heirs by will), who are called to the inheritance from the last will of the deceased himself, declared through a legitimate testament.

b) Into necessary heirs, who cannot be passed over by the testator as to a certain part of the goods, determined by Law (which they call the legitimate portion or reserved portion); and voluntary heirs, who can be passed over or instituted by the testator at pleasure.

These things having been premised, now we shall strive to present summarily those things which ought not to be unknown to Moral Theologians concerning hereditary succession, by discussing:

In the first place, hereditary succession in general, i.e. those dispositions of Law which are common to every succession, whether legal or testamentary; yet it must always be carefully distinguished between heir and legatee; for the things which will be said concerning heirs cannot of themselves be applied to legatees.

In the second place, legal succession, i.e. those dispositions of Law which are proper to legal heirs.

In the third place, testamentary succession, i.e. those dispositions of Law which pertain to instituted heirs and to legatees.

Notes to nn. 897, 903 - note sequence 1. (1) L. IV. 21. Notes to nn. 897, 903 - note sequence 2. (1) i.e. certain States excepted. (2) Kenr. Tr. X. 92. Notes to nn. 897, 903 - note sequence 3. (1) Kenr. Tr. X. 88. (2) p. 1227. sq. Notes to nn. 897, 903 - note sequence 4. (1) St. Thomas in 1. 4. Sent. Dist. 33. q. 2. (2) De jure belli et pacis Tom. I., Libr. II., Cap. VI. § XIV. (3) Gen. 15.

§ I. On Hereditary Succession in General, or on Those Dispositions of Our Law Which Are Common to Every Succession, Both LEGAL and TESTAMENTARY

898. What is generally required so that someone can be an heir. - It is required 1° That he be at least conceived at that moment at which he dies whose heir or legatee he is. Yet by substitution even one not conceived can be called to an inheritance or legacy. Thus, for example, a

disposition is valid by which someone leaves his goods or some good of his to someone with the burden that someone from the descendants of this one inherit them.

2° That he not be incapable by law.

899. Rights of heirs. - 1° They acquire dominion of all goods, rights, and actions of the deceased by the very moment in which the latter dies, and without its being necessary that they declare that they wish to acquire that dominion, and even if they are ignorant that they are heirs. Yet this acquisition of dominion is not to be confounded a) with actual possession of the same, which is procured through the executor or administrator of the inheritance; b) with acceptance of the inheritance; for it can be repudiated.

2° They have the right to seek the inheritance (i.e. to recover the goods and rights of the deceased) from all who detain it or part of it.

900. On the adition and repudiation of inheritance. - According to the axiom of law: "No one is an heir unless he wills it." Therefore no one is bound to enter upon or accept an inheritance. Among us, with common law considered,[1] no act is required by which someone repudiates an inheritance; it suffices that he neither seek nor enter upon the inheritance within the time established for the prescription of his right; and when this time has elapsed he falls from his right, even if he did not know that he was an heir.[2]

901. What pertains to the inheritance. - To the inheritance pertain:

1. As burdens: a) debts and real burdens of the deceased; expenses of burial and funerals; and also those which are joined with the execution of the testament or administration of the inheritance. b) Legacies.
2. As goods: a) goods and rights of the deceased; b) all things which are subjected to collation. But collation is the act by which one of the heirs brings back to the sum of goods which the testator left to be divided among the heirs those goods which he received from the deceased by donation inter vivos, so that they may be divided equally among all. "If therefore a father handed over to a daughter, on the occasion of marriage, fields, or houses, or a great abundance of money," or a dowry sufficiently notable so that she might enter a monastery; "or if he conferred gifts of this kind on a son, in order to provide for him; the children who remained with him, increased by no gift, can require that account be had of them in dividing the inheritance. Those who received those things from the father will indeed be able, by renouncing every right, to abstain from entering upon the division; but if they wish to claim anything beyond for themselves, only that will be owed which must be added so that the portion of all may be equal."[1]

Yet from collation are exempted a) those things which the deceased gave, by expressly exempting the heir from collation, or by title of special right (by benefit); b) expenses of nourishment, education, nuptials (wedding), learning an art or science, and similar things, unless the contrary intention of the deceased is clearly established; c) manual donations, unless they are of greater moment; d) fruits of things to be brought back, which the donee perceived before the death of the testator up to the day

on which the succession was opened; e) money used for redeeming a son from military service; for since this has place among us only in time of war, and it would be hard for a son to be exposed to the dangers of war before the other co-heirs, as if at his own expense, the father must be presumed, unless the contrary is clearly established, to have exempted this money from collation; f) those things which the son dishonorably spent from paternal goods, for example in games, drinking-bouts, etc., if he did not spend more than the father would have been content that he expend on honorable recreations. L. IV. 954-959.

For Louisiana see, if you wish, Civil Code of Louisiana.[2]

902. Original force of hereditary succession. - Much agitated among Authors is the question concerning the original force of hereditary succession; namely whether succession, whether from intestacy or from testament, repeats its force of transferring dominion originally from natural right; or rather from positive human law, so that, this law being excluded, the goods and rights of the deceased would of themselves become things of no one. - It suffices for us here to explain in a few words what seems more probably to be held about this matter.

A) As to succession from intestacy. - With attention both to the nature of property, and to the character of parental society and family, and also to the exigency of public order, we judge that it must altogether be resolved that this succession borrows its original force from the law of nature, especially indeed where it is a question of succession by which the nearest blood-relatives succeed to deceased blood-relatives, say, by which children succeed to deceased parents.[1] - Yet, since the law of nature directs succession from intestacy only in general and as it were indefinitely, and consequently leaves many things in this matter to be more specified and determined by positive law; hence you will also rightly say: succession from intestacy repeats its force of transferring dominion principally from the law of nature, and secondarily from positive human law, as that by which the natural force of succession seems to have become better ordered and much more valid.

B) As to succession from testament. - We defend with Grotius,[2] whose opinion is called by many the more common and more probable, that any man, not legitimately impeded, can by natural right validly dispose of his goods through testament, and consequently also that testamentary succession borrows its force of transferring dominion principally from the law of nature, and not from human law alone; although nevertheless it belongs again to the human legislator in this matter to order those things which are necessary so that affairs may be carried out in the due mode and order. "Although," says Grotius in the place cited, "a testament, like other acts, can receive a certain form from civil right; yet its very substance is cognate to dominion, and, this being given, is of natural right. For I can alienate my thing not only in a pure manner, but also under a condition; and not only irrevocably, but also revocably, and also with possession and the fullest right of enjoying retained meanwhile. But an alienation for the event of death, revocable before it, with the right of possessing and enjoying retained meanwhile, is a testament.... By this right Abraham, if he had died without children, would have left his things to Eliezer, as the place of Genesis indicates.[3] But that in some places it is not conceded to foreigners to make a testament is not from the law of nations; but from the proper law of that state, and, unless I am deceived, coming from that age in which foreigners were held almost as enemies: and thus among the more civilized peoples it has deservedly fallen out of use."

903. ○ Indeed it is necessary to confess that the proposed opinion concerning the natural force of testamentary disposition is not admitted by some Theologians and Jurists, who on the contrary contend that a testament, or last will, does not have the force and efficacy of transferring dominion from natural law, but only from positive human law; and they strive to prove their assertion by the following argument, sufficiently celebrated today:

For the translation of dominion, by natural right, it is required that the owner will and be able to transfer his thing into another;

But a testament, from its character, excludes this requisite, since the testator does not will to transfer his thing into another before death, and after death he is not able;

Therefore a testament, by natural right, is inept for the translation of dominion; and therefore if any force is to be ascribed to a testament, it must be repeated from positive law alone.

But in truth these Authors seem to effect nothing by aphorisms of this kind, since they do not at all attend to the nature of donation under a suspensive condition, concerning which Grotius speaks in the place cited; for when this is attended to, it would rather be necessary to argue thus in favor of our opinion:

For the translation of dominion, by natural right, it is required that the owner be able and willing to transfer his thing into another, either absolutely and actually, or under a condition;

But a testament, from its character, includes this requisite, since the testator at that very moment at which he makes the testament is able to transfer his thing into another and in fact also wills it, namely: under the suspensive condition of death.

Therefore a testament by natural right is not inept for the translation of dominion.

But the aforesaid Authors insist by producing this other argument:

At least, for the translation of dominion, by natural right, it is required that the will of the one accepting be united with the will of the one transferring;

But, in the case of testament, the will of the one accepting is not united with the will of the one transferring, who, at the time of acceptance, is dead;

Therefore, in the case of testament, by natural right there is no translation of dominion.

But this argumentation also seems very weak, as not distinguishing between actual and virtual union of wills. For suppose that in the case of testament an actual union of wills is not given; certainly, nevertheless, a virtual union is given, since the will of the one transferring, in the testament itself, according to common estimation (which I think is founded in faith in the immortality of the soul) is judged to persevere at least virtually. But it can by no means be proved that such a virtual union, in the case of testament, does not suffice by natural right; indeed, that this union in reality suffices is sufficiently established from the fact, most worthy of note here, that the usage of Nations and the very natural inclination of all men have always judged the last will of the deceased to be sacred and to be pursued with special honor.

Moreover, whatever may be the value of the opinion impugned by us, this still deserves to be noted at least for history:

All supporters of Communism have eagerly embraced the doctrine of deriving the force of succession from human law alone, as favoring their system more. For once this doctrine has been admitted, they seem to demand for themselves by so much greater right that the Civil Power at last take away from succession the force and efficacy which it previously attributed to it, and thus finally at some point recognize and promote the desired community of all goods. But what, I ask, would be the voice of all Theologians, as many as there are, if the civil power were to satisfy this wish of the Communists? Would not all with one mouth declare that an indulgence of this kind of the civil power is utterly to be condemned and injurious to citizens? But by what reason could that indulgence be called injurious, unless it is admitted that the force of succession is principally derived from the law of nature!

Thus acutely the distinguished Van Egeren, from whose illustrious Notes I have copied almost word for word these and many other things concerning Donations, Hereditary Succession, and Buying-Selling.

§ II. On Legal Hereditary Succession, or on Those Dispositions of Law Which Are Proper to LEGAL Heirs

904. ○ Who are called to the inheritance FROM INTESTACY, and what part of the inheritance individual heirs obtain. "In the United States... each State has established a law of descent for itself.... There is no entire, though there is an essential, uniformity on this subject.... It will be sufficient to state those leading principles... which are of the most general application."[1]

The debts of the intestate having been paid, and the dowry of the wife (see n. 605), if she survives, subtracted, the rest of the inheritance passes to the heirs according to the following rules.

905. ○ I. Rule. The inheritance "shall descend to" the "lawful descendants in the direct line of lineal descent; and if there be but one person, then to him or her alone, and if more than one person, and all of equal degree of consanguinity to the ancestor, then the inheritance shall descend to the several persons as tenants in equal parts, however remote from the intestate the common degree of consanguinity may be."[2]

II. Rule. "If a person... leaves lawful issue of different degrees of consanguinity, the inheritance shall descend to the children and grandchildren of the ancestor, if any be living, and to the issue of such children or grandchildren as shall be dead, and so on to the remotest degree as tenants in common. But such grandchildren and their descendants shall inherit only such share as their parents respectively would have inherited if living."[3]

III. Rule. "If the owner of lands dies without lawful descendants, leaving parents, the inheritance shall ascend to them, either first to the father and next to the mother, or jointly, under certain qualifications" for which you may consult Kent.[4]

IV. Rule. "If the intestate dies without issue or parents, the estate goes to his brothers and sisters, and their representatives. If there be several such relatives, and all of equal degree of consanguinity to the intestate, the inheritance descends to them in equal parts, however remote from the intestate the common degree of consanguinity may be. If they all be brothers and sisters, or nephews and nieces,

they inherit equally; but, if some be dead leaving issue, and others living, then those who are living take the share they would have taken if all had been living, and the descendants of those who are dead inherit only the share which their parents would have received if living. The rule applies to other direct lineal descendants of brothers and sisters, and the taking per capita when they stand in equal degree, and taking per stirpes when they stand in different degrees of consanguinity to the common ancestor, prevails as to collaterals, to the remotest degree, equally as in the descent to lineal heirs."[1]

V. Rule. "In default of lineal descendants and parents, and brothers and sisters, and their descendants, the inheritance ascends to the grandparents of the intestate, or to the survivor of them."[2]

VI. Rule. "In default of lineal descendants, and parents, and brothers and sisters, and their descendants, and grandparents, the inheritance goes to the brothers and sisters equally, of both the parents of the intestate, and their descendants. If all stand in equal degree of consanguinity to the intestate, they take per capita; and if in unequal degrees, they take per stirpes.... The rule is controlled in... some... States by the following rule."[3]

VII. Rule. "If the inheritance came to the intestate on the part of his father, then the brothers and sisters of the father, and their descendants, shall have preference, and, in default of them, the estate shall descend to the brothers and sisters of the mother, and their descendants. But if the inheritance came to the intestate on the part of his mother, then her brothers and sisters, and their descendants, have the preference; and, in default of them, the brothers and sisters on the father's side, and their descendants, take."[4]

VIII. Rule. "On failure of heirs, under the preceding rules, the inheritance descends to the remaining next of kin to the intestate."[5]

IX. Rule. "If there be no remaining next of kin, or if none lay claim to it within the time required in every State for the prescription of inheritances, the State is heir."

X. Rule. "The next of kin is" generally "determined by the rule of the Civil," and not of the Canon "law."[1] See Treatise on Marriage, concerning the impediment of consanguinity, n. 1582.

XI. Rule. "In a majority of the States the descent of real and personal property is to the same persons and in the same proportions."[2]

Notes to n. 905 - note sequence 1. (1) Kent, Vol. IV. 374. (2) Ib. n. 875. (3) Ib. 390. (4) Ib. 393-400. Notes to n. 905 - note sequence 2. (1) Kent, Vol. IV. n. 400. 401. (2) Ib. n. 407. (3) Ib. n. 408. 409. (4) Ib. n. 409. (5) Ib. n. 409.

906. ○ Who are excluded from the inheritance FROM INTESTACY.

1° He who, at the time when the intestate lays down life, has not yet been conceived; or (which nevertheless is not valid in all States), although he was conceived at that time, afterward is not born alive.

2° Aliens as to immovables are altogether excluded in certain States; in others, as citizens, they can be heirs; finally, in others, they obtain the rights of heirs if by oath they have proved an intention of always remaining in the Federated States, or inhabit them at that moment at which the intestate dies.

3° Illegitimates on the part of the father, but not on the part of the mother, nor toward one another.

But who are to be held among us as illegitimate is generally to be defined not from Common Law, but from the laws of individual States. See Kent.[3]

Notes to n. 906. (1) Kent, Vol. II. n. 422. (2) Ib. n. 427. (3) Ib. n. 208-214.

907. Questions. - Query 1° Are parents bound in conscience to recognize, or, on the occasion of nuptials, to legitimate their illegitimate offspring, so that thus they procure for the same the favors conceded by civil law?

Resp. Although parents can remove the injury caused to their illegitimate offspring by extra-matrimonial procreation only by recognition and legitimation of the same, and therefore, if a grave impediment does not stand in the way, they are to be carefully induced to this recognition and legitimation; nevertheless they do not seem able to be obligated to this under grave sin, provided they otherwise satisfy their natural office, by which they owe their offspring at least the necessities for the sustenance of life, for Christian education, and for a decent state.

Query 2° Do those about to marry act UNJUSTLY who on the occasion of marriage (as not rarely happens) falsely recognize and legitimate illegitimate offspring, which is not the offspring of both, but only of one or the other?

Resp. With the warning premised that here the doubt is moved solely concerning strictly so-called injustice, at least inchoative, toward future heirs, it must be said: concerning strict justice toward future heirs, in the proposed case, at least in those States where children are not necessary heirs, it is not certainly established; and therefore such persons about to marry are not to be compelled to restitution.

908. ○ Occupation of inheritance. "Power to administer the property" of an intestate is "granted" by the Court[1] "in the following order: 1st, to the widow; should there be none, then, 2d, to the children; should there be none, then, 3d, to the father; 4th, to the brothers; 5th, to the sisters; 6th, to the grandchildren; 7th, to any other of the next of kin. If any of the persons so entitled are minors, then to their guardians; if the relatives or guardians will not accept, then to the creditors of the deceased, the creditor first applying, if otherwise competent, to have the preference."[2]

Notes to n. 908. (1) Of Probate. Smith, n. 331. (2) Wells, p. 95.

§ III. On Testamentary Succession, or on Those Dispositions of Law Which Pertain to INSTITUTED HEIRS and to LEGATEES

909. What a testament is. - "A testament is the just sentence of our will concerning that which someone wishes to be done after his death." Thus Modestinus in Roman Law.[2] This definition is more conformable to our Law, because it does not require that either an heir be instituted in the testament, or some legacy be left in it. Namely it suffices that the testator declare what he wishes to be done after his death, for example in what manner the funeral is to be held, etc.

910. ○ In what manner a testament is to be interpreted.

1° Clear words do not receive interpretation.

2° If words admit multiple sense, the mind of the testator is to be attended to. But the mind of the testator is judged to have been that which is more conformable to the nature and object of his last will. He must also be judged to have willed that his testament effect something, and not to have willed anything which is contrary to laws.

3° A condition adjoined to a last will is to be held, a) as not appended, if it is either unintelligible, or impossible, or contrary to good morals or laws (yet see what was said in n. 870, 2°); b) as fulfilled, if he whose interest it was that it not be fulfilled impeded its fulfillment (n. 870, 5°).

4° A testamentary disposition resting on a final motive, either false or contrary to laws or good morals, is to be held null.

5° A disposition of last will obtained by force, fraud, or evil arts, is null.

Notes to nn. 910, 918 - note sequence 1. (2) Dig. XXVIII. T. I. L. 1. Notes to nn. 910, 918 - note sequence 2. (1) Wells, p. 92. (2) Kent, Vol. II. n. 170. (3) Kent, Vol. II. n. 172. Notes to nn. 910, 918 - note sequence 3. (1) L. IV. 946. (2) Civil Code of Louis. a. 1493. sq. (3) Wells, p. 93. Notes to nn. 910, 918 - note sequence 4. (1) Wells, p. 93. (2) Ib. pp. 92. 93. (3) Ib. p. 93. (4) Ib. p. 93. Notes to nn. 910, 918 - note sequence 5. (1) L. IV. 924. Notes to nn. 910, 918 - note sequence 6. (1) Sess. 22. c. 8. de Ref. (2) Cf. St. Alph. L. IV. 927. Notes to nn. 910, 918 - note sequence 7. (1) J. I. 35. (1).

911. Who can, and who cannot, make testament. - "All persons of sound mind, except infants,... married women," corporations, and with regard to real estate aliens, "are legally entitled to dispose of their property by will; and infants of the age of fourteen, if males, and twelve, if females, may make wills of personal property. But this rule of the common law has been generally modified by statute."[1] Thus for instance in many States married women are not excluded, and in all "the wife may dispose, by will or by act in her lifetime, of her separate personal estate, settled upon her, or held in trust for her, or the savings of her real estate given to her separate use."[2] "Equity will carry into effect the will of a feme covert, disposing of her real estate in favor of her husband or other persons than her heirs at law, provided the will be in pursuance of a power reserved to her in or by the antenuptial agreement with her husband."[3] On the contrary, in many States the restriction laid upon infants has been increased by the prescription that personal property may be willed by males at the age of eighteen, and by females at sixteen. With regard to aliens, see n. 654 and 906, 2°.

If it is a question of a testament to pious causes, by Canon Law those capable are the pubescent, i.e. males who have completed the age of 14 years, and females who have completed the age of 12 years.

912. Who can be instituted heir or legatee. - Generally in this country all natural persons, without exception, are capable of taking by will, provided:

a) They be in being at the time of making the will, or be the immediate issue of persons then in being;

b) They be not subscribing witnesses to the will.

Whether corporations can take by will or not, depends upon the express provisions of their charters. With regard to aliens see n. 654.

913. Of what goods anyone can dispose. - All a man can dispose of in anticipation of death is the surplus which remains a) after all his debts are paid, and b) the widow's dowry (n. 605) has

been subtracted. Yet by natural right, as was said in n. 902, some part of the goods must also be left to children, and by reason of charity and piety under grave sin also to brothers and sisters constituted in extreme or grave necessity.[1] - In Louisiana the quota of goods concerning which the testator can dispose is determined otherwise.[2]

914. ○ In what form a testament must be made so that it is valid.

Preliminary Note. - A testament is either holographic, which has been wholly written by the proper hand of the testator; or solemn, which has been made by the rite prescribed by law; or nuncupative, which is pronounced by words only; or privileged, which from the favor of law is valid, the customary solemnities being omitted; for most laws concede to sailors and others staying at sea, and to soldiers, the privilege of disposing concerning movable things without the customary solemnity. A codicil is called a disposition of last will by which something concerning a testament is explained or changed by adding or subtracting. A fideicommissum is a disposition of last will by which the testator commits something to the faith of another, for example, fields, whose fruits he may expend for the utility of another.

Which of these testaments are valid in individual States, and in what form, and for what goods they are valid, let each one see from the laws of his State. Let it suffice to note these general things:

a) "Nuncupative, unwritten wills are always unsafe; and, although they are legal under many circumstances, they rarely fail to leave room for troublesome and expensive litigation."[3]

b) "A codicil... must be executed with the same formality as a testament, - that is, in the presence of the same number of witnesses."[1]

c) In making a will the intention of the testator... should be fully and plainly stated; if the testator intends to give the property for a certain number of years, or for life, or forever, he should say so; he ought also to describe the property with reasonable certainty, as, for instance, "my house and lot known as No. 1 Bond Street, New York," or "my six houses and lots known as Nos. 81, 83, 85, 87, 89, and 91 Pearl Street," or "my farm of one hundred and sixty acres, in Claverack, Columbia County, State of New York," or "my gold watch," or "my horse," etc., etc.[2]

d) "All wills" (the nuncupative excepted) "must be made in writing, with the testator's full name at the end,"[3] written either by himself or some other person in his presence, and by his express direction. Every person, however, who shall sign the testator's name to a will by his direction, must write his own name as a witness to the will in the presence of two other witnesses.

e) "Witnesses should always write their respective places of residence after their name."[4]

f) The number of witnesses required varies in the different States. In Pennsylvania, however, no subscribing witnesses are required, provided the signatures to the will can be proved by the oaths of two respectable witnesses.

915. ○ On the value of an informal testament, i.e. a testament to which are lacking the formalities required by civil law under penalty of nullity.

Query 1° Is a testament of this kind, made for pious causes, valid?

Resp. With the observation premised that testaments are judged to have been made for pious causes insofar as in them something has been left to a Church, or Pious Place, or Sodality, or certainly to a person, so that divine worship, or the good of souls, may be promoted, or the calamity of the poor be relieved, we profess without any hesitation, with the opinion today most common and certain: such testaments, although destitute of legal forms, are valid in the forum of conscience and to be committed to execution; provided it is established to the heir (I do not say: concerning a velleity or inefficacious purpose, but) concerning the will of the testator, whether through his indubitable writing, or through words heard from him or in another similar mode, or also through witnesses; yet in this last case, namely if certitude must be acquired only from the testimonies of others, according to St. Alphonsus,[1] the testimony of one, even of a pastor or confessor, does not suffice, but at least two witnesses are required, whether male or female.

The reason for this assertion is: because by the very fact that someone disposes of his goods for pious causes, this matter becomes spiritual, and therefore subject to the jurisdiction of the Church, which is indeed free and immune from civil power in all things which directly fall under her jurisdiction. But the Church decrees that the aforesaid testaments, provided the will of the testator is established as above, are valid and to be executed for the forum of conscience; as is manifestly drawn both from various texts of Canon Law and from diverse responses of the Sacred Penitentiary, among which we judge especially to be noted here the following response given to the Canon of Angers, on the 23rd day of June, 1844.

POSTULATE.

"Eudorius, ... destitute of necessary heirs, ... determined to spend part of his goods on pious works. For this end he instituted Boniface universal legatee through a testament clothed with the due forms. But he handed to Boniface a private writing, in which he manifests his pious will and asks him to execute the same faithfully. - But Boniface, Eudorius being dead, keeps the whole inheritance from the fact that he holds it by a valid testament. It is asked whether he can be safe in conscience."

The Sacred Penitentiary responded: Boniface is bound in conscience to fulfill the certainly known will of Eudorius.

Note. - By the name of pious cause do not come those institutes of public beneficence which, by law, are not subject to ecclesiastical direction but only to the direction of civil power. Such are hospitals, hospices, orphanages, foundling-homes, places destined for the care of public want, and other similar things, which among us exist for the use of all citizens indiscriminately under the administration of the civil power alone or of some lay college.

916. Resolutions. - Therefore heirs who refuse to execute a testament for pious causes, certainly known, although informal, cannot be absolved sacramentally; unless perhaps (as often happens in this matter) they are in good faith ignorant of their obligation and there is fear that they will not obey the warning of the confessor. Yet in this case the confessor, if it can be done, should recur to the counsel of the Ordinary, to whom from the Council of Trent[1] the care of execution of pious dispositions has been entrusted.

917. ◦ Query 2° Is an informal testament TO PROFANE CAUSES valid?

Resp. Just as we think it must altogether be affirmed that defect of civil formalities does not prejudice pious testaments, so on the contrary we easily concede that defect of the same formalities can greatly harm profane testaments, if such was the mind of the legislator, to whose jurisdiction profane causes are subject. But whether the mind of the legislator was in fact such, namely of invalidating informal testaments of themselves even for the internal forum, is very greatly controverted. Three opinions are commonly brought forward, of which the first affirms, the second denies, while the third, walking as it were by a middle way, defends that the legislator indeed wished to invalidate informal testaments, but only in such a way that this invalidation would not have its full effect except after the sentence of the judge.[2]

In so great a conflict of minds, we think the following can be established, as sufficiently consonant with natural equity and the more common practice.

1° An heir from intestacy can licitly use the benefit of the law and seek rescission of an informal testament from the judge, provided he is not from elsewhere bound to the execution of such a testament, say, if by force or fraud he had impeded the making of a valid testament, or if it were a question of testaments for pious causes, for paying debts, or for making restitution.

2° When an informal testament has been rescinded by sentence of the judge, an heir or legatee from such a testament, by force of this testament, will no longer be able to accept anything for himself; and if perhaps they have already occupied some goods in good faith, they ought to return them to the heir from intestacy; nor do they seem able to use occult compensation in any way. Indeed, as regards occult compensation, St. Alphonsus[1] (against others) would not admit it even before sentence of the judge against the heir from intestacy, supposing that the latter was already in real (and not only in fictive) possession of the inheritance. - But if the informal testament has not yet been rescinded by the judge, but the heir from intestacy has certainly proposed to seek that rescission, the heir or legatee from such a testament seems bound to the same thing as above, at least from charity, because, since the rescission is going to be certain, they ought not to be in cause why the adverse party should sustain expenses and inconveniences of litigation. Yet we would not dare to affirm, says Bouvier, that those who even in this case wished to await the sentence of the judge would sin against justice.

3° An heir or legatee from an informal testament, with safe conscience, can enter upon the inheritance and accept the part falling to himself, or demand and retain goods left to him, if the heirs from intestacy do not use their right. Nor are they bound to warn them of the defect of formalities, which perhaps they are ignorant of, provided they have not concealed that defect from them by fraud or another unjust way.

4° Heirs from intestacy, if they have once voluntarily held ratified, confirmed, or paid the donations of an informal testament, seem no longer to have recourse to the judge. L. IV. 928 under 4 and 5.

Note. - He who has acquired and retains the inheritance from an informal testament, by that very fact is bound to the payment of a legacy perhaps imposed on him in the same testament. For it is not licit to change afterward a probable opinion once chosen, if from such a change certainly one law would be violated, as is clear from what was said in n. 76.

918. ○ Query 3° Is an heir from intestacy, who promised the testator that he certainly would pay the legacies even if the testament were informal, truly bound by that promise?

Resp. With a distinction: either the testator, on account of this promise, abstained from making a testament clothed with the due forms, or from inscribing such a legacy, or not.

If the former: we judge that the one promising is bound in the forum of conscience to preserve the legatee unharmed; for if, by making the promise, he intended not to fulfill it, he committed fraud and thus unjustly impeded another from the attainment of a good, and therefore he is bound to reparation; but if he promised sincerely, he indeed did not commit fault, but he would commit it by changing his purpose and thus inflicting true damage upon him who otherwise would have been instituted legatee.

If the latter: namely if the testator did not abstain on account of this promise, the solution will be various according to the variety of opinions concerning the value of an informal testament. If the opinion is admitted which teaches that such a testament is valid, it must be resolved that the one promising is bound from justice to fulfill the promise. But if the opinion is admitted which teaches that such a testament is invalid, it can be resolved that the one promising is not held from strict justice, since a private agreement cannot derogate from the disposition of laws, as supposed in this opinion.

Therefore, when the case assigned here occurs, fulfillment of the promise seems able to be much advised and urged by title of fidelity, but not imposed under grave obligation, unless perhaps it is a question of paying debts or of pious causes, to which this whole third question in no way pertains.

But if that promise were confirmed by oath, according to St. Alphonsus (see n. 866), it would have to be observed under grave obligation, not indeed from justice, but from religion, unless the bond of the oath is relaxed by competent spiritual authority.

919. In what manner a testament is revoked. - "The will of the deceased is ambulatory up to the supreme end of life,"[1] i.e. a testament can be revoked or changed as long as the testator is among the living. The cases in which a testament by our law is judged revoked are nearly these:

1° "Marriage and the birth of a child after" the will has been made, "provided such wife and child were unprovided for."[2]

2° "The will of a single woman is annulled in law by her marriage. But a woman," as has been said (n. 911), "may make a deed of settlement of her estate before marriage which shall empower her to retain her right to make a will after marriage."[1]

3° "A sale of, or an agreement to sell, property devised in a will, is a legal revocation of a will."[2]

4° "Children born after" the will has been made, "and not provided for by settlement, are entitled, at the death of the testator, to such share of the property as they would have had if no will had been made."[3]

5° A will is also revoked: a) by intentionally destroying, tearing, cancelling, or obliterating it; b) by making a subsequent will; but generally the subsequent will must either contain words expressly

revoking the former, or make a disposition of the property different from, and incompatible with the preceding;[4] c) by making a codicil for the express purpose of revocation.

In what manner a testament is revoked in Louisiana, see Civil Code of Louisiana.[5]

920. On the execution of a testament. - 1° The executor is instituted by the testator; but "no person can be an executor of a will who, at the time the will is proved, is either an alien, under 21 years of age, a drunkard, a convict, or deficient in understanding." Nor can a married woman be appointed. If no executor be appointed by the testator, or if the one appointed renounce such appointment, the law provides for one in different ways in the different States.

2° A will is of no effect until probate has been made, and the first duty of an executor is to have the will proved in the proper court.

3° After probate of the will, the executor is to follow its directions as far as they go; in every case, however, he has to make an inventory of the goods of the testator and to pay his debts according to the order prescribed by law.

CHAPTER III: ON LOAN FOR USE AND PRECARIUM

921. ○ Loan for use is a contract by which a thing is gratuitously conceded for use alone for a certain time, with the burden of restoring the same thing in individual.

Precarium, which is akin to loan for use, is defined: a contract by which the use of some thing is conceded to someone asking, yet revocable at the will of the one conceding. And in this precarium differs from loan for use, that it is revocable at the judgment of the one conceding.

Hence loan for use differs 1° from lease, by which the use of a thing is indeed conceded, but not gratuitously; 2° from deposit, by which a thing is handed over not for use but for custody; 3° from loan for consumption, by which a thing must be restored only in the same species.

Moreover the object of loan for use or precarium can be any things whatever, whether movable or immovable, placed in civil commerce, provided they are not consumable by that first use for which they are destined.

Notes to nn. 921-923 - note sequence 1. (1) Dig. XXXIV. T. IV. L. 4. (2) Wells, p. 93. Notes to nn. 921-923 - note sequence 2. (1) Wells, p. 98. (2) Ib. (3) Ib. (4) Kent, Vol. IV. n. 528. (5) a. 1690-1696, 1710.

Obligations of the borrower for use.

922. ○ Generally he ought to use the thing loaned to himself as a good father of a family; but specifically:

1° He cannot use the thing loaned except for the use either conceded to himself, or to which he prudently judges the lender for use consents, or for which the thing is destined from its nature; otherwise he abuses another's thing, and will be bound to repair all damages arising thence.

2° He ought to undergo the necessary expenses for the conservation of the thing, for example, to feed a horse loaned for use; but he is not bound to extraordinary expenses, for example, to care for a horse laboring under a grave illness without his own fault.

3° He ought to return the thing loaned for use at the prefixed time and at his own expense, even if it is not sought back; because the stated day interpellates for the master. If the time of restitution was not prefixed, the thing loaned for use ought to be restored as soon as it has furnished the requested use.

4° If the thing loaned for use suffers some detriment on account of the conceded use without fault of the borrower for use, the latter is not bound to compensation. If it has become worse by his juridical fault, he is bound to compensate in the external forum, and according to not a few Theologians also in the internal forum, since the contract was entered for his utility alone. Yet others deny this very probably, unless a particular agreement concerning this had intervened. Cf. n. 748.

Obligations of the lender for use.

923. ○ 1° He is bound not to seek back the thing loaned for use before the prefixed time, or at least, if this was not prefixed, before the borrower for use can use it; otherwise he will

be held for the damage which the other has experienced from his untimely revocation, since he thus violated another's right acquired by pact. Except a loan for use in favor of the borrower alone, who dies before the prefixed time; or if the lender for use immediately needs the thing, even though the borrower for use would undergo equal damage thence.

2° He is bound to restore extraordinary expenses, urgent and necessary for conserving the thing, which the borrower for use underwent while he could not easily warn the lender for use otherwise.

3° He is bound to open to the borrower for use any harmful defects of the thing loaned for use which he knows; otherwise he will have to compensate the damage arising thence.

4° Finally he is bound to sustain the perils and detriments of the thing arising from a fortuitous event, delay, fault, pact, and special law being excluded, because the thing perishes for the owner.

See Smith n. 325. II.

CHAPTER IV: ON DEPOSIT

924. ○ Deposit is a contract by which a thing to be kept is gratuitously committed and accepted, to be restored entire when it has pleased the depositor. But the care of deposit is judged to be accepted by drivers, sailors, innkeepers, and others obligated by office to keep things, whenever, while they are seeing it, a thing is deposited in a house, carriage, or ship.

Obligations of the depositary.

1° He is bound to preserve and guard the thing deposited with that care and diligence which diligent men are accustomed to use in conserving a similar thing of their own; for he has taken up this custody of the thing handed over. If the thing deposited perishes by fraud or by his theologically culpable negligence, he is bound to restitution.

2° He cannot use the thing deposited without the express or tacit consent of the owner, or at least prudently presumed; for it is not licit to use another's thing without consulting the owner. But that consent is prudently presumed if the thing is going to become worse from non-use. Therefore sometimes it is licit to ride a horse deposited with you, lest its feet swell by remaining too long in the stable. Likewise if it is a question of a thing consumable by use, for example wheat, or also of money not enclosed in a bag or box, nor fortified by seal, provided the depositary is certain that he will have as much of the same goodness when it is sought back by the depositor.

3° He is bound to return the thing deposited at once to the one asking; for otherwise he would have another's thing while the owner was reasonably unwilling. Except, unless the depositor seeks it back to his own or another's damage; and thus one deferring to return money to a drunkard does not sin, when he is going to abuse it for drinking; or unless the thing is stolen and the owner seeks it back; or also (at least in the forum of conscience) unless the depositary has a just cause of compensation. But the thing deposited ought to be returned in that state in which it is found at the time of restitution, and with the fruits perceived from it. But if by the fault of the depositary it has become worse, he is obligated to repair the damage.

Obligations of the depositor.

The depositor is bound to pay the expenses which the depositary underwent in preserving the thing deposited, and to render him unharmed for all things which he has suffered on occasion of the deposit. Thus for example, if you deposited a horse in another's stable, you ought to pay the expenses of nourishment; and if that horse labors under a contagious disease by which the horses of the depositary are infected, you must render him unharmed, for one's office ought to be damaging to no one.

See Smith n. 325. I.

CHAPTER V: ON MANDATE AND MANAGEMENT OF AFFAIRS

I. On Mandate (Smith, n. 353 sq.).

925. ○ Mandate is a contract by which an obligation of doing something for the convenience of another is gratuitously taken up, for example of completing some business, buying something, selling, etc.... I have said: gratuitously; for if it is taken up for an agreed price, it is rather named a hiring of work.

Obligations of the one mandating.

1° He ought to fulfill all obligations contracted by the mandatary and consonant with the mandate; but not that which has been done beyond the mandate, unless he has expressly or tacitly held it ratified.

2° He ought to furnish to the mandatary those things which are necessary for the execution of the mandate, and refund to him the legitimate expenses which he made on occasion of the mandate, even if he did not lead the matter to a happy outcome.

3° He is bound to render the mandatary unharmed by reason of damages which, culpable imprudence being set aside, he suffered on occasion of the mandate; for no one is bound, nor is he judged to wish, to confer a benefit on another with his own loss.

Obligations of the mandatary.

926. ○ 1° He is bound to conduct the business of the one mandating diligently and as his own. Whence he is bound at least for fraud and theologically culpable negligence.

2° He ought to contain himself within the limits of the mandate. Whence he can buy nothing at more, or sell at less, than has been prescribed to him; for otherwise he would not act by force of the mandate.

3° He cannot exact wages unless they have been promised, or he himself previously asked for them; nor is it licit for him secretly to compensate his work.

4° Of himself he cannot retain profit for himself if he sells, nor an excess of price if he buys below the determined price, unless the owner consents. Yet by accident the mandatary can retain the excess of price: 1° if the thing has become better by his special industry and undue labor; 2° if he tacitly agreed with the owner that he would give nothing to him beyond the determined price or value; 3° if, for the mere favor of the mandatary himself, the seller diminished the price or the buyer offered a greater sum; 4° if the profit is of small moment; 5° if, ordinary diligence having been used and a greater price not found, you buy the thing for yourself, and afterward sell it for more, and pay to the owner only the assigned price. Resolve the same if another committed to you to buy something at such a price, and you find the thing at a lesser price; namely, then you will be able to buy the thing for yourself, and afterward sell it at a greater price, provided that afterward, ordinary diligence having been used, you would not have found the occasion of buying the thing except at that greater price.[1]

Mandate is broken in three ways: 1° by revocation of the mandate, which the one mandating can make at pleasure; 2° by renunciation of the mandatary, notified at the due time; 3° by natural or civil death, or interdiction either of the one mandating or of the mandatary.

II. On Management of Affairs.

927. ○ Management of affairs is a certain quasi-contract by which someone takes up the business of an absent and ignorant person to be usefully conducted, without express mandate, but from his commission reasonably presumed.

1° The manager of the affair, just as the mandatary, is bound to administer the thing of another as a good father of a family, and to repair damages inflicted on the absent person from his fraud, negligence, or fault. Yet in many circumstances the obligation of compensating damages can be moderated, especially when those arise from the inexperience or negligence of a manager who took up the thing of another to be conducted in defect of one more skilled.

2° The absent person whose business is conducted is bound to observe agreements rightly made by the manager, and to repair to him expenses and damages arising from such management, even if the matter has succeeded badly.

More probably he has a right to suitable wages; for otherwise few will be found who spontaneously take up the affairs of an absent person to be conducted. - Thus Antoine[2] and others.

Notes to n. 927. (1) L. IV. 825. 826. (2) C. 4. in fine.

CHAPTER VI: ON LOAN FOR CONSUMPTION

It must be treated 1° concerning the nature of the contract of loan for consumption; 2° concerning profit perceived from loan for consumption, or concerning usury; 3° concerning titles excusing from usury.

Note. - Lender and one lending in this Chapter is understood as "the lender"; borrower, "the borrower"; to lend, "to lend."

ARTICLE I: ON THE NATURE OF THE CONTRACT OF LOAN FOR CONSUMPTION

928. ○ The word loan for consumption, according to the force of the name, signifies that something from mine becomes yours and reciprocally that yours, which you have received, again becomes mine. Sometimes it is taken for the very thing handed over by loan for consumption; but sometimes, and more often, for the contract by which that thing is handed over to another for use. In this last sense it is accepted here.

Loan for consumption is usually defined as a contract by which a thing consumable by first use is handed over to another, with the obligation at the stated time of returning a thing, not indeed individually, but the same in species and goodness.

Things consumable by first use (fungibles) are those which by their nature are destroyed and consumed for assisting human necessities, as bread, wheat, wine, oil, salt, fruits, etc. Likewise money, which, although it is not consumed nor perishes in itself, nevertheless perishes for the one expending it.[1]

Hence loan for consumption differs from loan for use, lease, and deposit: 1° because in loan for consumption the thing ought to be consumable by first use, otherwise in the others; 2° because the thing is to be returned not in individual, but only the same in species; 3° because in loan for consumption the dominion of the thing is transferred, and not in the others; 4° and for this reason in loan for consumption the thing perishes for the receiver, in the others for the one handing over.

Moreover, the reason why in loan for consumption strictly and properly so called the dominion of the thing is transferred is that, since the borrowed thing is consumable by first use, a use of this kind would not be licit without dominion itself. Hence all expenses and perils of the thing handed over fall to the borrower, as to the true owner. (m) p. 482.

Notes to n. 928. (1) L. IV. 754. 759. Appendix annotation (m), to n. 928. p. 371. col. 1. The dominion of an individual thing which is received by mutuum is transferred to the borrower to this extent, that that very individual thing is no longer the lender's. But the lender, by force of the contract of mutuum, reserves for himself a personal action against the borrower himself for a thing the same in species and goodness. But since this action itself, as an incorporeal thing (n. 593), is the object of dominion, it follows that this transfer of dominion in mutuum is not to be accepted in that exclusive sense in which, for example, it is accepted in donation. Pruner, Mor. Th. p. 608.

929. Principles. - I. There is given a strict precept of lending with respect to the poor who are in true necessity and will have that from which they may restore. The reason is that there is present a

strict obligation of charity of assisting a neighbor placed in that necessity according to the rules and principles established where charity toward neighbor was treated.

More often the precept of loan is absent toward the poor, from the fact that they are not presumed to be going to have that from which they can return an equivalent. But then the precept urges of some alms to be bestowed on them. I have said: of some; because you are not bound to furnish as much alms as the poor person was asking for as a loan. For there are also others who can and are bound to help.

II. There is given a precept of granting a loan also to the rich who, on account of a peculiar circumstance, need it exceedingly; but not to those rich persons who request the same in order to increase wealth. The 1st reason is that the precept of charity binds us toward all men, even the rich, and demands that we willingly furnish this which we would wish to be furnished to ourselves in a like case, at least if we can assist them by loan without inconvenience. But the 2nd reason is that rich persons of this kind are constituted in no necessity, and therefore no precept of charity urges toward them.

930. Questions. - Query 1° What are the obligations of the lender and borrower?

Resp. to the 1st. The obligations of the lender are the following:

1° He is bound to warn the borrower concerning a defect of the thing handed over, if there is any; likewise concerning imminent damage, ceasing profit, peril of principal, unless he wishes to lend gratuitously, or condone that which by the titles of emergent damage, ceasing profit, etc., he could justly have exacted; otherwise the latter does not consent and sustains an injury, which the one lending will be bound to repair. Cf. nevertheless n. 935, II.

2° He is bound not to seek back the thing before the stated time, or before a time to be defined by the judgment of prudent men, with attention to the circumstances and the end on account of which the thing was given by loan. Yet he is bound to receive the thing if it is brought before, when the time was conceded for the mere favor of the borrower.

3° He is bound of himself not to receive more than the thing lent was worth when it was given by loan, because loan for consumption of itself is a gratuitous contract, from which there exists for the borrower only the obligation of returning a thing the same in species and goodness at the due time. Thus of itself it would not be licit for a lender to exact that metallic money be returned to him for paper money, although at the time of the loan each happens to be equal in value; for it would be a burden estimable by price imposed on the borrower. Yet St. Alphonsus warns that a contract customary in some region, and usually celebrated by upright men, is not easily to be condemned.[1] "But it would be plainly unjust," adds Kenrick,[2] "to lend certain money-tickets which are worth less, and to exact that gold or silver be returned" (or the price of gold), "as if they were of the same value."

Resp. to the 2nd. As to the obligations of the borrower:

1° However the thing lent perhaps perishes, the borrower is not freed until the lender has received what is his, either by himself or through another designated; the reason is that the debt is not concerning the thing in individual, but in species, or if money was given as a loan, concerning the value.

2° He ought to return the thing at the appointed time and in the same physical species, measure, number, weight. But as to money, which is judged to perish only morally, it suffices (unless agreement was made concerning the same species of money to be returned) that it be restored according to the same value; because in money attention is paid rather to value than to species. (A) p. 476.

Notes to n. 930. (1) L. IV. 755. (2) Tr. XI. 80. Appendix annotation (A), to n. 930. Resp. to 2nd under 2°. p. 372. col. 1. Worthy of note is the Response which the S. Penitentiary gave on Jan. 21, 1873, to the Bishop of Como, who asked in these words: "Most Eminent and Most Reverend Lord: "Titius, in the year 1860, when this government(1) had not yet given compulsory use to paper money in the Lombard Province, lent to Sempronius at interest by note one hundred and twenty gold coins, commonly called marenghi, with these conditions given and accepted. "I. The principal will have to be restored in the same species, any other thing substituted for metallic money being excluded, and this even in the case in which some civil law might permit this substitution, namely of paper money, for extinguishing debts of whatever kind, the debtor from now renouncing the privilege which the law perhaps might grant to him. "II. If it should happen that a law of this kind be passed, and from it the creditor be forced to accept such paper money as payment, the debtor obliges himself to restore the aforesaid sum by handing over paper money, not according to its nominal or legal value, but according to its commutative value, or by handing over such a sum of paper money that from it, by exchange, the aforesaid 120 gold coins can be had; and likewise the owed interest in metallic money. "With these agreements, Sempronius gave interest according to their tenor up to this day; but now, when compelled by Titius to render the said principal, he refuses to stand by the agreements; namely, he neither wishes to pay gold money, nor to add upon the paper money as much as presently is required so that it may be equated with gold according to the difference, commonly aggio; and he brings forward this reason, that the civil law, by decreeing that paper money is to be accepted by all in place of metallic, has besides declared wholly void the preceding agreement concerning restitution of the capital sum and payment of interest to be made in metallic coins and not in paper coins. "Therefore for the direction of souls it is asked: "I. Whether the simple(3) condition attached in the note concerning restitution to be made not otherwise than in metallic money loses its force even in the forum of conscience through a subsequent civil law invalidating it? And, if affirmatively: "II. Whether Sempronius, in this case, that is, by special conditions as stipulated above,(1) can safely conform himself even in the internal forum to this civil law so very useful to himself, when this law, even in these circumstances, would have favored him in the external forum? "May Your Eminence deign, etc. "PETER, Bishop of Como. "Como, on the fourth day before the Kalends of January 1873." "The Sacred Penitentiary, having maturely considered the proposed doubts, replies: "To I. Regularly(2) affirmatively, unless peculiar circumstances obstruct, concerning which recourse must be had in particular cases, after they have been diligently set forth. "To II. With attention to the quality of the agreements, and also with attention to the tenor of the law of which there is question in the case, negatively. "A. PELLEGRINI, Regent of the S. P. "L. CAN. PEIRANO, Secretary of the S. P. "Given at Rome in the S. Penitentiary, Jan. 21, 1873."

931. ○ Query 2° Can you receive back the thing lent in the same measure and quantity, if its price increases during the time of the loan? Can you seek back more if it decreases?

Resp. 1° If when a thing is handed over by loan there is an equal doubt on each side whether at the time of restitution the thing will be worth more or less, it is licit to contract that, with the same goodness and measure observed, it ought to be returned in its own time, even if its price has greatly increased. The reason is that since on each side there was equal danger, by that very fact equality is already preserved.[1]

Resp. 2° The aforesaid pact is not licit of itself if it is certainly established, or is by far more probable, that at the time of payment the value is going to be increased. The reason is that thus equality is not observed, but more is exacted than is given at the time of the loan. Hence if a bushel of wheat is now worth $3.00, and is going to be worth $4.00 at the time of restitution, it is not licit to contract that the same amount be paid. Yet except unless you had determined to preserve the thing until the time

of the increased price; because then more is exacted on account of ceasing profit (n. 937). Yet then the estimation of peril, or of expenses in preserving the thing, must be deducted.[2]

Resp. 3° If you foresee diminution of value or price, you can seek back only so much, and the borrower ought to pay so much, as the thing was worth when it was handed over by loan, because in reality you do not exact more than you gave.[3]

Notes to n. 931. (1) L. IV. 782. (2) Ib. et Lacroix, n. 910. (3) L. IV. 782.

ARTICLE II: ON USURY, OR ON PROFIT PERCEIVED FROM LOAN FOR CONSUMPTION

Usury, taken in a broad sense, is called every profit perceived from loan, or on occasion of it, whether with a title or without a legitimate title. But usury in the stricter sense is profit immediately proceeding from loan, that is, precisely by force of the loan and without another just title. Yet the crime of usury is not present if someone expects something for a loan, not as owed, but from mere benevolence (provided implicit usury does not underlie it), or if he exacts a thing already owed from elsewhere by justice, since thus in fact no new burden is imposed.[1] - If it exceeds the limits of a just title, or is exercised toward the poor (such in reality and hope), it is called oppressive usury.

932. Principles. - I. Usury perceived by force of a loan in a thing consumable by first use, as in wine, wheat, etc., ... is utterly illicit. The reason is that "in a thing" consumable by first use, "as wine, wheat, money, there is not present a use of the thing distinct from dominion, since the use of the thing is the very consumption of the thing, and therefore in loan for consumption from its nature the dominion of the thing is transferred to the borrower: therefore, if something were exacted for the use of a consumable thing, it would indeed be exacted unjustly, says St. Thomas,[2] and all, because it would be exacted for a thing which does not exist," or, as Scotus says, for a thing not his own.[3]

II. Oppressive usury is repugnant to natural right, whether it is done toward the poor or toward the rich: 1° if it is done toward the poor, because the one lending is bound from charity to give the loan gratuitously; 2° if it is done toward the rich beyond the limits of a just title (or at least of legal rate), because justice requires that there be a proportion between this title and the profit perceived from it. This is established from various texts of Scripture. (m) p. 482.

III. Usury will not be unjust if there is present a title extrinsic to the loan, for example, emergent damage (n. 935 sq.). The reason is that then profit is not taken by force of the loan, but by reason of the extrinsic title. For it is licit for you to receive as much as you handed over; moreover, if from one hundred coins given you lose ten, in some manner you expend one hundred and ten: therefore you can receive one hundred and ten.

IV. Usurers and their cooperators are bound from Justice to restitution, since they injure commutative justice just as thieves themselves do; therefore the rules handed down in the Treatise on Restitution must be applied to them.

Notes to n. 932. (1) L. IV. 774. 777. sq. (2) 2. 2. q. 78. art. 1. (3) L. IV. 759. Pruner, Mor. Th. p. 598. 2. Appendix annotation (n), to n. 932. II. p. 372. col. 2. Oppressive usury, even with a title otherwise just, toward the poor, such in fact and in hope, injures not only charity but also justice. The reason is that, although a mutuum is owed to them from charity alone, nevertheless oppressive exaction cannot be the object of a valid contract. Pruner, Mor. Th. p. 607. 1.

933. Questions. - Query 1° In doubt whether the borrower gave something beyond the principal gratuitously or not, can you retain it?

Resp. Distinguish; for you accepted either in good faith, or in doubtful faith. If the former, a doubt supervening, and after due inquiry remaining, you can retain what was accepted; if the latter, speculatively speaking you cannot, because you cannot begin possession with doubt; in practice deference must be given to that party for which there is the stronger presumption, and thus the borrower can be presumed to have donated gratuitously if he is not poor, or avaricious, or did not give impelled by fear, or from annoyance or petition of the one lending.[1]

Query 2° Can the lender retain what the borrower gave from fear, lest otherwise the loan be denied to him?

Resp. More probably affirmatively. The reason is that, for usury, it is required that it be given by force of pact, or as owed from justice. - Thus more commonly. St. Alphonsus in H. A. goes over to this opinion.[2]

934. ○ Query 3° Is it usury if you lend on this law, that the borrower buy necessaries for himself at a just price in your shop?

Resp. Affirmatively, if this is brought into pact. The reason is that a burden is imposed on the borrower and his liberty is restricted, which is illicit and unjust.[3] Yet otherwise it must be said if the burden imposed is owed from elsewhere by the borrower. Thus you can propose to another that you will give him money as a loan, provided he include in a promissory note what he owed you before. Thus likewise you will be able to give money as a loan by this pact, that the other abandon an unjust lawsuit which he had instituted.

Query 4° Can an ANTIDORAL donation, or one which is made from a grateful mind, be brought into pact?

Resp. Negatively. The reason is that from pacts there necessarily arises a title of justice, but not a donation bestowed merely from a grateful mind. - St. Alphonsus[4] and others commonly. Hence with him to whom you give a loan, you cannot contract that he obtain some gift for you. But nothing forbids asking that he interpose his prayers, but it is very dangerous.[5]

Notes to n. 934. (1) L. IV. 761. (2) Ib. 763. H. A. Tr. X. 145. (3) Ib. 780. (4) Ib. 764. (5) Ib. 779. 780.

ARTICLE III: ON TITLES EXCUSING FROM USURY

Four principal ones are numbered, namely 1st emergent damage; 2nd ceasing profit; 3rd peril of principal; 4th conventional penalty.

I. On Emergent Damage.

935. ○ Emergent damage is the detriment which the one lending suffers on occasion of the loan furnished to his neighbor.

I. If by reason of the loan the lender suffers damage, it is a legitimate title of accepting something beyond the principal. The reason is that it is not equitable that you bear damage from the loan; for no

one is bound to furnish a benefit with his own damage except in the necessity of a neighbor. - Thus all.[1]

II. For this, however, the following conditions are required: 1° that the loan be the cause of the damage; 2° that equality between the damage and its compensation be preserved; 3° that the increase be brought into pact from the beginning.[2] The reason for the first and second condition is clear of itself; but the reason for the third condition is this: that, since the contract of loan for consumption by its nature is gratuitous, when an express or tacit pact is lacking, nothing beyond that which was given by loan can be exacted. But an express pact is not required if it is a question only of a legal increase or, this lacking, a common increase; for concerning this increase today there is always present a tacit pact, since from a usage common today, known and accepted by all and permitted by the Church, the legal or common increase on occasion of loan is judged to be owed. See Kenrick.[3]

936. Questions. - Query 1° Can the lender exact compensation of emergent damage if he himself voluntarily offers himself for lending?

Resp. More probably affirmatively, with St. Alphonsus,[4] etc. The reason is that even then the borrower, when he accepts the loan, is the true cause of the emergent damage. For the lender does not offer absolutely, but conditionally, namely under the condition of compensation to be obtained.

Query 2° Is it licit for the lender from the beginning to contract concerning a certain profit to be perceived if emergent damage is only probably going to occur?

Resp. Affirmatively, provided proportion according to the probability of the damage is observed.[1]

While we establish these things concerning emergent damage, we altogether prescind from the various contracts by force of which perhaps some profit from money lent to another could be legitimated, as will be clear from what is to be said. This same observation ought also to be valid for the other titles soon to be explained, of ceasing profit, etc.

Notes to n. 936. (1) L. IV. 768. (2) L. IV. 769. (3) Tr. XI. 85. (4) L. IV. 769.

II. On Ceasing Profit.

937. ○ I. Ceasing profit is that which the one lending would have gained by preserving his thing or money, if he had used it in another licit contract.

Ceasing profit is a legitimate title of exacting something beyond the principal. The reason is 1° because then truly emergent damage is had; 2° because the hope of profit is extrinsic to the loan, and at the same time estimable by price.

II. Required conditions: 1° they are the same as in the preceding title; 2° the lender ought to have had the mind of expending his money in business; for otherwise the profit would not cease.[2]

Query. Can you exact ceasing profit on account of the loan of money which you destined for business, if you preserve other idle money?

Resp. 1° Certainly affirmatively, if you had reserved this for the use of the family, or lest you expose your state to danger, because by reason of the loan you are not bound to neglect your own thing.[3]

Resp. 2° Probably affirmatively also in the other cases, provided that when you give the loan you truly have the intention of not exposing that other money to business, because the loan is the true cause why profit ceases.[4]

Notes to n. 937. (1) L. IV. 770. (2) H. A. Tr. X. 149. sq. (3) L. IV. 771. (4) L. IV. 771.

III. On Peril of Principal.

938. ○ Peril of principal is prudent fear lest the principal cannot be recovered. Peril of principal, provided it is true and extraordinary, according to the more common and more probable opinion is a legitimate title of some profit. The reason is both because, if abdicated hope of profit is estimable by price, a peril of probable damage will be estimable a fortiori; and because things placed in safety are valued more than things placed in peril; and also because it is established from the decision of the Sacred Congregation de Propaganda for the Chinese Missionaries approved by Innocent X in the year 1645. - See St. Alphonsus.[2]

Except 1° If the borrower is poor, because then the precept of loan from charity urges; 2° if the borrower guards against the peril of the principal by a pledge, etc.[3]

I have said: provided ... the peril is extraordinary. For the common peril, for example, fear lest all the goods of the borrower perish by fire, etc., is intrinsic to the loan, and therefore cannot be separated from it. But it would be extraordinary, for example, if a loan were given to a prodigal, or to a man of doubtful faith, or to one sailing, or if great expenses in recovering the principal were feared.

939. ○ You will object: Either the principal will perish, or not; if the former, the lender will accept nothing, namely neither the principal nor the stipulated increase; if the latter, he will in fact suffer no detriment: therefore he ought to exact nothing.

Resp. 1° Even if the principal is going to perish, it does not necessarily follow that the lender will receive absolutely nothing; for it can happen that the principal does not perish at once, and then the interest which meanwhile is paid will be held as a certain compensation for the principal.

Resp. 2° Although the lender suffers no damage in fact, nevertheless he can perceive something beyond the principal; for he truly undergoes a peril estimable by price. Certainly by equal right, one who agrees with another concerning the price for insuring a ship can indeed exact it, although in fact the ship has not perished. Therefore by parity, etc.[4]

IV. On Conventional Penalty.

940. ○ Conventional penalty consists in this, that the borrower obligates himself to paying something beyond the principal, if he does not restore it at the prefixed time.

I. Conventional penalty is a legitimate title of accepting, besides the principal, that concerning which agreement was made. The reason is that thus provision is made for the firmness of the contract, and at the same time the negligence of the borrower is guarded against.[5]

II. The required conditions are: 1° that the delay of the debtor be notable and culpable; 2° that the penalty be moderate and proportioned to the fault; 3° that the mind of profiting through the penalty

be absent, for example, by burdening the debtor to return at a time at which he is foreknown to be unequal.[5]

Notes to n. 940. (2) L. IV. 765. (3) Ib. (4) Ib. 766. (5) Ib. 766.

941. Questions. - Query 1° What today concerning those who, caring nothing whether one of the aforesaid four titles is present or not, perceive from money given by loan the profit rated by civil law, or, this lacking, by the custom of the timorous?

Resp. From various responses of the Holy See (see p. LI sq.) it is clear that they are not to be disturbed, i.e. that this is positively permitted to them, provided it is a question of a loan not owed from charity, and they are prepared to obey the Holy See, which hitherto has put forth no definition concerning that matter.

Theologians have labored much to compose this declaration of the Holy See with natural right. 1. Some say that today scarcely not always one of the extrinsic titles thus far set forth is present, especially of ceasing profit, since scarcely anyone keeps money idle at his place. 2. Others, distinguishing between a loan of a fungible thing (consumptive loan) and a loan of a thing fruitful in any way whatever (productive loan), teach that, on occasion of the former loan, no profit can be exacted unless one of the titles set forth is present; but from the latter it can; but that money, if it is lent so that from it things destined to sustain life may be compared, must be numbered among fungible things; but among fruitful things if it is sought by loan for gain. Thus, they say, St. Alphonsus is to be understood, who, although in L. IV. n. 759 he denies that money is fruitful, nevertheless in n. 904 of the same Book by no means corrects Busembaum writing: "to some things suitable for gaining, or fruitful, as money, etc." 3. There are not lacking those who think that the Republic, on account of the common good which is promoted through the easy furnishing of money, is not lacking the power of permitting by law that the borrower pay something to the lender beyond the principal: among these, some hand down this doctrine crudely; others with the addition that borrowers willingly accept this law as profitable to themselves. 4. Finally others have recourse to the triple contract, as probably licit and similar to the pact concerning increase (n. 1015).

942. ○ Query 2° Is it licit to exceed the legal or common rate by reason of greater emergent damage or ceasing profit?

Resp. 1° Negatively with respect to the poor or others who seek a loan in necessity, and who would be oppressed by a greater increase, as is established from what has been said. Yet you are not bound to concede a loan to them if the detriment which you ought to undergo on account of ceasing profit or emergent damage is not light; because charity alone then obligates you, but charity does not obligate with grave inconvenience.

Resp. 2° If money is handed over for the utility, but not the necessity, of another, it is controverted, and a twofold opinion is brought. The 1st Opinion affirms by reason of indemnity or just compensation. Thus among others Kenrick[1] and Pages of Lyons, although in the matter of usury he has become known by a most noted reputation for severity. - The 2nd Opinion denies. The reason is that compensations of damages arising from a monetary obligation can be exacted only according to the legal rate. This opinion indeed can have place if the lender compels or obligates another to accept

a loan from him; otherwise the reason does not appear why the lender ought to undergo the detriment of emergent damage for the favor of another.

943. ○ Query 3° Is it licit to subtract the increase from the beginning from money given by loan?

Resp. Of itself negatively, because the borrower, if the increase is subtracted from the beginning, pays it for a sum greater than that which he truly accepted.[2] "Yet," says Kenrick[3] (and therefore I have said: of itself), "the custom has been received in money-tables that the increase is thus deducted from the beginning; and since it is approved by the common consent and usage of all, perhaps it can be excused on this account. The same is done whenever money is given by private persons for a promissory note."

944. ○ Query 4° Is it licit to perceive INTEREST from INTEREST itself (interest upon interest or compound interest)?

Resp. 1° Affirmatively by civil law. But it is required, that the agreement be made after interest has become due; an original agreement, though not void, would prevent the party from recovering the interest either at law or in equity.[4]

Resp. 2° It also seems it must be affirmed for the internal forum: 1° if an agreement preceded, whether explicit or implicit; because revenue, after the term has elapsed, is added to the capital sum: for it is altogether the same thing that I leave to the debtor my money, which he already has from loan, or hand over other money to him; 2° if from delay of payment damage comes to the creditor.

Notes to n. 944. (1) Kenr. Tr. XI. 96. sq. (2) L. IV. 770. quamvis autem. (3) Tr. XI. 94 (2). (4) Kent, Tr. XI. 94 (2).

945. ○ Query 5° What must be said concerning institutions which are commonly called SAVINGS BANKS (savings banks)?

Resp. Such institutions are not only to be tolerated, but also to be praised, since they assist widows, male servants, maidservants, and the poor, while their modest money is accepted in a certain way by loan, and interest is repaid to them. It is confirmed from the Response of the Sacred Penitentiary, 17 Dec. 1832, in Kenrick.[1]

946. Resolutions. - 1° Those who do not exceed the legal or common rate by reason of profit perceived from loan can be absolved, indeed are to be absolved; since it is by no means established that they are guilty of injustice, and therefore they cannot be obligated to making any restitution.

2° Although therefore anyone can defend the opposite opinion concerning profit arising from loan as speculatively more probable, nevertheless he cannot condemn the adverse opinion as contrary to Catholic doctrine, nor exact restitution, absolution being otherwise denied. Indeed, one who would urge a penitent to restitution would himself have to be forced to repair the damage of the penitent; since, from commonly received doctrine, a confessor rashly prescribing undue restitution is bound to repair damage inflicted.

3° Nor are those penitents to be obligated to restitution who accepted profit according to law with bad faith, that is, thinking that they could not perceive such profit; because from the fact that they sinned by acting against conscience, it does not follow that they were guilty of injustice.

4° Penitents from the clause added in most responses of the Sacred Congregation ought always to be prepared to submit themselves to the judgment of the Holy See; but they are not necessarily to be questioned by the confessor concerning such a disposition: 1° because this is not exacted in the aforesaid responses; 2° because the confessor ought to presume that the penitent, as a good Catholic, is placed in such a disposition, unless the contrary is established. Indeed, says Kenrick,[2] the Holy See has already become accustomed to omit this condition.

Notes to n. 946. (1) Tr. XI. 116. (2) Ib. 98.

947. ○ 5° The profit perceived from money lent even to a poor man who does not suffer grave necessity, and who does not rashly hope that with the help of that money he will become so rich that he can easily restore the principal with a moderate increase, is not to be condemned as unjust. For the precept of lending gratuitously then does not urge, and money even then retains utility and its own price.

6° If no profit ought to be perceived from money lent to a poor man for sustenance, this happens because the lender by force of the precept of charity is bound to will that the money lent by him be applied to the sustenance alone of the poor man.

7° Profit exceeding the legal or common rate is illicit and unjust, and therefore liable to restitution. Except unless the reason of greater emergent damage or ceasing profit persuades otherwise, according to what was said and the limitation, n. 942.

948. ○ 8° Likewise, he who accepts money by loan according to the rate of law, for example at 5%, cannot for this reason exact 10% by lending the same money again to another, because the title for accepting the five superfluous is lacking; but it does not seem against civil or natural law of itself that someone accept money by loan for 3 or 4, and lend the same again for 5 in 100.

9° An increase exceeding the legal or common rate can be accepted from a borrower who, with regard to a greater profit, and with no necessity of household affairs compelling, offers it with a glad mind; for consent heals the defect of title. Thus Kenrick.[1]

10° "In money-tables money is commonly given as a loan to be paid after sixty days: but if someone seeks a delay of six months, it is sometimes conceded with a greater increase accepted; but, lest the law seem to be violated, shares are sold at a greater price, which the buyer is going to pay after six months; or bank-notes of another, which are worth less, are given. This manner of acting plainly smacks of usury." Thus the same Kenrick.[2]

11° A title for accepting a greater increase can sometimes be taken from the uncertain condition of things, "by which it happens" that the credit of almost no one, even the richest, "is established," since by the fall of others he "can" become unequal to paying, or, with the help of laws, weave delays.... Hence "it happens" that on account of the narrowness of things money is "sought" as a loan, with an increase of two offered each month for one hundred; ... but since this is wont to happen "not by the

fraud of one or another or from necessity by which" a few are pressed, "I do not dare to condemn those who, while such is the condition of things, give" money as loans, with the increase accepted which "then" is given; "although I confess that the matter is not lacking in the appearance of evil, and that the very condition of things is far removed from a right rule of trading." Thus again Kenrick.[2]

12° Absolutely nothing can be exacted from the poor seeking a loan from necessity, notwithstanding the title of civil law; and therefore, if any profit has been perceived, it must be restored; since civil law, which cannot destroy an obligation of natural right, is not judged to comprehend this case, and therefore neither to transfer dominion of the profit into the lender.

Notes to n. 948. (1) Tr. XI. 96. (2) Ib. 97.

LITTLE APPENDIX: ON MOUNTS OF PIETY, PUBLIC TABLES OF BANKERS, AND SHARES GENERALLY

I. On Mounts of Piety.

949. ○ A mount of piety is called an accumulation of money or other lendable things collected for this, that the poor, a pledge having been given, may be able to receive from it by loan those things which are necessary to themselves.

I. Its conditions are these: 1° whatever is given by loan from it ought to be given for a certain time, for example for a year, but nothing for an indeterminate time; 2° it is licit to give a loan from a Mount of Piety to the poor only, unless it is so abundant that, without damage to the poor, satisfaction can also be made to others; 3° the borrower ought to give something beyond the principal on account of expenses necessary for the wages of the ministers and the administration of the house; 4° he ought also to hand over a pledge equivalent to the thing lent, which, unless he returns what was accepted at the stated time, must be sold. - Thus commonly.[2]

II. Mounts instituted under these conditions are licit, nor are they usurious in any way, independently of any other title whatever for profit. The reason is that, even independently of any other title, they savor of no stain of usury, since satisfaction must be made for the expenses of the Mount and to the ministers, whose labor and care is truly estimable by price.[1]

950. ○ Query. Can Mounts of Piety be instituted by private persons?

Resp. More probably affirmatively with Lessius. The reason is that it matters little for the notion of usury whether the institution is public or private, provided the private person accepts no more than that which has been established by law or legitimate custom. Among us, however, private persons alone have, or imitate, not to say simulate, Mounts of Piety, and they are called Pawn-brokers. But when pledges happen to be sold on account of the loan not returned, the excess of the price will have to be returned to the owners, or, if these do not appear within the time established by law, custom, or in defect of these by agreement, it will have to be applied to pious causes.[2] But the sale of a pledge by our laws, outside the case of contrary agreement between the parties, is rescindible unless it is made after the debtor (pawnor) has been warned beforehand concerning the time and mode of sale, or in Louisiana after sentence of the judge.[3]

Notes to n. 950. (1) L. IV. 765. in fine. (2) Kenr. Tr. XI. 109. (3) Kent, Vol. II. 583.

II. On Public Tables of Bankers (Banks).

951. ○ Public tables of bankers exist by force of a contract of society entered among several persons contributing money, which they cannot seek back, but from which they expect an uncertain annual interest, namely that part of the fruits of the money which the directors of the bank (the directors of the bank) shall have adjudged at the stated times. The part of the money contributed by individuals is called a share (action or share). Individuals can indeed alienate this, for example by sale, but the society is not therefore

taken away, nor the peril of damage; for he to whom the share has been transferred occupies the place in the society of him who withdraws. - Once here, and still elsewhere, there was a power of tables to emit promissory notes (bank-notes). - The ends of tables are: 1) that the money of merchants and others can be deposited with some for the sake of security, with others also for the sake of a modest increase, to be withdrawn at will if it has been deposited for the sake of security, but only after a defined time if for the sake of increase; 2) that money can be accepted from them as a loan at legal interest; 3) that exchanges be moderated.

952. Resolutions. - The directors of tables sin, and those cooperating with them: ^*^

1° If they continue to accept deposits after they know that they are unequal to paying; for they deceive the trust of depositors with grave damage to these.

2° If they emit promissory notes beyond the limits designated in the Charter of incorporation: for thus they seek profit from promissory notes emitted without legitimate authority, and make these become cheap.

3° If they exact excessive increase, or profit from bills of exchange (checks, drafts) greater than that which the general consent of money-changers bears.

4° It sometimes happens that promissory notes of foreign banks are brought to a public table, either in payment of debt, or in the place of a deposit. If these are offered by someone from the common people, they are either not accepted, or are held for less than they are commonly worth; but if they are offered by a friend of the chief banker, or by someone from the directors of the table, they will be accepted, and indeed at the value at which they are commonly accepted, or even at the value of gold or silver, because the banker will have abundance, by managing affairs skillfully, of receiving the whole value. In that manner of acting there is manifest injustice, unless a special cause is present for making a discrimination of this kind. Perhaps this special cause could be present in benefits conferred on the table, for example in very much money deposited by someone with it, from which he perceives no increase.

5° If they use money deposited to promote their own utilities, whether because from it they buy shares in a foreign table, or because they use it in any other mode against the laws of the table: for they abuse the trust of the creditors or partners of the table, who will that deposits be expended for increasing the common matter with their own profit, and perhaps cast away the money into danger.

III. On Shares Generally.

953. ° Shares are distinguished as 1) of tables, concerning which it was said in n. 951; 2) of societies for constructing railways, for digging canals, for publishing newspapers, for erecting industrial factories, and for almost every kind of thing; 3) of Governments, or also of municipalities (bonds). If those shares are emitted for a licit end, they are licitly compared, and profit from them is licitly perceived. It can indeed affix a cross to someone, that very many things are done by the directors or officials of tables or societies which cannot seem just; but since the very institution of those tables and societies is joined with great utility for all, and very many reasons of honorable profit

from those shares are available, partners can safely permit to the consciences and judgment of the directors and officials what is licit or not in each matter.

***** "He who helps a usurer only in counting money, writing accounts, ... can be excused from the sin" of cooperation "by the sole reason of service." L. II. 78. "But I would not excuse one exacting" unjust usuries "from the sin of cooperation by the reason of service alone." L. IV. 789.

Notes to nn. 949-953 - printed sequence 1.

2 L. IV. 765. in fine.

SECTION II.

ON ONEROUS CONTRACTS.

Namely 1° concerning sale and purchase; 2° concerning society and the triple contract; 3° concerning lease and hire; 4° concerning exchange; 5° concerning census; 6° concerning suretyship, pledge, and hypothec; 7° concerning insurance, wagering, drawing of lots or lottery, and game.

CHAPTER I: ON SALE AND PURCHASE

ARTICLE I: ON PURCHASE AND SALE IN GENERAL

§ I. On the Nature of the Contract of Purchase and Sale

954. ○ What it is and how the contract of purchase and sale is perfected.

I. What is it? The contract of purchase and sale is thus defined by Blackstone:[1] "A transmutation of property from one man to another, in consideration of some price or recompense in value." - From this definition it is clear that these three things are essentially required for the contract of purchase-sale:

a) The legitimate consent of seller and buyer;

b) Merchandise, i.e. a vendible thing, to be handed over for a price;

c) The price to be paid for the merchandise, and that determined by the contracting parties themselves or to be determined by the judgment of a third party.

But by the name of price here is understood money alone; for an agreement concerning merchandise to be handed over for merchandise is the contract of exchange (exchange), and not purchase-sale properly so called.

Therefore Blackstone's definition also comprehends exchange.

955. ○ II. How the contract of purchase and sale is perfected.

It is perfected by the consent alone of the parties. Nor does it matter for the forum of conscience whether consent is expressed by word or by writing. Writing is used only to prove that the contract has been entered. But although purchase-sale is perfected among us by the consent alone of the parties, nevertheless "the peril of the thing," says Kenrick,[2] "does not seem ever to pass to the buyer unless it" has been "handed over in some manner," or has begun to be handed over. "There must be," says Kent, "a) a delivery or tender of it, or b) payment, or tender of payment, or earnest given, or c) a memorandum in writing signed by the party to be charged."

Yet these things are not valid in every way for Louisiana and Virginia. "Everything depends on the custom of merchants" (I would add also on agreement).[2] But it is certain:

1° That Churches and pious causes from the disposition of Roman Law[3] acquire dominion without any handing over.

2° That the peril of the thing pertains to the seller, if it is a question either a) of the sale of things by weight, number, or measure, which have not yet been weighed, numbered, or measured; or b) of the sale of things for tasting or testing, which have not yet been tasted or tested.

3° If the thing sold perishes either from an intrinsic defect already existing at the time of sale, or from the fault of the seller, or also by a fortuitous event at the time when the seller was in culpable delay

for handing over the thing, the seller is held for the price accepted and for the expenses of the contract.

Cases. - 1. Josephine expressed consent by words, by which for a determined price she sells her field to a certain monastery. - The dominion of the field passes to the monastery without any handing over; for it was sold to the Church.

2. Titius sold to Caius ten measures of grain, existing in his abundantly supplied granary; but before that quantity was determined by measure, an equal quantity of grain perishes by fire or is taken away by theft. To whose damage? To the damage of Titius, unless agreement bears otherwise.

3. Titius absolutely bought from Caius a determined horse to be handed over after a month; but the horse perishes before the month has elapsed. To whose damage? To the damage of Caius, if it perishes either from an intrinsic defect existing at the time of sale, or by defect of due vigilance or care on the part of Caius, or after the month has elapsed, if Caius was in culpable delay in handing over the horse to Titius, provided nevertheless that in this last case the horse would not have perished by the same fortuitous event, for example by fire, equally at Titius's place.

Notes to n. 955 - note sequence 1. (1) Com. Vol. II. p. 446. (2) Tr. XI. 47. Notes to n. 955 - note sequence 2. (1) Vol. II. 493 (2). (2) Kenr. Tr. XI. 47. (3) L. fin. de S. eccl.

956. Questions. - Query 1° To whom do the fruits of a thing sold pertain, for example calves from a cow sold?

Resp. Distinguish. For either agreement has been made between the parties concerning this matter, or not. If the former, one must stand by the agreement; if the latter, subdistinguish. For either the thing has already been handed over, or it still is to be handed over. If handed over, they belong to the buyer, and that practically also in the case in which the latter is in delay as to payment of the price; for the seller vindicates for himself only the increase (interest) of the price, according to the agreement of the contracting parties. - If a determined thing, for example this cow, is still to be handed over, i.e. according to what was said above in n. 955, if in no manner it has been handed over or begun to be handed over, again it must be distinguished. For either the thing is sold absolutely, or conditionally. If absolutely, the fruits of the thing pertain to the buyer, and civil laws opposed on this point have been reproved by Canon Law, as favorable to usurious profit.[1] Yet in the case in which, from custom, the peril of the thing would not belong to the buyer, I would resolve the contrary; for then the reason of equity alleged by St. Alphonsus, namely that he who has the inconvenience ought also to have the advantage, militates rather for the seller. If conditionally, i.e. under a suspensive condition, we think it must be distinguished thus. Either that thing sold produces fruits after the condition has been fulfilled, and the fruit will belong to the buyer, as in absolute sale, such as that about which there is question becomes when the condition has been fulfilled; or before the fulfillment of the condition, and then it is disputed. Therefore in this case the condition of the possessor, the seller, will be better, especially since the peril of the thing sold belongs to him up to the fulfillment of the condition.

Query 2° At whose expenses come the acts which are usually made in the purchase-sale of things, especially immovables; likewise at whose expenses is the handing over or transmission of the thing?

Resp. to the 1st. Excepting the case of special agreement, the laws of each State must be consulted.

Resp. to the 2nd. Unless it has been agreed otherwise, at the expenses of the buyer.

Query 3° What must be held concerning the firmness of the contract of purchase-sale entered with the giving of earnest; namely whether, when earnest is given, it is licit for the giver to withdraw from the contract with the loss of the earnest?

Preliminary Note. - By the name of earnest (earnest-money) is understood that which sometimes is given by one of the contracting parties to the other either as pledge of the firmness of the contract entered, or as pledge of the obligation of not withdrawing from the contract except with the loss of the thing given. Whence a twofold earnest is distinguished, namely: earnest which is simply given for the greater security of the contract entered, from which therefore it will not be licit to withdraw; and earnest which is given only for establishing the obligation of not withdrawing from the contract, except under the penalty of losing it; so that it is indeed licit to withdraw from the contract, but not except with the loss of the earnest.[1]

Resp. In doubt of which kind the earnest is, and unless custom holds otherwise, it is to be held as a pledge of the firmness of the contract entered.[2]

Notes to n. 956 - note sequence 1. (1) H. A. Tr. X. 169. Notes to n. 956 - note sequence 2. (1) Kent, Vol. II. 495. (b). (2) L. IV. 794.

§ II. On Those Who Can Buy and Sell

957. ○ All those can enter the contract of purchase-sale who are naturally capable of contracting and are not declared incapable by positive law. But by our law a twofold class of citizens is declared incapable. The first is of those who are declared incapable of any contract in general, and consequently also of the contract of purchase and sale. The second is of those who are declared incapable specifically for the contract of purchase and sale in the cases assigned by law.

To the first class pertain: 1° minors, who can buy only those things which are necessary, in the sense declared in n. 837, 1°, and concerning which provision would not be made by parents; 2° wives, who nevertheless can: a) buy those things which pertain to the daily necessities of the family and to their own condition and decent support; b) sell all things of which they have full dominion and buy from these; c) in many States conduct commerce separately from the husband; d) sell and buy jointly with the husband as to common goods, n. 607. In what manner spouses can sell something to each other, see n. 840; 3° interdicted persons; 4° aliens as to immovables in certain States, as was said in n. 844.

To the second class chiefly pertain 1° Officials of the Supreme Government, of States, of Municipalities, etc., who cannot buy things which they sell in the name of the Supreme Government, State, Municipality, etc.

2° Agents (agents), who generally cannot buy that kind of merchandise which they sell in the name of another.

3° Guardians "cannot act for their own benefit in any contract, or purchase, or sale, as to the subject of the trust."[1]

Notes to n. 957. (1) Kent, Vol. II. 229.

958. ○ Query. What must be established for the forum of conscience concerning the value of the contract of purchase and sale entered by him who is indeed naturally capable, but civilly incapable?

Resp. With attention to the things handed down in n. 882, q. 1, we think it can probably be defended that such a contract, according to the mind of the civil legislator, is not ipso facto invalid in conscience; but that its invalidity must be declared by the judge. Whence, before the judge has declared the nullity of the contract, neither contracting party is bound from justice to withdraw from the agreement once entered, provided it can be judged naturally valid and just. Yet generally we think it must be said that the obedience owed to civil law demands that an incapable person not enter a contract, and that a contract not be entered with an incapable person; unless perhaps it is a question of those contracts which daily use and common prudence, with civil law neglected and the government silent, have made as it were legitimate, and in which the capable party abstains from every fraud or malicious art. Indeed, as to these contracts it seems able to be reasonably presumed that the civil legislator did not wish to comprehend them so strictly under his incapacitating law; indeed in such a way that the incapable party, to whom the petition for a declaratory sentence of nullity is conceded by Law, by the persuasion of equity would by no means be suited to urge his supreme right as to such contracts and pursue it in judgment.

§ III. On Merchandise or the Matter of Purchase and Sale

959. ○ Supposing those things which, according to what was said concerning contracts in general in n. 830 sq., are required for the matter of any contract; in this place concerning the matter of purchase-sale it suffices to establish for a rule:

All those things which are placed in civil commerce can be bought and sold, provided that no prohibition of law intervenes, such as in reality intervenes as to certain goods assigned in Law, whose sale is expressly prohibited either absolutely or at least in a certain hypothesis. And thus:

1. Outside the case of marriage, every pacting concerning the hereditary succession of a person still living is absolutely prohibited, even if that person himself consents.
2. In the hypothesis that the formalities to be observed by law are not observed by guardians and curators, the sale of goods pertaining to their wards is prohibited to them.
3. In the hypothesis that someone, unequal to paying his debts, has made cession of his goods, the sale of those same goods is altogether forbidden to him.
4. In the hypothesis that the goods of some debtor have been placed under custody by legitimate authority, the sale of those same goods is interdicted, unless those things to be observed by Law are observed in it.

5. Finally, under penalty of a monetary fine or prison, the sale (at least if it is done indiscriminately) of certain things is prohibited, which of themselves are harmful to social order either under a physical respect or under a moral respect.

960. ○ But in particular concerning the matter of purchase and sale a fourfold question is usually moved among Authors, namely:

Query 1° Is another's thing VALID matter of purchase and sale?

Resp. Negatively. Yet the buyer of good faith: 1° acquires the fruits of the thing bought according to what was said in n. 723; 2° can prescribe the thing, provided the conditions required for legitimate prescription are present.

Therefore the practice of those must be reproved who, when things stolen or lost have been bought in good faith, refuse to restore them to the owner appearing and seeking them back, unless the owner first refunds the price expended for the same.

Query 2° Whose is the thing bought by a buyer in his own name, for ANOTHER'S money?

Resp. We think it must be resolved that such a thing belongs to the buyer, so that he is not bound to hand over that thing to the owner whose money it was, provided he can otherwise satisfy his obligation of restoring. Yet except the case in which the money belonged to the Church, because then by Roman and Ecclesiastical Law the thing itself is acquired for the Church. Cf. St. Alphonsus.[1]

Query 3° Is a thing which at the very time of sale has already perished apt matter of sale?

Resp. Negatively. But if only part of the thing has perished, the buyer will be free to vindicate that part to himself for an equitable price.

Query 4° Is a thing which can be validly sold also LICITLY sold in a case in which the buyer is foreseen to be going to abuse it?

Resp. The solution of this question must be sought from the doctrine which we set forth concerning cooperation in the sins of others. But in particular the rule which we handed down in the same place, n. 312, is valid here, namely: Since evil must not be presumed without reason, hence altogether, a special prohibition of law being excluded, it seems licit for merchants, by the sole title of commerce, to sell their merchandise to any buyer, provided 1° that those wares are indifferent things which can easily have a good use, although many in general abuse them, for example strong liquors, playing-cards, etc.; and 2° provided that in the very purchase or circumstances no evil intention of the buyer appears. But if these two conditions are not verified, the sale will either in no way be licit, or not except from a grave and proportionate cause, as we explained more broadly in the same place, n. 312.

Notes to n. 960. (1) L. IV. 799.

§ IV. On the Just Price

Preliminary matters. - On the nature of the just price and its division.

961. Nature. - Commutative justice demands that in an onerous contract, such as especially is the contract of purchase-sale, equality be entirely preserved between that which is handed over

and that which is acquired; for in an onerous contract the contracting parties do not wish to donate, but to exchange and to acquire the equivalent of that which is ceded.

Therefore the just price in buying and selling will be: that sum of money which constitutes the equivalent of the vendible thing, or: that sum of money which adequately corresponds to the value of the vendible thing.

But the value of a vendible thing is not something merely subjective, as if it depended on the arbitrary will of the buyer and seller; rather it is something objective, so that it must principally be taken from the nature itself of the vendible thing, insofar as this is considered, not precisely in its physical being, i.e. according to its substance or physical perfection, but in its usual being, i.e. according to its necessity, utility, or pleasurableness in the common use and society of men. For temporal things have been made by God for the use of men, and to the same end they also are bought and sold by men; so that of themselves they must be said to be worth as much as, with attention to the diversity of times, places, etc., they serve the common use of men.[1] But how much these things serve human use, and how much therefore they are worth, this is left to be defined, not again by the private prudence of the seller and buyer, but either by the judgment of legitimate authority, or by the common opinion of men; so that finally it is permitted to establish briefly thus: The just value of a vendible thing is that which, with attention both to the usual nature of the thing and to the diversity of circumstances of time, place, etc., is defined either by legitimate authority, or, this failing, by the common opinion of men; and consequently: The just price of a vendible thing will be that sum of money which, with attention to the nature of the thing, etc., is taxed either by legitimate authority, or, this failing, by the common estimation, as the equivalent of the vendible thing. From this there now spontaneously flows the following very well-known division of the just price.

962. Division. - The just price is divided into legal and vulgar, or natural. The legal price is that which is established by legitimate authority for the common good of some region, province, or place. The vulgar price is that which is taxed by the common estimation of the inhabitants of the place where the vendible thing exists, (not however where the contract is made, unless the seller agrees that the thing be transferred thither. St. Alphonsus.)[2] But a twofold very notable difference is usually assigned between these prices, namely:

The first difference. - The legal price is defined punctually or arithmetically; but the vulgar price admits a certain latitude, since the common estimation of men is not wont to agree precisely in one point.[2] Whence also deservedly Authors subdivide the vulgar price, while remaining within the limits of the just, into the highest or rigorous vulgar price, the middle or moderate, and the lowest or pious. The highest is that above which, the lowest that below which, the thing is not commonly estimated; the middle is that which consists between the highest and the lowest. But how great is the distance or latitude between the highest vulgar price and the lowest, this can be judged rather from the usage of the market and the common sense of negotiators than defined by a fixed measure. Yet regularly the doctrine must be admitted which Moralists are wont to hand down here, namely: That in necessary things and those of more frequent sale, for example: in bread, oil, salt, etc., the lowest vulgar price is little distant from the highest, and thus, for example, if the middle price is 5, the highest will be 6 and the lowest 4, so that only the latitude of two degrees, 6-4, is to be admitted; if the middle price is 10, the highest will be 12 and the lowest 8, so that only the latitude of four degrees, 12-8, is to be

admitted; if the middle price is 100, the highest will be 105 and the lowest 95, so that only the latitude of ten degrees, 105-95, is to be admitted; and likewise, with proportion observed, one must judge concerning the rest, yet always attending to the usage of the market or the common sense of negotiators, and moreover observing that the latitude of price is greater in superfluous and more precious things, for example: palaces, villas, etc., whose purchase-sale is infrequent, and greater still in things altogether rare and precious, such as singular gems, ancient pictures or statues, etc., whose value is held as estimated neither from law nor from common opinion. See St. Alphonsus,[3] and the things to be said below.

The second difference. - The legal price is stable, so that of itself it remains and is in no way varied unless the law itself ceases, or unless there is given a just reason here and now excusing from the law; but the vulgar price with its latitude is variable, so that at any time it is subject to change, i.e. to increase or decrease, according to the diversity of circumstances which continually tend to vary the common estimation of men; and thus (to assign here the principal circumstances):

1° Price is accustomed to increase from common sense:

a) By reason of the multitude of buyers or the abundance of money, and the scarcity of merchandise; for that is commonly esteemed more which is sought by more persons and found with more difficulty.

b) By reason of the manner of selling goods by retail (retail); for that is appraised higher for whose conservation greater labors, cares, and expenses must of themselves be expended by merchants.

2° On the contrary the price is accustomed to decrease:

a) By reason of the scarcity of buyers or of money, and the abundance of merchandise; for what is less sought and is everywhere found is also estimated at less.

b) By reason of the manner of selling goods together in great quantity (wholesale); for that which of itself demands lesser cares, expenses, etc., of merchants is also commonly judged to be of lesser price.

Therefore, practically speaking, you will say most rightly that the vulgar price is that which, when the legal price is lacking, commonly runs in the present circumstances = the price running here and now (the current price).

With these things premised concerning the nature and division of the just price, now let us inquire a little more accurately, 1° by what price one must of itself stand from justice; 2° what are the titles on account of which sometimes accidentally it is licit to sell above the common highest price, or to buy below the common lowest price.

I. By what price PER SE must one stand from justice?

Let the following three rules serve for the solution of this question:

Notes to n. 962 - note sequence 1. (1) St. Thomas 2. 2. q. 77. a. 2. (2) L. IV. 804. 808. Notes to n. 962 - note sequence 2. (2) L. IV. 804. (3) L. IV. 805.

963. First Rule. - If a vendible thing has a legal price, that must be observed punctually from justice; so that the seller who exceeds the legal price acts unjustly and is held to restitution of the

excess.

But for the right understanding and application of this rule, it must be carefully observed:

1° Taxation by law is made for merchandise of common goodness and quality; and therefore the rule concerning the legal price does not obtain if it is a question of merchandise which is notably more precious or worse than usual; but in the former hypothesis the seller can licitly increase the price, and in the latter he must decrease the price.

2° The legal tax must be just and still in force; and hence the rule concerning the legal price again will not obtain, a) if the tax of the law is no longer observed by the greater part of the citizens, with the magistrate silent; and b) if, circumstances having changed, for example on account of sterility, etc., the tax becomes unjust. Cf. St. Alphonsus.[1]

3° The legal tax is ordinarily constituted in favor of buyers, so that ordinarily even the seller alone is bound by that tax, and the buyer consequently can licitly buy below that tax, provided he remains within the limits of the vulgar price.

4° The legal tax in these our times is very rare, and scarcely occurs, except in certain places as to bread, or in a city, besieged in time of war, as to things necessary for life. For many political writers judge that nowadays, when there is so great a facility of transporting merchandise by railroad, etc., and so great a competition of merchants is found, it is regularly no longer expedient that the prices of things be taxed legally. Whence also the resolutions of Moralists concerning the legal price will more rarely come into use in our time.

964. Second Rule. - If a vendible thing does not have a legal price, from justice one must stand by the vulgar price running here and now; so that it is not licit to sell above the highest vulgar price, nor to buy below the lowest.[2] Whence he who sells above the highest vulgar price sins against justice and is held to restitution of the excess; he who buys below the lowest sins against justice and is held to restitution of the defect. Yet, fraud excluded, of itself it is licit to sell at the highest vulgar price, or to buy at the lowest.

It is said: Fraud excluded; for although of itself it is licit to sell at the highest or to buy at the lowest, nevertheless each one has the right not to be deceived by fraud; and therefore one will offend against justice and be held to restitution, even if the highest price has not been exceeded: a) if, once an agreement has been made concerning the middle or lowest price, he secretly obtains the highest for himself by deceiving the buyer in the counting of money, in weight, or in measure; and b) if before the agreement has been made he deceitfully induces the buyer to pay a greater price than otherwise he would justly have given.

Here however observe for practice: commonly faith is not given to the lies or perjuries of sellers, by which they affirm that they procured the vendible thing for themselves at so much, or sold it to others at so much, so as thus to draw the buyer to the highest price; nor to the lies or perjuries of buyers, by which they affirm that they bought the thing from others at so much, or that others offered it to them at so much, so as thus to draw the seller to the lowest price. For it is sufficiently known that sayings of this kind are common stratagems of negotiators, which do not deserve faith, and therefore do not constitute deception properly so called. Whence sellers or buyers of this kind

indeed sin by lying or perjuring; but, since in reality by such lies they do not deceive the other, they do not on account of them offend against justice, and therefore will not be held to restitution, always supposing that they do not sell above the highest, or buy below the lowest. Yet if in a particular case it were clear to the aforesaid sellers or buyers that faith was being given to their lies, etc., and that these were truly the cause of a greater or lesser price, then they would not be excused from the fault of deception and injustice. - But as to the manner of acting of many merchants, who ask something above the highest price, so that they may bring buyers, who are accustomed to offer less, to the just price, it seems it must be said: such a manner of acting, as being commonly received, and of itself not mendacious, cannot be condemned of fault; provided however those merchants, where perhaps they obtained what they ask, remit to the buyer that which exceeded the just price.

Notes to n. 964. (1) L. IV. 808. (2) St. Thomas 2. 2. q. 77. a. 1.

965. Third Rule. - If it is a question of extraordinary things, whose price is taxed neither by law nor by the estimation of the common people, such as extraordinary gems or stones; singular ancient pictures or statues; rare and precious books; horses eminently beautiful; foreign birds, etc. (so-called rarities), which do not pertain to common human use and society, but to luxury, splendor, and the pleasantness of men, and among which dances, songs, the abuse of a woman, etc., can also be reckoned; the solution of the question concerning the just price is very often quite ambiguous. Indeed I, that I may openly profess what I think concerning this matter, think, saving a better judgment, that this can be established:

Such very rare things can justly be sold and bought at that price concerning which the contracting parties themselves, without fraud and freely, agree, in the following cases:

1° If the purchase-sale is made between parties who both wholly ignore the greater or lesser preciousness of such a singular thing; because in this hypothesis the contract entered is not a simple contract of purchase-sale, but at the same time a quasi-aleatory contract, in which each party commits himself to fortune. Thus, for example, Titius would not be accused of injustice who bought an illustrious ancient picture at a cheaper price from Caius, where both, ignorant of the preciousness of this picture, without fraud and freely agreed concerning such a price.[1]

2° If the purchase-sale is made under the spear, i.e. in public auction; because public auction is an extraordinary title (as will be said below), on account of which whatever price, with fraud excluded, is determined by the bidders can be judged just.

Likewise I think it can be resolved relatively to the buyer, namely: that the buyer can justly buy such a thing, although precious and known by him as such, at a cheap price (for a trifle):

a) In the case in which that thing, for example an ancient and precious book, is publicly exposed for sale in the market among antiquarians, i.e. among those who are accustomed to sell antiquated things; because by this very fact that the thing is exposed in the market, it has as it were lost its ancient price, and receives its price from the judgment of buyers who come together to that market, in almost the same manner as we said above concerning things sold in a public auction.

b) In the case in which that thing is now actually destined to a vile use, for example if an ancient book now is being carried to be sold for tearing up, or some picture is now handed over to children for play and soon perhaps will be torn up; for in these circumstances that thing is judged again to

have lost its price, and consequently to be able to be bought at that price for which it is commonly worth for that vile use. Thus also it is everywhere asserted by Authors that a buyer, when among common things destined to vulgar use he finds a thing which by chance he knows to be precious, for example a medicinal herb among common herbs destined for the fodder of horses and cows, can justly buy those common things at the price for which they would vulgarly be bought by others for such a use.

c) In the case in which that thing, for example a singular picture, from the common judgment of experts is vile, and the buyer from private study recognizes in it a certain preciousness; for in this hypothesis, since the thing is not accustomed to be esteemed at more by the experts themselves of such a region, it must be ascribed to the fortune and industry of the buyer alone that from this he has known how to procure an advantage for himself.

d) In the case in which that thing, even from the judgment of experts, does not have a stable and real value, such as, for example, a picture of a celebrated master, Raphael, Rubens, etc., is judged to have; but only an altogether volatile and relative value, or the value, as they say, of affection, founded namely in the particular affection of one or another buyer seeking that thing to complete, for example, his singular Museum of such rarities; for no reason appears why the buyer must bring his particular affection into the reckoning for determining the price.

Notes to n. 965. (1) Cf. St. Alph. L. IV. 805.

966. ○ But with the cases assigned thus far excluded, the question concerning the just price of singular things which have neither legal nor vulgar price is greatly controverted among Moralists:

St. Alphonsus[1] with Lugo, Lessius, and others defends as more probable: that in the purchase-sale of a singular thing that price must be observed from justice which is taxed by the persons of such a region skilled in that matter; because justice seems to require that even in these things equality be observed, if it can be observed; but it can be observed where there are experts able to appraise these things. Whence in the purchase-sale, for example, of some singular gem, the judgment would have to be investigated from the jewelers of such a place; in the purchase-sale of a rare picture the judgment of painters, etc. Yet the patrons themselves of this opinion admit that the just price of things of this kind suffers a very great latitude, since a picture has been seen to be taxed by many experts at $500 for which 100 would not be given if it were sold; so that the price of the thing which is here and now to be sold must be taxed, with all concurrent circumstances.

On the contrary Card. Toletus[1] with Navarro, Valentia, Medina, and others defends: that singular things pertaining to the adornment or delight of life, since they do not have a legal or vulgar price, have only the price which they call conventional, i.e. that concerning which the contracting parties, apart from fraud, freely agree; and thus there would not be injustice if someone, for example, received $4000 for an ancient statue, or another similar thing, provided the thing is such as it is sold; in other words: provided there is not error concerning the substance, so that, for example, that which is sold as a gem is not glass. And to this opinion, as to the substance, there also adheres the more recent Anonymous Author in the Book whose title is: *Examen Raisonne*,[2] etc. Indeed St. Alphonsus himself[3] asserts concerning this opinion that it is rightly called probable by the Salmanticenses.

Therefore, with the described diversity of opinions standing, it will be permitted for practice to say that those are not to be disturbed who in good faith and freely agree according to their own judgment in such things.

II. What are the titles on account of which accidentally it is licit to sell above the highest vulgar price, or to buy below the lowest vulgar price?

Where there will be added a threefold special question: a) concerning goods voluntarily offered; b) concerning anticipated or delayed payment; and c) concerning particular knowledge of a price soon to be diminished or increased.

Notes to n. 966 - note sequence 1. (1) L. IV. 808. Notes to n. 966 - note sequence 2. (1) J. VIII. c. 45. (2) Tom. I. p. 343. (3) L. IV. 808.

POINT I.

967. ° The titles, extrinsic to sale, on account of which accidentally it is licit to sell above the highest vulgar price, principally are:

1° Damage emerging from the present sale: namely if the seller, from the fact that he sells his thing to the buyer, suffers a damage which he would not suffer if he did not sell the same; for example, if you sell to another an instrument necessary or very useful for the exercise of your art, which afterwards you will not be able to buy except at a higher price.[1]

2° Profit ceasing from the present sale: namely if the seller, from the fact that he sells his thing to the buyer, loses profit which he would obtain if he did not sell the same; for example, if now you sell grain to another which you were going to reserve for the time in which grain will be worth more.

3° Peril or some other inconvenience, estimable by price, arising from the present sale; namely if the seller, from the fact that he sells his thing to such a buyer, is truly exposed to the peril of never receiving the price from the same, either in whole or in part; or to the peril of not receiving the price from the buyer except with extraordinary expenses.

But for the just practical use of these titles it must be carefully observed that Moralists commonly require: a) that the seller forewarn the buyer concerning titles of this kind, insofar as he can, if he wishes, procure that thing for himself by another way; and b) that the seller, by force of such titles, not sell the thing for more than the titles themselves are worth by prudent estimation. Indeed not a few still require, c) that the seller sell the thing at the instance or in favor of the buyer; and hence, according to them, the seller could not justly sell for more if he sells only to provide for his own necessities, although from this sale he would suffer emergent damage or ceasing profit; because in the case the seller himself, and not the buyer, seems to be the cause of such emergent damage, etc. "But," says St. Alphonsus,[2] "the opposite seems more probable to me; ... because the buyer, by accepting the contract, now himself is the true cause of the seller's damage."

4° Special affection of the seller toward the thing itself sold; for the privation of a thing toward which the owner is singularly affected, for example because he received it from a Prince or from his ancestors, is deservedly judged estimable by price; and therefore in the case the seller will licitly be able to exceed the vulgar price by as much as that affection is reasonably estimated. Yet here again, as

we noted above concerning other titles, it is required that the seller forewarn the buyer concerning his special affection, etc.

Moreover, it is necessary that you by no means confuse with the aforesaid title of the special affection of the seller the special affection of the buyer; for according to the opinion very common among Theologians, especially the older ones, the special affection (I do not say of many buyers, but) of the present buyer as an individual is not a title by which alone it is licit to sell a thing dearer; because on this title alone the seller would unjustly exact a price for that which is not his.[1] "If someone," says St. Thomas,[2] "is helped much by the thing of another which he has received, but he who sells is not damaged by being without that thing, he ought not to sell it at a higher price; because the utility which accrues to the other is not from the seller, but from the condition of the buyer. But no one ought to sell to another what is not his, although he can sell to him the damage which he suffers." - And indeed this opinion is admitted as certain by any Theologian even more recent, indeed also by any fearful seller, whenever the discussion is about the case in which the present buyer is specially affected toward the thing sold by reason of necessity or want (on account of necessity or present embarrassment); since everyone understands how injurious it is to wish to grow rich precisely from the head of the necessity or want of one's neighbor. But whenever it is a question of a case in which the buyer is specially affected toward the thing, not by reason of necessity, but only by reason of utility, convenience, or delight, which the thing will procure for him, the same opinion scarcely seems to harmonize with the usage, sufficiently common nowadays, by force of which sellers commonly in such a case exact an increase of price from the buyer. Whence a doubt arises: whether this usage can be tolerated, or rather, with prudence leading, must be reproved as an abuse and corruption? Indeed I judge, with some more recent Doctors, that this sufficiently common usage can be tolerated, at least in the hypothesis that the thing toward which the buyer is specially affected by reason of utility, etc., is judged from today's vulgar estimation to have a certain greater real value, although relative, for example that the field of Titius has a greater real value relative to the neighboring estate of Caius. Indeed I would think that this usage in this hypothesis cannot be said to be diametrically opposed to the opinion of St. Thomas related above, since it supposes that the utility accruing to the buyer arises from the singular condition of the buyer; and therefore also grounded, it seems to me, is the resolution which the learned Kenrick,[1] having first alleged and admitted the opinion of St. Thomas, hands down in these words: "if from the circumstances it is clear that the thing is commonly esteemed at more on account of that special utility which it will bring to the buyer, it will be licit to ask a greater price. Thus sometimes a small field, which of itself is worth little, and provides almost no utility to the owner, is of great value to the owner of the neighboring estate: and therefore it is justly sold for that price which seems fair to most, that matter being considered."

Besides, in general it will still be useful to have noted that nowadays, on account of the changed circumstances of the times, the special affection of the buyer by reason of utility, etc., occurs more rarely, one or another singular case excepted, at least nakedly and simply, i.e. without another accompanying title. For now there is so great a competition in commerce, so great a facility of acquiring merchandise of any species, so frequent and variable an alienation of the same things, for example of the same fields or houses, that either special affection toward such a determined thing is scarcely given, or at least there is a plurality of buyers.

5° Finally, the fifth title for justly exceeding in sale the highest vulgar price is the manner of selling under the spear, or public auction; for in such an auction whatever price is freely and without fraud determined by bidders is judged just, as will be explained more broadly in Art. II, where sale in species is treated.

Notes to n. 967 - note sequence 1. (1) St. Thomas, 2. 2. q. 77. a. 1. (2) L. IV. 807. Notes to n. 967 - note sequence 2. (1) Cf. L. IV. 806. (2) 2. 2. q. 77. a. 1. Notes to n. 967 - note sequence 3. (1) Tr. XI. 51.

968. ○ Besides the five titles assigned thus far, by many Authors there are still assigned: scarcity of things, multitude of buyers, abundance of money, manner of selling in small quantity, etc. But circumstances of this kind, strictly speaking, are not titles of exceeding the vulgar price; rather they are only causes on account of which the vulgar price increases from common estimation, without ceasing to be vulgar. Whence the seller, demanding a greater price in the aforesaid circumstances, in reality does not sell above the vulgar price; but observes the price here and now vulgar, or here and now running. See above n. 962.

POINT II.

969. ○ The titles on account of which accidentally it is licit to buy below the lowest vulgar price especially are:

1° Damage emerging from the present purchase. 2° Profit ceasing from the present purchase. 3° Peril or some other inconvenience, estimable by price, arising from the present purchase, for example the peril of never receiving from the seller the thing sold, for which the price has already been paid by the buyer. 4° Sale under the spear, or public auction; to which here sale made by dealers in old things seems able to be assimilated, since things exposed among them are judged to have lost their ancient price, and to receive another price from custom or the agreement of the contracting parties.

The further explanation of the aforesaid titles will be open by itself to anyone from those things which were noted in Point I concerning the same titles, considered relatively to the seller.

970. ○ But with the titles assigned on account of which accidentally it is licit to buy below the lowest vulgar price, there are again joined by various Authors: scarcity of buyers, abundance of merchandise, manner of selling in great quantity, etc.; but these or similar circumstances indeed cause the vulgar price to decrease from common estimation, but by no means constitute a title of buying below the lowest price running in the aforesaid circumstances. See above n. 962.

Note. - For the completion of the doctrine concerning the just price there remains for us a threefold question to be solved, already indicated at the beginning of this section, namely:

971. ○ Query 1° Whether it is licit to buy more cheaply voluntary goods, i.e. goods voluntarily offered by the seller seeking buyers?

Resp. Since a voluntary offering of merchandise, from things commonly occurring, argues either scarcity of buyers and abundance of merchandise, or danger of a latent defect or of a cloaked

excellence, etc.; hence the common opinion has prevailed that the common proverb is just: Goods voluntarily offered become cheap; and this more probably, says St. Alphonsus,[1] by a third part. - But this resolution is valid not only in the case in which the voluntary offering of merchandise is made by the seller by reason of acquiring profit, as is wont to be done by sellers going through the streets and houses with their merchandise; but probably also, with strict justice considered, it seems able to be admitted (although it ought not to be advised) in the case in which a voluntary offering is made by the seller by reason of poverty by which he is pressed (provided it is not a question of such things which are commonly bought and offered, as grain, oil, and similar things); for the want of the seller does not effect that the price is changed. Yet we said notably: with strict justice considered; for, as St. Alphonsus[1] deservedly observes, the buyer will easily sin against charity if he buys more cheaply a thing voluntarily offered by a poor man pressed by necessity, not solely in favor of the poor man, but for his own utility, for example because he himself needs that thing, etc. The Lydian stone, by which it is necessary to examine the honesty of such contracts, is not, as the most wise Pontiff Benedict XIV insinuates, rigorous justice alone, but in addition Christian charity.

Notes to n. 971 - note sequence 1. (1) L. IV. 802. Notes to n. 971 - note sequence 2. (1) L. IV. 802.

972. ° Query 2° Whether because of delayed payment a THING CAN BE SOLD ABOVE THE HIGHEST VULGAR PRICE, - OR because of anticipated payment BOUGHT BELOW the lowest?

Resp. Delayed or anticipated payment is considered by very many Theologians as a virtual loan; so that one selling on credit or with delayed payment (on credit) can by this very fact be judged as it were to lend money to the buyer for the time of credit or delayed payment; and similarly, one buying with anticipated payment can by this very fact be judged as it were to lend money to the seller for the time of anticipation. And therefore the doctrine concerning a loan is usually applied by the same Theologians to delayed or anticipated payment, which is reduced here to a few points:

a) It is illicit to receive an increase of the principal, i.e. more than was given in loan, immediately from the loan, or by force of the loan alone. Consequently it will also be illicit to receive profit, or to sell more dearly precisely on account of delayed payment, or to buy more cheaply precisely on account of anticipated payment.

b) On the contrary it is licit to receive some proportionate increase on the occasion of a loan on account of a just title extrinsic to the loan, namely on account of emergent damage, ceasing profit, or peril of the principal. Consequently it will also be licit, proportion being observed, to sell a thing more dearly on the occasion of delayed payment, or to buy more cheaply on the occasion of anticipated payment, on account of emergent damage, ceasing profit, or some other peril estimable by price, provided the buyer is warned of these in the first hypothesis, and the seller in the second hypothesis, according to the things said above in n. 967. - Moreover many[1] still defend as probable relatively to delayed or anticipated payment, that it is also licit on the occasion of delayed payment to sell more dearly, and on the occasion of anticipated payment to buy more cheaply by the title of custom and vulgar estimation of the place, namely: if in such a place there is in force the custom of selling on credit, and, this custom standing, goods are commonly estimated at more, since for buying thus a plurality of buyers is wont to come together, and in that plurality there is the peril lest the price more often be lost; or similarly, if in such a place there is in force the custom (rare indeed) of

buying with anticipated payment, and, this custom standing, goods are commonly estimated at less, since then regularly there occurs a scarcity of buyers and a plurality of sellers. - But observe that this resolution of many, strictly speaking, turns outside the question proposed above; since in the supposition of this resolution the price of the merchandise increases or decreases from vulgar estimation; so that in the proper sense it is not sold above the highest vulgar price, or bought below the lowest, as is understood of itself from the things handed down above, n. 962.

c) Finally, by some more recent authors there is defended a thesis, formerly more rarely heard in the schools, but nowadays, as they say, on account of so great a change (comparatively to former times) of the use of money in commercial and industrial business, becoming more prevalent, namely: that, the titles assigned thus far excluded, neither does it seem illicit, on the occasion of a loan of money, and therefore also on the occasion of delayed or anticipated payment, to receive some proportionate increase by the title of the use of money granted to another; since the very use of money, according to them, in the present state of commerce and industry, can be judged estimable by price, except only the case in which it is a question of the poor, to whom money is lent for consumption and to relieve their want. - But whatever may be the case concerning the value of this opinion, it will surely be permitted without hesitation to defend as probable: that, the titles alleged above excluded, on the occasion of a loan of money, and therefore also on the occasion of delayed or anticipated payment, some proportionate increase can justly be received from the non-poor according to the rate of civil law, or, this failing, according to the vulgar rate.

Notes to n. 972. (1) L. IV. 811.

973. ○ Query 3° Whether he who by PRIVATE knowledge knows that the price of merchandise is shortly to be increased or diminished can nevertheless sell or buy at the price running here and now?

With the warning premised that here it is not a question of the case in which someone secretly knows that the price of a thing is soon to be diminished on account of an intrinsic defect of it already existing, for example, the price of some debt soon to be diminished because the debtor is already unable to pay; but only of the case in which someone privately knows that the price of a thing is soon to be diminished or increased on account of some extrinsic cause, for example, that the price of public securities (bonds) is soon to be diminished or increased by reason of certain events certainly or probably future:

Resp. Affirmatively, provided fraud is absent and injury to charity. For, as St. Thomas rightly notes,[1] "The seller who sells a thing according to the price which he finds does not seem to act against justice if he does not disclose what is future." For one must regard not the future value, but the present value; and the present value is not varied by some particular knowledge. For the same reason it will also be licit for the buyer to buy merchandise at the current price, although he privately knows that the price is soon to be increased; and thus, for example, according to the testimony of Genesis,[2] Joseph, knowing the future sterility on account of which the value of grain was to be increased, bought a great abundance of it at the current price and stored it away.

I said: a) provided fraud is absent; for it cannot be doubted that such sale or purchase is unjust if it is caused by fraud or deceit, for example by spreading through public newspapers or a telegraphic

report false rumors of a price soon to be diminished or increased, etc., as nowadays, alas, is practiced rather frequently, especially relatively to public securities.

I said: b) provided injury to charity is absent; for sometimes it would more or less be repugnant to charity to buy or sell in such a way, namely: if the other party were thereby thrown into grave necessity, or even if the thing could easily be sold to many or bought from many, and is sold to one or bought from one, who therefore alone will suffer the whole damage. Nevertheless, excepting singular cases of this kind, charity does not seem to urge. Indeed it is of more abundant virtue, says St. Thomas,[1] if the price is diminished; but, strictly speaking, he who uses his right, justly providing for his own affairs, does not injure charity, although another by accident suffers damage from this.[2]

Notes to n. 973 - note sequence 1. (1) 2. 2. q. 77. a. 3. (2) C. 41. Notes to n. 973 - note sequence 2. (1) 2. 2. q. 77. a. 3. (2) L. IV. 824.

974. Practical observation. - Finally concerning the matter of the just price it is useful still to note that regularly, unless I am mistaken, the confessor will not wander from the right way who, in so manifold a variety of cases pertaining here, attends chiefly to that which, according to the judgment of prudent men, is wont to be done in contracts in which no fraud and bad faith intervenes.

§ V. On the Obligations of the Seller

Besides the obligation of observing the just price, there are many obligations incumbent on the seller, of which some pertain to the manifestation of defects of the merchandise; others to handing over (delivery); and others to assurance (warranty).

I. On the obligation of the seller to manifest the vices or defects of the merchandise.

975. ○ The seller, relatively to defects of merchandise, is generally obliged cautiously to avoid every fraud by which the buyer would be unjustly deceived. But the seller can commit fraud relatively to the defects of his merchandise in two ways, namely: positively or negatively.

a) He commits fraud positively when he deceitfully hides the defects of the merchandise, and that either by words or by deeds. By words indeed, if he falsely asserts that his merchandise is entirely without a defect of some moment, with which nevertheless it is in reality infected, for example if he asserts that a horse is very tame, while in reality it is furious; but not if he merely extols his merchandise in general according to the usage common to merchants, by which buyers are regularly not deceived, as we have already observed above in n. 964. By deeds, if by art, which they call mangonium, he brings it about that his merchandise appears notably better than it really is, for example if he puts much more selected grain on the top of the sack, as if the whole is of the best quality; if he pours a small drop of mercury into the ears of a slower horse, so that it appears much more noble and lively; if he seeks a corner and darkness, lest the defect of his merchandise be detected; if he sprinkles wool with water, so that it becomes of greater weight, etc. Yet all these things, as Billuart rightly notes, must be accepted with this moderation: unless such an artful manner of acting is common and sufficiently known to buyers, as it is known to all that merchants are

accustomed to give their goods some slight coloring and to place the better things on the outside; for in that hypothesis buyers again are not properly deceived.

b) The seller commits fraud negatively when he does not manifest the vices of the merchandise known by him, whenever he is held to manifest them. But whenever he is held to manifest those vices, this is a rather difficult question; for its solution let there be the following brief treatment:

976. On the vices of his merchandise known by him which must be manifested by the seller. - The vices of merchandise can be of a threefold kind:

1° A vice concerning the substance, i.e. concerning the thing itself which is sold, so that this is altogether diverse from that which of itself and principally the buyer intends, for example if glass is sold for a gem, brass for gold, water for wine, etc.

Yet carefully observe here that not every physical diversity constitutes a vice concerning the substance in purchase-sale; for in this contract, as was said above in n. 961, the thing to be sold is considered not so much in its physical being as in its usual being; and therefore it not rarely happens that two things, diverse in physical substance, are not judged substantially diverse in commerce, whenever they have the same uses and the same effects. Wherefore, when we treat of a vice concerning the substance, we do not take substance in the absolute sense, but in the relative sense, namely: in order to human use and the end for which it is bought.

2° A vice concerning quantity, i.e. concerning number, weight, or measure, for example if a cask of wine which contains only forty measures is sold for forty-five.

3° A vice concerning quality, i.e. concerning an accident affecting the use and utility of the thing more or less, for example if a slow horse is sold as fast, new wine as old, a diseased sheep as healthy, etc.

Now indeed, for this threefold kind of vices, a threefold distinct resolution must also be given:

977. Resolution I. On a vice concerning substance. - If the vendible thing labors under a vice concerning substance, without doubt the seller must manifest that vice to the buyer; because such a vice, unknown by the buyer, altogether impedes his consent, required for the validity of the contract. Whence the seller who sells to another a thing substantially vitiated without sufficiently detecting that vice acts fraudulently and from justice is held, at the will of the deceived buyer, either to rescind the contract, or at least to restore the excess of the price, and moreover to compensate the damages following to the buyer from his deception, provided they were foreseen to some extent. - But for the right understanding of this rule it is again permitted to warn that in it there is question only of a thing substantially vitiated relatively to human use and the end for which it is bought; and hence the aforesaid rule does not seem able to be applied to the case in which the seller hands over, as they say, quid pro quo, i.e. for one thing another equally or almost equally useful thing, for example to the case in which a pharmacist, instead of the prescribed medicine which he does not have at hand, hands over another medicine of the same utility. Yet observe with St. Alphonsus[1] that the seller, in order in the case to be excused from the stain of injustice, must a) be certain, not doubtful, concerning such equality of utility, and b) diminish the price insofar as the thing handed over perhaps is worth less.

978. Resolution II. On a vice concerning quantity. - If the vendible thing labors under a vice concerning quantity, the seller is again held to manifest it to the buyer, at least by diminishing the price for the defect of quantity. For although such a contract of itself is not invalid, provided the consent concerning the substance remains safe; nor even can it of itself be rescinded at the will of the buyer, unless deceit gave the true cause of contracting; nevertheless this contract is certainly illicit and unjust by reason of the deceitful excess in the price, which therefore must be restored to the buyer. Whence it is said in the book of Deuteronomy:[2] You shall not have in the bag diverse weights, a greater and a lesser, nor shall there be in your house a measure greater and lesser. ... For the Lord abominates him who does these things, and detests every injustice. - Yet probably it will be permitted to except from the proposed resolution the case in which the seller, using right measure, cannot obtain the just price on account of the injustice of the legal tax,[1] or on account of an unjust monopoly of buyers agreeing among themselves not to offer the just price. For in this case, according to the opinion of many, he can licitly use a measure defective to the extent in which it reaches the price, yet only the lowest price, and thus justly free himself from unjust oppression. St. Alphonsus.[2]

979. Resolution III. On a vice concerning quality. - If the vendible thing labors under a vice concerning quality, first, generally, we think it must be resolved: the seller is obliged from justice to manifest that vice when the buyer seriously questions him concerning such a vice, and thus sufficiently shows that he either does not wish at all to buy the thing infected with such a vice, or at least not at so great a price; for in this hypothesis the vice concerning quality would redound into the substance, and would remove the consent of the buyer either in whole or at least in so much; so that the seller, by concealing the truth in the case, is guilty of fraud, and must undergo the consequences of this fraud. - Nevertheless, if the buyer were to question only in general, no obligation of justice seems to be present for indicating vices of lighter moment; for such a general question is not accepted in so much rigor, since scarcely any thing exists which is plainly immune from every defect. - Note. On the mode by which a seller obliged to manifestation of a vice can satisfy this obligation, see below.

980. ◦ But supposing that the buyer does not question the seller in any way; before all things it is necessary to attend whether the vice not asked about is patent or occult; and if occult, whether it must be judged notable or not notable; and with these things attended to it will be possible to resolve:

Notes to nn. 980, 985 - note sequence 1. (1) L. IV. 821. (2) 25. 13. 14. 16. Notes to nn. 980, 985 - note sequence 2. (1) See above n. 963. (2) H. A. Tr. X. 186. Notes to nn. 980, 985 - note sequence 3. (1) L. IV. 823. (2) Praxis Conf. n. 44.

981. A) On a patent vice. - If the vice is patent, so that it can generally be known by anyone with common diligence, for example if a horse is one-eyed, the seller, not questioned, is regularly not held to indicate it to the buyer, at least from justice; provided he does not exceed the just price of the thing. For where the thing itself speaks, there is no need of the voice of the seller; and the buyer, if by his negligence perhaps he does not advert to such a vice, must impute this to himself.

I said: 1° regularly he is not held; for accidentally the seller, even from justice, must detect a vice patent of itself, namely when it is certainly clear to him that the buyer, on account of manifest inexperience, dullness, etc., morally speaking, cannot advert to that vice; because then the vice is judged occult respectively to such a buyer, and therefore to be manifested whenever occult vices, as will soon be said, must be manifested.

I said: 2° regularly he is not held at least from justice; for sometimes charity will demand that the seller, if he can without grave inconvenience, warn the negligent or imprudent buyer, at least after the contract, namely if the seller sees that damage or peril from the thing bought is imminent for the buyer by reason of his negligence.

982. B) On an occult notable or redhibitory vice. - If the vice is occult and at the same time notable, i.e. if a vice not knowable by common diligence renders the vendible thing harmful, useless, or notably less useful for the end for which, in the present circumstances, it is commonly accustomed to be bought, the seller must open it from justice; for otherwise the buyer is not judged to have consented to the purchase or at least to the price of the purchase. - Whence sellers are guilty of malicious fraud, and are bound by the obligation of restitution, who sell to another a thing laboring under a vice here and now occult, by which its use and service is impeded, for example those who sell to another a horse here and now latently infected with the vice of stubbornness (stubbornness); who sell an ox secretly already laboring under pulmonary consumption, or a sheep latently scabby, or a secretly rancid pig; likewise those who sell garments or shoes apparently good, but made from burnt cloth or leather, and therefore unfit for sufficiently durable use; likewise those who sell medicines harmful or useless from a latent defect, etc.

But note well the words printed above in italics: for the end for which, in the present circumstances, it is commonly accustomed to be bought; for if the thing is sufficiently apt for usual ends of this kind, the seller is not held of himself to inquire whether perhaps the buyer has another special or extraordinary end, for which the thing would be harmful or unfit; but on the contrary he rightly presumes the usual ends, unless another end of the buyer becomes manifest to him either explicitly, or at least implicitly from the circumstances of things. Whence, selling at a just price an ox excellent for slaughter, but unfit for the plow, he is not held to indicate to the buyer that the ox is unfit for plowing, except only the case in which it would be clear to the seller from the express words of the buyer or from his known condition that he seeks the ox solely for the end of plowing; for then the seller, by keeping silent about the unfitness of the ox, does not seem excused from every injury; although that injury is not reputed grave where the buyer can easily and without inconvenience or damage accommodate the ox to another use, or resell it to others at an equal price. - But that sometimes, at least after the contract, there can be given some obligation of charity, is sufficiently clear from the things said above in n. 981 at the end, and it will again be clear from the things to be said in the following resolution:

983. C) On an occult, non-notable, or non-redhibitory vice. - If the vice is occult, but not notable, so that it does not render the thing harmful or notably less apt for usual use, for example if a sheep labors under some contemptible little fever; if garments or shoes are made from cloth or leather somewhat weaker, yet sufficiently durable; the seller, not questioned, is bound by no

law of justice to manifestation of such a vice, even a most occult one, provided he observes a proportionate price. For this seems abundantly clear from the common use and practice even of the fearful, concerning which buyers reasonably cannot be unwilling; since otherwise all commerce among good citizens would be overturned to the detriment of society.

Nevertheless, if the seller accidentally were probably to suspect that the buyer, ignorant of the vice, wishes to keep the thing longer than it can be kept, or wishes to resell it to a third party for more than it is worth, then the seller, although not questioned, would have to warn the buyer, at least from charity, after the contract, to prevent damage or peril otherwise likely to be imminent for him or for others. And thus, for example, as de Lugo notes, if you sell wine which indeed cannot be kept long, but nevertheless in that state which it still has is commonly sold at such a price for daily use; nor does the buyer show that he seeks the wine for keeping, but, having tasted the wine beforehand, buys it; you do not seem obliged from justice to state the peril. But if you probably feared that the buyer perhaps wishes to keep it longer, then it will be necessary from charity to warn the buyer through yourself or through another, so that he use the wine shortly, at least if you can without grave damage to yourself.

984. Questions. - Query 1° In what mode can a seller, obliged from justice to manifest the vices of merchandise, satisfy this obligation?

Resp. He can satisfy this obligation not only if he sincerely and by name assigns the vices of the merchandise; but also generally, a) if he sells his goods in such circumstances that their defectiveness ought of itself to be understood or presumed by the buyer, for example: if he sells as a dealer in old things; and b) if he simply and candidly asserts that he is unwilling to render an account concerning any vice whatever, but sells the thing as it is; for by a protestation of this kind the seller regularly sufficiently warns the buyer to look out for himself. And hence deservedly, from the opinion of St. Alphonsus,[1] the custom is tolerated, which is in force somewhere, especially at great fairs, that animals are sold thus, even if the vices are most occult; for, to remove lawsuits and to promote the common good, this is sufficiently made honorable by custom; provided (which must cautiously be kept before the eyes) the thing is not sold beyond the just price, at least the highest, with the account of that occult vice having been had.

Note. - On this occasion it deserves also to be observed what St. Alphonsus[2] warns concerning the justice of contracts in general, namely: "If some contracts are found, by use through a long time in some region; ... the confessor ought not to condemn them, unless first all the circumstances have been inspected; since at first sight many contracts appear usurious or unjust; but afterwards, the matter having been weighed better, they are not to be held as such."

985. ○ Query 2° What must be resolved concerning merchandise with which another cheaper merchandise has been mixed?

Resp. Attending to the various opinions which are found among Authors concerning this matter, indeed in practice I would not dare to condemn the seller of the sin of injustice and oblige him to restitution who makes mixtures commonly accustomed to be made, and asks for merchandise so mixed the price commonly accustomed to be exacted. Yet such mixtures or corruptions are not to be excused which render things notably worse for the end to which they are destined, as would happen

if things by reason of mixture no longer retain that goodness with which buyers of such things are accustomed, or, on account of universal custom, almost must be content. Besides, it is necessary to confess that any commixture, even of itself not strictly unjust, nevertheless is commonly illicit, as being opposed to good faith and the security of commerce; unless the mixture is made from a reasonable cause, for example: so that a just price may be obtained, which otherwise could not be obtained on account of the extraordinary goodness of the merchandise, on account of the unjust taxation of the Magistrate, on account of an unjust conspiracy of buyers, or on account of common use.

II. On the obligation of the seller as to the handing over of the thing sold.

986. ○ The seller by every Law is obliged to the handing over of the thing sold; unless perhaps that obligation has ceased from a legitimate cause, for example because the buyer does not pay the price, or because after the purchase he has made cession of goods.

By our law concerning it these things almost are to be observed.

I. If it is a question of immovables, a solemn contract is required (a deed).

II. If it is a question of movables a) "A delivery to the carrier, or to the agent of the buyer, is a delivery to the buyer himself." b) "As to the time of delivery and payment, the rule is, that when no time is agreed upon, they are concurrent acts to be performed forthwith." c) "When no place of delivery is specified in the contract, the law implies that it is the place where the article is at the time of sale."[1]

III. On the obligation of the seller as to the assurance of the thing sold (warranty).

Note. - What we are going to say concerning assurance, we shall say resting only on natural law, since the laws of the various States concerning this matter differ much among themselves and are changed day by day.

Notes to n. 986. (1) Walker, § 181.

987. ○ Every seller of himself is judged to sell and hand over only such a thing as can be safely possessed by the buyer and applied to the destined use; and therefore also every seller of himself, unless the contrary has been stipulated, is held to assure the thing sold to the buyer (to warrant), i.e. to provide that the buyer can possess the thing bought quietly, and enjoy it.

But since tranquil possession of the thing is taken away by eviction, and enjoyment of the thing by vices of such a kind as make the thing altogether or at least notably unfit for the destined end (which vices in Law are called redhibitory vices), hence a twofold assurance is distinguished, owed by the seller, namely a) assurance against eviction of the thing (warranty of the title), and b) assurance against redhibitory vices of the thing (warranty of the quality).

With these things posited generally, let us now note a few things concerning each species of assurance singly.

A. On assurance against eviction.

988. ○ Query 1° What is eviction?

Resp. Eviction is the legitimate disturbance of the buyer in the possession of the thing which he bought; by force of which the buyer must return the thing bought by him, either totally or partially, to some third party, who namely proves certainly that it, either totally or partially, is his, or at least that it is burdened by his real right, for example, the right of hypothec; and who therefore legitimately seeks back what is his, standing in the principle of natural law: the thing cries out to its owner, or in addition standing in the sentence of the judge, according to the terms of civil law decreeing eviction. E.g. if Titius bought from Caius, and, handing over having been made, now possesses some house, which afterwards Jacob validly proves not to have pertained to Caius, but truly to be his own, and which therefore he legitimately reclaims from Titius; then there is eviction with respect to Titius, who must return that house to Jacob legitimately reclaiming it, and thus is justly despoiled of the thing bought by him, or, as Jurists say, is evicted of the thing bought by him.

But from the given description of eviction it is clear that it can not unsuitably be distinguished a) into total and partial, according as the buyer is evicted of the whole thing or only of part of it; and b) into natural and juridico-civil, according as it is founded in the law of nature alone, or moreover in civil law applied by the judge.

989. ○ Query 2° To what is the seller of himself (i.e. another stipulation excluded) held from the very law of nature toward an innocent buyer in the case of eviction?

Resp. with a distinction: either the seller was of bad faith, i.e. knew sufficiently that the thing was subject to eviction and concealed this from the buyer; or he was of good faith, i.e. wholly ignored the danger of eviction.

If the first, namely if he was of bad faith, the seller from the law of nature, and therefore in the forum of conscience, is held to return to the evicted buyer the price paid by him, and to keep him altogether unharmed; because he truly deceived the buyer and must be called simply an unjust damager. - But if the eviction was only partial, the same seller owes to the buyer restitution of the price pro rata, and compensation of the damages; indeed he must, at the will of the buyer, rescind the contract whenever the part of which the buyer is evicted is so notable that of itself it could be presumed that the buyer would not have entered the contract without such a part; because then the deceit of the seller truly gave cause to the contract.

If the second, namely if he was of good faith, the seller also from the law of nature is held to return to the evicted buyer the price paid, either in whole or in part, according as the eviction is entire or partial; provided he still has that price in itself or in the equivalent; but besides this from the law of nature he seems obliged in conscience to nothing else; unless perhaps, in the case of partial eviction, to rescinding the contract, when it is clear of itself that the buyer, with attention to the notable part of which he is now evicted, would not have wished to enter the contract if he had known the peril of such eviction; for then his consent was altogether founded in error. - We said that the seller is held to return the price accepted, provided he still has it in itself or in the equivalent, or, as others say, understanding the same thing: insofar as he was made richer from it; for if the seller of good faith perhaps spent that price in gambling or gifts, so that from it he was not made richer (take this as: if otherwise he would not have made such expenses), then neither will he be able to be obliged to restitution of the price from the law of nature, as is clear from the principles previously set forth concerning the obligations of a possessor of good faith.

990. ○ Query 3° What must be established for the case in which the seller in good faith stipulated that he does not assure the thing?

Resp. He is held to return the price insofar as he still has it in itself or in the equivalent.

Note. - If by the malice, says St. Alphonsus,[1] or the fault of the judge, or by the force of another, or by the negligence of the buyer the thing is evicted, the seller is held to nothing; for fortuitous peril pertains to the buyer.

B. On assurance against redhibitory vices of the thing.

Notes to n. 990. (1) L. IV. 800.

991. ○ That every confusion may be prevented, it is permitted here in advance to warn that the things now to be handed down concerning assurance against redhibitory vices are to be considered simply as a supplement to the treatment set forth above, n. 975 seq., concerning the manifestation by the seller of the vices of his merchandise. For since in that treatment there was discussion only of the obligation which, from the law of nature, is incumbent on the seller relatively to vices of the thing known by him, and consequently of his obligation toward the buyer, if he did not manifest vices of this kind which had to be manifested, and therefore is to be judged to have acted fraudulently and in bad faith; hence it is clear of itself that certain things still remain to be said concerning the obligation which from the law of nature is incumbent on the seller, in the case in which he himself ignored the vices of the thing, and therefore ought to be judged to have sold sincerely and in good faith.

992. ○ Query. To what is a seller OF GOOD FAITH held toward the buyer from the law of nature as to vices of the thing sold?

Resp. Since such a seller has committed no deceit, the solution of the question must be sought from the doctrine, handed down concerning contracts in general, around error. Therefore, that doctrine supposed, it can be established:

1° If the vice is concerning substance, the seller of good faith from the law of nature must rescind the contract and return the price accepted, insofar as he still has it in itself or in the equivalent.

2° If the vice is concerning quantity, he must, for the defect of quantity, return part of the price, insofar as he still has it in itself or in the equivalent.

3° If the vice is concerning quality truly notable, according to the diversity of the error in which the buyer was, he must either rescind the contract and return the price, insofar, etc., or at least reduce the contract to equality, returning pro rata part of the price, insofar, etc. Yet here the case seems to be excepted in which the seller of good faith stipulated the contrary and accepted a price proportioned to this stipulation; for then the contract is rather aleatory.

§ VI. On the Obligations of the Buyer

Three obligations of the buyer are given, of which one is principal; while the two remaining are less frequent and accidental.

A. On the principal obligation of the buyer.

993. ○ The principal obligation of the buyer is: that he buy the vendible thing at a just price and faithfully pay it in the due place and time.

B. On the twofold obligation of the buyer, less frequent and accidental.

994. ○ The first obligation, less frequent and accidental, is the obligation (whether expressly, or at least tacitly, i.e. by increasing the price up to the vulgar lowest) of manifesting to a simple and ignorant seller the goodness of the merchandise which he wishes to sell more cheaply, not knowing its value; for otherwise the buyer would not buy at the just price, i.e. not at so much as the thing is worth in common estimation. Nor is the buyer to be excused when in such a case he asks the ignorant seller to condone it if perhaps the thing is worth more; for a donation of this kind would be invalid, as founded in ignorance. Besides, to understand rightly the aforesaid obligation of the buyer, observe:

a) That obligation probably cannot be extended so far as that the buyer would have to make the seller, even one questioning him, more certain of the highest value of the thing which is unknown; for I am able with St. Alphonsus[1] to apprehend no injustice in the buyer who justly buys by paying the lowest price, and besides does not positively deceive the seller or compel him to sell. - But that the seller is ignorant that this price is the lowest is accidental and must be imputed to him.

b) The same obligation does not comprehend the case in which there is question of a thing which in the common estimation of the place is held as cheap, although the buyer by private knowledge recognizes its greater value; nor the case in which both buyer and seller, laboring under ignorance, in good faith enter a quasi-aleatory contract, committing themselves to fortune.

The second obligation, less frequent and accidental, is the obligation of the buyer to manifest candidly and totally to the seller the vices of the price, if any perhaps exist here and now, for example if the buyer pays coins or notes for the price, which here and now are of doubtful or litigated value. But by saying: here and now, we sufficiently suggest that an obligation of this kind does not touch the case in which the discussion is about a price which here and now is best, but which the buyer privately knows is soon to be diminished on account of some extrinsic circumstance in the future. See concerning this case the resolution handed down previously in n. 973.

Notes to n. 994. (1) L. IV. 819.

ARTICLE II: ON THE PRINCIPAL SPECIES OF PURCHASE-SALE

Since the matter of purchase-sale can be altogether various, and the manner of buying and selling plainly various; hence also various species of purchase-sale are distinguished, concerning the principal of which, as being more or less necessary to know in practice, there will be spoken in this Article singly and compendiously at the same time, namely: 1° concerning sale with the pact of buying back; 2° concerning the sale of incorporeal rights; 3° concerning sale under the spear, or public auction; 4° concerning sale through brokers; and 5° concerning monopolies.

§ I. On Sale with the Pact of Buying Back

[Conditional Sale. Kent, T. IV. n. 144. (4)]

995. ○ Sale with the pact of buying back is a contract by which the seller reserves to himself the right of buying back his own thing, under the condition that he compensate the expenses, improvement, or similar things.

996. ○ As regards the morality of sale of this kind, to which for the internal forum purchase with a pact, that the thing bought must be bought back by the seller at the judgment of the buyer, seems able to be assimilated; these things from the sufficiently common doctrine of Moralists can be established:

Sale or purchase with the pact of buying back is of itself licit, provided the price of the thing is diminished pro rata for the burden which one party, by bargaining for the right of buying back, imposes on the other party; since such a burden in reality is as it were a part of the price, which therefore must be diminished insofar as due equality in the contract of purchase-sale demands it. Wherefore:

1° If the pact of buying back is made solely in favor of the seller and as a burden of the buyer, the seller must descend in the price according to the estimation of the burden imposed on the buyer. But how much that burden is to be estimated, this must be left, with attention to the circumstances, to the judgment of prudent men, although not rarely that burden will be equivalent to a third or at least a fourth part of the price; so that not rarely also the price must be diminished by a third or at least by a fourth part; and thus, for example, if the price of the thing of itself is 100, and the seller sells it with the pact of buying back in his own favor, then often he will have to sell it for 65-75, or, generally speaking, for the price which, with attention to the circumstances, is determined by the estimation of prudent men.

2° But if the pact of buying back is made solely in favor of the buyer, and to the burden of the seller, then on the contrary the buyer is held to increase the price according to the estimation of the burden to be undergone by the seller.

3° Finally, if the pact of buying back is made in favor of both; so namely that as often as the seller has returned the price, the buyer is held to return the merchandise, and on the contrary, as often as the buyer has returned the merchandise, the seller is held to return the price; then equality of the middle price will have to be observed, since the burden is equal for each. Cf. St. Alphonsus.[1]

Notes to n. 996. (1) L. IV. 812. sq.

997. ○ Besides, for practice as to purchases and sales of this kind with the pact of buying back, observe that they are sometimes made not with the intention of buying or selling, but with an entirely usurious intention, namely to cloak, under the deceitful species of purchase-sale, the usury latent in the agreement. But it is easily understood that such agreements, by reason of the latent usury, are illicit and unjust, at least whenever the profit perceived from them exceeds the increase which it is licit to receive on the occasion of a loan according to the things said above in n. 972. An example of a usurious agreement of this kind is at hand in the contract called in Spanish mohatra, by which

someone sells a thing at a greater price on credit, with the pact that the buyer sell it back to him at a lesser price, in counted money. Cf. St. Alphonsus.[1]

§ II. On the Sale of Incorporeal Rights

Preliminary note. - Goods which pertain to the matter of purchase-sale are distinguished into corporeal and incorporeal. Corporeal, as we said in n. 593, 2), are those things which by their nature can be touched, i.e. perceived by the senses, such as a field, a garment, gold, and similar material things. Incorporeal are those which cannot be touched, as consisting in mere right, such as the right of an opened inheritance, the right of usufruct, and generally any credits whatsoever. This having been noted:

998. ○ Query. Whether in conscience it is licit to buy credits or notes, in counted money, below their numerical value?

With the distinction premised between private notes, commercial notes (drafts, for instance), and notes of States or rather public securities, founded in the Government (bonds):

Resp. 1° As to private notes: It is manifest that they can be bought for much less in counted money if they are uncertain or litigated or difficult of payment on the part of the debtor; and this probably even if perhaps to the present buyer, on account of a circumstance special to himself, they become easy to collect; since the price of a thing is determined from common estimation, and not from the particular circumstance of the buyer.[2] But a serious controversy is conducted among Doctors, yet one more speculative than practical, concerning notes or debts, as they say, liquid, i.e. certain and easily to be paid by the debtor at a prefixed time. Not a few judge that such liquid notes too can be bought a little more cheaply; because purchase, even of such a note, is not the purchase of money but the purchase of a right to money; but a right to money from common estimation is worth less than present money. Others on the contrary think that they cannot be bought for less, because such debts, although physically they differ from present money, nevertheless morally speaking are of altogether the same value. But, as we have already suggested, this controversy seems more speculative than practical; because in practice debts of this kind are more rarely bought without there intervening danger of difficult payment, at least in common estimation, fear of troubles, emergent damage, or something similar, which justifies purchase at a lesser price. For where today is a debt found so placed in safety that in security it equals present money? Wherefore in practice you will safely follow the first opinion.

Resp. 2° As to commercial notes: These notes can be equated with private notes when they are not from those commercial credits which are publicly exposed to be sold in the commercial market (exchange, stock-exchange); but if notes of this kind are publicly exposed there to be sold, then we think it can probably be resolved with Bouvier that they can be bought and sold at the price running in that market, and this not only if those notes are directed to another city and therefore of themselves somewhat perilous, for example if a note, bought in Baltimore, is directed to Boston and is payable there only; but even if they must be paid in the same city; for such notes publicly exposed are held as merchandise, whose price increases or decreases from common estimation according to circumstances.

Resp. 3° As to public securities: These securities from the common estimation of any region whatsoever are equated with ordinary merchandise, whose price increases or decreases according to the diversity of circumstances. Whence without doubt it seems licit to buy and sell them at the current price.

Notes to n. 998. (1) L. IV. 813. (2) L. IV. 829.

§ III. On Sale under the Spear, or on Public Auction

999. ○ By the name of sale under the spear, in the stricter juridical sense, there is understood only that sale by which, from the edict of a judge, certain things for sale, for example the goods of a debtor unequal to paying, are publicly exposed to be bought by those offering more. Yet commonly by the same name there is usually designated in general any sale in which the thing to be sold is proclaimed by a crier, whose bidding is admitted, and the thing is adjudged to the last bidding. Everywhere they also call this sale public auction, because on the part of buyers it is perfected by bidding, so that the later bidder increases the price offered by the former.

1000. ○ Sale under the spear, or public auction, is in use everywhere among nations, is approved by legitimate authority, and of itself contains nothing unjust. Whence without doubt it is licit in conscience; yet with this law, that the price be observed which in such a sale can be judged just. But in a public auction, with the holy Doctor Alphonsus, that price can be judged just which is determined by the public concurrence of bidding buyers; even if it descends below the lowest vulgar price, or is elevated above the highest vulgar price; provided frauds are truly absent, which, alas, in this species of sale intervene rather frequently, both on the part of the officials, and on the part of the sellers themselves, and on the part of the buyers coming together:

1001. ○ On the part of the criers fraud principally intervenes: if they adjudge the thing to be sold to someone more quickly than usual, with detriment to the seller; or if they begin the sale before the time, so that, buyers being lacking, the thing is sold at a lesser price.

1002. ○ On the part of the sellers themselves fraud principally intervenes: 1° If they positively conceal the vices of the thing, or expose one thing for another, or a defective thing as whole, unless nevertheless in that case, in the usual manner, the defective thing is simply sold as it is.[1] Likewise 2° of itself speaking, i.e. with attention to the original character of public auction, if they bid by themselves or suborn others as fictitious bidders; or if they withdraw the thing when a lesser price is offered. Nevertheless accidentally, namely: by reason of the contrary practice, nowadays almost universal, we think that it is possible to pronounce somewhat more mildly; because by reason of this practice the public auction itself seems to have put on as it were another nature; so that the seller would now imprudently be condemned who would withdraw the thing thus, or would bid himself by himself; since it is permitted not irrationally to presume that buyers, knowing this and prepared to do the same in a similar occasion, renounce their right, and therefore no injury is done to them.

Notes to n. 1002. (1) See above n. 975. a) and 984.

1003. ○ On the part of buyers fraud principally intervenes: 1° If they impede others by force or deceit, for example by lies or other unjust means, so that they do not increase the price; but not if they simply ask others by non-importunate prayers, as is commonly practiced. 2° If they procure that the bidding be ended more quickly than is fair, and the thing be adjudged to them before the time. Likewise 3° of itself speaking also, if buyers agree among themselves not to bid or not to offer more; except nevertheless, according to many, the case in which buyers were joined in society, or quasi-joined as brothers, friends, etc.; since in this hypothesis they make as it were one moral person, and it would be harder to exact from them that they bid against one another. But accidentally, - namely: where the practice assigned above is in force, that sellers themselves by themselves or by others bid, and withdraw their thing when a lesser price is offered; - I would not dare to accuse of injustice even buyers who agree among themselves by pact that they cannot bid beyond a moderate price; for if the seller, by bidding and withdrawing the exposed thing, can impede the price from decreasing too much, equity also seems to demand that he not complain that buyers agree lest the price be increased too much. But whether by the same title, that the seller withdraws the thing, etc., the buyer can still be excused who gives or promises money to the rest so that they abstain from bidding, and thus the thing can be bought by him at a moderate price, is a very arduous question, concerning which Authors everywhere are silent, while fewer, touching it in passing, stand for a negative response, to which also the more common sense and practice of the fearful seem to give support. Indeed mindful of the wise warning of St. Antoninus: that no one is to be condemned of sin unless it is sufficiently clear concerning it, before the fact I deter the aforesaid buyer from a suspect manner of acting of this kind, but after the fact I do not presume to condemn him absolutely. As regards the case, not rarely occurring, in which someone has accepted money from the buyer under the condition of not bidding, while in reality he had no intention of bidding; it does not seem that the money must be restored to the buyer, since at least the right of bidding, which he abdicated, is worthy of a price. Cf. n. 857, 1°. But let all these things be said for the sole hypothesis that the seller can withdraw his thing, etc., and by no means for the case in which the seller is not able to do that in fact or in law, as happens, for example, in judicial sale under the spear.

1004. To be noted. - For judging the diverse arts and machinations which nowadays are practiced in public auctions, it is necessary chiefly to attend to these two things, taken collectively:

a) To the very nature of such a sale, namely that public auction is as it were an aleatory contract, to whose justice it pertains that as to the advantages to be hoped for and the disadvantages to be feared, the condition of the seller on the one side and the condition of the buyers on the other side be of itself equal; so that fraud is judged to be present where the order of this sale is subverted by either party in such a way that this due equality vanishes; and then:

b) To the practice commonly in force somewhere; for although common practice, even of the more fearful, does not necessarily furnish an unanswerable argument for the justice of a contract,

nevertheless regularly it furnishes a founded presumption of that justice, which the confessor certainly ought not to reprove unless its falsity is sufficiently clear, as we have already warned above with St. Alphonsus. Yet the reins would be loosened too much for buyers if, as a practical principle, it were assumed that sellers, knowing the arts accustomed to be committed, voluntarily subject themselves to the same by this very fact, that they have proposed their things to be sold by the mode of public auction.

§ IV. On Sale through Brokers

1005. ○ Sale through brokers is that which is not made immediately by him to whom the thing to be sold pertains; but from his mandate or commission by others, who are called brokers.

Concerning sale and purchase of this kind certain special things occur to be noted a) respectively to brokers in general, and b) respectively to those brokers in particular who are such by office.

1006. I. On brokers in general. - As to brokers in general this one difficulty alone is usually moved:

Whether a broker who sells ABOVE or buys BELOW the price designated to himself by his principal can licitly retain for himself the EXCESS of the designated price?

Resp. Of itself speaking negatively; because a broker, as such, enjoys by himself no just title for retaining something for himself. Yet accidentally, namely on account of particular circumstances, he will be able to have a title of this kind and consequently licitly to retain something for himself, namely:

a) If the broker by his extraordinary and undue labor or by his special industry improved the thing to be sold, and therefore precisely sold it for more; for the fruits of industry follow industry.

b) If the owner of the thing had expressly or equivalently declared that he exacted nothing beyond the price designated from the broker; as they assert happens rather often where the owner assigns no stipend for the labor of the broker.

c) If the broker, common diligence having been carefully applied, and no greater price having been found, truly and validly buys the thing for himself and at his own risk, and afterwards sells it for more, and pays to the owner only the designated price.

d) Finally the broker can licitly retain for himself the residue of the price, given or determined by his principal for buying something, whenever that whole determined price would have had to be expended, unless the seller had diminished the price in favor of the broker himself; and thus, for example, a tailor, deputed to buy in a shop cloth and other things necessary for making garments, and besides faithfully managing the business of the owner, will licitly retain for himself that part of the price which the shopkeeper remitted or donated to the tailor in his favor, for example because he frequents his shop, etc. Yet St. Alphonsus warns that in cases of this kind one must proceed cautiously, lest justice be injured; since, as experience testifies, it not rarely happens that shopkeepers pretend that they are donating something to tailors or other brokers, while in reality the owner, if he himself went to the shop, would obtain the thing for the same diminished price.

1007. II. On brokers by office. - We call brokers by office those who perform the function of an intermediate negotiator, and in the vernacular tongue are commonly named brokers, commission-merchants. Certainly the same obligation which was just described as to the greater or lesser price is incumbent on these intermediate negotiators as on brokers in general; but more special frauds can be committed by them, which it has seemed useful here to recount summarily.

Therefore they commit fraud:

1. When in their accounts they note, or cause to be noted, the price of the thing bought as greater, or of the thing sold as lesser, than it truly was.
2. When they buy a thing at a price greater than it could easily have been had, so that they may procure a greater increase for themselves.
3. When they bring damage to the mandator by buying worse merchandise.
4. When in taxing things, for example a field, a house, they assign to them a price lesser or greater than the just price.
5. When without a just title they exact a wage or increase greater than custom permits.

Notes to nn. 1007, 1013. (1) L. IV. 817. (2) Kenr. Tr. XI. 124. (3) L. IV. 905. 907. q. IV.

§ V. On Monopolies

1008. ○ Monopoly, according to the force of the name itself, derived from the Greek *monos*, alone, and *poleo*, I sell, signifies the sale of one, or made by one sole seller; and therefore it is conveniently accepted for: the exclusive power of selling, existing in the possession of one, or of only a few.

Monopoly they generally distinguish into public and private. A public monopoly is one if it is constituted by public authority, which indeed is wont to happen in two ways, namely: a) when the public authority or Government reserves to itself, as such, the sale of some merchandise, and by this reason imposes on the community as it were an indirect tax; b) when public authority grants to one or only a few citizens the privilege of selling certain merchandise, with the exclusion of others. - A private monopoly is one if one, or several by the mode of one, by their own private authority, machination, and industry bring it about that either they alone sell certain merchandise, or that they do not sell their merchandise except at such a price.

1009. ○ Query. Whether monopoly is licit?

Resp. 1° Public monopoly by the confession of all is licit; provided it rests on just causes, and moreover care is taken that the privileged monopolists do not increase the price of the merchandise beyond the terms of the just.

Resp. 2° As to private monopoly, first of all a threefold mode must be distinguished by which it can be had, namely: a) by impeding, lest foreign merchants import merchandise of the same kind; or b)

by buying all the merchandise of the same kind; or c) by conspiring with others, so that no one sell merchandise for less. But with this distinction attended to, it seems it must be established thus.

1010. First Rule. - When one or several impede merchandise from being imported from elsewhere, it must be investigated by what means they do this. If for this they use force or fraud or other unjust means, they certainly sin against justice and are held to restitution both toward foreign merchants, and toward fellow citizens who suffer damage through the unjustly impeded importation of merchandise. But if they apply no unjust means, they do not seem able to be condemned of sin, at least of injustice.

I say: at least of injustice; for those impeding the importation of merchandise, even without injustice, would then certainly sin against charity toward neighbor if they act thus without a right cause, for example: without the cause of obtaining honest profit, or of guarding beforehand lest they themselves and fellow citizens be compelled to sell their merchandise at a cheaper price. For charity forbids that without a right cause we furnish to our neighbor even only an occasion of damage.

1011. Second Rule. - If one or a few buy all, or almost all, merchandise of some kind which is necessary for the sustenance of life and common society, for example grain, oil, salt, etc., so that afterwards they may sell it above the highest price which, the monopoly excluded, would run, from the opinion which St. Alphonsus[1] calls common and true, they sin against justice; because in this hypothesis they are the true cause why the price is unjustly increased.

But we said: 1° if all or almost all merchandise of some kind, etc.; for it seems to pertain to the common industry of merchants, certainly licit, that they buy at the price now running merchandise of this kind remaining after citizens have sufficiently procured it for themselves, so that afterwards they may sell it with some moderate profit.[2]

We said: 2° merchandise which is necessary for the sustenance of life and common society; for if it is a question of things in no way necessary, but only of things pertaining to pleasure, for example precious gems, etc., the proposed rule is not applicable, as you will easily understand from the things noted above concerning the price of such things, n. 965.

We said: 3° so that afterwards they may sell it above the highest price which, the monopoly excluded, would run; for if afterwards in selling they do not exceed the highest price which would run even with the monopoly excluded, they do not seem to sin against justice; because they are not the cause why the price is increased unjustly; indeed, according to many, neither do they sin against charity, since charity does not oblige one to neglect his own advantage to prevent the inconvenience of a neighbor. Yet it seems opposed to the due order of charity that one seller of this kind also induce others to sell similarly, and thus, without a right cause, close off to citizens the way of buying merchandise at a lesser price.

1012. Third Rule. - When several conspire so that they sell only at such a price, again a distinction is needed. If they conspire thus to a price above the highest, they sin against justice and are held to restitution; but if they conspire thus to the highest price only, they do not indeed sin against justice; but, from the common doctrine, against charity; because charity, although it does not oblige you to sell below the highest price, nevertheless seems to oblige you not to dissuade

> others from selling at a lesser price; just as, granted that charity does not oblige you to give alms, nevertheless it seems to oblige you not to dissuade others who wish to bestow it.[1]

Moreover, those things which in this third rule are established concerning sellers conspiring must also, as Carriere rightly warns, be applied to buyers conspiring to a price below the lowest (which is against justice), or to the lowest price only (which is against charity). And the same things they commonly apply to craftsmen who, (as nowadays is practiced rather frequently, especially by members of the pernicious society commonly called the International) by mutual agreement promise among themselves that they will not do or perfect such a work unless they receive such a price; and, vice versa, also to masters who by mutual machination hire craftsmen to work at a lesser price. For although all these things are not monopolies strictly so called, nevertheless concerning these one must judge from the same principles.

CHAPTER II: ON SOCIETY AND THE TRIPLE CONTRACT

ARTICLE I: ON SOCIETY (Partnership)

1013. ○ Definition. It is the agreement of two or several persons to contribute something for profit to be received from it, with profit and loss communicated pro rata. - Something, as money, merchandise, industry, labor. - To contribute, and not to transfer into the associate; for society is not converted with co-ownership (joint property). Wherefore between brothers and sisters society does not exist for this reason (i.e. by a precise pact), because they have an undivided patrimony and live from a common table. - With profit and loss, etc. Hence of himself he is not an associate for whom, as minister or broker, a certain quota of profit is constituted in compensation for labor, nor he who gives money by loan to a merchant, so that he may receive a fixed part from the commercial profit.

Conditions: 1. that there be equality, i.e. a right to profit pro rata of the thing contributed; 2. that, unless from a pact the loss and the principal are common, the peril of the principal regard the owner of the principal; 3. that each one undergo the burden of losses and expenses which come on account of the society; yet he who has been made liable to creditors by the fault of the associate is not held in conscience to pay before sentence. - But he who has a small portion, for example a sixteenth, although in most States he is held for the whole debt of the society, satisfies in conscience if he pays according to the pro rata part of his portion. - Whenever a society is entered by the sanction of a public charter (incorporated), the goods of the individual associates, unless the contrary is established in the Charter, are not liable to creditors, but only those things which are of the group (i.e. the capital stock);[2] 4. that each one apply the same diligence in the society as in private negotiation.[3] It is clear that, by defect of the conditions under 1. and 3, the Leonine society is unjust (so called from the fable of the lion sharing in the hunting of the other beasts without danger to himself), by which one communicates profit without contributing anything, or one feels only profit, the other loss.

Notes to n. 1013. (1) L. IV. 816. (2) H. A. Tr. X. 183.

1014. You will resolve: - Associates sin and are held to restitution: 1° By using common things for their own private advantage, with the others unwilling. 2° By attending to private profit, while they ought to devote themselves to the common profit. 3° By wasting common things. 4° By not contributing into the common treasury whatever they have acquired by negotiation. 5° By neglecting to fulfill their parts. 6° By rashly entangling themselves in business which will scarcely have a happy outcome,[1] the associates being unaware or unwilling. 7° By withdrawing from the society before the time, with the associate unwilling and without a cause certainly excusing.

Note. - That faithful persons proposing cases concerning the contract of society may be rightly understood, I have judged it not useless to explain certain terms of law pertaining to the matter. - 1. Limited partnerships consist of one or more persons jointly (in solidum) and severally (pro rata)

responsible, who are called general partners, and one or more, whose liability extends no farther than the fund furnished, and who are called special partners. 2. A dormant partner is one who participates in the profits, but does not appear to the world as a partner. When discovered; he is responsible for the engagements of the firm as if his name had appeared therein. 3. A nominal partner is one who has no actual interest in the trade or its profits, but lends his name and credit to a firm, or in any manner holds himself out as a partner therein. He incurs the liabilities of a partner, not as between himself and the firm, but as between himself and third persons dealing with the firm, if such holding out has come to the knowledge of such third persons. A nominal partner, however, is to be distinguished from a person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, i. e. of the sale of the right to use the name of the firm. Such seller is not deemed to be a partner, nor to be subjected to any liabilities incurred by the buyer. 4. Articles of association are the rules by which the partnership is to be governed. 5. Joint-stock company. This name usually designates a partnership in which the capital is distributed by shares among a large number of partners. Legally they possess none of the peculiar attributes or powers of corporations, except as conferred by statute.[1]

ARTICLE II: ON THE TRIPLE CONTRACT

1015. ◦ The triple contract is that by which someone contributing money makes an agreement with another associate that, whatever may happen, the whole sum be restored to him with a certain profit, yet a profit less than that which he could probably hope for; or it is a contract of society, to which two other contracts are joined, namely insurance of the principal and insurance of the profit, or sale of the hope of receiving a greater profit for a lesser profit that is certain and insured. It is instituted in this way. I contract, for example, with Peter, by giving him a sum of money for trading. But, since the hope of gaining 15 for 100 shines before me, and on the other hand I fear lest I lose the principal, I enter a second contract with Peter, giving him 5 for 100, if he is willing to take upon himself the insurance of the principal. This second contract having been entered, there now remain to me only 10 for 100 to be gained. But I would prefer a profit still less, but certain, than a greater and uncertain one. Therefore I propose to my associate that he give me only 5 for 100, but certainly refund it, whatever may occur. Hence there is given a triple contract, namely of society, of insurance of the principal, and of insurance of the profit.

1016. ◦ Query. Whether the triple contract is licit?

Resp. There is a twofold probable opinion among Theologians. St. Alphonsus explains both.[1] Since, with the Church permitting, it is licit to exact an increase on the occasion of a loan, this contract no longer pertains to practice here.

Notes to nn. 1016-1023 - note sequence 1. (1) L. IV. 908. (2) Unless it is of personal work. Notes to nn. 1016-1023 - note sequence 2. (1) Kenr. Tr. XI. 43.

CHAPTER III: ON LEASE (Lease)

1017. ○ Lease is a contract by which the use, or fruits of a thing, or the work of a person, for a certain wage is accepted for a time by one and granted by another. He who hands over a thing for the use or utility of another is called the locator (Lessor); the other is named locatary or conductor (Tenant or Lessee). Moreover the species of lease are variously numbered: 1° lease of buildings; 2° of fields; 3° of animals; 4° of labor and servitude. (o) p. 482.

I. General Rules of Lease.

Appendix annotation (o), to n. 1017. p. 402. col. 2. To these our and the English jurists add lease of custody, which differs from the contract of deposit only to this extent, that the latter is gratuitous, the former onerous; lease of work for carrying goods, which can be referred to lease of work (this number under 4°); and lease of work to be made, concerning which we treat in n. 1023 in the Note. Kent treats of the dispositions of our law concerning various species of lease, Lect. XL. LII. LIII.

1018. Principles. - 1° The locatary generally can sublet, unless something else has been stipulated, or detriment be done to the locator from it. - 2° Lease[2] is not dissolved by the death of the contracting parties, but passes to the heirs. - 3° If the time of lease has not been determined, it can cease at the judgment of either contracting party, provided he warn the other at a fitting time according to the custom and laws of places, and the nature of the thing leased. - 4° If the locator has sold the thing leased, the locatary cannot be expelled, but the term of the lease must be awaited.

II. Obligations of the locator.

Notes to n. 1018. (1) Kenr. Tr. XI. 135.

1019. ○ 1° He is held to open the harmful vices of the thing to be leased. - 2° He must provide that the locatary enjoy it tranquilly. - 3° It is incumbent on him to sustain the necessary expenses of repairing the thing leased. - 4° He cannot change the form of the thing leased without the consent of the locatary. (p) p. 483.

III. Obligations of the locatary.

Appendix annotation (p), to n. 1019. p. 403. col. 1. The necessary expenses of repairing a leased thing, a building, are called in English "substantial repairs," which "include repairs to the main walls, roofs, timbers, etc."; they are distinguished from repairs which are called moderate, in English ordinary repairs, for instance, "the common reparations to windows, shutters, doors, etc." (Smith, n. 157). Whether the lessor is held to moderate expenses, or rather the lessee, in defect of a special agreement, must be determined from particular laws or the custom of places.

1020. ○ 1° He must use the thing leased as a good father of a family, for the sole end of the lease. - 2° He is held to restore or repair those things which have perished by his fault, or have been made worse. - 3° Not even in the external forum is he held for damages which the thing leased undergoes, unless it is proved that they happened by his fault, at least

juridical. - 4° He is held to pay the rent at the stated time, and that with the legal increase from the day on which it was to be paid, if he does not pay at the stated time.

1021. Questions. - Query 1° What of law, if a leased house perishes by fire?

Resp. 1° In the forum of conscience the locatary is held to nothing if it has been burned without any fault of his, even juridical; indeed probably even if it perished from juridical fault alone.

Resp. 2° Nor is the locatary held for the damage in the external forum, unless it is proved that it happened from the fault, at least juridical, of the locatary.

Query 2° What especially concerning lease of works?

Resp. 1° The locator of a servant or worker is held to agree with him concerning a just wage, such as that which is commonly wont to be given to such persons.

Resp. 2° If the determination of the wage was left to the judgment of the conductor, he must give a just wage, at least the lowest. But a master dismissing a servant before the time without sufficient cause is held to repair the damage emerging from it.

Resp. 3° If a servant or worker voluntarily offers himself, and you do not need him, but receive him only from charity, resolve from the things said in n. 710 what you owe to give to him.

1022. ○ Query 3° Whether the locatary of fields is held to pay the whole rent in the case of sterility, on account of hail, or another extraordinary misfortune?

Resp. By common law, affirmatively, if the rent to be paid is Money.

Query 4° Whether the tax of the thing leased must be paid by the locator, or by the locatary?

Resp. Of itself, a special agreement excluded, the locator must pay the taxes; because not only is he the owner of the thing, but he has not even transferred the usufruct except in a successive manner and from day to day. But otherwise concerning full and properly so-called usufruct, as was said above n. 678. II. 2.

1023. ○ Query 5° Whether a messenger going to a certain place can licitly receive the whole wage from several?

Resp. 1° Concerning drivers there is no difficulty, because such is the custom. - Thus commonly Theologians.

Resp. 2° Concerning a messenger there is a twofold opinion here. - Recall the things said above, n. 831. q. 1.

Note. - To the contract of lease must be referred the contract of accomplishing some work, concerning which each one should consult the laws of his State. Generally one must stand by the agreed pacts. Not rarely in this contract among undertakers of a work (the contractors) there occurs the case of mutual conspiracy for increasing the price, or even the case of public bidding, more or less impeded. But cases of this kind, with the circumstances prudently attended to, will have to be resolved from the things handed down concerning Public Auction, n. 999 sq., and concerning Monopolies, n. 1008 sq.

CHAPTER IV: ON EXCHANGE (Exchange)

1024. ○ Exchange is the permutation of money with some profit of the money-changer (Money-changer, Banker). Yet exchange in general sounds the same as permutation, whether in money, or in other things.

Today exchange is distinguished as only twofold, namely manual or petty exchange, and local exchange or exchange by letters. The former is made when money of one form or matter is exchanged with money of another form or matter. But the latter has place when present money is exchanged with absent money to be paid in another place.

If in manual exchange money of the same nation is exchanged, no wage is now usually exacted for the exchange, but only the difference of the current value (premium): but for those who exchange money of one nation for money of another nation, it is licit to receive moderate profit. - For the most part exchange is made by letters not only between diverse nations, but also between diverse cities of the same nation, indeed even between citizens of the same city. For money-changers now everywhere are joined among themselves by the commerce of letters: whence if, for example, money is to be transmitted from New York to another place, coin is not transmitted, since this could not be done without peril and greater expenses, but the money is handed over to a New York banker, letters having been obtained from him by which in that other place that money can be obtained by him to whom it was to be transmitted. These letters are called "bills of exchange." From these the letters called "promissory notes" differ to this extent, that by the former another is ordered or asked to pay money to someone, by the latter payment of money is promised to someone. By letters which are called "checks" or "drafts," a banker (a banker) is ordered or asked by someone who often uses his services (a customer), that he pay money to some third person or to his mandatary (to his assignee or indorsee), or to anyone possessing the letters (to the bearer) as soon as it is demanded (on demand).[1]

Notes to n. 1024. (1) The person making an order or request for the payment of a sum of money, is called the drawer; the person to whom it is addressed, the drawee, and, if he accepts it by signing his name under the name of the drawer or on the face of the instrument, the acceptor; the person in whose favor it is made, the payee. The owner of a bill is called the holder, or, where it is transferable by delivery, the bearer. In a promissory note the promissor is called the maker; and the promissee is called the payee. - A bill is said to be "at maturity" when it becomes due, and to be "taken up" when it is paid; and when a person is said to "retire" a bill, it is generally meant that he pays it before maturity; but sometimes the term is applied to a payment by the acceptor at maturity. Indorsements are either in full or in blank. A full or special indorsement is one which mentions the name of a person in whose favor it is indorsed. An indorsement in blank is one which is effected by the holder merely writing his own name on the bill (usually and properly on the back of it), without making it payable to any one in particular. - Where the drawee cannot, will not, or does not accept, some other person sometimes accepts the bill for the honor of one of the parties (acceptance for honor). The refusal to accept or pay a bill is technically termed dishonor. The acceptance for honor is generally, if not invariably, after a protest, and hence is often termed an acceptance supra protest. - The words "at sight" or "... after sight" designate the time when a bill is made payable; the words "on demand" denote that the debt is due and payable immediately, so that an action will be a sufficient demand. But though a bill or promissory note be expressed to be payable on or after a particular day, time, or event, yet it is not really payable till the expiration of a certain number of days afterwards. These days are called "days of grace." Their number depends upon usage in some of the States, and in others the subject has been regulated by statute. - A paper is called negotiable when the legal right to that which is secured by it, and the right of action on it in case of default, are transferable from one person to

another, so as to enable the latter to sue upon it in his own name. Such are, generally speaking, bills of exchange, promissory notes, checks, or drafts.

1025. Principle. - Real exchange, whether petty or local, is licit, provided the profit does not exceed the current price, which is usually announced daily in the public papers. The reason is that there are various titles from which the banker can receive profit, namely 1° industry, by which he has procured an abundance of money in a far region or in another city of the same region, so that he might serve the convenience of others; 2° emergent damage from the misfortunes of debtors; 3° expenses and cares in maintaining the money-changing office.[1]

Notes to n. 1025. (1) L. IV. 851, 853. Kenr. Tr. XI. 127.

1026. Note. - The division of exchange into real or true, and fictitious or dry, today pertains to antiquated things. St. Alphonsus treats of it L. IV. 853. 854.

CHAPTER V: ON CENSUS

1027. ○ Census is the right of receiving an annual pension from a thing or person. Census is:

1° Reservative, that is, an annual pension to be received from a thing, for example fields, houses, as to the property alienated (rent-seck [dry] or barren rent).

2° Consignative, that is, an annual pension to be received from another's thing (rent charge) or from a person (annuity) by title of purchase.

3° Real or personal, according as the pension is constituted in a fruitful thing, or in the labor and industry of a person.

4° Temporary, or perpetual, or for life, according as it is constituted for a time, for example for 20 years, or in perpetuity, or for the life of a man.

5° Redeemable from one or both parties, according as it can be redeemed at the judgment of either or both; or irredeemable, if from the pact the seller or censuary cannot free himself by restitution of the capital: then the buyer, or censualist, necessarily preserves his right to the census.

1028. Principles. - I. Any reservative census is licit; because anyone, transferring the ownership of his thing, can reserve for himself part of the fruits of it, provided he diminishes the price pro rata of the reservation.

II. Consignative real census, both fruitful and pecuniary, is licit, because it is licit to sell and buy the right to some part of a usufruct, or to an annual pension.

III. The same conditions generally are required by natural law for census as for sale, namely 1° good faith; 2° sufficient assurance on the part of the censuary toward the censualist; 3° a just price, which is determined by law or common estimation.

1029. Questions. - Query 1° Whether consignative personal census is licit?

Resp. Affirmatively, at least by natural law, provided due conditions are observed; because the right of receiving a pension from another's labor, industry, etc., is as estimable by price as the right of receiving it from a fruitful thing.[1]

Query 2° Whether REDEEMABLE census is licit?

Resp. Affirmatively, at least on the part of the censuary, just as resale can be licit.

1030. ○ Query 3° Whether it can be redeemable from BOTH parties?

Resp. Affirmatively, more probably, because it is a true sale, and the buyer ought not to be of worse condition than the seller, provided it is of good faith, and equality otherwise is observed.[2]

Notes to n. 1030. (1) L. IV. 840. (2) L. IV. 843.

1031. ○ Query 4° Whether census for life is licit?

Resp. Affirmatively. For it is an aleatory contract, and is in no way repugnant to natural law.

But the following conditions are required.

1° Account must be had of the age or health of the person.

2° The censuary cannot redeem himself except from the will of the censualist; nor can the censualist seek back the capital except insofar as the censuary does not furnish the promised securities.

Note. Among us the contract of census is rare. Kent treats of it, T. II. n. 460 sq.

CHAPTER VI: ON SUBSIDIARY CONTRACTS, OR ON SURETYSHIP, PLEDGE, AND HYPOTHEC

These contracts are called subsidiary, because they are applied for the security of another contract. We shall speak briefly concerning each.

ARTICLE I: ON SURETYSHIP

(Bond, Bail-bond, Security, Recognizance.)

1032. ° Suretyship is a contract by which someone takes upon himself another's obligation, if the principal debtor does not pay. -

1033. Rules of Suretyship. - 1° A surety is not obliged more strictly than the debtor; for the accessory follows the nature of the principal: wherefore if the obligation of the latter, on account of a vice in the title of the creditor, is invalid, that of the former will also be invalid.

2° He is held toward the creditor for the whole and only the obligation which he undertook, but with the benefit of discussion or order, i.e. regularly he is not obliged before the creditor has juridically sought the debt from the principal debtor, and it is clear that this man is unable to pay. - I said 1: for the... only, etc. Therefore the force of suretyship ceases if anything is renewed in the obligation without the consent of the surety. E.g. you became surety for a debt to be paid after a month. If between the creditor and the principal debtor, without your consent, it has been agreed that the debt be paid after 36 days, or, a part of the debt having been accepted, he has promised that the remainder will be paid at another time, your obligation will cease. "If the holder of a promissory note takes upon himself to give further time for payment, or receives a part of the money and gives time for the rest, the nature of the transaction is essentially changed, and the endorser is no longer responsible."[1] - I said 2: regularly not, etc., i.e. unless the surety has renounced the benefit of discussion, or has denied the suretyship by bad deceit, or has not presented in judgment within the term prefixed by law an absent debtor who does not have liquid goods by which satisfaction may be made to the creditor. - "Besides, if someone cannot provide the damage for which he exhibited himself as surety without the calamity of himself or his own, he is not to be condemned if he provides for himself and his own, as to those things which are necessary for support, if this can be done without fraud and danger of perjury."

3° A surety who pays for the debtor is subrogated to all the rights of the creditor, and therefore has recourse against the same debtor, so that he may seek back from him whatever he was compelled to pay in his place.

4° The obligation of the surety, as being real, passes to his heirs: but as legal only, if that for which someone became surety is owed from legal justice alone, as in the case of suretyship concerning a defendant to be presented in judgment or concerning peace and legality to be preserved (to keep the peace).

5° If several become sureties together, each one is held only for a pro rata part, unless they have obliged themselves in solidum by clear words: which among us is generally done. "An obligation of two individuals running thus: 'We bind ourselves, our heirs, executors and administrators, and every of them firmly by these presents,' is joint and several. - 4 Watts, 50."[2]

Notes to n. 1033. (1) Purdon's Digest, art. Promissory Notes. Apud Kenr. Tr. XI. n. 141 (5). (2) Purdon's Digest, art. Bonds, Notes. Apud Kenr. Tr. XI. n. 141 (6).

1034. You will resolve. - 1° Those who became sureties by inscribing their name on another's bills of exchange or note, when the principal debtor does not pay, are held from justice to fulfill the obligation assumed; but they can recover the money which they are compelled to pay, and all expenses, from the principal debtor, or from another who earlier inscribed his name on the bills of exchange or note.

2° Those who provided themselves as sureties for public officials cannot make themselves immune by compensation, even if by the fraud of the officials they undergo great damage.

3° Those who became sureties that a defendant would be presented for judgment, or concerning peace and legality to be preserved, if, the defendant fleeing, or peace and laws being violated, they hide their goods, or avoid paying the fine to which they are subject, do not seem to violate commutative justice, unless it is a question of a debt or an injury to be estimated by price. Yet they are guilty of perjury who falsely assert that they are worth as many coins as the judge demands for bail; for among us they must assert this under the faith of an oath.

Note. - It is licit to accept a price for suretyship, even if no danger is feared; because of itself it is estimable by price.

ARTICLE II: ON PLEDGE

(Pawn or Pledge.)

1035. ° Pledge is a contract by which the debtor gives a movable thing to the creditor as assurance of the credit. - Under the name of pledge also comes the thing pledged. L. IV. 913-915.

Rules of pledge. - I. On the part of the debtor handing over the pledge. He must: 1° hand over to the creditor a suitable pledge; 2° refund to the creditor the expenses made for the conservation or improvement of the thing; 3° not seek back the pledge before he has paid the whole debt, unless the creditor abuses it.

II. On the part of the creditor receiving the pledge. He must 1° not use it, unless from the at least presumed consent of the debtor; 2° guard it diligently; otherwise he is held for the damage; 3° compute the fruits perceived from it toward the diminution of the debt, namely so that equality may be observed; 4° not sell the pledge by his own authority or that of a judge for obtaining payment, unless the debtor is in culpable delay and has first been warned.

Kent treats of this contract, T. II. n. 577 sq.

Near to pledge is that which in English and American law is called "a Lien," i.e. the right which belongs to the just and legal possessor of goods to detain them until satisfaction has been made to the right which he has against their owner. One is general (a general lien), another special (a particular lien). "A general lien is the right to retain property of another for a general balance of accounts due in the ordinary course of dealing in the same business. Solicitors, for instance, have a general lien upon the papers of their clients in their possession, for the balance of their professional accounts; bankers on all the paper securities which come to their hands. A particular lien is a lien upon goods in respect of money due on them, or of labor, trouble, or care expended upon them. A tailor, for instance, to whom cloth has been delivered in order to make a coat out of it, has a lien upon the coat for the price of his labor." - See Kent, T. II. n. 634 sq.

ARTICLE III: ON HYPOTHEC (Mortgage)

1036. ◦ Hypothec is a contract by which an immovable thing is bound to the creditor (the mortgagee), so that from it he can pay himself if the debtor (the mortgagor) has not paid.

This is the force of a hypothec, that the legal increase is to be paid each year to the creditor, and the principal at the stated time: but if this is neglected, he will be able to vindicate possession of the thing for himself, or to offer it for sale, with the order of judgment nevertheless observed. - Therefore a hypothec differs from a pledge in this, that by the former an immovable thing is bound to the creditor; by the latter a movable thing: besides, the thing pledged is handed over to the creditor, or, by consent of the parties, to some third party, to be possessed: but possession of the thing hypothecated is not handed over to the creditor, but only the right of vindicating possession, in the case in which the debt is not paid. The hypothec of Roman Law, which we have defined here, is indeed very similar, yet not plainly identical, to that which the English and Our people call "mortgage."

Hypothec is either conventional, or judicial, or legal (which also is called implicit or tacit), according as it exists from the mutual agreement of the parties, or from the sentence of a judge adjudicating the goods of the debtor to the creditor for payment of the debt, or by force of law alone. - Another is general, by which all the goods of the debtor (present and future) are bound; another special, by which some determined goods are bound to the creditor. Yet future goods, insofar as they would be "a mere expectancy on the part of an heir," cannot be objects of conventional hypothec, since they are nothing other than "a naked possibility."

The laws concerning hypothec are various in many of our States. In most of them the debtor has the right of redeeming the thing bound by hypothec if it is sold (right of redemption): if this right is precluded by the sentence of a judge, it is called "foreclosed." See Kent, Lect. LVIII.

A ship is sometimes handed over into hypothec (which contract is called "Bottomry"), money having been accepted by loan by that pact that it is to be repaid with an increase when the voyage has been happily completed; but the debtor is held neither for the money given by loan nor for the increase if it happens that it is sunk, or otherwise perishes. Merchandise with which the ship is loaded is also handed over into hypothec, with a similar condition added ("Respondentia"). A great increase is generally exacted which is called maritime, on account of the peril of the principal undertaken, 12 for

100, or more from the pact of the contracting parties; which clearly is licit, since the right to the principal is lost if anything adverse should happen. "Bottomry is a contract in the nature of a mortgage of a ship, on which the owner borrows money, to enable him to fit out the ship, or to purchase a cargo for a voyage proposed; and pledges the keel or bottom of the ship (partem pro toto) as a security for the repayment. It is moreover stipulated, that if the ship be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money; but if the ship should arrive in safety, then he shall receive back his principal, and also the interest agreed upon, generally called the 'marine interest,' however this may exceed the legal rate of interest."

"Bottomry is a loan upon the ship, and respondentia upon the goods."[1]

Notes to n. 1036. (1) Rees' New Cyclopedia, Vol. V. art. Bottomry. Blackstone, Comm. L. II. n. 488. Apud Kenr. Tr. XI. n. 140 (1).

CHAPTER VII: ON ALEATORY CONTRACTS

1037. ○ They are of various kinds: insurance, wager, drawing of lots or lottery, and game. They are called aleatory, because they are subject to the vicissitudes of chance.

ARTICLE I: ON INSURANCE (Insurance)

Insurance is a contract by which one takes upon himself the peril of some thing (fire of a house, shipwreck of a ship, etc.), and the other obliges himself to a price for peril of this kind undertaken. The instrument by which the contract is written is called "the policy": the insurer, "the underwriter."

1038. Questions. - Query 1° Whether the contract of insurance is licit?

Resp. Affirmatively. For equality is preserved when the due conditions concur, as Theologians commonly confess, and daily practice confirms.

Query 2° What are the conditions required for insurance?

Resp. They are the following: 1° that the price be proportioned to the peril, or established by an incorporated society according to the Charter of incorporation; 2° that the peril be true, and equally known to each party; 3° that the insured observe all conditions of the contract; 4° that the insurer have whence he can pay.[1]

1039. ○ You will resolve. 1° He who accepts money by loan, with which he may buy merchandise to load a ship (to buy a cargo), in the contract which is called "bottomry" (n. 1036), is guilty of usury if he himself also furnishes insurance of the ship; for the peril of the money is removed, on account of which the great usury was promised. - But he who in this case gives money by loan, if he furnishes one security concerning the value of the ship and merchandise to be paid in the case in which the ship perishes, can receive both a premium for the security, and an increase by reason of the peril. "Although respondentia and bottomry are of themselves a species of insurance, yet the lender has an insurable interest in his securities, and therefore may protect himself from the sea-risk by insuring them. However, a policy on bottomry or respondentia cannot be subscribed by the borrower of the money; for if he were to become an insurer, this would be no longer a loan upon bottomry, but a cloak for usury."[2]

1040. ○ 2° They sin most gravely who burn their own houses so that they may receive from the insurance society money beyond their value, or, when a fire happens by chance or by the malice of another, exact money greater than their damage. But in what manner restitution is to be made in this case is in practice very often difficult to define, since very often it is not clear whether it is to be transmitted to the treasury of the insurance society, with the officials unjustly retaining it for themselves. But what some think, that it is impossible for restitution to arrive certainly to the true owners, and to each of them for the part due to himself, if it is to be made to so-called mutual insurance societies, or at least to those whose associates (stockholders) are many, on the ground that, after the

damage brought on the society and before restitution, very many associates perhaps will have left it, and it is unknown who they are and by what portion they were associates, is trifling, and is valid only for the case of the dissolution of the society; for to associates who leave the society, others succeed with a right to the credits and an obligation to the debts of the society. But in the case in which it is clear that the restitution will not be transmitted to the treasury of the society, or distributed to the individual associates according to their pro rata part, it must be made to pious causes. Resolve the same, on account of parity of reason, concerning any restitution to be made to some society.

3° A shipmaster sins who by his negligence gives cause for the shipwreck of an insured ship, or deliberately directs it toward the shore where it is to perish, or conceals those things which, if they became known, would deprive the owner of the ship or merchandise of the right of insurance.

Notes to nn. 1040-1051 - note sequence 1. (1) C. 11. q. 5. Notes to nn. 1040-1051 - note sequence 2. (1) n. 891.

1041. ○ 4° The contract of life insurance is licit, by which, on account of a premium given once, or on account of money paid yearly, some society or some private person obliges himself to pay a certain sum of money when it happens that someone dies, provided a) account is had of age, health, and other circumstances, and b) the price to be paid by each contracting party is fair. For on each side there is a risk, and the lot of loss, as also of profit, is uncertain. But they sin who conceal those things which would have impeded insurance, for example a hidden grave infirmity, a more advanced age, etc., or those things which would have impeded payment of the insured price, for example suicide committed by the insured; likewise those who kill the insured so that they may obtain the price.

ARTICLE II: ON WAGER (Wager)

Wager is a contract by which several persons, contending concerning the truth or concerning the event of some thing, mutually promise something to themselves, or deposit it with someone, so that it may belong to him who has spoken the truth.

1042. Questions. - Query 1° Whether the contract of wager is licit?

Resp. Affirmatively, the things to be posited having been posited; for it bears nothing dishonest before itself. - St. Alphonsus,[1] and others commonly.

Query 2° What are the conditions that a wager be licit?

Resp. 1° That the matter be understood in the same sense by each party; 2° that there be the intention of obliging oneself and of paying what is wagered; 3° that the event be uncertain to each. But if someone manifests that he is certain concerning the fact on which the wager rests, and the other nevertheless wishes to wager, the wager more probably is invalid. Except: a) if he who up to this point was certain concerning the event of the matter begins to doubt; b) if the other wishes to wager, although he doubts concerning the truth of the assertion which he maintains in the wager; or c) if it is openly clear concerning his spontaneous intention of donating. L. IV. 879.

Among us a wager generally furnishes no action in the external forum, and wagers concerning political elections are accustomed to furnish an occasion for many sins, e.g. calumnies, etc.

ARTICLE III: ON DRAWING OF LOTS, OR LOTTERY

Lottery is a contract by which several persons deposit something in common, so that they may have the right of drawing by lot the thing exhibited in the middle. Certain persons have the whole, certain persons a part, certain persons finally nothing.

1043. Questions. - Query 1° Whether lottery is a licit contract?

Resp. Affirmatively, provided the required conditions are present. The reason is that lottery can be considered as the purchase of an uncertain thing, or as a contract by which with money there is bought the right of drawing by lot and of acquiring that which will fall by lot. Moreover it is licit to buy an uncertain thing, just as to make a pact for the peril of some thing.

Query 2° What are the conditions required so that lottery be a contract licit in itself?

Resp. They are 1° that there be no fraud in drawing the tickets, nor in paying the prize which has fallen; 2° that the owner of the lottery not exceed in profit, nor morally gain more than if by another licit contract he expended his money, or distributed his merchandise. Yet the profit can be greater if the lottery has been instituted for a good work or public utility. - Thus commonly. Public lottery is never permitted in some States; in the rest it cannot be made without the license of civil power.

ARTICLE IV: ON GAME

1044. ○ Game is a contract by which players pact among themselves that the price which they have exposed may fall to the victor. - Game is threefold: 1° industrial, which is chiefly ruled by the industry of the players, as a game of ball and of disks; 2° aleatory, which principally depends on chance; 3° mixed, which depends partly on industry, partly also on chance, as, for example, a game of cards, at least for the most part.

1045. Questions. - Query 1° Whether every species of game recounted is licit?

Resp. None of the three aforesaid games is illicit of itself, if the due conditions are observed. The reason is, because game of itself 1° is not repugnant to morals, since it is honest recreation; 2° nor to justice, since anyone can transfer the dominion of his own goods to whom and in what way he wishes.

Formerly aleatory games were prohibited to all by Canon Law, especially to Clerics; but these laws as to laymen have gone into desuetude. As to Clerics see n. 1132. 5°. Whether and what games are prohibited in the individual States, each one will easily discern from the laws of his State, which besides are merely penal.

1046. ○ Query 2° What are the conditions required that game be licit?

Resp. It is required 1° that the player have free administration of the things which he exposes. Hence to a son of a family who plays concerning the goods of his parents without their license, at least

presumed, the sum won in game, even licit of itself, must be restored, just as from the truer opinion a son of a family also must restore what he has gained.[1] 2° That fraud and deceit be absent from the game. But those clever devices which the rule of the game and received custom allow do not constitute fraud, for example to simulate fear so that the adversary increase the wager; to inspect another's cards from this man's negligence alone. But fraud which neither the rules of the game nor received custom allow would be, for example, so to place yourself that you can see the cards; to appoint another by whom you are warned; to steal cards or mark them with signs on the back, etc. But he who uses some fraud of this kind which is not accustomed to be applied and to which the fellow player does not consent expressly or tacitly, is held not only to restore what he himself gained, but also what the other, that fraud not having been applied, would justly have gained. In doubt concerning this, let him restore as much as the greater hope of victory was worth, which the fellow player, the fraud ceasing, would have had. 3° That on each side the peril of losing be morally equal. 4° That the game be honest in itself, and not prohibited by law. 5° That coercion be absent. But one coercing, not much more skilled, licitly retains what was gained and not sought back by the vanquished. 6° That one not play in such a way with damage to the family or creditors. L. IV. 877. 880. 882.

1047. ○ Query 3° Whether the victor who is much more skilled in the game is held to restore, so that he knows beforehand with certainty that he will be victor?

Resp. Affirmatively, much more probably; because the equality required between the players is lacking, and therefore justice is injured. Hence the one notably more skilled must withdraw from the game, or remit some advantage to the adversary. - Thus more commonly. L. IV. 881.

Yet in practice restitution would not have to be urged if it was a question of a thing of lesser moment; or even when the adversary, sufficiently forewarned, nevertheless obstinately wished to play; because then no deception would have intervened.

1048. ○ Query 4° Whether the victor in a prohibited game is held to restoring, or the vanquished to paying in the same game?

Resp. to the 1st Negatively, in those States where the contract is not declared void by law, but only rescindable. L. IV. 887.

Resp. to the 2nd Negatively, where the contract is void: otherwise it is controverted. The 1st OPINION denies; because the law, by prohibiting such a game, seems by this very fact to have taken away the natural obligation of paying into punishment of the victor. - Thus Lugo.[1]

The 2nd OPINION affirms, because the contract was valid by natural law, and therefore the vanquished must stand by it until he judicially seeks restitution. St. Alphonsus calls the first more probable and more common; yet the second very probable.[2]

Notes to n. 1048. (1) L. IV. 911. (2) Rees' New Cyclopedia, Vol. XX. art. Insurance. Apud Kenr. Tr. XI. n. 137 (3).

1049. ○ Query 5° Whether players renouncing the benefit of the law are held to pay if they are vanquished?

Resp. Distinguish. That renunciation either is sworn or not sworn. If not sworn, negatively, because the renunciation, as being contrary to the common good, is null. Except if the renunciation is made after payment, because then it is a new gratuitous donation independent of the game. - If it is sworn, they are held to pay in States where the contract of game is declared only rescindable, but they will be able to seek dispensation or to seek back what was paid: but they are not held in States where it is declared void. L. IV. 891. 892. Cf. things said n. 865. 866.

Query 6° Whether the vanquished, if he has already paid, can compensate himself for what was paid?

Resp. By distinguishing, as was just said, between the States; for compensation will be licit in those where the contract is void; but in the rest it will be illicit, unless the victor refuses to return what was paid to the vanquished seeking rescission. See St. Alphonsus L. IV. 893. coll. 717.

Query 7° What if the vanquished falsely threatens that he is going to seek back in judgment what was paid, and the victor consents to settle?

Resp. More probably the settlement is valid; for whatever the victor cedes, he donates so that the vanquished may cede the right by which he truly is strong, of seeking back what was paid. L. IV. 894.

1050. ○ Query 8° Whether you can retain profit from a game in which either you yourself or the fellow player exposed another's money?

Resp. Negatively to both. For you yourself exposed nothing to the game by exposing what was another's; therefore the contract was unjust and you are held to restore the profit to the vanquished; but the fellow player, exposing another's thing to the game, cannot give you a right which he himself lacked. - Except if either you yourself or the fellow player exposed a deposit, with the consent at least presumed of the depositor (n. 924), or has something else which he may hand over. L. IV. 875.

Query 9° Whether the game is valid if a great sum of money is exposed at one time?

Resp. More probably affirmatively of itself, i.e. prescinding from the laws of the States where the contract is void, and provided the required conditions are observed, that is especially, if the players are able freely and fully to dispose of their own goods, without detriment to family, creditors, etc., ... because the players equally undergo peril knowingly and willingly; and therefore there is no injustice. But the aforesaid conditions easily fail; and otherwise, even if such a game were not against justice, at least it is opposed to honesty: whence a prudent confessor, by way of satisfaction, if it seems opportune, could enjoin on the penitent victor that he expend some part of the profit for pious uses. - Antoine.[1]

Note. - Although game for the most part is licit in itself, and serves honest recreation, due moderation in its use is to be commended as much as possible, lest it easily decline into detestable abuses. For how great evils come from it, daily and too lamentable experience proves! For how many, alas, most miserable young men are seen, and also men of whatever condition, who, given over to game, make the loss of an entire fortune in a few days or hours, immerse their family in hardships, and themselves are rolled in every kind of disgrace! Therefore let Parish Priests and confessors strive according to their powers to turn subjects and penitents away from the madness of playing of this kind. - Thus Gousset rightly concludes.[1]

Notes to n. 1050 - note sequence 1. (1) L. IV. 869. Notes to n. 1050 - note sequence 2. (1) L. IV. 871. 872. 874. 876. Lugo. Disp. 31. n. 20. Lacroix, n. 1067, and others commonly.

1051.

- To game or wager in some sense can be equated settlement (compromise), by which a doubtful matter and uncertain lawsuit is composed. If the right of another is certain, the other cannot without injustice induce him to settle; and therefore he must restore. But nothing forbids someone knowingly and willingly to cede to his own right, especially if the right has arisen from a fortuitous case, for example game, wager.[1]

- Emphyteusis (a sort of fee-farm or copyhold) is a contract by which useful dominion of an immovable thing is transferred, direct dominion being retained, under the burden of an annual pension. Among us this sometimes exists under this form: fields are sometimes handed over on this condition, that within a certain space of time so many acres be made suitable for cultivation, trees having been cut down, and that the fields be surrounded with fences, and a barn and houses be erected. If for a determined time the pension is not paid, the owner by the authority of law can expose the goods of the tenant for sale, or, if there is not an abundance of them, eject him after some days, the form of law having been observed. - Often from the fruits of the fields some portion is to be paid to the owner: in this matter the faith and justice of the tenant is to be considered, lest, led by empty reasons, he conceal the truth of things. Kenr. Tr. XI. n. 145.

Feud is a contract by which, under the burden of fidelity and personal service, the useful dominion of an immovable thing is transferred, direct dominion being retained. That manner of contracting flourished in the middle age, but already began before it. Fields were handed over to soldiers by that pact that they would accompany the owner with certain services, and follow him to war. He who had obtained a feud was called a Vassal, and was not able to transfer the feud to another without the consent of the lord. Those things which were possessed immune from every burden, and by absolute right, were called allodia (freehold). All in the Federal States are judged to be of this kind. Ib. n. 146.

Notes to n. 1051. (1) Disp. 22. n. 300. (2) L. IV. 889.

TREATISE ON PARTICULAR STATES

It must be treated concerning 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 concerning the various and mutual offices of Superiors and inferiors. But in the present Treatise we must speak concerning the offices which regard the public good, and especially concerning forensic persons. Hence:

It must be treated 1° concerning the obligations of judges; 2° of advocates and procurators; 3° of officers; 4° of scribes and notaries; 5° of the accuser and the accused; 6° of witnesses; 7° of physicians, surgeons, and pharmacists; 8° of craftsmen and workers. Concerning custodians see n. 776. q. 7°. 822. 823.

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

CHAPTER I: ON THE OBLIGATIONS OF JUDGES

1052. ○ A judge is a public person, constituted by legitimate authority, so that according to the laws he may vindicate justice and decree due punishments upon delinquents.

It is said: a public person, constituted by legitimate authority, so that he may be distinguished from an arbiter, who undertakes the office of judging not by public authority, but by the spontaneous election of the contending parties.

Principles. - I. A judge is held from a quasi-contract with society and private persons to fulfill his office rightly: if he does not provide this, he will be guilty of violated justice both legal and also commutative.

II. That a judge may rightly perform his office, he must have 1° more than common intelligence, so that he can look into intricate causes; 2° sufficient knowledge, so that he may have account of all the circumstances both of law and of fact, so that whoever seeks or undertakes the office of judge, knowing himself to be so unequal to it that he probably foresees grave damage to his neighbor will follow, sins mortally. But whether he has done this conscious or unconscious of his poverty, he ought not to be absolved unless renunciation of the office has been made, or unless he has the firm purpose of renouncing;[1] 3° incorruptible integrity, so that he yield neither to love nor to hatred.

III. A judge is held to pronounce 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. Except the special case in which the mind of the law must be followed by the judge rather than the bark of the words; then indeed account must be had both of the age, and of the condition and fortune of him on whom he must impose the punishment.

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

1° In criminal matters favor must be shown to the accused, unless the crime is clear, i.e. both concerning the existence of guilt and concerning the merits of the punishments. - Reg. Jur. Can. 11. in 6°.

2° In doubt concerning ownership and possession at the same time one must judge according to the more probable reasons, as is clear from natural law and proposition 2 condemned by Innocent XI. See p. XV. But if the reasons are equally probable from each side, the thing must be divided. Cf. n. 60. II. 3°.

3° In doubt concerning ownership alone, one must stand for the possessor certainly of good faith. This is clear from Reg. Jur. 65. in 6°: "In equal fault or cause, the condition of the possessor is better." Cf. n. 60. II. 3°. Except pious causes and certain others in St. Alphonsus,[1] in whose favor one must judge, although they are actors. Yet our laws do not favor them.

Notes to n. 1052. (1) L. V. 195.

1053. Questions. - Query 1° Whether a judge can condemn an accused person whom he knows to be guilty only by private knowledge, or an innocent person who juridically is convicted as guilty?

Resp. to the 1st Negatively altogether according to all. The reason is that a judge is held to judge according to the things alleged, and according to the forms prescribed by law. For there is no danger in sometimes dismissing a hidden guilty person, while there would be great danger in violating the established forms of judgment.

Resp. to the 2nd It is greatly controverted. St. Thomas affirms.[2] - St. Bonaventure denies. - St. Alphonsus[3] admits the affirmative opinion as undoubted if it is a question of civil causes, or even pecuniary punishments: but if a case concerning greater criminal matters, and especially capital ones, occurs, he thinks the opinion of St. Bonaventure very probable. The reason is that in the former case the Republic for the common good, which exists from judgment rendered according to public knowledge, rightly transfers the dominion of goods. But otherwise in the latter case; and therefore then to condemn an innocent person seems intrinsically evil.

Besides, this question in our law and in causes which we call criminal offers itself under an altogether different aspect; for among us jurors alone pronounce concerning the innocence or guilt of the accused; but the judge only declares what punishment according to the laws is to be applied to him who has been pronounced guilty by the jurors. But in declaring this he performs his office only mechanically, so to speak; nor does he, but the jurors, seem to be the efficacious cause of the punishment to be pronounced. Yet he is held to do what is in him, so that he whom he knows to be innocent not undergo the punishment, which for the most part he can prevent either by intercession with the Governor, or, if the sentence of the jurors does not rest on the acts and proofs, but has been pronounced from a malignant spirit or rashly from ignorance, by indicating that they have exceeded the limits of their office, and labor under error of fact or of law, and thus obtain a new judgment for the innocent person, by which the error may be removed.

Query 2° Whether 1) a Catholic Judge can pronounce a sentence of divorce as to the bond according to the laws of this region; whether 2) it is licit for a Catholic, in any event of things, to demand a sentence of this kind, and what 3) concerning an advocate seeking it in the name of a client?

Resp. to the 1st "Since a Catholic could scarcely perform the office of judge, if he did not wish to decree divorce, the offense" (on account of which it is sought according to the laws) "having been proved in judgment; and the civil effects are chiefly regarded, I think the judge is not to be condemned who furnishes his service." Thus Kenrick.[1] But certainly, as is clear of itself, he can pronounce a sentence of divorce in the case in which a Catholic licitly demands it.

Resp. to the 2nd The bond of matrimony subsists before God, or not. In the former case again one must distinguish; for civil divorce is sought either with the intention of entering new nuptials, or without this intention. If the former, it is not licit, as is clear of itself. If the latter, and a most grave reason presses, e.g. lest the husband be compelled to pay the foreign debt of the wife and so that every right to inheritance be taken away from her,[2] let divorce from cohabitation be sought where the law grants it. But if the law, as in most States, grants only divorce from the bond, or where the option of either is given, this alone is chosen as the sole efficacious barrier against foreign troubles, it seems this can be sought in certain most grave circumstances; for he who is not going to use the civil liberty which he asks to be restored to himself is not judged to approve the exercise of civil power upon the bond.

But if the bond of matrimony subsists from civil law alone, and not before God, because, for example, one or the other lacked Baptism, it will be licit for a Catholic to seek the protection of the civil law. This is gathered from the response of the S. C. Inq. to the questions of the Bishop of New Orleans, Sept. 9, 1824, concerning marriages which were invalid on account of the impediment of clandestinity. Namely the S. Congregation advises that every effort be applied to induce them to contract with each other in a Catholic manner; "but to suggest to one asking to enter a new marriage with another that he should first consult both for himself and for the Parish Priest, acting namely so that both civil liberty may be restored to himself, and nothing evil may come thence to the Parish Priest, this would not be to approve the custom of civil repudiation, provided the one asking is rightly instructed that this is done not for this reason, that the bond of matrimony may be dissolved, because he is now detained by no bond, but only that he may free himself and the Parish Priest from legal penalties and civil vexations. ... But Missionaries ought not to involve themselves in these things to be transacted with the Government. He who asks to marry, let him conduct his own business."[1]

Resp. to the 3rd. 1° It is certain that it is licit for an advocate to do what I said is licit for the client in Resp. to the 2nd. - 2° It also seems certain that an advocate is not held to inquire from the client either concerning the intention with which he seeks divorce, namely whether with the intention of entering other nuptials or not, or concerning the true cause on account of which he seeks it, so that he may know namely whether it is sufficiently grave, or concerning the value of the marriage before God; for he is judged to undertake only the civil cause of the client and this to be defended only by a civil title. - But whether 3° it is licit for him to undertake this civil cause in the case in which from the sayings of his own client or from public and certain fame, he knows that divorce is sought in a marriage valid before God and with the intention of passing to other nuptials, or from a cause not sufficiently grave, I would rather leave to the judgment of the wiser. It is indeed true that the client will easily find another advocate who will act his part; but the advocate is not able to be excused by the same reason of necessity as a judge, since he can refuse his service with impunity.

Notes to n. 1053 - note sequence 1. (1) L. V. 210. v. quoniam. (2) 2. 2. q. 64. a. 6. (3) L. V. 208. H. A. Tr. XIII. 64. Notes to n. 1053 - note sequence 2. (1) Kenr. Tr. XXI. n. 111. (2) Ib. Tr. XXI. n. 112.

1054. ○ Query 3° Whether a judge can accept gifts for pronouncing sentence?

Resp. Negatively. For this is prohibited by every law; and 1° By natural law, in the case in which either scandal or danger of perversion, or of favoring the donor more than is fair, is present.[2] But if the judge sins by receiving gifts, by this very fact whoever offers them also sins; for he cooperates with the sin of another. Except the rude, whom ignorance generally excuses. Likewise except if gifts are given to redeem unjust vexation, when an unjust sentence otherwise prudently seems to be feared: but these must be restored, and can also be sought back in judgment after the sentence.[3] 2° By Canon Law; for Boniface VIII[1] established that judges accept neither any gift nor anything else, except perhaps food and drink offered by mere liberality.

Query 4° Whether a judge is held to restitution if he has accepted gifts from litigants?

Resp. Negatively, probably before the sentence; because although he acts illicitly by accepting gifts, nevertheless he does not sin against justice. - Thus more commonly, - against others, who also probably affirm. - St. Alphonsus[2] says that each opinion is sufficiently probable.

Yet judges at least must be impelled to restore gifts accepted, or to expend them on pious works. Sometimes this could be enjoined as penance to turn the judge away from relapse.

Query 5° Whether a judge is held to restore what he has accepted by pact for pronouncing some sentence?

Resp. 1° Affirmatively, if he accepted it for pronouncing a just sentence, i.e. for furnishing that which from justice he owed. The reason is that whatever is already owed from office, and therefore from justice, cannot be matter of a contract. A fortiori he is held to restore those things which he has extorted by force, threats, or unjust vexation.

Resp. 2° If he accepted it for pronouncing an unjust sentence, he certainly is held to restitution before he pronounces a sentence of this kind; but after sentence has been rendered it is controverted, according to the things said concerning a contract in a shameful matter, n. 834.

Notes to n. 1054 - note sequence 1. (1) Kenr. Tr. XXI. n. 111. (2) L. V. 216. (3) L. V. 212. Notes to n. 1054 - note sequence 2. (1) L. I. Tit. III. c. 11. in 6°. (2) L. V. 216.

1055. ○ Query 6° Whether a judge is held to repair damage which he did not impede, or whose reparation he does not procure, when he can?

Resp. Affirmatively, because he is an unjust and efficacious cooperator. Recall the things said concerning negative cooperators, n. 773 and following.

Query 7° Whether a sentence of a judge doubtfully just, or certainly unjust, obliges?

Resp. to the 1st Affirmatively altogether. For presumption favors the Superior or judge. (n. 65. 3°.)

Resp. to the 2nd Negatively of itself, as is clear. Yet except unless there is present a reason of scandal or of disturbance of public order; because private good must always yield to public good. But he who obtains a cause through an unjust sentence cannot receive the thing adjudged to himself, or must restore it, and moreover he is held to repair all damages and expenses to the adverse party. Yet if he was in good faith, when this vanishes he must only return the thing of another according to the things said concerning a possessor of good faith, n. 722.

APPENDIX I: ON JURORS

1056. ○ Jurors, so called on account of the oath which they furnish concerning the office committed to them to be rightly exercised, are men selected from the citizens to perform some part proper to judges. Their function is to pronounce concerning the existence of the fact and the culpability of the accused; but then the judge pronounces the punishment according to the law.

Jurors contract the same obligations as the judges themselves, whose office in great part they exercise, and therefore concerning Jurors the same generally must be said as concerning the judges themselves.

1057. ○ Query. Whether a Juror can give a vote against the accused, indeed juridically convicted of the crime, but whose innocence he certainly knows by private knowledge?

Resp. Negatively, because this seems contrary to the mind of the law, by force of which, almost everywhere, they must pronounce only concerning the fact, and according to the intimate conviction which they have concerning its existence, nor are they in any way held to render the legal reason of their sentence. Indeed from the law itself they are not held to found their sentence either from such a number of witnesses, or from these or those reasons brought into the middle by the various parties, etc. Therefore they must give their vote only according to that which they think in the forum of conscience. And so, with attention to the office which is imposed on Jurors, it is easily clear that those controversies which are conducted concerning judges, n. 1053, have no place at all concerning them.

APPENDIX II: ON ARBITERS (Arbitrators)

1058. ○ They are called arbiters who, by each opposed party, are spontaneously chosen or admitted, after the manner of judges, to settle some lawsuit.

The pact by which the faculty of composing the lawsuit is attributed to them is called compromise (in English submission). By this pact the adverse parties by mutual consent promise that they will execute whatever is established by the arbiters. But what is established is called in our tongue "award."

Arbiters, whoever they are, once admitted by the diverse parties, properly enjoy the office of judges and perform all their functions, no differently than if they had been designated by public authority. Therefore they can instruct the cause brought to them, defer the matter to another more opportune time, hear witnesses, and finally, with sentence rendered, settle the lawsuit absolutely. Sometimes they designate a third, who in their name may settle the matter, and this one is called "the umpire."

1059. ○ Since arbiters fulfill the offices of judges, they undergo approximately the same obligations and the same burdens as judges. Hence:

1° They ought not to undertake a lawsuit for the judging of which they do not have sufficient doctrine; otherwise they sin against commutative justice, and contract the obligation of restitution.

2° Arbiters are held to judge according to the laws, unless the parties have imparted to them the faculty of composing the matter from the fair and good. For then from the good and fair they must promote the convenience of each party.

3° They must most greatly beware of acceptance of persons, namely lest, drawn aside by hatred, aversion, or excessive affection, they pronounce sentence against the rules of equity. As to the rest, the same things must be said concerning arbiters as concerning the judges themselves.

CHAPTER II: ON THE OBLIGATIONS OF AN ADVOCATE AND PROCURATOR

1060. ○ An advocate (Counsel, Counsellor, Advocate, Lawyer, Barrister) is called he who furnishes his assistance to litigants either by counsel, or voice, or writing.

A procurator - one is of the parties (Attorney, Attorney at Law, in chancery Solicitor) and appears in the name of his client, and prepares all instruments of the lawsuit by which the advocate can conduct the matter, - another is of the State (Attorney-General, State's Attorney, Solicitor) and represents the State in causes either civil or criminal.

Principles. - I. Advocates and procurators are held from legal justice toward society, and from commutative justice toward litigants, to have competent knowledge, to undertake and prosecute a cause with due diligence and study, and to prevent delays damaging to litigants; otherwise they sin, and are liable to restitution, as was said above concerning judges.

II. In civil matter neither the advocate of the defendant nor the procurator of the State can licitly sustain a certainly unjust cause; therefore if, by defending it, he obtains an unjust sentence, he is held to repair all damages following thence, if they are not repaired by those in whose favor the unjust sentence falls.[1]

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

III. An advocate, when questioned by a client, must examine his cause seriously, and with that diligence which the gravity of the matter demands, preserve fidelity toward him, open the justice or injustice, and scrupulously indicate the probability of obtaining or losing it; otherwise he will impel the client to empty expenses which he himself is held to repair.

But in pleading the cause he must beware of frauds, false proofs, or other unjust means against the adverse party; for otherwise likewise he is held to compensate all damages following thence.

Query 1° In what sense must the INJUSTICE of a cause which an advocate cannot sustain be understood, namely MORAL, or only LEGAL?

Resp. Far more probably moral, and not only legal. Thus St. Alphonsus.[2] For to the question: "When the client has a good right in the cause of possession, yet not in ownership, whether it is licit for an advocate to defend him in a possessory cause?" he responds:[1] "Others say that it is licit for an advocate to defend such a client, because then he only permissively cooperates with the sin of the client, since in that case he exercises the function of a counselor before the judge. But Lugo Disp. 41" de Just. "n. 10 with Molina, Fagundez, Medina, etc., contradicts more truly. The reason, because just as the client sins by retaining the thing, so the advocate sins by cooperating with him in such retention; but the advocate does not stand on the part of the judge, but of the client."

Therefore an advocate sins by furnishing his service to a party whom he knows to elude the certain right of the adverse party by opposing to this either some vice, or defect of title or instrument, or prescription to which good faith is lacking. Yet an advocate is not held to inquire from the client concerning the moral justice of his cause, and he will be able to sustain this so long as he is ignorant of its moral injustice.

Notes to n. 1060. (1) L. V. 228. (2) L. V. 221.

1061. Questions. - Query 2° Whether advocates can defend causes even less probable both of defendants and of actors?

Resp. 1° In civil causes of defendants, or, if it is a question of probability of law, also of actors, affirmatively, with the common and certain opinion, because they can have hope that the truth may shine forth. But if it is a question of probability of fact, even equal, it will not be licit to defend the cause of the actor.[2]

Resp. 2° But in criminal causes, the accused can always be defended, even if his culpability were clear, yet by honest and licit means, namely with lies, frauds, etc., excluded. The reason is that an advocate defending an accused person brings injury to no one, and besides from his office ought to patronize the accused as much as he can.[3]

Notes to n. 1061. (1) L. V. 222. (2) Ib. 220. (3) L. V. 220.

1062. ○ Query 3° To what is an advocate held by reason of the honorarium or stipend?

Resp. 1° Generally speaking, he can accept nothing beyond the just amount, which either perhaps has been taxed by law, or is to be determined by the judgment of prudent men, with account had of the business, the skill of the advocate, the labor which he expends, and received custom.

Resp. 2° As to the poor in particular, 1° he is held to aid gratuitously, even with grave inconvenience to himself, those who are in extreme necessity; 2° likewise he is held to patronize gratis those who exist in grave necessity, and indeed under mortal sin, yet not with notable inconvenience to himself; 3° finally even in common necessity he is held from charity to protect the causes of the poor, yet not with grave inconvenience: namely it suffices that he bestow something of his work on them when he is free from others.

Query 4° What can an advocate exact if, after agreement has been made concerning the stipend, the client abandons the cause begun?

Resp. He can exact the whole if it does not stand through him that he does not prosecute the lawsuit, no otherwise than one renting his work for some wage can exact this if it stands through the conductor that the work is not completed. Yet except if a just cause of abandoning the lawsuit intervenes, since this condition is always understood in the agreement.[1]

1063. ○ Query 5° To what is an advocate held who, after the cause has already been undertaken, notices that it is unjust?

Resp. He must at once warn concerning the injustice of the cause and abandon it, lest he cooperate with unjust damage. Nor can he advise settlement (n. 1051), for this is licit only in a doubtful matter.

- But if knowingly he has prosecuted an unjust cause, he will be held to compensate all damages occurring to each party. For he must restore to the adverse 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 office he was held to warn him concerning the injustice of the cause.

Yet an advocate, by abandoning a cause which he detects to be unjust, ought not to aid the other party, or reveal the secrets of his own cause to the other party, as is clear from natural law, and St. Thomas expressly teaches.[2] A certain exception, which however will be present very rarely, see, if you wish, in St. Alphonsus.[3]

Query 6° To what is an advocate held who, noticing that a cause is unjust, indeed warns the client, but, with him wishing it, prosecutes the cause?

Resp. 1° He is held to nothing toward the client if he loses the cause, because no injury is done to one knowing and willing.

Resp. 2° He is held to compensate all damages which the adverse party suffers by title of positive cooperation.

Notes to n. 1063. (1) L. V. 228. (2) Quodl. XI. art. 15. (3) L. V. 231.

1064. ○ Query 7° Whether and how an advocate sins who defends a just cause by unjust means, for example if he substitutes a new note in place of a former lost one, etc.?

Resp. 1° He sins against fidelity and truth, more gravely indeed or less gravely according to the measure of the unjust means applied, and according to the gravity of the matter about which there is question, and likewise according to the gravity of the effect which follows upon the use of the unjust means. The advocate will be guilty of a greater sin if he not only substitutes a new note for the former one, but supplies that which never existed. Nor can he be excused from the good end which he intends; for evil things are not to be done that good things may come.

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

1065. You will resolve. - 1° Advocates sin against justice toward the client if, when they are not sufficiently skilled and suitable, they undertake causes to be defended; if they detect the foundations or secrets of the cause to the adverse party, or if they serve each party; if, because some arguments seem to them peremptory, they neglect to bring forward others not contemptible, because perhaps judges would be moved by those neglected motives; if they do not prepare themselves sufficiently for pleading the cause, etc.

2° The same sin against justice toward the adverse party if they cite false or abrogated laws, or bend them aside to an alien sense, apply deceit or lies, from which judges or jurors are drawn aside into an unjust sentence or vote; likewise if they impose false crimes or vices on the adverse party, etc.

3° They sin likewise "by advising the client to swear falsely, or by as it were casting him into the necessity of perjuring, by indicating that otherwise there is no hope of victory, or by seeking out false

witnesses, and instructing them to perjure by a certain discipline and training before the public examination, as is sometimes done."[1]

4° Procurators of the parties sin against justice if they draw out causes, if they obtain undue delays, if they do not procure in the first place a cause earlier accepted, if they lead the parties to an unjust composition, etc.

5° The procurator of the State sins against justice if from negligence, from haste or prejudice, from hatred or acceptance of persons, etc., he brings an innocent person into detention, into judgment, and into undergoing an unjust sentence. Likewise if he sustains an accusation after in the course of the cause he has recognized innocence, or has gravely doubted concerning it; therefore he is held concerning all damages following upon the accused. Likewise if he delays the exercise of his office with injury to citizens, by hope of greater profit; but what he has procured by arts of this kind he is held to restore.

Notes to n. 1065. (1) Kenr. Tr. VIII. n. 144.

CHAPTER III: ON THE OBLIGATIONS OF AN OFFICER

1066. ○ An officer (constable, sheriff) is he who from office carries a command of appearing in judgment (citation, warrant) and the mandates of justice, and performs the executions decreed by the judge. Hence the office of an officer is twofold.

Since officers are ministers of justice, it is exceedingly fitting that they perform their office very humanely, and temper the rigor and harshness of their ministry as much as can be done. They must be sufficiently instructed concerning all things which pertain to their office. They must also furnish fidelity in executing the mandates of the tribunal, and in guarding themselves both from negligence in performing their office, and from rigor and vexation toward those whom public justice pursues.

1067. ○ Officers act unjustly especially:

1° If they allow themselves to be corrupted by price or favor to the prejudice of the client, for example by drawing out or neglecting announcements of sentences, or by doing other things whence it happens that the creditor cannot receive payment. Likewise by favoring certain debtors bound in solidarity, so that they do not comprehend them in executions.

2° If while searching houses they act more harshly, so that they may extort some gift; if they inflict unjust force or another injury; if they announce something false in their acts.

3° 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 seized things, etc.; if they retain part of this price for themselves, etc.

CHAPTER IV: ON THE OBLIGATIONS OF SCRIBES AND NOTARIES

I. On scribes or secretaries.

1068. ○ A scribe or secretary (clerk of the court) is he who reports in writing the testimonies, the sentences of judges, and all the rest which are transacted in tribunals. Hence he is usually considered as the right hand, as it were, of the judge, and his public and authentic secretary.

But a scribe can commit various injustices, especially:

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

2° If he does not use serious and constant attention for reporting into the authentic books all things uttered 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 on the part of secretaries?

3° If from malice he omits something in writing, or if he adulterates or badly guards the public tables committed to him; if he does not place, or does not sufficiently strive to have placed, the due formalities and signatures; if he does not faithfully transcribe testimonies, whether by exaggerating, or diminishing, or changing, or inverting.

II. On notaries.

1069. ○ A notary, or tabellion (Notary, Notary public, Conveyancer), is called he who is constituted by legitimate authority for writing public acts or instruments, which may make faith both in judgment and outside judgment.

Hence it appears of how great moment the office of a notary is, how widely it extends, and by how grave obligations it is bound. Therefore notaries must enjoy knowledge equal to that office, more than common perspicacity, and especially eminent fidelity, prudence, and probity. For since they must handle affairs and contracts of every kind, from their negligence, ignorance, and defect of attention very great evils for society and damages for the parties can follow.

1070. ○ Notaries are unjust especially in the following cases:

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

2° If they compose a false, usurious, or unjust instrument; if to the damage of another contracting party or of a third they feign in an instrument those things which are not; if they place false annotations of the day, or change true ones, even if they do not intend damage; likewise if they

counsel such things; if they compose acts which exceed their office, or if outside the territory assigned to them they exercise their ministry: for then their acts are void ipso facto.

3° If they do not describe faithfully the wills of the contracting parties, or through ambiguous compositions furnish place for lawsuits and injustices; if they do not warn the parties concerning clauses which can harm them, or concerning difficulties which can arise from them. For they are held to these things from a quasi-contract with the parties.

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

5° If they guard acts and instruments negligently with peril of damage to the parties; if they defer the expedition of instruments so that they may extort money; if they commit something to an amanuensis with danger of error.

6° If they change anything in the original act, whence some right is violated or impeded; if they admit false witnesses; if they do not exhibit, conceal, or deny a transcript of some necessary testimony to their own client.

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

8° If they neglect to watch over their ministers, and on account of this the instruments are badly composed; for notaries are held to answer for all ministers whom they employ; if they sign instruments composed either by other notaries, or by their own ministers, before they have diligently reviewed them and have had perfect knowledge concerning the things which are contained in them.

9° If they ask a price beyond the tax or approved custom, or draw out the affairs to be handled for the sake of increasing the salary.

In all these, and many similar matters, notaries are held under grave obligation, of themselves, to restitution, as unjust damagers or cooperators, as is clear from the things said in the Treatise on Justice and Right. - St. Alphonsus.[1]

Notes to n. 1070. (1) L. V. 292.

CHAPTER V: ON THE OBLIGATIONS OF THE ACCUSER AND THE ACCUSED

I. On the accuser.

1071. ○ He is called an accuser who in criminal causes brings a crime to the judge, and asks vindication from him on account of the common good, and at the same time undertakes the obligation of proving the objected crime: but in civil causes he who, as the injured party, compels the adversary to the judge, is not called accuser, but actor (plaintiff).

The accuser differs from the denouncer, who brings some crime to the Superior or judge for vindication, and nevertheless does not undergo the obligation of proving it. - Therefore denunciation is not understood here as fraternal, whose scope is not punishment but the amendment of the neighbor, with the paternal admonition of the Superior intervening, from which amendment is hoped more certainly on account of his authority, - but juridical. L. V. 235.

By our law the obligation of proving a denounced crime is incumbent only on the magistrate constituted for this, or the procurator of the State. But private persons also are held to denunciation from charity, and indeed under grave obligation and even with grave inconvenience, when it is a question of avoiding common and grave damage, or even, but not with grave inconvenience, if it is a question of averting grave damage from an innocent person.[1]

II. On the accused.

An accused person (accused in a criminal cause, defendant in a civil) is called he who is accused in judgment either criminal or civil, whether he is guilty or innocent.

1072. Questions. - Query 1° Whether the accused, questioned by the judge, is held to confess the truth?

Resp. 1° Negatively by our positive law. "Nor shall" (any person) "be compelled in any criminal case to be a witness against himself."[2]

Resp. 2° Affirmatively by natural law, if this is necessary to avert common damage. Yet he must be left in good faith if fruit is scarcely hoped from the warning.

Resp. 3° Affirmatively also, if it is a question of an ecclesiastical punishment, which namely is medicinal, provided he is legitimately questioned, i.e. by a legitimate judge, with the judicial form observed and the offense half-fully proved.[4]

Query 2° Whether the accused, although not legitimately questioned, if it is a question of an ecclesiastical punishment, at least from this cause must confess the crime, because otherwise he by whom he was accused or denounced could be held as a calumniator?

Resp. This certainly and altogether must be denied. The reason is that no sane person will hold the accused as falsely accused because the crime has not been confessed, and the accused not confessing who, other proofs failing, is absolved, is held not as innocent, but simply as not convicted. L. V. 277.

Query 3° Whether it is licit for the accused to appeal?

Resp. Distinguish. For either it is a question of a civil cause, or of a criminal. If of a civil, and this either certainly unjust or less probable, it is not licit, as is clear from the things said n. 60. II. 3°; otherwise, if it is doubtful whether the superior judge is justly going to render sentence for the accused, because since the minds of men are diverse, perhaps the opinion which the inferior judge judged less probable will appear more probable to the superior, and the accused can licitly try this.[5] - If of a criminal cause, generally and practically speaking, among us it will almost always be licit; for 1° the right of an appeal properly so called in a criminal cause is not given here to the accused except by decree of the judge, which it is surely licit for the accused to ask by legitimate means. 2° St. Alphonsus teaches with the common opinion that the accused is not held to abstain from an appeal from a sentence, even an altogether just one, except in the case in which it is certain that the opposite cannot be proved; but in practice that certitude, when a new judgment has been granted, will scarcely ever be present, especially among us, since jurors are very easy in absolving. (q) p. 483.

Query 4° Whether an innocent accused person can reveal occult crimes of witnesses or of the accuser for his own defense?

Resp. Affirmatively, provided 1° the crime is true; 2° the revelation is absolutely necessary for his own defense; 3° otherwise he himself is going to suffer grave damage[2] (n. 517. III. IV.).

Notes to n. 1072. (1) L. V. 230, 231. (2) Const. of the U. S. Amend, Art. V. (3) L. V. 214. (4) Ib. 272. 274. (5) Ib. 285. Appendix annotation (q), to n. 1072. q. 3°. p. 418. col. 2. "At common law an appellate court takes cognizance characteristically only of matters of law. Matters of fact in that system can be revised only upon a new trial. ... The review upon points of law is had, at common law, upon a writ of error." The Amer. Cyclop. V. Appeal.

1073. ○ Query 5° Whether it is licit for an innocent accused person to flee or resist?

Resp. It is indeed licit for him to flee and to snatch himself from the hands of attendants; but it is not licit to repel force by force, by killing or wounding, because he would violate the rights of public power.[3]

Query 6° Whether it is licit also for an accused person who truly committed an offense to flee?

Resp. Affirmatively, if he has not yet been condemned by juridical sentence to the punishment; because no one is held to pay the punishment before sentence. Likewise if he has already been condemned to a most grave punishment, and prison has been assigned to him for custody until he is struck by the established punishment. - Thus commonly.[4]

But they more commonly deny if prison has already been assigned as punishment by the sentence of the judge. The reason is that the accused is held to obey in the execution of a just sentence. Yet many except if necessary things are not given to him, or if the prison is most harsh: because the obligation of not freeing oneself from a most grave punishment seems to exceed human strength when one can accomplish this without force and resistance.[5]

Query 7° Whether it is licit for the accused to flee, even if the guard is going to suffer damage from it?

Resp. Affirmatively, because he uses his right and does injury to no one, unless nevertheless charity suggests otherwise on account of damage to the guard much graver. Yet it is not licit for the accused

to corrupt the guard with money, because, since an obligation is incumbent on the guard of not dismissing the accused, he would cooperate with this man's sin. L. V. 282.

Query 8° Whether it is licit for those who are not ministers of justice to help the accused, so that he can escape from prison?

Resp. Affirmatively, in the case in which this is licit for the accused, and provided 1° the flight of the accused, because, e.g., he is a highway robber or similar, is not pernicious to the Republic, and 2° from this, for example from a break-in, the security of the prison does not perish. The reason is that to help another toward an end licit to him cannot be illicit.[2]

Query 9° Whether it is licit for the accused to decline a MILDER punishment, for example a fine or a not long prison, to which he was justly condemned, BUT WHICH HAS NOT YET BEEN INFLICTED UPON HIM?

Resp. Kenrick:[3] "I think all punishments are so established by law and decreed by the judge that they are to be inflicted by the ministers of justice; and therefore I do not dare to condemn him who, another's right being uninjured, withdraws himself" from punishment of this kind, "provided however he does not apply force and does not disturb public order."

Notes to n. 1073 - note sequence 1. (1) L. V. 285. Cf. Kenr. Tr. VIII. 185. (2) Ib. 277. (3) Ib. 278. H. A. Tr. XIII. 86. (4) Ib. 280. (5) Ib. 280. Notes to n. 1073 - note sequence 2. (2) L. V. 284. (3) Tr. VIII. n. 138.

CHAPTER VI: ON THE OBLIGATION OF WITNESSES

1074. ○ I. No one is held from justice spontaneously to offer himself for testifying; but sometimes there is given such an obligation from charity, for example if someone by his testimony can easily free an innocent person, impede a grave injustice, etc.[1]

II. A witness legitimately cited is held to present himself before the judges, to emit the oath prescribed by law; to say the truth entire and nothing besides the truth, and then to respond simply according to conscience to legitimate questions. - Thus all.

III. A witness who maliciously deposed what is false is perjured, and, if through this he was the efficacious cause of damage to another, a violator of justice; and therefore he is held to reparation of all damages, and also to revocation of the false oath, with equal damage to himself, even with danger of life, if by force of the false testimony an innocent person has been condemned to death.[4]

Notes to n. 1074. (1) L. V. 269. (4) Ib. 269. Notes to nn. 1074-1081 - note sequence 1. (1) L. V. 291, and above n. 977. (2) T. V. Decr. Tit. XXXVIII. c. 13. Notes to nn. 1074-1081 - note sequence 2. (1) L. V. 292.

1075. Questions. - Query 1° To what is a witness held who said what is false from invincible ignorance, or inadvertence, or inculpable forgetfulness?

Resp. He is held to open the false testimony, and to impede damage in the way in which he can; yet he is not held to reparation of damage already following, since he is without theological fault.[1] - The same would have to be said more probably even if he had sinned venially. Cf. things said n. 746. 3°. - 749. q. 3°. - 773. q. 7.

Query 2° What concerning him who supposes or adulterates a writing, note, or receipt, to supply acts that have been lost, or to prosecute a certain right?

Resp. 1° He sins at least venially by reason of lying; because, however the matter stands, the note which is exhibited is diverse from that which makes faith in judgment.

Resp. 2° Sometimes he can sin gravely against charity toward himself, when he exposes himself to the proximate peril of most grave punishments if the falsity is detected.

Resp. 3° In no way does he sin against commutative justice, and therefore he is by no means held to restitution.

1076. ○ Query 3° When is a witness excused from furnishing testimony?

Resp. He is excused in the following cases: 1° if he accepted the matter only under the secret of Confession; 2° if he knew the matter under a committed secret; 3° if he accepted 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 grave damage going to come to himself or to his own; 6° if he has knowledge of the fact through injury, for example by opening another's letters, or unjustly compelling another. Except, as to 2°, 5°, 6°, if common damage or another's private damage prevails.[3] - Yet by the laws of all States the excusing cause alleged 2°, or even 1°, is not admitted. Cf. n. 541. q. 1°.

Query 4° Whether a witness is held to reveal an altogether occult crime, for example which he alone knows?

Resp. Affirmatively, in States in which common law is in force, which establishes that even one witness can suffice for condemning the accused.[4]

Notes to n. 1076. (1) L. V. 269. (3) Kenr. Tr. VIII. n. 128. (4) Ib. 268.

1077. ○ Query 5° Whether and how a witness sins 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, because no one is held to obey the precept of a Superior before it is imposed on him; 2° nor against commutative justice, because he conducts himself merely negatively. Yet he can sin against charity toward neighbor, as was said above (n. 1074).

Resp. to the 2nd. He sins gravely against legal justice, or against obedience owed to the judge in a grave matter and 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.[1]

Query 6° Whether a witness is held to restitution who, legitimately interrogated, conceals the truth; yet does not say what is false?

Resp. Negatively, probably. The reason is that the witness then conducts himself merely negatively, nor is he held 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 even against religion on account of the oath furnished of saying the truth.[2]

Notes to n. 1077. (1) L. V. 270. (2) Ib.

CHAPTER VII: ON THE OBLIGATIONS OF PHYSICIANS, SURGEONS, AND PHARMACISTS

1078. ○ They are held before all things under grave obligation, 1° to have sufficient knowledge and skill; 2° to apply diligence proportioned to the gravity of the matter which is committed to their care. But if they are deficient in these, they are held concerning all damages which follow thence.

Moreover they must furnish their work gratuitously to the poor who are in necessity, as was said above n. 1062. q. 3° R. 2° concerning advocates.

But in curing the sick the following rules must be observed:

I. They are held to follow safe and secure opinions of physicians, at least ordinarily; because the peril of the sick person cannot be removed by the probability of the matter.

II. When it is certain that some medicine will be useful to the sick, they are held to apply it, the doubtful one omitted; but if something certain is lacking, they more probably must prefer the doubtful.

III. What is licit when no hope appears concerning the health of the sick person, and no remedy is present except a doubtful one, see n. 60. II. 2°.

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 applies untried medicines for the sake of trying them. 4° If, with the nature of the disease not well known, he rashly prescribes dangerous remedies, especially with risk of life or grave lesion. 5° If, when the danger of the sick person has been recognized, he is not present opportunely, visiting him day and night if need be, and does not apply all means apt for driving away the disease. 6° If he does not permit other physicians to be called when it would be necessary, or if, summoning others for the sake of consultation, he attends to friendship rather than to skill. 7° If, on the contrary, without necessity he calls other physicians with useless expenses for the sick person, or if against his own conscience he adheres to their counsels. 8° If he draws out the cure for the sake of profit, uselessly multiplies visits where a salary is exacted for each, or if he exacts too great a price. 9° If, to favor friendly pharmacists, he prescribes superfluous medicines. 10° If he advises abortion, or the means of procuring it, or himself executes it. 11° If easily and without necessity he absolves from fasting or from Mass. 12° If he treats the poor, whose care he undertook from a stipend, less diligently than the rich, or, although not obliged from a stipend, does not assist those placed in grave danger and not having another. 13° If he does not preserve secrets committed to his faith and in order to his art, e.g. by revealing shameful diseases without a proportionate cause. 14° Finally the physician sins gravely, indeed most gravely, if, besides in the case in which he would certainly judge the warning not to be useful, he does not forewarn concerning the grave danger of the sick person, so that the Sacraments may be conferred on him.[1] See also other things concerning the physician above in their own places.

1079. ○ Pharmacists, if you except a few things, sin almost as physicians in the cases just set forth, but especially by applying old medicines, selling useless ones, supplying means to pregnant girls for casting out the fetus, not faithfully executing the mandates of the physician, for example by supplying one medicine for another, etc.

1080. Questions. - Query 1° To what is the physician specially held as to the soul of the sick person whose care he has undertaken?

Resp. He is held of himself under grave obligation to warn him concerning the grave danger in which he is placed, and, if it is a question of a Catholic sick person, also concerning the necessity of receiving the Sacraments, lest he depart without absolution, Viaticum, and Extreme Unction. This is clear 1° from natural law, or from the precept of charity. 2° From the very well-known Decretal of Innocent III, confirmed and renewed by other subsequent Supreme Pontiffs.[2] - Yet it is not always necessary that the physician by himself warn the sick person concerning the proximate danger of death. Sometimes it suffices that he take care that he be warned by relatives or friends, so that he benevolently admit the Priest, and be induced to receive the Sacraments. If the sick man has a known confessor, it will suffice if this one is warned concerning 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 suffer the warning to be deferred longer. For he ought not to draw it out until the danger of death is certain; but he is held to this office when he adverts that danger is gravely imminent. If physicians observed this custom, the sick would not so greatly fear the warning, nor at the mention of Confession be seized with terror.

Query 2° Whether a physician sins gravely who in time of pestilence abandons the sick, lest he contract the plague?

Resp. Affirmatively, if it is a question of a physician for whom a stipend has been established by the community, and of those sick persons in whose favor it was constituted. Otherwise negatively, since charity does not oblige with equal danger to oneself.

CHAPTER VIII: ON THE STATE OF CRAFTSMEN AND WORKERS

1081. ○ Craftsmen and workers must be carefully examined by the confessor: for generally in Confession they are silent about the injustices and sins proper to their condition.

I. In general they are unjust by selling or leasing their works at an unjust price; by not manifesting occult defects of their works according to the things said concerning sale; by wasting time through culpable negligence; by turning other workers away from labor; by executing the work badly, whether by excessive haste, or by omission of necessary things, etc.

II. But in particular the following chiefly are unjust:

1° Goldsmiths and silversmiths who adulterate gold and silver, pour lead among the empty spaces, buy diamonds or even below their just lowest value from the ignorant, or sell fabricated or artificial ones as natural.

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

3° Millers who change the grains, or mix with them extraneous things of almost no value, as beans, for increasing the weight and mass; who retain for salary something from the wheat or flour beyond the practice of the fearful.

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

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

6° Tailors and shoemakers who cut badly; who use cloth or leather corrupted or burnt; who retain part of the cloth handed over to themselves, pretending that they applied the whole in making the work.

7° Makers of hats who sell hats newly blocked or dyed as new, or as if they had existed in the shop for a longer time.

8° Printers who print copies in a greater number than was agreed, and retain these for themselves; who make adulterous editions against the right of one having a privilege; who have unskilled correctors; who do not apply paper of the same quality as they promised in the program, etc. ... - See St. Alphonsus.[1]

Notes to n. 1081. (1) L. IV. 182.

PART SECOND: ON THE STATE OF CLERICS

It must be treated 1° concerning the common obligations of Clerics; 2° concerning the peculiar obligations of certain ones.

CHAPTER I: ON THE COMMON OBLIGATIONS OF CLERICS, BOTH POSITIVE AND NEGATIVE

ARTICLE I: ON THE POSITIVE OBLIGATIONS OF CLERICS

Clerics are chiefly obliged: 1° to sanctity of life; 2° to celibacy; 3° to ecclesiastical habit and tonsure; 4° to the canonical Hours; 5° to suitable knowledge; 6° to the ecclesiastical ministry to be performed fittingly; 7° to the obedience and due reverence to be furnished to the Bishop justly commanding. Concerning the four former here; concerning the rest in their proper places.

§ I. On Sanctity of Life

1082. ○ How great the internal sanctity and exterior edification of Clerics must be needs neither demonstration nor exposition. For the very idea alone of Clericate and Priesthood manifestly argues this. Therefore in very few words we shall declare that Clerics must be pious, holy, and modest, both from the nature of their state, and from Scripture, the Fathers, and Councils.

1° 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 on the faithful, to the divine praises solemnly to be paid in the name of the Church, to teaching the Christian people concerning 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 they may be, according to the testimony of the Gospel, the salt of the earth and the light of the world. Moreover they cannot be such unless they shine before others by an illustrious and excellent sanctity of morals. Not only the sublimity and excellence of the offices to be fulfilled, but also the garments with which the Cleric is clothed, cry out that he must profess sanctity. Hence St. Jerome says:[1] "The garment cries out, the state cries out, the profession cries out sanctity of soul."

2° From Scripture. Thus the Lord said concerning the priests of the old law: They will be holy to their God, and they shall not pollute His name: for they offer the incense of the Lord and the breads of their God, and therefore they will be holy.[2] Likewise in Isaiah it is said: Be cleansed, you who carry the vessels of the Lord.[3] Moreover if so great sanctity of life was required in priests who offered oxen and sheep and other animals to God, what will have to be required in those who sacrifice the divine Lamb Himself? And if so great cleanness was required in those who carried the vessels of the Lord, what purity of soul will have to be required in those who carry the Lord Himself in their hands? Read also St. Paul to Titus, Timothy, etc.

3° From the Fathers. Thus St. Chrysostom:[4] "The Priest ought to have an immaculate life, so that all may look to him as to some excellent example; for God chose us for this, that we may be as lights and teachers of the rest, and may live on earth as Angels." St. Thomas[5] teaches that greater sanctity is required in a priest than in a simple Religious, saying: "Through Sacred Order someone is deputed to most worthy ministries, by which Christ Himself is served in the ministry of the Altar; for which greater interior sanctity is required than even the State of Religion requires." And in the

Supplement:[6] "For the suitable execution of Orders, goodness of any sort does not suffice; but excellent goodness is required, so that just as those who receive Order are constituted above the people by the grade of Order, so also they may be superior by merit of sanctity."

4° From Councils. Innumerable things are contained in Canon Law concerning the sanctity of Clerics, which also are confirmed by very many Councils. But let it suffice to report that which the Council of Trent has by solemn Decree:[1] "It altogether becomes Clerics called into the lot of the Lord so to compose their whole life and morals, that in habit, gesture, walk, speech, and all other things they display nothing except what is grave, moderate, and full of religion." - The Plenary Council of Baltimore II[2] exhibits the practical interpretation of this Decree in these words: "Wherever they have been, whether they travel, or walk through the streets, or mingle in conversations among themselves or with those given to the world, let them show in their walk and gesture, and in countenance itself and voice, the modesty and gravity which befit them. Let them avoid with highest zeal excessive raising of the voice, immoderate laughter, scurrilous jokes, finally whatever is an indication of a soul not well composed. Let them not utter more free, insolent, impious words, even by reporting the sayings of others; let them restrain and coerce, if not otherwise, by mouth and countenance, others uttering them."

§ II. On Celibacy

1083. ○ All Clerics receiving Sacred Orders contract ipso facto the obligation of celibacy. This is clear from various Decrees of Canon Law; but especially from c. 1. D. 28, where St. Gregory thus prescribed: "Let Bishops presume to make no one 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,[3] where it has thus been defined: "If anyone has said that clerics constituted in Sacred Orders, or Regulars solemnly professed to chastity, can contract marriage, and that the contract is valid, notwithstanding ecclesiastical law or vow, let him be anathema."

1084. Questions. - Query 1° Whether the obligation of celibacy is of divine law?

Resp. Negatively with the common opinion against some; but it is from mere ecclesiastical institution: namely from the force of the 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. Moreover this is clear from the Council of Trent related above, where it is said: "Notwithstanding ecclesiastical law." Therefore, etc. - Thus commonly Theologians.[1] Therefore the Church can dispense from that obligation. But she never dispenses with those constituted in Sacred Orders, so that they can be bound by the bond of matrimony, except by that law, that they be altogether kept from clerical offices. Thus Pius VII convalidated the sacrilegious marriages of some priests who during the time of the "Gallican" disturbance entered nuptials.

1085. ○ Query 2° Whether the obligation of celibacy proceeds immediately from a precept of the Church, or mediately, namely from the vow which is emitted in the ordination itself?

Resp. Each opinion according to St. Alphonsus is probable; but the more common and more probable is that which says that this obligation arises from a vow. It is proved, 1° from c. 6. Tit. III. L. III. Decr., where it is said: "Therefore we attending to the fact that the Oriental Church has not admitted the vow of continence," etc. Therefore in the Western Church it is admitted. Moreover this is clear from c. unico. T. XV. L. III in 6°, and from C. Inter praeteritos, § 41, Benedict XIV, Dec. 3, 1749, where this is expressly said. 2° from the fact that if the obligation were from the law of the Church alone, the Pope could absolve all clerics from it: which would be against the common opinion.[2]

Notes to nn. 1085-1096 - note sequence 1. (1) Sess. 25 (at the end). (2) Cf. Prop. 35 condemned by Alexander VII. D. I. p. 36. q. Tit. XLI. L. III. Decr. L. V. 140 sq. Cf. Bizzarri, Collect. in usum Secr. S. C. Ep. et Reg. p. 547. 849. n. 17. Notes to nn. 1085-1096 - note sequence 2. (1) L. V. 146. (2) Ib. 147. (3) Ib. (4) L. V. 148. Notes to nn. 1085-1096 - note sequence 3. (1) L. V. 150. (2) Ib. 142. (3) p. 908. (4) L. V. 143.

1086. ○ Query 3° Whether the obligation of celibacy is universal in the Church?

Resp. Some exception is given from the tolerance of the Church among the Orientals. For in the Oriental Church priests indeed can never enter marriage after priestly ordination, or even after diaconate; but married men before diaconate can be advanced to further Orders, and nevertheless converse with their wives. Bishops are excepted, who all must constantly preserve perfect chastity. But among the Greeks subdiaconate is not numbered among Sacred Orders. Hence for clerics not married, in the ordination of Diaconate the precept of chastity is imposed, and today, in a certain Province of the Greek rite, even in the ordination of Subdiaconate, as is clear from the Instruction of the S. C. de P. F.[3]

Notes to n. 1086. (1) Apud Gury P. II. n. 38. (2) Levit. 21. 6. (3) 52. 11. (4) Apud Gury P. II. n. 38. (5) 2. 2. q. 184. a. 8. (6) q. 35. a. 1. ad. 3.

1087. ○ Query 4° Whether he would be held to chastity who expressly did not wish to vow chastity?

Resp. This one would nevertheless be held to chastity, if not from vow, since no one can be bound by a vow unwillingly, yet certainly from the precept of the Church, which from the motive of Religion would bind him to chastity, the vow failing. - Thus commonly with St. Alphonsus.[1] Others wish that he is held to emitting a vow of chastity; and no one will deny that the Church can oblige him to this.

Note. By what pact chastity must be observed by a priest, the Plenary Council of Baltimore II teaches, a. 164-168.

§ III. On the Wearing of Habit and Tonsure

1088. ○ Clerics, at least those initiated in major Orders, are obliged to wear the tonsure and clerical garment. This is clear from the whole of Canon Law, especially from the Council of Trent, Sess. 14. c. 6 de Ref., where it is said: "For although habit does not make a Monk, nevertheless clerics ought always to wear garments proper and congruent to their Order, so that through the decency of exterior habit they may show the intrinsic honesty of morals." Moreover in the same place it is enjoined on Bishops that they seriously warn transgressors, and, if they do not obey, remove them from sacred functions.

But the clerical habit is various for various regions. Speaking of habit, the Fathers of the Plenary Council of Baltimore II[2] prescribe these things: 1° "We wish that ... while they are acting at home or in church, they always use the cassock, which is proper to a Cleric. When they go outside for the sake of office or of recreating the mind, or on a journey, it is permitted to be clothed in something shorter, which nevertheless is of black color, and is drawn below the knees." 2° "Let them not cultivate hair and beard studiously, or after the manner of laymen. Pope Pius IX recently condemned the long beard of Clerics.[3] We command all ecclesiastics in this matter to follow the custom of the Roman Church as the norm to be followed."

"In this region the tonsure for the most part is not made except in the initiation itself; since we live among heretics, for whom it would foster derision without profit of religion." Thus Kenrick.

Notes to n. 1088. (1) Sess. 22. c. 1. Ref. (2) a. 152. (3) Sess. 24. can. 9.

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

1089. ○ Canonical Hours are called: the collection of prayers and readings to be recited by persons deputed to this, at certain hours, on individual days. Hence the Hours are also called 1° the Divine Office, which is recited in honor of God; 2° the Ecclesiastical Office, which is paid in the name of the Church; 3° the Canonical Office, which must be recited according to the rules of the Canons; 4° the Breviary, because that Office is a compendium of the Old and New Testament, and also of the sentences of the Fathers and the life of the Saints.

The origin of the Divine Office as to substance seems to have to be traced back from the very times of the Apostles, as is gathered from various places of 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 were various. The Council of Trent[1] commanded that a new reform of the Roman Breviary be made. St. Pius V corrected it, increased it with some additions, and by the Bull *Quod a Nobis*, July 7, 1568, prohibited all other Breviaries which did not exceed 200 years by institution or legitimate custom.

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

It must be treated 1° concerning the obligation of the Breviary; 2° concerning the time established for the recitation of the Hours; 3° concerning the mode of reciting them; 4° concerning the causes excusing from recitation.

Point I. On the obligation of reciting.

1090. Principles. - I. The following are obliged to recite the canonical Hours daily:[2] 1° All Clerics constituted in Sacred Orders, even those censured and deposed. This is clear from various places of Canon Law; from the Lateran Council, year 1215, from the Bull of St. Pius V *Quod a Nobis*. - 2° All beneficed persons who have a right in the thing and full dominion of the benefice. It is drawn from the Lateran Council under Leo X, and also from the Bull of Pius V:

Ex proximo. - 3° All Religious of each sex professed in an Order approved by the Church, or in which solemn vows are emitted, and destined for choir. It is clear from custom, and also from the Decree of Gregory X, etc. Cf. n. 1205. q. 2°.

II. All these sin gravely if they omit the whole Office or a notable part of it without legitimate cause. The reason is clear; for they violate the law of the Church in a grave matter. - St. Alphonsus,[1] 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, from the mind of the Church, ceases with the day assigned to it, and for this reason is usually called the burden of the day.

1091. Questions. - Query 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 equivalent at least to the quantity of one little Hour, is matter of mortal sin; but that the omission of a lesser part does not exceed venial sin.[2]

1092. ○ Query 2° Whether it is grave to omit Vespers on Holy Saturday?

Resp. Negatively, at least more probably, because the matter is very slight both in itself and in respect to the whole Office.[3]

1093. ○ Query 3° Whether he commits one or multiple grave sins who omits the whole Office?

Resp. He seems to commit one grave sin only. - Thus commonly Theologians with St. Alphonsus after St. Antoninus, 3rd part tit. 13. c. 4.; because the whole Office of the day falls under one precept. Yet several sins could be committed from an evil will interrupted and resumed several times, for example if someone intends to omit the Office or some hour, afterwards proposes to say it, and again is turned away from the good purpose.[4]

Notes to n. 1093. (1) L. VI. 807. (2) Ib. 808. (3) Apud Gury. Ed. Rom. 1873. T. II. p. 638.

1094. ○ Query 4° Whether if someone doubts whether he has omitted something in the Office, he is held to recite it?

Resp. Negatively, if either there is present a solitary probability or presumption for the Office having been paid, or it is a question of a scrupulous person; otherwise affirmatively. Cf. things said n. 67. b).

Hence (they say) you are well excused from repeating the Office if you do not remember having said something, and you have a just conjecture of believing that you said it: for example, if you remember that you began some Psalm, or Reading, or Hour, and afterwards, distracted, you have come to the end of the Psalm, Reading, 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 come to some Hour, for example Sext, and you doubt whether you recited the preceding one, you can hold the same decision, because you are not accustomed to recite a later Hour unless you have recited the prior one first, and therefore you can prudently believe that you omitted nothing.[1]

1095. ○ Query 5° Whether Religious who for just cause do not come to choir are held under grave obligation to recite the Office privately?

Resp. Affirmatively. 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 undertook 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 bound under grave obligation to reciting the Office privately. But universal custom, which has been constantly observed by Religious and Nuns with great inconvenience, furnishes a sufficient argument concerning the grave obligation undertaken. Whence the opinion of some is not probable, who say that the obligation of the Office does not urge a Religious outside choir. Yet both the Constitutions and the legitimate customs of each Order must be consulted.[2] Those professed of simple vows, concerning whom n. 1187 will be treated, are not held to private recitation; yet they must be present at choir as solemnly professed. Bizzarri, Collect.

1096. ○ Query 6° Whether a Religious sins gravely who recites the Office privately, while he can easily be present at choir?

Resp. Negatively. For the obligation of choir, although it is grave for the Community, nevertheless is held as light for individual private persons, provided the choir is not altogether taken away. But four free persons, or persons valid for sustaining the choir, suffice for choir. But if Religious are fewer, they are in no way obliged to recite the Office in choir; yet they are not exempted from private recitation, as has just been said.[4]

1096. ○ Query 7° Whether those obliged to the Office are held to supply those things which they omit in choir on account of the functions of choir, for example by ringing bells or playing organs, or by looking for the Psalms, and other similar things?

Resp. Negatively. The reason is that omission in choir, provided it is not excessive, is supplied by the companions. Thus he satisfies who coughs while others are reciting, etc., and probably even if an entire Psalm is said in the meantime. But he does not satisfy who, while the Office is sung, answers the choir alternately by playing the organ, without uttering the versicles of his own part. A fortiori he is not held to repeat who did not hear some things of the opposite part, even if it is a question of a notable part, provided he sufficiently attended.[1]

Notes to n. 1096. (1) L. VI. 809. (2) a. 148. 151. (3) Ib. p. 286. (4) Tr. VII. n. 5. Notes to nn. 1096-1107. (1) L. V. 174. (2) Ib. quer. 3. (3) Tr. XVI. c. III. n. 15. (4) L. V. 173.

1097. ○ Query 8° What Breviary must be used?

Resp. By common law the Breviary reformed by St. Pius V alone must be used; this is clear from the Bull of the same St. Pius V, *Quod a Nobis*, given July 7, 1568. In this Bull the Pontiff takes away and abolishes all other Breviaries which from institution or legitimate custom do not exceed two hundred years. Yet he permits that even those older than two hundred years can be changed into the Roman Breviary, if the Bishop and the whole Chapter consent. But he commands that this Breviary be observed throughout the whole world, with only the exception just related. 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.

1098. ○ Query 9° Is there still given an obligation of reciting the gradual Psalms, the little Office of the B. V. M., and the Office of the dead?

Resp. 1° Negatively as to Clerics who recite the Office privately.

Resp. 2° Negatively also for those reciting the Office in choir, unless where there is present a custom of reciting the aforesaid Offices from the time of St. Pius V. - Thus the S. Congregation of Rites declared several times. Yet this obligation, where it exists from custom, does not affect individual private persons outside choir.[2]

Query 10° Whether those obliged to the Office must under grave obligation recite the Office of the dead on the day of the Commemoration of all the deceased, and also the Litanies on the feast-day of St. Mark and on the three days of Rogations?

Resp. to 1st Affirmatively, according to all. But this Office consists only of Vespers, Matins, and Lauds.[1]

Resp. to 2nd Affirmatively, according to the common opinion. The reason is that in the Rubric after Monday of the fifth Sunday after Easter it is said thus: "Those who are not present at the procession of Rogations shall privately after Lauds say the Litanies with their prayers and orations." But the word "shall say" imports a grave precept when the matter is grave, such as certainly is the matter of the Litanies. Besides, everywhere the custom of reciting the Litanies on these days prevails. But custom is the best interpreter of laws. Yet some deny the grave obligation, saying that the precept is not clear, especially not the grave precept. - "I do not dare to call the second opinion improbable, but the first pleases me more." (f) p. 483.

Notes to n. 1098. (1) L. V. 143. Not. 8 and 168. q. 2. (2) L. V. 148. Appendix annotation (r), to n. 1098. q. 10°. R. to 2nd. p. 426. col. 2. The S. C. of Rites, Aug. 4, 1877 (see Acta, T. XIII. p. 429. col. 2), in one case of the Order of Premonstratensians, to the doubt whether Premonstratensians absent from Choir are held under some sin to the private recitation of the Office of the Dead on Nov. 2 and of the Litanies on the day of St. Mark and the triduum of Rogations, replied: "Affirmatively, that is, they are held, as all are held who have the burden of reciting the Canonical Hours."

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

I. As to Time.

1099. ○ 1° The time prescribed for fulfilling the entire recitation of the Office begins from midnight and is ended 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 duty. The reason is that, as to substance, one satisfies by reciting the whole Office on the natural day. Indeed Matins and Lauds, by a privilege granted by the Church, can be recited on the preceding day in the evening.

2° 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 Preparat. 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. See below, q. 2 and 3, n. 1100.

3° All the little Hours can be recited in the morning time; and indeed the two earlier ones must be recited before midday; but the two later ones can be said during the whole time both morning and evening. Vespers and Compline are recited from midday up to midnight. Yet in Lent from the first Sunday Vespers can be recited before dinner on account of the ancient discipline, according to which the fast was not broken before the recitation of Vespers. But 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 in the morning, Sext at midday, None at the third hour in the afternoon, Vespers at sunset, Compline at the twilight of night. Hence a cleric ordained subdeacon is held only to reciting the Hours corresponding to the time of ordination. Therefore if the ordination is made before the ninth hour in the morning, he will be held to reciting Terce, but not to the preceding Hours. But more probably he does not satisfy if he recites the part of the Office to which he is held before ordination; yet the opposite opinion is also probable to St. Alphonsus. See the arguments of each opinion in the same author.[2]

1100. Questions. - Query 1° Whether the little Hours can be recited even before dawn without any cause?

Resp. Affirmatively, more probably. The reason is that since the ancient custom of reciting those Hours at a determined time has been taken away, no other law or new custom has 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. Alphonsus.[3]

Query 2° Whether the obligation of reciting Matins and Lauds before Mass urges under grave obligation?

Resp. Negatively, 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 to be a disposition for celebrating, since a priest can also dispose himself piously for the Sacred rite by praying otherwise; nor does a grave obligation appear from the Rubric related above, and generally it is apprehended not under grave obligation, but under light. - Thus commonly, with St. Alphonsus[3] and Benedict XIV.[4] Otherwise, according to the truer opinion, if it is a question of recitation in choir before the conventual Mass to be celebrated in chant.

Query 3° What cause can excuse from that obligation?

Resp. Any moderate reasonable cause will excuse, 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, requires this; if some unexpected business has arisen; if some penitent must be heard first; and similar things.[1]

1101. ○ Query 4° At what hour is it permitted to begin the recitation of Matins in the evening of the preceding day, according to the privilege related above?

Resp. From the common opinion of Theologians it is permitted to begin at the hour of Vespers, which is had when the sun holds the middle of its course between midday and setting; for then, according to all, the ecclesiastical day begins, since first Vespers are accustomed to be chanted. This is confirmed by universal custom. Hence in various places tables are usually prepared determining this hour at the diverse times of the year.[2] Yet our Bishops can communicate to "ecclesiastical men, whether secular or regular, the faculty which they have," of privately reciting, with a legitimate cause concurring, Matins with Lauds of the following day immediately after two hours have elapsed after midday. See p. LXXII, Faculty 1 among Extra. C.

Query 5° Whether the recitation of Matins must be repeated if it was had before the aforesaid time?

Resp. Affirmatively, more probably. The reason is that the Breviary is the burden of the day; therefore it must be recited on the day itself assigned; but if the aforesaid anticipation is made, now the Office is recited outside the day, just as if the little Hours of the following day were recited before midnight.[3] It is confirmed from the declaration apud Muhlbauer.[4]

Addendum and Corrigendum. - I confirm the sentence of St. Alphonsus, according to which more probably the recitation of Matins must be repeated if it was had before that time at which the sun holds the middle of its course between midday and setting, from the declaration which is read apud Muhlbauer. But it was asked whether this declaration is to be understood in such a way that he would not satisfy his obligation who recited Matins with Lauds on the evening of the preceding day before the sun holds the middle of its course between midday and setting. The S. C. responded on 13 July 1883: "Approved Authors are to be consulted." Among the approved authors who have written on this question, that St. Alphonsus is second to none is not something I need say.

Notes to n. 1101. (1) L. V. 148. (2) H. A. App. 3. (Exam. Ord.) n. 74. (3) L. VI. 347. 348. Ex. Ord. n. 113. (4) De Sacrif. Missae, L. III. c. 13. n. 4.

1102. ○ Query 6° Whether the Matins of the Office of the dead and the Litanies for the feast of St. Mark and the days of Rogations can be recited on the previous evening?

Resp. to 1st Affirmatively, more probably. It is clear from universal custom, and also from the Rubrics, which read thus: "The *Benedicamus Domino* having been said, the Matins of the dead begins absolutely." Therefore since the Matins of the Octave of the feast of All Saints is accustomed, or certainly is able, to be anticipated, consequently the Matins of the dead also can be anticipated.

Some deny this with Lacroix, relying on a Decree of the S. Congregation of Rites, Sept. 1, 1607. But that Decree, according to St. Alphonsus,[1] seems to regard only recitation in choir; concerning which matter indeed there cannot be doubt after the Response of the S. R. C., Sept. 4, 1745 in Ratisbon (apud Gardellini n. 4177).

Resp. to 2nd Negatively. 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 assistance at the procession, which is altogether affixed to the day. Furthermore 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.[2]

1103. ○ Query 7° Whether one foreseeing an impediment to reciting the Office is held to anticipate the time of the Hours?

Resp. Negatively, probably, if it is a question of Matins and Lauds to be recited the day before, because the time of the precept is not yet running, but only of the privilege. Affirmatively, if the day of precept has already begun, because the Office is prescribed to be recited within the breadth of the whole day, and he who, the precept now urging, is going to be impeded, is held to prevent it. L. V. 155. Cf. above n. 548. q. 3°. n. 550. q. 1°.

1104. ○ Query 8° At what hour can the recitation of Vespers begin in the morning during Lent?

Resp. The Salmanticenses say[3] that Vespers in Lent can be recited from the eleventh hour, or one hour before midday.

But as to the hour of reciting any part whatever of the Office, that must not be passed over which St. Alphonsus has:[4] "That someone may licitly anticipate or postpone the due time of the Hours, any useful or honest 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 held to use. But Compline does not enjoy the aforesaid privilege; whence also during Lent it is to be recited after midday.

Notes to n. 1104. (1) L. VI. 347. (2) L. V. 174. (3) L. V. 174 and Retr. 51. (4) Suppl. t. 2. p. 516.

II. As to Place and Posture.

1105. ○ 1° As to place. The Office of choir must be recited in the place itself 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, whether at home, whether in the country, or even in the road while walking, or while making a journey, provided the place is fitting for the attention required and devotion.

2° As to posture. The Office can privately be recited in every decent posture, whether on bended knees, whether standing, whether sitting, whether walking. Thus universal practice, with which all Theologians agree.

1106. Questions. - Query 1° Whether it is permitted to recite the Office lying down in bed?

Resp. Negatively, a reasonable cause being excluded; for such a posture often has some irreverence. The same also must be said of any other posture redolent of softness. Yet this irreverence never exceeds venial sin. - Thus Concina and Viva apud St. Alphonsus.[2] But any moderate cause whatever will excuse from every fault, for example sickness or any infirmity, headache, weariness, or if someone cannot sleep at night, he could recite the Office without being held to rise.

Query 2° Whether it is permitted to recite the Office in a carriage or on horseback?

Resp. Affirmatively. The reason is that this is prohibited by no law; nor otherwise does it stand in the way of attention, nor of the reverence due to prayer, even if others were traveling and conversing at

the same time. For this has obtained by general custom, even of the pious. - Thus commonly.

1107. ○ Query 3° Whether it is fault not to observe the rubric according to which certain prayers are to be recited on bended knees?

Resp. 1° Negatively, if it is a question of recitation outside choir; for by custom and common interpretation this rubric regards choir alone. These things indeed laudably are done in private recitation, but are omitted without fault. - St. Alphonsus[3] and others commonly. Say the same of the Sign of the Cross, and of other signs used in choir.

Resp. 2° If it is a question of recitation in choir, it is disputed. More probably it seems to be affirmed, because a rubric prescribing something imposes a precept. Yet such omission can never exceed venial fault.

Query 4° Whether it is a sin to recite the Breviary in an indecent place?

Resp. More probably it seems to have to be denied of itself, unless the place were an obstacle to due attention, for example on account of a crowd of people, noise, etc.; otherwise it would be indecent to pray in an indecent place, which is false, since, because God is everywhere, He can also be prayed to and adored everywhere, as is clear from the Apostle:[2] *I will men to pray in every place.* - St. Alphonsus[3] and others, against some who said that there is venial sin, because this is not without some irreverence.

Notes to n. 1107. (1) L. V. 179. (2) Ib. (3) Ib.

Point III. On the Mode of Reciting the Hours.

The Hours must be recited 1° in the prescribed order; 2° with due pronunciation; 3° with sufficient attention and devotion.

I. As to Order.

1108. ○ A double order must be observed in the recitation of the Breviary, namely the order of Offices and the order of Hours. 1° The order of Offices is described in the calendar of feasts and in the rubrics for their translation, where several occur at once. From the Declarations of the S. R. C.: a) In doubt the Diocesan Directory must be followed, even if to someone it seemed certain that it errs. b) Simple priests, or those who are neither beneficiaries nor, according to St. Alphonsus,[4] Religious, can conform themselves to the office of the place in which they are staying.[5] 2° The order of Hours is that which is set forth in the Breviary, namely that Matins with Lauds be recited in the first place, then the little Hours be added, that is, Prime, Terce, Sext, None, and finally Vespers with Compline follow.

1109. Questions. - Query 1° Whether he satisfies the precept of reciting the Hours who by error or inadvertence recites another Office for the Office of the day?

Resp. Affirmatively. The reason is that the Church is not presumed to wish to oblige someone twice to this burden on one day, and because the substance of the recitation has been sufficiently preserved. Hence the common axiom which is held as a rule in these circumstances: *Office is valid for Office.*

Therefore there is no obligation, the recitation having been completed, of reciting another Office. - Thus commonly.[1] - The same also must be said of any part of the Office according to the axiom: *An error is corrected where it is discovered.*

Yet it is a counsel, says Laymann with others, not an obligation, to add the proper things 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.[2]

1110. ○ Query 2° If someone by error has recited only some part of an undue Office, and notices the error, whether he can continue the begun Office, or whether he is held to recite the remaining things from the Office of the day?

Resp. According to the common opinion of Theologians, freedom is given. Therefore he can either continue, or recite the remaining things from the due Office, yet with the Psalm or prayer finished. But it is better to change the Office according to many who establish this rule: "An error is corrected where it is discovered." But this is from mere counsel, not from precept.[3]

1111. ○ Query 3° Whether, when you have already said one Office for another, you can recite the omitted Office on the day on which the Office already recited by you will occur?

Resp. Negatively. But the Office recited must be recited again. The reason is that the Church then only prescribes an Office to be transferred when it is impeded by a Sunday or a greater Office; besides, there is present the obligation of conforming oneself with the common rite of the Church. - Thus Lugo.[4] St. Alphonsus says this more probably,[5] and it must be held as morally certain from the Decree of the S. R. C., June 17, 1673, apud Gardellini.[6]

1112. ○ Query 4° Whether or how he sins who knowingly recites another Office for the Office of the day?

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

Resp. 2° The reason being excluded, it will indeed be a sin, but venial only, if the Office is changed into an equal or almost equal one, because the obligation is satisfied as to substance, provided nevertheless (which seems more equitable to St. Alphonsus,[2] although he holds as sufficiently probable the opinion which does not admit that restriction) that it happen rarely. - St. Alphonsus[2] against others who say that it is always mortal.

Resp. 3° 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. See p. XIV.

1113. ○ Query 5° What kind of sin is it to invert the order in the recitation of the Hours?

Resp. 1° In private recitation it never exceeds venial sin, because such inversion of order does not contain grave deformity; for the order to be observed is only under a secondary precept and as a circumstance of lesser moment. But if from some just cause you change the order, for example to recite with a companion who has already proceeded further in the recitation, you will be wholly without fault. Some say that inversion of order is a mortal sin if it happens frequently; but this is more probably to be denied with St. Alphonsus.[3]

Resp. 2° 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. Each opinion is probable; but the negative is more probable, because a grave precept is not clear. - Thus St. Alphonsus, apud whom the reasons of each opinion may be seen.[4]

Notes to nn. 1113-1124 - note sequence 1. (1) L. V. 170. (2) p. 815. Notes to nn. 1113-1124 - note sequence 2. (1) Prinziv. n. 652. (2) L. V. 166. (3) L. V. 163. (4) Ib. 168. (5) Ib. 167. Notes to nn. 1113-1124 - note sequence 3. (1) L. V. 167. (2) Ib. 172. Notes to nn. 1113-1124 - note sequence 4. (2) S. R. C. apud Gardellini n. 3222, sub 3. (3) L. V. 162, 163. (4) S. R. C. Nov. 12, 1831. n. 4669. 42. (5) De Herdt, S. Lit. Prax. t. II. n. 389, ed. 1870. (6) Lacroix, n. 1295. Notes to nn. 1113-1124 - note sequence 5. (1) L. V. 165. (2) Ib. 167. (3) n. 1064. (4) n. 1805.

1114. ○ Query 6° What is a cause for inverting the order of the Hours?

Resp. Any reasonable cause excuses. But the following can be assigned, namely: 1° if you are invited by a friend to recite some Hour with him, and you have not yet recited the preceding Hour or Hours; 2° if in the morning you do not have a Breviary at hand, and cannot conveniently wait, then from a Diurnal which you have you could recite the day Hours, afterwards to recite Matins; 3° if you do not have the Readings at hand, you can recite the Psalms of Matins and Lauds, indeed also the remaining things, the Readings being postponed; 4° if you come to choir when the Hour has already begun, you can go on with the others and afterwards 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 afterwards supply the earlier. - Thus St. Alphonsus[1] and others commonly.

1115. ○ Query 7° Whether it is 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,[2] but venial only, if it is done without cause. But neither is it clear that it is venial, since the Office of one day seems to have no order with the Office of another day. But according to the opinion which holds that it is a venial sin, a sufficient cause of 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 Matins of the following day with him; and generally every cause sufficient for inversion of order among the Hours of the same day would suffice also in the present case.

Query 8° Whether he sins who does not recite the commemorations according to the order assigned by the rubric?

Resp. Several deny it, because that rubric, if it is a question of private recitation, seems merely directive, just as those things which regard posture of the body or signs of the Cross.

II. As to Pronunciation.

1116. ○ Pronunciation must be vocal, entire, continued.

1° Vocal. The Office must be recited by voice, and indeed by a distinct one; but it does not suffice that it be read by the mind alone, or only run through by 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 done with distinct voice. - Thus all.

2° Entire. The Office must be recited entirely: but to integrity belong the *Pater*, *Ave*, *Credo*, at the beginning and end of the Hours, as is noted in the rubrics. Yet the prayers *Aperi, Domine* and *Sacrosanctae* do not belong to the integrity of the Office; but are recited only from counsel. The privilege of the prayer *Sacrosanctae* is not obtained by those who recite it outside the case of infirmity, not on bended knees. S. C. Ind., July 26, 1855.[1]

3° Continued. Whatever notable interruption within one Hour, if it is made without any cause, is not without fault; but it does not exceed venial sin.[2]

1117. Questions. - Query 1° Whether one reciting the Office must hear himself in order to satisfy?

Resp. Negatively, more probably. The reason is that hearing is not prescribed, but only recitation, that is, pronunciation of words, which is called vocal: therefore it suffices if he who recites is conscious to himself that he is pronouncing the words; and St. Alphonsus says this is sufficiently probable,[3] against others.

1118. ○ Query 2° What are just causes for interrupting the Office?

Resp. Any reasonable cause suffices for interrupting any Hour whatever; but especially the following causes are numbered: 1° any utility of one's own or another's which cannot be deferred without some inconvenience; 2° reason of civility or charity, or reason of executing the commands of Superiors; 3° if the Confession of someone must be heard who would not willingly wait; 4° if you wish to do or note something in order to remove a distraction or solicitude, for example lest you forget, etc., provided nevertheless that this not be done frequently; because frequent interruption on account of this cause is not without some irreverence; 5° some brief prayer, or some pious affection of the heart, can also licitly be inserted into the recitation. Yet it would not be permitted for the sake of meditating to linger long and frequently in these things, because the character of recitation or of vocal prayer would not be sufficiently preserved; likewise if a longer vocal prayer and one not at all pertaining to the Office were said: for a notable part would be added to the Hours, which would be venial, as being against the prescribed form. - St. Alphonsus[4] and others commonly.

1119. ○ Query 3° Whether Matins can be separated from Lauds?

Resp. Affirmatively, according to the common opinion.[5] But then, Matins having been finished, the *Pater noster* must be said, as must be done after any Hour whatever.

Addendum and Corrigendum. - Add the Response of the S. C. R., 18 May 1883, in the Marionopolitana. "Doubt IV. If it happens in private recitation that Matins is separated from Lauds, it is asked how Matins is to be concluded: ... and how Lauds are to be begun?" The response was: "In the case, Matins is to be concluded with the prayer of the Office of the day; Lauds are to be begun as in the Psalter."

Notes to n. 1119. (1) Tit. XXIV. c. 2. (2) 1 Tim. 2. 8. (3) L. V. 179. (4) L. V. 161. q. ult. (5) Gardellini, n. 4669, 4746.

1120. ○ Query 4° Whether the Nocturns can be separated without cause?

Resp. Affirmatively. It is clear from universal custom, to which no law can be opposed. Indeed formerly they were separated from the practice of the Church, since they were accustomed to be 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 interposed among the individual Nocturns. But if a just cause is present, by reason of which the Nocturns must be separated, that interval can also be extended in proportion to that cause. - Thus Busembaum, Bonacina, the Salmanticenses, Viva, whose opinion St. Alphonsus rightly calls probable.[1]

1121. ○ Query 5° Whether or how that man sins who, one or another Nocturn having been recited on the vigil, recites the remaining part of Matins with the whole night having intervened?

Resp. 1° He is always to be exempted from mortal sin, because he satisfies the substance of the precept. For from the general rule handed down by St. Alphonsus[2] and by others commonly, the substance of the precept is satisfied whenever the Office is recited entirely on the natural or ecclesiastical day, so that then venial sin is never exceeded, however great an interruption, even without cause, intervenes. Therefore the present case must not be excluded.

Resp. 2° He also will be excused from venial sin who does this from a reasonable cause, for example if the Office is very long, as the Sunday Office, and after the first Nocturn has been recited, he is very wearied or overcome by sleep, etc. The reason follows from what has been said; since any interruption whatever from a just cause is licit.

1122. ○ Query 6° Whether or to what extent some Hour is to be repeated on account of a notable interruption interposed?

Resp. 1° The whole Hour is never to be repeated, even if the interruption had been interposed without just cause. The reason is clear from what has just been said. Besides, individual Psalms, and individual Readings or Orations, have their complete signification, and they are sufficiently united by the intention of continuing.

Resp. 2° Indeed, speaking per se, nothing is necessarily to be repeated, even if the interruption happens in the middle of a Psalm, provided it is not in the middle of a versicle or in the middle of an oration, because even individual versicles have their particular signification. - St. Alphonsus[1] and others commonly, against some.

Query 7° Whether in the recitation of the Office it is permitted to mix in or append something from devotion?

Resp. Negatively, because in the Offices nothing is to be added or changed unless it has been conceded by the Apostolic See.[2]

1123. ○ Query 8° To what is one reciting the Hours with a companion or with choir held by reason of pronunciation?

Resp. To satisfying the obligation it is required: 1° that recitation be made by alternate verses. But if more than two recite, a double choir having been made, it must be recited alternately, because this mode is admitted by the custom of the Church; 2° that the verses be said successively, and not simultaneously; nor should one resume before the other has completed his own; 3° that to those things which are said by one, the others sufficiently attend, so that they communicate, and one moral prayer is made. Yet it is not necessary that those hearing pronounce in a low voice the part of the others, and it is sufficiently probable that they satisfy even if they do not hear the part of the others on account of a defect of these in pronouncing. - Thus most commonly.[3] 4° The *Confiteor* and *Misereatur* at Prime and Compline can be recited alternately, but they must not be,[4] outside choir. 5° Outside choir the antiphon of the B. V. M. is not to be added by precept except at the end of Lauds and Compline.[5]

Query 9° Whether you satisfy if you recite the Hours with a layman, or another not obliged, or with one distracted or not attentive?

Resp. Affirmatively 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 another does not change your recitation nor vitiate it. 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.[6]

Notes to n. 1123. (1) L. V. 161. q. 2. (2) Ib. (3) Ib. q. 5. (4) Resp. mor. L. V. Dub. 8. (5) L. V. 161. q. 5. (6) n. 2684.

1124. ○ Query 10° Whether you are held to repeat those things which you recited with imperfect or mutilated pronunciation?

Resp. 1° Affirmatively, if the mutilation is very notable, so that the sense of the words is corrupted and destroyed; and this holds, even if you did this involuntarily, because the defect affects the substance of the recitation; except unless impossibility stands in the way, for example stammering; for then the one reciting did what he could.

Resp. 2° Negatively, if you so mutilate the syllables that the sense of the words is not corrupted, or if you mutilate in a 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 on account of inadvertence, or stammering, or an inveterate custom which can be overcome with difficulty, provided suitable effort is applied to correcting this custom. Nor are you held to repeat if you recite with a companion, unless it is certain to you that the companion by mutilating omitted a notable part. But he is not excused from venial sin who voluntarily associates himself with such a one, unless perhaps a reasonable cause is present, for example because a grave person invited him to this, etc.[1]

Query 11° Whether the oration must be said after Matins when Lauds are separated?

Resp. Negatively, probably, but it suffices after Matins to recite the *Pater noster*. The reason is that probably Matins and Lauds morally make one Hour, and otherwise the oration is prescribed only on

the night of the Nativity of the Lord.[2]

Query 12° Whether before Lauds separated from Matins the *Pater* and *Ave* must be said, as before the other Hours?

Resp. Some affirm absolutely, because then Lauds are an Hour distinct from Matins. Others deny more probably, because this is nowhere prescribed. Nor does the reason avail, 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. - Lacroix.[4]

Notes to n. 1124. (1) L. V. 161. q. 3. (2) Ib. (3) L. V. 170. (4) L. V. 171.

III. As to Attention and Devotion.

1125. ○ 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 he ever sins gravely will soon be said in the Questions.

But voluntary distractions are not only those which are intended, but also those which are willed in their cause, namely those which proceed from negligence, levity, excessive preoccupation with business to be done, from curiosity by looking about at external objects, from circumstances of place or time not opportune, unless some reason excuses this.

1126. Questions. - Query 1° How many kinds of attention are distinguished?

Resp. Twofold: internal, namely, 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 talking, writing, etc.

Again internal attention is threefold, namely 1° spiritual, which is to God Himself as the term of prayer; 2° literal, or to the sense of the words and the signification of things; 3° material, which is directed to the words only, namely to pronouncing them rightly. - See n. 402.

Query 2° Whether internal attention is required under grave obligation?

Resp. There is a double opinion among Theologians.

The first opinion, the more common, affirms. The reason is, 1° because prayer without internal attention is not prayer. For prayer is the elevation of the mind to God; but, internal attention being removed, there is no elevation of the mind to God. Therefore... Besides, for paying the Hours there is required at least some intention of worshiping God; but this intention cannot be had without some internal attention. Therefore... 2° Because it must not be believed that the Church intended to prescribe external attention only in paying 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. 3° 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 second opinion denies it, and says that, for satisfying the substance of the recitation and removing mortal sin, external attention absolutely suffices. The reason is that, if internal attention were required, one who recited the Hours involuntarily distracted would not satisfy his obligation; for when the essence of a thing has been destroyed, although inculpably, the thing itself remains destroyed: yet not even the adversaries admit this. But St. Alphonsus concludes thus: "The first opinion seems more probable, at least on account of extrinsic authority, and altogether as safer is to be counseled; but the second, both on account of the authority of Doctors, which is not to be contemned, and on account of the reasons, founded on no light foundations, appears sufficiently probable." - Recall the things said concerning Mass, n. 403.

1127. ○ Query 3° What internal attention is required according to the first opinion?

Resp. Any attention whatever 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 is required, nor literal, 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. - Thus St. Alphonsus.[2]

Notes to n. 1127. (2) L. V. 176.

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

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

1128. ○ I. Impossibility, whether physical or moral, which consists in grave difficulty of reciting the Office. Hence he is excused:

1° Who does not have a Breviary, because, for example, when undertaking a journey he forgot it, or on the journey lost it, with inability to procure another. Yet if he forgot, lost, or threw it away by his own grave fault, he sinned gravely, and the omission of the Hours is imputable to him.

2° Who labors under grave illness, for example fever, pain of the intestines or of the head; or who justly fears lest from the recitation grave inconvenience follow, etc. Whence he is sufficiently excused who prudently believes or fears lest on account of the recitation of the Office there arise for him notable heaviness of the head, or crudity of the stomach, or exhaustion of strength, or another grave inconvenience.[1]

3° One recovering from grave illness can be excused for some days according to the judgment of a prudent man, until his strength is restored. And this can be admitted even if the sick man already celebrates Mass.[2]

4° He is also excused who in time of persecution fears lest he be betrayed by the recitation of the Breviary; likewise he who labors gravely in the eyes, etc. - St. Alphonsus[3] and others commonly.

II. Charity toward one's neighbor, that is, 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 recitation of the Hours either totally or partially:

1° If at night, about to recite the Office, for example Vespers, you are called at once to a dying person, and neither time nor convenience is available to you for paying the obligation of the Office.

2° If you are occupied the whole day in hearing Confessions which on account of peculiar circumstances cannot be deferred, for example in sacred missions, and especially near their end, when you are about to depart, etc.

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

4° If you are occupied the whole day in quieting quarrels, or assisting the sick, for example at the time of contagious disease, etc. - St. Alphonsus[4] and others.

Notes to n. 1128. (1) L. V. 154. Not. I. (2) Ib. Not. II. (3) Ib. 156, 157. (4) L. V. 156.

1129. ○ III. Legitimate dispensation, or one granted by a legitimate Superior.

1° The obligation of reciting the divine Office, since it is of ecclesiastical law, can be taken away by ecclesiastical Superiors.

2° The Pope can grant this dispensation validly in every case, even without cause; but licitly from a reasonable cause, for example on account of excessive occupation, for calming scruples, etc.

3° The Bishop also can dispense from this law, but not validly without sufficient cause, and only with some particular person for a time, namely 1° when there is doubt concerning moral inability, or concerning the gravity of the detriment to be feared; 2° when recourse to the Pope is difficult; 3° when the dispensation is sought on account of a cause which frequently recurs, for example on account of infirmity; 4° when the dispensation is sought for a brief time. - Thus St. Alphonsus.[1] - Recall the things said, n. 154.

See also Faculty 26. Form I. p. LXXII. Certain Bishops, from Apostolic Indult, are able to commute Matins and Lauds into other prayers in favor of priests who have heard Confessions for five hours of the same day.

1130. Questions. - Query 1° What must be done in doubt whether infirmity suffices for excusing or not?

Resp. 1° The sick man can commit himself to the judgment of a physician; 2° he can acquiesce in the judgment of the Superior, who in doubt can also dispense; 3° he can remit himself to the probable judgment of a prudent man; 4° indeed he can probably also stand by his own judgment, if he himself can make such a judgment; 5° if by none of these modes the doubt can be solved, the law, as being certain, will possess, except in the case either of solitary probability for the sufficiency of the cause (see n. 66. 2°), or of fear lest recitation gravely harm health (see n. 67. 1° c)).[2]

Query 2° To what is a sick man held if he is certain that he cannot pay the whole Office, but doubts whether he is able to recite a part?

Resp. Probably he is held to nothing. For he is reasonably excused from the whole Office, lest he be troubled by scruples, not knowing how far he can and is held to recite; and this anxiety indeed, as St. Alphonsus says, would bring him great harm.[3]

Notes to n. 1130. (1) L. V. 159. (2) Ib. 154. (3) Ib. 154. in fine.

1131. ○ Query 3° Whether one impeded in any way from reciting the whole Breviary is held to the part which he can recite?

Resp. Affirmatively altogether. The reason is plain. For the obligation of the Breviary falls on its individual parts, since the thing prescribed is divisible. This is also clear from proposition 54 condemned by Innocent XI, p. XVII. Therefore he who lacks a Breviary and knows nothing else by memory except Lauds or Compline is held under grave obligation to recite these.

Query 4° Whether you are held to reciting the Psalms if you have only these at hand, or know them by memory, the Readings with the Responsories being left aside?

Resp. Affirmatively, more probably. 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.[1] But the following rule is handed down by St. Alphonsus[2] and others: If you can recite as much as is a little Hour, you are held under grave obligation to recite it; but if less, you are not obliged to recite anything even under venial sin, because such a small part, taken separately, is not judged estimable for the end intended by the law.

Query 5° Whether you are held to use a companion if you are not able to recite the Hours alone?

Resp. Affirmatively, if you easily find someone whom you can conveniently use. The reason is, 1° because then there is no properly so-called inability; 2° because the precepts of the Church require ordinary diligence for their fulfillment: but no means is more ordinary than to use a companion in recitation. - Thus commonly. - St. Alphonsus.[3]

ARTICLE II: ON THE NEGATIVE OBLIGATIONS OF CLERICS, OR ON THOSE THINGS WHICH ARE PROHIBITED TO CLERICS

1132. ○ The Plenary Council of Baltimore II sets forth the negative obligations of Clerics in the following words.

1° "Let them not be present at stage-plays, spectacles, dances."[4]

2° "Let them abstain from every forbidden" (that is, clamorous, or which is done with dogs and the noise of weapons, or hawks, or which would be scandalous) "kind of hunting."[5]

3° "Let them not practice medicine and surgery, neither for the sake of gain nor under the appearance of charity" (that is, habitually and by profession; not in some particular case and by accident). "In this matter we most strictly command that those things be observed which were established by Benedict XIV."[6] But the summary of those things which are established, or rather taught, by Benedict XIV is this: a) An Apostolic indult is required, to obtain which a cause is necessary, namely either defect of a surgeon, if it is a question of surgery, or scarcity of physicians, if it is a question of the exercise of medicine, or poverty of the cleric. b) Nothing is to be demanded, nor, from the poor, even from those

spontaneously offering, is anything to be accepted. c) Medicine to be practiced without incision or burning, and ordinarily also surgery.[1]

4° "We decree that clerics not carry arms of any kind for offense, or even for defense, unless perhaps outside the city they must make a journey in suspected places."[2]

5° "Let priests diligently avoid every illicit game; and let them also abstain from all games of whatever kind, even if for diversion of the mind, which can be for scandal,"[3] for example to Sectarians.

But today a cleric is judged immune from grave sin who plays in a mixed game, or rarely, moderately, privately, and, as was just said, without scandal, in a game of chance; indeed also from light sin if he plays in a game of skill, or, for the sake of recreation, in any game whatever, in places where the Canons concerning gaming are not rigidly observed.[4]

6° "Let them not rashly approach profane tribunals for the sake of business or litigation."[5] Cf. n. 113, Resp. to 2nd, 2°. 3°.

7° "Renewing the precepts of the Canons, we decree that they not carry on traffic of any things or goods, or of money;[6] that they not exercise gainful negotiations in their own name, or under the covering of another name; that they not rent another's estates for the sake of profit; that they not stand surety for others; that they not, without consulting the Bishop, become agents in the affairs of others; that they not undertake care and tutelage of anyone, except of their own, unless the Bishop consents." ... "We forbid priests, while preaching, or on the occasion of preaching, or under any other pretext whatever, from the pulpit or from the place of the altar, to make words to the people too often concerning their revenues, honoraria, stipends, Sunday collections, and other things of this kind, and to complain as if these were not sufficiently ample or were less than just." ... "We prescribe ... that no one hereafter accept deposits of this kind" (of money with priests under this condition, that, increased by interest, it be recovered at a fixed time), "not even under the pretext that they are to be converted into the temporal good of the Church, works of mercy, or other pious uses, unless beforehand the permission of the Bishop, to be granted in writing, is had."[1]

8° "That we may remove from clerics the occasion of crime, which is not usually absent in inns and taverns, we altogether forbid them the entrance and use of inns, except on a journey from necessity."[2]

9° "First of all we will that" (the priest) "not use excessive association and familiarity with secular women, not even his own being excepted; nor permit them, even though joined by near blood-relationship, to dwell in the same house with him, unless they are most respected in life and morals, and in no way, whether directly or indirectly, interfere in managing sacred duties or administering the things of the church. Let him have no housekeeper, maidservant, or other female servant, unless she is of more mature age and enjoys a reputation wholly intact. Let him never speak before them or before relatives, if he has any with him, about the governance of the flock, about affairs of the church, about the vices or defects of parishioners.... Also with women devoted to the pursuit of piety, let there be for him no familiarity, no custom, which the reason of charity or of office does not demand."

Wherefore they are also prohibited from acquiring shares ("stock") of banks called *en commandite* ("joint stock banking companies"), as was answered by the S. C. of Bishops and Regulars, June 30, 1845, apud Lucidi, *de visitatione Liminum Apost.* Tom. I. p. 499, n. 493, which several, on account of parity of reason, extend to shares of mines, woolen factories, and the

like. See Scavini (Ed. 12th) Tom. I. n. 576. 13). Yet they are not prohibited from acquiring bonds ("bonds").

Notes to n. 1132 - note sequence 1. (1) Ib. 158. (2) Ib. (3) p. 274. 153. (4) a. 153. (5) a. 153. (6) p. 287. V. Notes to n. 1132 - note sequence 2. (1) Conc. Pl. Balt. II. a. 157, 158, 159. (2) Ib. a. 162. (3) Ib. a. 164.

CHAPTER II: ON THE PARTICULAR OBLIGATIONS OF CLERICS

We shall speak of the obligations 1° of Bishops; 2° of Pastors.

Note. We omit those things which Theologians hand down concerning the obligations of Canons and Beneficiaries, since they do not pertain to our matters.

ARTICLE I: ON THE OBLIGATIONS OF BISHOPS

1133. ○ 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 to which they bind themselves by oath on the day of consecration, are reduced to residence, preaching, prayer, and visitation of the diocese.

Notes to nn. 1133-1142 - note sequence 1. (1) a. 142. (2) a. 143. (3) a. 158. (4) a. 141. (5) H. A. Tr. VII. 80. (6) Rom. 12. 8. Notes to nn. 1133-1142 - note sequence 2. (1) a. 225, 505. 7, 8, 13, 27, 469-473, 513.

1134. ○ I. As to residence. Bishops, even if they are Cardinals, are held to dwell in their diocese, as is gathered from the Council of Trent.[1]

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

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

2° Urgent necessity, for example if the Bishop's life is endangered on account of sickness, inclemency of air, personal persecution, etc.; but not on account of general danger, for example in time of contagion: yet at that time he will be able to remain in safer places of his diocese and from there provide for his own. St. Alphonsus, L. VI. 233.

3° Due obedience, namely when the Pontiff calls some Bishop in order to entrust to him the care of some business.

4° The evident good of the Church, for defending its rights, for example in a Provincial or General Council.[2]

It is permitted to Bishops, from an honest cause and without detriment of the flock, to be absent each year for two or three months, whether continuously or interruptedly. Thus the Council of Trent, where there are several things concerning this matter.[3] But they cannot be absent longer without Apostolic Indult - or, if it is a question of our Bishops, without the cause of absence having been approved in writing either by the Metropolitan, or, he being absent, by the older suffragan Bishop residing, who must likewise approve the absence of the Metropolitan[4] - if you except pilgrimage to the thresholds of the Apostles and assistance at a Provincial Council.

Notes to n. 1134. (1) Sess. VI. c. 1 Ref. and Sess. XXIII. c. 1. (2) L. V. 125. (3) Sess. XXIII. c. 1 Ref. (4) Conc. Pl. Balt. II. a. 91. Kenr. Tr. VIII. 33.

1135. ○ II. As to preaching. Bishops are held by a most strict obligation of preaching the word of God, by themselves or at least by others if they themselves have been legitimately impeded. This is clear from Sacred Scripture. Thus the Apostle:[1] *Preach the word; be urgent in season, out of season; reprove, entreat, rebuke in all patience and doctrine*, etc. This is also clear from the Council of Trent.[2]

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

Frequently, and at least on Sundays and feast days, they must offer the Sacrifice for the whole diocese, and often incite the people to prayer by teaching the mode of praying, by appointing private and public prayers in chief necessities, and by decreeing supplications, etc.[3]

1136. ○ IV. As to episcopal visitation. The Bishop, as pastor of the whole diocese, must bear great care of the souls committed to his solicitude and labors. Wherefore he is bound diligently to visit the diverse 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 clear from the Council of Trent.[4] Cf. n. 185. II.

"But if, on account of the distance of places," says the Plenary Council of Baltimore II,[5] "and the number of churches, they cannot visit all the churches yearly, let them at least visit the principal ones and those which are nearer to the Episcopal city, and let them order the visitation in such a way that every two years, according to the prescription of Trent,[6] or, if this cannot be done, at least every three years, they may go through the individual parts of the diocese. But let them perform this most grave Episcopal duty not too hastily or perfunctorily, but with all diligence applied, and led by zeal for souls; asking carefully and in a summary way concerning all those things which are prescribed in the Roman Pontifical."

In all things which pertain to visitation and the correction of morals, Bishops have the right of ordering, moderating, punishing, executing, according to the sanctions of the Canons, those things which may seem necessary according to their prudence for the amendment of subjects and the utility of the diocese. Thus from the Council of Trent[1] and Benedict XIV, Bull *Ad militantis*. - Nor is there given from decrees made in visitation outside judicial form an appeal to suspensive effect, but only to devolutive effect.

Notes to n. 1136. (1) 2 Tim. 4. 2. (2) Sess. 5. c. 2. Ref. (3) H. A. Tr. VII. 63. 66. (4) Sess. 24. c. 3 Ref. H. A. Tr. VII. 59. 60. (5) a. 86. (6) Sess. 24. c. 3. Ref.

1137. ○ The other obligations of Bishops are handed down in their proper places. Those which follow are more proper to our Bishops.

1. In recommending men to the Episcopate they are held to follow with the greatest diligence the rules prescribed by the Holy See; but especially to beware lest they recommend any except those whom in conscience they judge suitable.[2]

2. The erection of seminaries, where this is possible, is commended, inculcated, and prescribed to them.[3]

3. They must stir priests to annual retreats and to spiritual and theological conferences.[4]

4. They are held to watch over the execution of those things which were decreed by the Holy Synod of Trent concerning the residence of pastors, and they are admonished that in their synods they establish penalties against those who have been absent without grave cause or permission.[5]

5. "Let them admonish ... priests exercising the care of souls that they also apply themselves *personally* to the instruction of youth in Christian doctrine."[6]

6. They are prohibited from enrolling in their clergy priests coming from Europe unless the letters of their Bishops have first been had; but those who from these provinces wish to pass to another diocese, they are prohibited from dismissing unless it is certain that they are to be received by another Bishop.[7]

7. The offices of Bishops as to schools, see n. 440. 3°, and as to ecclesiastical goods, n. 619 sq.

ARTICLE II: ON THE OBLIGATIONS OF PASTORS

1138. ○ A Pastor, once canonically constituted, enjoys ordinary jurisdiction over the people entrusted to him, and without a new approbation of the Bishop has the right to perform all parochial duties. Therefore no Cleric, except the Bishop and his Vicar general and their delegates, can licitly perform any sacred functions at all, at least in his church, without his express or reasonably presumed consent.

On account of the various statutes which are in force in our ecclesiastical Provinces or even in the diverse dioceses of the same Province, it is not easy to say precisely how far the rights of those who among us are placed over districts divided after the likeness of parishes extend. Wherefore let it suffice here to note those things which until now have been held as the almost common opinion concerning all dioceses. - The jurisdiction of absolutely all priests laboring among us in the Sacred Ministry has been held as delegated, not ordinary. - To Rectors of Congregations divided as above are attributed parochial or quasi-parochial rights.[1] - But what obligations correspond to those rights, both in the Rectors of other Congregations and in either priests cooperating in the same Congregation or the faithful, will have to be judged partly from the Plenary Council of Baltimore II,[2] partly from Provincial and Diocesan statutes. - As to the Province of San Francisco, see (f) p. 471.

Moreover, if you except the obligation of offering the Sacrifice for the sheep, concerning which n. 1139. II, it is certain that they are bound toward their Congregation by the same obligations by which Pastors are bound toward their parish. - Moreover:

Pastors, like Bishops, are chiefly held to residence; prayer; preaching; administration of the Sacraments; correction of the sheep; visitation of the sick and of the parish.

Appendix annotation (ζ), to n. 1138. p. 438. col. 1. In the Province of San Francisco there are certain parishes properly so called, in which, although they are not ruled by pastors properly so called, the faithful and their pastors or rectors, by force of common law, are bound to one another by the same offices by which parishioners and pastors properly so called are bound. This is clear from the following words of the Fathers of the First Provincial Council of San Francisco, in 1874: "We

declare that the Rectors of those parishes which are held as parishes properly so called are held to fulfill all the duties of pastors toward the faithful established within the limits of their churches; but that the faithful have the right to receive spiritual helps from them as from their own Rectors of souls, and are specially held to recur to them for Paschal Communion, Baptism, Viaticum, Extreme Unction, and Matrimony."(5) From these things it seems to be concluded that these Rectors, no less than pastors properly so called, are held to offer Mass for the people, and validly and lawfully to hear the Confessions of their parishioners everywhere.

1139. ○ I. As to residence. The Pastor is bound to residence, because when he accepted the administration of the Congregation, he obligated himself to consult the salvation of souls and to procure it according to his strength. - Council of Trent.[3] - St. Alphonsus.[4]

The Pastor must dwell in the presbyteral domicile, or, if this is lacking, in his own house within the boundaries of the Congregation, so that he can easily be approached, and he himself not be impeded in fulfilling the duty of residence. But that the duty of residence may be satisfied, he must not only be present in body, but also serve the Congregation himself personally, or through coadjutors.

Yet they can, if they obtain leave from the Ordinary, be absent for a just cause for that space of time and under those conditions which are determined by diocesan statutes or by the judgment of the Bishop. But for one or another day they will be able to be absent without special permission for a cause which seems legitimate to them, provided they have, or know, to whom the sheep committed to them can have recourse in necessity.

II. As to prayer. The Pastor is held, as the Bishop is, to offer the Sacrifice for the parish on feast days and Sundays, as will be clear from things to be said concerning the Eucharist, n. 1322. But this obligation does not exist as to our quasi-pastors or Missionaries (unless they are truly over parishes), although it befits them to show this office of charity to the sheep.[1] Likewise he is held to pray frequently for his sheep, that he may implore for himself and for his subjects the graces necessary for salvation and heavenly blessings. (f) p. 471.

Besides, the Pastor must take care that all learn to pray, that they pray well, and teach their own to pray.[3]

Moreover let our priests note the following statute of our Plenary Council of Baltimore I. "If ... sometime on account of public calamities or necessities it should seem good that prayers be recited in the vernacular language in assemblies of the faithful, let this be done only when the Ordinary so establishes, and let only that formula of praying be used which he himself has prescribed. The same we establish also concerning days designated by the civil Magistrate for giving thanks. For on these days we wish ecclesiastical ceremonies to be had only when the Ordinary commands; but if they are celebrated, let them be performed according to the norm established by the rubrics."[4]

Notes to n. 1139. (1) Sess. 24. c. 10 Ref. (2) Conc. Pl. Balt. II. a. 101-107. (3) Ib. a. 171-174. (4) Ib. a. 68. 95. (5) Ib. a. 114. (6) Ib. a. 115. (7) Ib. a. 121, 122.

1140. ○ III. As to preaching. Pastors are held rather often to speak words to the people, to nourish it with salutary food, at least on each Sunday and on each greater Feast.

Therefore Pastors who abstain from preaching for a notable time sin gravely. But by many a notable time is held to be if through one whole and continuous month, or through three months not

continuous, or divided in the year, they do not preach by themselves or by another.[1] Nor do those satisfy the obligation who do not strive to accommodate preaching to the capacity of the hearers.

Under the name of preaching here do not come sermons perfected and elaborated by much and subtle art, filled with elegances, and committed to memory; for although these sermons are useful and sometimes necessary, nevertheless for the most part a Pastor giving sermons of this kind would in no way satisfy his duty, because according to Trent he must teach those things which are more necessary, and in a manner more useful and more accommodated to the greatest part of the hearers. Nor are those less to be reproved who, with no preparation applied, pour out whatever comes into the mouth, without order, clarity, piety, and zeal. These disfigure the word of God and create nausea and disgust in the hearers. - Thus all.

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 so weak of memory that he cannot do otherwise: but then from time to time he must take care that sermons be had for the people through another, or he must notify the Bishop of the impediment.

Moreover let the preacher consider those most wise admonitions which the Plenary Council of Baltimore II hands down concerning his office, and of which this is the summary.

1° Let him teach, a) "the motives and frequent practice of acts of faith, hope, charity, and contrition; the dispositions required for receiving the Sacraments usefully; the vices which it is necessary to avoid, and the virtues which it is proper to follow";[2] b) "those heads of Catholic doctrine ... which heretics and unbelievers, especially of this region and time, either obstinately deny, or call into doubt, or, according to the most inept genius of this age, attack by jokes and mockery rather than by arguments."[3]

2° In relating miracles and prodigies let him use the greatest prudence, and avoid foolish fables, although it is proper to mix examples with precepts.[4]

3° Let him not abuse sacred place and time for avenging a private injury.[5]

4° Let him mix nothing of daily, civil, or political events with sacred doctrine.[1]

5° On the occasion of funerals let him not extol the dead person with immoderate praises, nor speak of all indiscriminately as already received into heaven or soon to be received.[2]

6° Concerning his stipends, of whatever kind, on the occasion of a sermon or under any other pretext, from the pulpit or from the place of the altar, let him not make words too often.[3]

7° Let him not easily condemn certain things as lethal sins which are not certainly such.[4]

Notes to n. 1140. (1) Conc. Pl. Balt. II. a. 124. (2) Ib. a. 11, 112 and 287. (3) Sess. 23. c. 1. Ref. (4) L. V. 501.

1141. ○ IV. As to the administration of the Sacraments. Pastors are held to minister the Sacraments personally, not only when the time of precept and of grave necessity is pressing, but also, as regards the Sacraments which can be repeated, as often as the sheep duly, or not inopportunely, ask, unless they are legitimately impeded, or can provide for those asking through another without inconvenience and offense. See several other things on this obligation in the Treatise *de Sacram. in genere*, n. 1225 sq.

V. As to correction. The Pastor is held to correct subjects living in mortal sin or in proximate danger of mortal sin, even with danger of life, if nevertheless some hope of amendment seems to shine forth and it is a question of their grave spiritual necessity. He must also, insofar as he can, remove or prevent scandals with due prudence, by himself or through others, directly or indirectly, by command, counsel, exhortation, prayers, etc. - Thus commonly, and indeed more probably from justice, namely by reason of the stipend which they receive from the Congregation, not from charity only.[5]

Then Pastors must solicitously provide for the spiritual good of subjects, according to that saying of the Apostle:[6] *He who rules, in solicitude.* Therefore they must investigate the morals of parishioners, correct delinquents, sustain those who are wavering, and strive that all fulfill their obligations, always keeping in memory that they at some time will have to render an account for their souls. But especially, according to the admonitions of the Plenary Council of Baltimore II, let them most sharply and often reprove the sluggishness of Catholic parents who do not take care that infants be immediately fortified by the Sacrament of Baptism; let them restrain the reading of wicked newspapers; with ardent and gentle zeal let them lead back to truth those wandering from the Church; let them take care by every means to commend the observance of Sundays and feast days; let them put every effort into eliminating the vice of drunkenness; let them turn the faithful away from theaters and stage-plays; let them attack and condemn immodest dances; let them procure missions for their sheep; let them turn the faithful away from secret societies.[1] - They are also held to provide for deaf-mutes in the better way in which they can, by taking care that they be instructed at least in those things which must be known by necessity of means, in the precepts of the Decalogue, etc. Those most unhappy persons are exposed to the greatest peril in non-Catholic institutes. - On the office of the Pastor as to schools and catechesis, see n. 440. 3°. - As to visitation of the sick, see the things to be said at the end of the Treatise on Extreme Unction.

Notes to n. 1141 - note sequence 1. (1) L. V. 124-127. (2) Conc. Pl. Balt. II. a. 368. (3) H. A. Tr. VII. 88. (4) Conc. Pl. Balt. II. a. 399. Notes to n. 1141 - note sequence 2. (1) L. IV. 269. (2) a. 129. (3) a. 130. (4) a. 139. (5) a. 140.

1142. ◦ As to the visitation of Parishioners, a certain more recent Council has these things.

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

APPENDIX I: ON THE PRIVILEGES OF CLERICS

I. On the Privileges of Clerics in Common.

1143. ○ Clerics enjoy certain privileges from canon law and from Roman civil law, indeed according to several from divine law, namely the privilege of immunity, that they not be punished by a lay court, and of exemption from the lay forum as to goods of their own, both ecclesiastical and patrimonial. But these privileges, and most others generally, among us are no longer recognized by the civil power. See n. 112-114. Yet everywhere there remains the privilege which is called of the Canon, by reason of which those incur excommunication who unjustly lay hands on Clerics, concerning which n. 1719. - From the declaration of the S. C. of Immunity, Sept. 20, 1860, a Cleric, having lost according to the laws of the Church the privilege of forum, by that very fact has lost the other privileges, so that he must be considered as a lay person. Del Vecchio, *Comp. Scav.* T. I. n. 245 (1).

Notes to nn. 1143-1144 - note sequence 1. (1) S. Alph. de Priv. n. 65. (2) L. VI. 795. (3) Craisson, Elem. n. 453, 459. (4) L. I. T. IV. c. 2. in 6°. (5) De Syn. L. II. c. VIII. Notes to nn. 1143-1144 - note sequence 2. (1) Kenr. Tr. VIII. n. 42. (2) L. I. Decr. T. XX. c. 2. in 6. (3) Ex L. I. Decr. T. XXIII. c. 8. (4) S. C. C. Dec. 4, 1655. Ben. XIV. de Syn. L. I. c. V. II. (5) Trid. Sess. 24. c. 6. Ref. (6) L. I. T. XXIX. c. unico. (7) Craisson, Elem. n. 465. 7°. Notes to nn. 1143-1144 - note sequence 3. (1) Craisson, Elem. n. 465. 13°. (2) Ib. n. 467.

II. On the Privileges of Bishops.

1144. ○ The privileges of Bishops regard 1° censures and irregularities; 2° impediments of matrimony; 3° vows and oaths; 4° other special cases.

I. Concerning censures and irregularities:

1° They absolve subjects in the forum of conscience from occult papal cases, except cases specially reserved to the Roman Pontiff in the Constitution *Sedis Apostolicae* of Oct. 12, 1869; and not even these are excepted if subjects cannot go to Rome for absolution without grave damage to themselves or their own, whether temporal or spiritual. They absolve these directly if the impediment of going personally to Rome is perpetual, that is, if founded hope is absent that within five years they can easily do this; otherwise indirectly unto reincidence, that is, with the burden, the impediment having been removed, of presenting oneself to the Pope or to one having faculty from him.[1] See n. 1402. II.

2° They can dispense from all irregularities and absolve from all suspensions incurred on account of an occult delict, except irregularity from voluntary homicide.

3° In non-occult irregularities from defect of birth, for minor Orders and simple benefices, except nevertheless more probably a canonry in cathedrals.[2] - As to similitudinary bigamy, see St. Alphonsus L. VII. 452.

II. Concerning Matrimony they dispense:

1° In impeding impediments, except the vow of perpetual chastity, the vow of entering Religion, espousals, and the impediment of disparity of cult between Catholics and heretics (n. 1572. q. 1°).

2° In supervening impediments, after matrimony has been contracted, in order to asking the debt, for example if they have contracted affinity because one or the other had carnal commerce with the blood-relatives of the other; or if one has vowed chastity. Indeed a Bishop can also dispense a spouse from a vow of perpetual chastity which he emitted before Matrimony, so that he may be able to exercise matrimonial rights (n. 1572. q. 2. 1589. III.).

3° In doubtful diriment impediments[1] (n. 1623. II.).

4° By accident in certain diriment impediments, both before and after Matrimony has been contracted[2] (n. 1623 and App. to this n.).

5° In publications of Banns[3] (n. 1538 sq.).

III. Concerning vows and oaths, Bishops can dispense:

1° In all simple private vows, except the five reserved to the Pope, namely of perpetual chastity, of entering Religion, and of pilgrimages to Jerusalem, to the thresholds of the Apostles, and to St. James of Compostella, n. 392. q. 3°.

2° In all oaths, if you except oaths added to an onerous promise, especially made in favor of a third party and accepted by this one, which were not extorted by fear or fraud.

IV. Concerning other particular cases, Bishops can dispense:

1° Sometimes in the law of a Superior. See n. 154, 159.

2° For making the Sacred rite from midday, and if great and urgent causes are present, but only by way of act, in private houses and in a private oratory.[4] - They also have a personal privilege, by which through themselves or through another they can celebrate in their own house and in any other outside their own habitation, while on the occasion of visitation or journey or in cases permitted by law they make a stay away from their diocese. Van de Burgt, *De Celebr. Miss.* n. 227, 228.

3° They can choose for themselves a confessor outside the diocese, provided he is their subject, and they can take him with them into diverse places; but if he is not a subject, he must be approved by his own Ordinary, not by the Ordinary of the place of confession. Cardinals can do the same, but at Rome only, although they can take elsewhere with them the one whom they have chosen.[1]

4° They can dispense from interstices for ordination.[2]

The special faculties of our Bishops, see p. LXX sq.

Notes to n. 1144 - note sequence 1. (1) L. VII. 84-92. (2) Trid. Sess. 24. c. 6. Ref. S. Alph. de Priv. n. 49 sq. L. VII. 429.
Notes to n. 1144 - note sequence 2. (1) De Priv. n. 55. (2) Ib. n. 56 sq. (3) Ib. n. 54. (4) S. C. C. Dec. 20, 1855.

APPENDIX II: ON THE VICAR GENERAL

1145. Notion of the Vicar General. - The Vicar General is he who is legitimately deputed to exercise generally episcopal jurisdiction in place of the Bishop, so that his acts are judged to be done by the Bishop.

It is said: 1° *to exercise jurisdiction*; for it does not belong essentially to the Vicar General that he be able to act in place of the Bishop in exercising the power of Episcopal order, although he may be distinguished with it.

It is said: 2° *To exercise generally*. But it suffices that his jurisdiction be morally universal; for several things either by law or by man, that is, by the Bishop, are excepted, or can be excepted. I said *several*, not all; for although a resident Bishop more probably is not held to constitute any Vicar, yet if he constitutes someone, he must constitute him not without any jurisdiction or with excessively restricted jurisdiction.[3]

It is said: 3° *In place of the Bishop, so that*, etc. Hence 1) from a sentence of the Vicar General appeal is not given to the Bishop (since the tribunal of each is one and the same), but to the Metropolitan; [4] 2) when the Bishop has died, or his jurisdiction has otherwise ceased, the jurisdiction of the Vicar likewise ceases.

1146. Power of the Vicar General. - I. The limits of his power. He can do the same as the Bishop, unless law expressly establishes otherwise, or the Bishop has reserved something to himself.

I say: *unless law expressly establishes otherwise*. But those things which the law did not wish to be exercised by the Vicar without the special mandate of the Bishop, according to Benedict XIV,[5] are approximately these.

1. To grant dimissorial letters for Orders outside the case in which the Bishop is staying in remote regions.
2. To confer benefices. "Yet he can," unless the Bishop has reserved this to himself, "give faculties to priests with care of souls," unless this is beneficial.
3. To take cognizance of greater criminal causes, and therefore to depose someone from Order or office,[2] or, according to Fagnanus,[3] to grant excorporation, or an exit, to a cleric. 4) To convoke a synod.[4] 5) To visit the diocese. 6) To absolve from episcopal cases, or from papal cases from which the Bishop absolves by ordinary right, not his own, but delegated, such as those which are enumerated in Trent, Sess. 24, c. 6, Ref.[5] Yet they can absolve from the papal cases concerning which n. 1733-1735, and from a light striking of a cleric; for these are reserved to Bishops or Ordinaries [de Priv. n. 46. 47]. 7) To remove irregularities from occult delict.[6] 8) To dispense in oaths, vows, diocesan statutes, the Breviary.

9. Those things which the Bishop can do only as Apostolic delegate, as, for example, to correct excesses of exempt Religious living outside cloisters.

10. To bring a sentence of excommunication, suspension, or interdict as a penalty of delict.[6] Yet he can bring it so that subjects obey him, for example to command under penalty of excommunication, suspension, or interdict, that the accused or a witness appear.[7]

11. To substitute for himself a delegate for the universality of causes; but indeed he can for one or several causes.[1]

II. How the jurisdiction of the Vicar General expires. - 1° By his own express renunciation, or at least tacit, as if the Vicar goes out of the diocese with the intention of not returning anymore.

2° By removal or revocation of him made by the Bishop; but it must be notified to the Vicar, for his acts performed before notification are valid.

3° By the natural death of the Bishop: but this as to causes which were delegated to him by the Bishop or by the Apostolic See only under the name of Vicar General; otherwise, if the delegation was made with his proper name.

4° By translation of the Bishop to another Episcopate.

5° By deposition or relegation (Smith, below under 8°) of the Bishop.

6° By renunciation of the Episcopate made by the Bishop and admitted by the Pope.

7° By legitimate entrance of the Bishop into some Religion.

8° By captivity of the Bishop. In what sense, see Smith, *Elem. of Eccl. Law*, n. 634.

9° The jurisdiction of the Vicar General expires when the jurisdiction of the Bishop is suspended through excommunication, suspension, or interdict.

The revocation of the Vicar General is valid, even if it is made without any cause.

That it may be licit, regard must be had for his honor; whence it must be done with great circumspection and with a grave and just cause: otherwise he can be reinstated through the Sacred Congregation of Bishops. Thus the same Sacred Congregation declared in Spalato, July 3, 1601, and in Trogir, Sept. 7 and Oct. 1649.[2]

ON THE ADMINISTRATOR OF THE DIOCESE WHILE THE SEE IS VACANT.

It belongs to the Administrator of the diocese, while the See is vacant, to govern the diocese. What chiefly he must beware in fulfilling his office, you have in the Plenary Council of Baltimore II, a. 99. But by whom he must be designated, and with what faculties, granted by the Holy See to our Bishops, he is endowed, whether in all Provinces of the United States, or in the Province of Baltimore (now of Baltimore and Philadelphia), Smith explains very well, *Elem. of Eccl. Law*, n. 638. His jurisdiction seems to expire at that very instant in which the Brief by which the new Bishop is constituted is shown to him, since this one, once it has been shown, can exercise the jurisdiction annexed to his dignity. Craisson, *Man.* n. 885.

PART THIRD: ON THE RELIGIOUS STATE

Preliminary Matters.

1147. ○ Besides the way of the commandments, through which all men must tend to obtaining eternal salvation, there is given the way of counsels or of special perfection, which is of mere counsel, and is proposed by God Himself to only a few chosen, who, bidding farewell to the world, lead life in monasteries.

Christ Himself teaches us this double 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 thou wilt enter into life, keep the commandments*. But to the same one, asking what was still lacking to him, He responds in v. 21: *If thou wilt be perfect, go, sell what thou hast, and give to the poor, and thou shalt have treasure in heaven; and come, follow me*.

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

Hence a triple class of men is established by reason of the means proposed for obtaining God, or a triple state of life, namely the state 1° of matrimony; 2° of celibacy; 3° of religious life. Hence also there is a triple grade of perfection; for celibacy, as St. Paul declared,[1] and the Council of Trent defined,[2] is more perfect than the matrimonial state; but religious life is, as is clear, the most perfect of all. The priestly state, although in dignity it is the most excellent of all, nevertheless by reason of perfection yields by far to religious life. But as God is wonderful in His saints, so also is He wonderful in the various modes by which He advances them to sanctity.

It must be treated 1° concerning those things which are common to all Religious; 2° concerning those things which are proper to Religious who profess solemn vows; 3° concerning those things which are peculiar to Nuns; 4° concerning the privileges of Regulars; 5° concerning Regulars dispersed by force; 6° concerning the condition of Regulars in our United States.

Notes to n. 1147. (1) 1 Cor. 7. 32-40. (2) Sess. 24. Can. 10.

CHAPTER I: ON THOSE THINGS WHICH ARE COMMON TO ALL RELIGIOUS

The things common to all Religious are: 1° the very nature or essence of the religious state; 2° the necessity of vocation to the religious state; 3° probation; 4° profession of the three vows according to some rule.

ARTICLE I: ON THE NATURE OF THE RELIGIOUS STATE

1148. ○ The religious state is a stable mode of living in common of the faithful, tending under a certain rule to the perfection of Christian charity, the three substantial vows of perpetual chastity, poverty, and obedience having been emitted, approved by the Church with solemnity attributed to the vows. Thus, from the Law today in force in the Church, De Angelis.[1]

Notes to n. 1148. (1) L. III. T. XXXI. sub 5°.

1149. Corollaries. - I. The religious state according to itself and as to its substance was immediately handed down and instituted by Christ the Lord; for He Himself is the author of religious perfection, handing down the evangelical counsels.

This state in the Church is necessary as to the said substance, because she herself must be holy also by external and public sanctity, since sanctity is one of the notes by which she is discerned from false churches. But this public sanctity cannot shine without profession of the evangelical counsels. - But it is not necessary if it is considered as to peculiar forms by which it is determined to a certain Rule and Institute.

Whence as to substance the religious state is of divine law counseling; as to forms it is of ecclesiastical law.

II. For the essence of the religious state there is required some cause inducing permanence or firmness; otherwise it would not be a state. This cause of firmness is the vow. But for the essence of the religious state, considered by divine law alone, solemn vows are not required, but simple vows suffice. For all conditions necessary for the substance of Religion are also had in simple vows, and "the solemnity of the vow by the constitution of the Church alone" (according to De Angelis[1] a little before the middle of the eleventh century, as he argues from Cause 27. q. 1. Can. 40) "was invented" (cap. unic. L. III. T. XV. in 6°). This is also clear from the Bull of Gregory XIII *Ascendente Domino*, of the year 1584.

III. Although solemnity of vows is necessary for the religious state today even from the law of the Church, nevertheless already from the time of the Council of Trent another stable mode of living was introduced into the Church, which would include the three substantial vows, but would lack solemnity of vows, since in it simple vows were emitted, and it came under the name Congregation. Indeed another also supervened, which would not indeed have the essence of the religious state required by Christ, yet would imitate its form and retain something from it, namely only the vow of

chastity, or the three vows, but temporary, or a similar mode of living without any vows; whence the former are called Congregations properly religious, the latter Congregations improperly religious (De Angelis L. III. T. XXXI. 6°). Religious Congregations are neither held by the laws nor enjoy the privileges of Regulars strictly so called, unless either the former were specially imposed on them or the latter were granted to them.

Therefore it is clear in what sense Congregations properly religious must be called such by ecclesiastical law, and in what sense not.

Notes to n. 1149. (1) L. III. T. XXXI. c. 18.

ARTICLE II: ON THE NECESSITY OF VOCATION TO THE RELIGIOUS STATE

1150. ○ It is certain that divine vocation is given, namely that by most benign providence God calls some before others to a more excellent and more perfect state, and at the same time bestows endowments and graces for rightly executing and preserving it, especially as to the ecclesiastical and religious state. For all things in the natural order are governed by God in the mode proper to individuals; therefore a fortiori in the supernatural order. Otherwise, for embracing and pursuing the more perfect state, special endowments and graces are required, which can be granted by God alone, the supreme dispenser. It is clear besides from various places of Sacred Scripture. Thus concerning Priesthood in particular the Apostle says:[1] *Neither does anyone take the honor to himself, but he who is called by God as Aaron.* ... Moreover the same must be said of religious life, which is a more perfect and much more difficult state. (s) p. 483.

Appendix annotation (s), to n. 1150. p. 444. col. 2. Among the Doctors it is controverted whether a special vocation, distinct namely from that general one by which Christ the Lord commends the evangelical counsels, is necessary for the religious state. Yet even those who deny the necessity of a special vocation universally admit these things: 1. There are those who by divine or ecclesiastical law are impeded (n. 1157) from taking up the religious state. 2. They sin who, led by an undue end, embrace this state; likewise those who know that there are lacking to them, with or without their own fault, those conditions of soul or body without which they either will not be able to observe, or in fact will not observe, the evangelical counsels or the rules of the special Religion which they are going to profess.

1151. Questions. - Query 1° Whether or how he sins who, feeling himself called to Religion, does not obey the divine vocation?

Resp. 1° Per se, rigorously speaking, he sins in no way, because divine counsels of themselves impose no obligation, since in this precisely they differ from precepts.

Resp. 2° Yet he can scarcely be excused from some fault on account of the danger of eternal salvation to which he commits himself. Indeed he would not be excused from grave sin who had been persuaded that this was the only means remaining for him of obtaining eternal salvation, that he flee from the dangers of the world.

But are those in a bad state who, morally certain concerning 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 doubtful that these expose themselves to a great danger of salvation; because by remaining in the world against the vocation of God, they deprive themselves of those special helps which the providence of God had prepared for them in Religion, and therefore

with difficulty they will resist the temptations of the world. Yet St. Alphonsus does not dare to bring a certain judgment on this; nevertheless he inclines much more to the opinion condemning this of mortal sin.[2]

Notes to n. 1151. (1) Hebr. 5. 4. (2) L. V. 78. v. Utrum.

1152. ○ Query 2° How does he sin who, not called, professes Religion?

Resp. He sins gravely if he clearly knew the defect of vocation, especially on account of the danger of salvation which he incurs while he undertakes obligations which morally he will not be able to satisfy. Fault will cease when he grieves over it, firmly proposing, grace having been implored, to fulfill the obligations of the state already undertaken.

1153. ○ Query 3° Whether those sin gravely who turn away sons, subjects, or any others from the religious state?

Resp. 1° Affirmatively, if they turn them away unjustly through threats, force, fraud, or importunate prayers; because they impede them from the attainment of a great good to which they have a right, and expose them to the danger of eternal salvation. When those turning away through threats, force, fraud are held to restitution, see n. 805. 3°.

Resp. 2° Affirmatively, for the most part, even if they turn them away only by prayers and promises; because this cannot be without grave damage to them. - Thus commonly with St. Alphonsus,[1] 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 prove their constancy, or on account of another just cause. But that cause can be judged just on account of which even the Superiors of the Order would not easily admit the candidate. Moreover even in proving the constancy of the younger, no small discretion is needed, lest the fragility of the candidate turn him away from a vocation otherwise true. Wherefore in this matter, to avoid illusions, one must stand by the counsels of a confessor or of an upright and learned man.

Query 4° Whether children entering Religion against the will or without the knowledge of parents sin?

Resp. Negatively, speaking per se, although in practice this ordinarily is not expedient, unless they rightly fear unjust vexation or impediment. The reason is that unless parents stand in the way for a just cause, children are altogether free concerning the choice of a state of life. - Recall the things said n. 425.

Notes to n. 1153. (1) L. V. 70.

1154. ○ Query 5° What are the signs of religious vocation?

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

1° 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 good character, in

a soul submitted to the yoke of obedience, in relatively sufficient knowledge, and in the absence of defects of body and soul which are opposed to the character of this life.

2° Inclination must be a) spontaneous, which generally arises from this, that the religious state is presented to the mind as congruent to one's own disposition, and suited to bringing about internal peace and happiness; b) constant, which therefore is not subject to frequent changes, notwithstanding otherwise some past delay arising from temptations of the devil or from a certain 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 c) must be right, namely proceed from a pure intention, from the mere desire of obtaining salvation more easily, of procuring the greater glory of God or also the salvation of souls, etc.

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

Note. - Doubt concerning vocation persisting after long probation through protracted examination and fervent prayer, and the matter having been submitted to a prudent confessor and to Superiors constituted by God, one must remain in the inferior state; for no one ought to ascend to the superior state unless he is morally certain of divine vocation. Thus in the opinion set forth n. 1150.

1155. ○ Query 6° To what is he held who has vowed religion?

Resp. Distinguish. 1° He who vowed religion in general, that is, not determining either Order, or place, or laxer or stricter discipline, is held by ordinary means to seek some one in which discipline flourishes, at least as to the more principal observances. - If he is rejected from that one, he more probably must seek another, because his vow is general, concerning some Religion.

2° He who vowed Religion in species is held to enter some house of that Order, and where he is rejected by one, he is held to use ordinary means so that he can enter another.

3° He who vowed it individually, determining the place in such a way that he does not intend another, if he cannot be admitted into the fixed house, will be free; because he bound himself under this condition only.[1]

Query 7° Whether one vowing religion sins gravely if, having entered, he departs?

Resp. Affirmatively, if he does not have a just cause; but negatively if he did not have the mind of professing, but only of trying. - If he is cast out as unfit, he must apply moderate diligence so that he may become fit for another; but if he has attempted this in vain, he commits no sin by remaining in the world, because the vow has been made impossible.[1]

Notes to n. 1155 - note sequence 1. (1) Cfr. L. IV. 222. L. V. 72. Notes to n. 1155 - note sequence 2. (1) L. V. 72.

ARTICLE III: ON PROBATION OR NOVITIATE

1156. ○ Novitiate is a mutual experiment, by which Religion, on the one side, tries the morals and qualities of the novice, so that it may see whether it is expedient to admit or reject him; and the novice, on the other side, tries the austerities and Statutes of Religion, and

his own disposition, so that he may see whether it is expedient for him to profess it. - Thus Billuart.[2]

1157. Questions. - Query 1° Who are not to be admitted into the Novitiate?

Resp. 1° On account of defect of mind, those who are not masters of themselves, as is clear of itself.

2° On account of defect of liberty.

a) Slaves, on account of the injury which would be done to masters.

b) Those joined in Matrimony, concerning whom it will be treated in the Treatise on Matrimony.

c) Bishops, even only confirmed, unless with the permission of the Supreme Pontiff, on account of the bond by which they are bound to their Church in perpetuity.[3]

d) Those professed in some Religion, unless either they are previously dispensed from the vows emitted in it, or they pass to a stricter Religion, that is, such that its actual observance, not merely its primary institution, is stricter. Yet this transition must not be made rashly or from levity, or with grave damage to the Religion to be left. Besides, the permission of the Superior or of the Pope is to be sought, and, in the case of a privilege granted to the Order which is being left for this, it must also be obtained. But transition to a laxer Religion cannot be made except with permission of the Supreme Pontiff; but to an equal one by the same permission, or also, but with just cause, by permission of the Superior.[4]

3° Those whose parents are in grave or extreme necessity would be admitted illicitly, though not invalidly, if they can assist that necessity without being exposed in the world to proximate and grave danger of falling into mortal sin. Only grave necessity of brothers or sisters does not impede admission; indeed dispensation from the vow of entering is also necessary for someone to be able to defer entrance for a long time on account of it. But parents would illicitly enter Religion if they had unemancipated children constituted in grave necessity or destitute of sufficient education.[1]

4° By natural law (concerning the dispositions of positive law, see n. 801. q. 4°), those burdened with debts would be admitted illicitly, if they were able to pay them in a notable part at least, and in a short time (say within two years), and without great difficulty or probable danger of sin or of losing vocation. - Thus St. Alphonsus[2] as more probable, although the opinion which denies absolutely and the opinion which affirms absolutely are also probable to him.

5° Those also would be admitted illicitly and most imprudently whom public acts show to have been accused or investigated before the secular court concerning some graver crime, unless they have been dismissed by the judge as innocent.[3]

6° Those are not to be admitted whose infirmity is such that they are not equal to bearing the burdens of common life and fulfilling the obligations of the Order.

7° Those would be admitted illicitly to the habit who had not sought and waited for a suitable time (three months) for testimonial letters both from the Ordinary of origin and from the Ordinary of the place in which, after the completion of the fifteenth year of their age, they stayed beyond a year, unless nevertheless the Institute which admits them has been dispensed by a special and non-communicable privilege from the Decree of Jan. 25, 1848,[4] in which this disposition is contained.

8° The prepubescent (n. 911), against the will of parents or guardians.

Notes to n. 1157 - note sequence 1. (2) De stat. rel. Diss. 4. art. 2. (3) L. III. Decret. T. XXXI. c. 18. L. I. Decret. T. VII. c. 2. Ib. T. IX. c. 10. (4) Craisson, Man. n. 2605-2614. Notes to n. 1157 - note sequence 2. (1) L. V. 66. 67. 69. 70. (2) Ib. 71. (3) Craisson, Man. n. 2635. (4) Corr. de Rome 1848. p. 13. 332.

1158. ○ Query 2° Whether clerics, especially those having care of souls, can be admitted to Religion without the permission of their own Ordinary?

Resp. Affirmatively, as is clear both from the unanimous opinion of the Doctors, and especially from the authority of Benedict XIV, Brief *Ex quo*, Jan. 14, 1747. Yet a priest exercising care of souls must make the Bishop more certain concerning his plan, lest the flock be left without guardianship. Besides, in the case in which the Church which the priest serves would suffer grave damage from his transition to Religion, the Bishop could recall him, even after profession, as is clear from the Brief just cited. - Which of our clerics are not absolutely able to enter Religion, see n. 374. 8°.

ARTICLE IV: PROFESSION ACCORDING TO SOME RULE

1159. Principles. - I. For valid profession there is required:

1° Aptitude of the one vowing, namely that he have no impediment which is judged substantial either from divine law, or from canon law, or from statutes confirmed by the Supreme Pontiff.

2° Consent and acceptance of the Prelate of the Order, or, where it is required, of the Chapter. (B) p. 477. But error concerning the substance, both on the part of the one professing and of the one admitting, makes the Profession void.

3° Liberty of the one vowing, that is, that Profession be made spontaneously, grave fear being excluded, or even reverential fear joined with importunate prayers often repeated, flatteries, command, or grave offense or indignation of blood-relatives continued for a long time, also with threats added concerning subsidies to be denied if he leaves Religion. For these things singly, or certainly joined together, considered with the condition of a rude and timid man, can induce just fear and invalidate profession; as Laymann teaches with others.[1] (l) p. 477.

II. From religious Profession is born the obligation, of itself perpetual, 1° of observing the vows; 2° of observing the rule; 3° of tending to perfection. I say: of itself perpetual; because, as we shall say below, it can either cease or be changed.

Notes to n. 1159. (1) L. V. 5 seq. L. VI. 1047. sq. Appendix annotation (B), to n. 1159. 2°. p. 447. col. 1. The Congregation on the State of Regulars, on Feb. 7, 1862, declared that the conventual Chapter must indeed be heard for the instruction of the mind of the Superiors; but that the Superior General, or his subdelegate, is by no means bound to stand by the resolution of the same Chapter. Bizzarri, Collect. p. 912. Appendix annotation (Γ), to n. 1159. II. p. 447. col. 1. "Profession is distinguished as twofold; one express, the other tacit. The former is that which is expressed by word, writing, or another sign sufficiently declaring consent. But the latter is that which is made neither by voice, nor by writing, nor by another sign, but is judged to be induced through one or more acts proper to those professed. - As regards religious, tacit profession has been abrogated (S. C. on the State of Regulars, June 12, 1858, n. XL. Cf. Bizzarri, Collect. p. 907). In monasteries of Nuns there can still be place for it, either by wearing the habit of the professed for the time required by law, c. 1, 3, de Regul. in 6°; and Clem. 2, de Regul.; or by involving oneself in acts proper to the professed. But that tacit profession be valid, besides age and novitiate, it is required 1° that the habit was taken, or the act exercised, with the consent of the Superior who can admit to Religion, or at least that it was done with him knowing and not contradicting. 2° That the novice know that tacit profession is induced through such an act or wearing of the habit. 3° That the act or

wearing of the habit be done with the mind of professing. 4° That the act or wearing of the habit be done freely and not by compulsion." Van der Velden-Piat, T. I. n. 241 (4).

§ I. On the Obligation of Observing the Vows

A) On the Obligations from the Vow of Poverty.

1160. ○ From the present discipline of the Church, the proper and necessary object of the vow of poverty is not 1) life, nor honor, nor reputation, nor knowledge, nor the right of conferring by election, presentation, or collation a regular benefice; 2) abdication of imperfect dominion (n. 590); but 3) dependent use, or only use of fact, of temporal goods, insofar as of themselves they are estimable by price (n. 675), is necessary. This is clear 1° from the fact that the possession of temporal goods estimable by price alone constitutes a man rich, in the proper sense of this word, and that from the lack of these alone he properly becomes poor. - 2° from those things which we taught with De Angelis n. 1149 under III; indeed also from the Pontifical Decree given by our Most Holy Lord Leo XIII for the Regulars of Belgium. - 3° from the fact that today there is no truly so-called religious Institute in whose rule independent use is permitted. Cf. Craisson[1] and St. Alphonsus.[2] Hence:

1161. ○ I. The following are not comprehended by the vow of poverty:

1. Manuscripts, whether one's own or accepted from another. For they are offspring of the intellect, which do not fall under the vow of poverty. Besides, common usage bears this, and it is clear from the Brief *Postulat* of Benedict XIII, year 1724, and the Declaration of Clement VIII. The continuator Tournely with others excepts if the contrary has been defined in the constitutions of the Order.[3]
2. Relics, since they are spiritual things.
3. Paintings, although offspring of the intellect, nevertheless cannot be made by a Religious, while the vow is preserved, with the intention of keeping them for himself, nor even (if they are made either by a lay-brother at the time in which he is held to work for the convent, or by any professed one with colors, etc. handed over by the convent) with the intention of giving them to outsiders.[4]
4. Peculium, that is, a temporal good destined for the uses of an individual and not for the common uses of the monastery, and this not only when necessaries are not supplied by the community, as is clear of itself; but also when they are supplied, provided in this case 1° it already exists by custom; 2° it is held dependently on the Superior, and therefore 3° with a mind prepared to renounce it at the nod of the same Superior; and 4° it is kept either in common, or in the cell even of the religious, but with permission of the Superior, and not locked with a key or so hidden that it is withdrawn from the free disposition of the Superior; 5° it is applied to uses neither illicit nor superfluous. - The first is required so that the prescription of Trent,[1] by which peculia are more probably prohibited,[2] may cease; the second, third, and fourth, that use of right, or independent use, may be guarded against; the fifth, as will be clear from what must soon be said.

5. An ecclesiastical benefice, for example an Episcopate, legitimately conferred. Namely he will be able to administer it and to dispose of its revenues independently of the Superior, since the thing is annexed to a spiritual thing; yet he cannot do this licitly except for his own support and pious uses.[4]

Notes to n. 1161. (1) Manuale, n. 2477-2485. 2749. (2) L. V. 14. (3) Ib. (4) Ib. Cfr. Salm. Tr. XII. c. II. n. 197-199.

1162. ○ II. All acts of use independent of the rule or Superior, concerning temporal things, are comprehended by the vow of poverty, and therefore a Religious sins:

1. If he spends or lends something from things granted to him for use into another use without permission, or culpably loses, destroys, or makes it worse.[5]
2. If he accepts anything without permission, whether as a gift, or as a loan for consumption, or as a loan for use, or as a properly so-called deposit (n. 924), or refuses what is owed to Religion from a title of justice, for example inheritance, wages. Resolve otherwise concerning gifts, since the vow of poverty does not oblige one to acquire for Religion. Yet he who without just cause refused gifts of this kind would sin against charity toward the convent by impeding its good.[6]
3. If he buys anything without permission, even for the community.
4. If he asks or accepts something from an outsider to be spent on pious works not determined by the donor in the lowest species.[6]
5. If he hides something in such a way that it is withdrawn from the free disposition of the Superior.[7]
6. If a Procurator or Superior expends anything otherwise than the rule, the will of the Superior, custom, or reasonable cause permits. The reason is that these are not masters of common goods, but only administrators.[1]

Notes to n. 1162 - note sequence 1. (1) Sess. 25. c. 1. de Regul. (2) L. V. 16. (4) Ib. n. 19. (5) L. V. 20. (6) St. Alph. Opere Ascet., Lett. e Istr. Circ. Oct. 1757. Tom. IV. p. 380. Cf. Vind. p. 372. - Ed. 2. T. I. p. 420. (7) L. V. 23. Notes to n. 1162 - note sequence 2. (1) L. V. 28.

1163. Questions. - Query 1° What permission is required and suffices so that use is not independent?

Resp. to 1st. There is required: a) True permission, that is, not extorted by fear nor obtained by fraud, for example by feigning necessity. b) Reasonable permission, that is, not for illicit or vain uses, nor for superfluous, precious things unbecoming the religious state. For the Superior cannot give greater permission than he himself has; but he, since he is not master of the goods of Religion, cannot expend them at his own discretion and uselessly, but only for the necessity and utility of Religion.[2] Hence the opinion altogether pleases St. Alphonsus (although he does not dare to condemn the opposite) teaching that such permission is not merely illicit, but also invalid, except if it is a question either of superfluous things without notable excess, because otherwise the matter would be exposed to great scruples, or of a small sum to be exposed to a licit game, that is, not merely fortuitous.[3]

Resp. to 2nd. Tacit permission suffices, and more probably also permission presumed from certain probability of future concession; for each takes away independent use. Yet such presumption

ordinarily is not without venial fault, because for the most part Superiors, at least as to the mode, are unwilling. (A) p. 477. Permission sought, but unduly denied, unless there is danger of grave damage in delay, does not excuse from transgression of the vow.[4]

Hence, that is, from presumed permission, a religious can assist a poor man laboring under great poverty when access to the Superior does not lie open; he can bestow moderate alms on the poor if with due permission he is living outside the convent; give them something edible when he is in the convent; make light donations to friends and blood-relatives as a sign of gratitude or due friendship, or for conciliating love toward Religion; make remunerative donations from goods granted to him for use, indeed give more than he received, up to an excess of a fourth part, because gratitude demands that more be returned than had been accepted; more probably also give those things which by living more sparingly he withdrew from himself from things granted to him for use, if a fixed quantity is assigned to him in such a way that neither the monastery is held to furnish more, nor he himself to render an account of what was assigned;[1] unless the contrary will of the Superior is clear; accept from outsiders something to be handed over to the Superior;[2] buy a thing if he knows that it will be very pleasing to the Superior and easy recourse to him is not open, for example on a journey; generally accept or expend something when the Superior cannot be approached and the occasion is urgent;[3] give something to Peter, if he has permission of giving to Paul, unless the Superior gave permission for Paul on account of a peculiar reason, being going to deny it if it had been sought for Peter.[4] Yet presumption would be illegitimate in a religious who, while traveling, turned aside to other places outside the way to see curious things, unless perhaps the distance were very short and no or very slight expenses had to be made, or unless in the particular case the permission of the Superior could rightly be presumed from the nature of the cause.

Notes to n. 1163. (2) L. V. 28. (3) Ib. n. 30-32. (4) Ib. n. 18. 33. Appendix annotation (Δ), to n. 1163. R. to 2nd. p. 448. col. 2. St. Alphonsus adds, L. V. 18: "Yet Elbel, t. 2. p. 632. n. 644, and Lugo, n. 128, with Suarez and Sanchez, warn that after such acceptance a religious is held, if he conveniently can, to manifest the matter to the Prelate, so that thereafter he may lawfully retain it. The same" (namely, that presumed permission suffices) "Elbel says, p. 631. n. 640, if the Superior is accustomed easily to grant permission for certain things, especially things to eat and drink; but in well-ordered monasteries such permissions are not usually granted everywhere, as Lessius says, l. c., except for very small things and those frequently occurring."

1164. ○ Query 2° What matter must be judged grave in violation of the vow of poverty?

Resp. 1° In sins which are at the same time against religion and justice, generally speaking, that is to be held as grave matter which constitutes mortal sin in theft.[5]

Moreover, that one may judge concerning the gravity of matter in thefts of this kind, it must be noted that moderately wealthy monasteries are commonly equated with quite wealthy private owners. Hence generally the same measure as for these 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 spends the same things on outsiders, because thus they remain at home. Greater also in minute thefts, which besides, when a notable interval has intervened (see n. 698. q. 6°), do not coalesce into grave matter. Greater again in eatables, provided they are not reserved and the damaging of the convent is not excessive and in a more extraordinary and more precious thing.[6]

Resp. 2° In sins committed against Religion alone, or against the vow alone, the difficulty increases, and there is greater disagreement of Theologians. Yet more commonly they require no greater matter for mortal sin than in the preceding case, where justice is violated; because the act of proprietorship seems to be of the same gravity. Yet not improbably some grave Doctors require a greater quantity for grave sin. - Thus Elbel,[1] the Salmanticenses.[2]

But commonly they agree that a much greater value is required for sinning gravely when gifts are accepted from outsiders to be spent on others; because then the act of proprietorship is much less than if these were retained for one's own use.[3]

But generally 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 so hides it that it cannot be found by the Superiors; because then the Prelate is not judged unwilling as to the substance, but only as to the mode.[4]

As to things accepted or handed over by loan for consumption or loan for use without the permission of the Prelate, generally speaking he will not sin gravely against the vow of poverty if he gives the thing to outsiders for his own use or even other uses by loan for consumption or loan for use, provided he is certain of recovering them and does not therefore inflict grave damage on the Community, which for this reason, for example, lacks the use of a thing gravely necessary here and now. Much less will he sin gravely if he lends by loan for consumption or loan for use things granted to him for use to other religious of the same monastery. The reason is that although he posits some act of proprietorship in these things, nevertheless he does not sin gravely, according to the common interpretation of Theologians.[5]

Notes to n. 1164. (1) L. V. n. 19-23. (2) Lacroix, L. 4. n. 118. (3) Ib. n. 109-111. (4) Ib. n. 119. (5) L. V. 24. (6) Ib. n. 24. 25.

1165. ○ Query 3° Whether a religious who has violated the vow of poverty is held to restitution, and whether one unable to restore is held to withdraw something from himself from the things granted to him for use?

Resp. to 1st Affirmatively, if by violating the vow he also violated justice at the same time. The reason is clear.

Resp. to 2nd. The negative opinion is truly probable to St. Alphonsus[6] if the things granted for use are necessary. The reason is that it is not to be presumed that the Superior wishes to oblige the subject to this with so great an inconvenience.

Notes to n. 1165. (1) n. 646. (2) c. 6. n. 12. (3) L. V. 24. (4) L. V. 24. (5) Ib. n. 27. (6) Ib. 26.

1166. ○ Query 4° What is the difference between the vow and the virtue of poverty?

Resp. The vow regards only external acts of proprietorship; but the virtue also extends to internal affections of the heart. For the object of the vow is to despoil the Religious externally of temporal goods. But the virtue has as its end wholly to cut away every inordinate affection of the heart toward earthly things. Therefore the vow of poverty is like the means to the virtue, which is the end to be obtained. This being posited, everyone sees that the virtue of poverty extends much more widely than the vow; for as often as someone infringes the vow, at the same time he wounds the virtue also; but not vice versa.

I said that the vow affects only external acts of proprietorship; yet the vow could be violated by an internal act which regarded and touched an external act, namely by the desire of acting externally against the vow; since desire puts on every malice and species of the external act, as was said n. 228.

B. On the Obligations from the Vow of Chastity.

1167. ○ 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, namely pleasures of the body and of the senses.

Its object embraces two things, namely those things which by natural and divine law are already prohibited, and also those things which could be done licitly in legitimate matrimony. Therefore this is the efficacy of the vow of chastity, that what otherwise could be licit becomes illicit for the Religious; but those things which are prohibited to all, he must avoid from a double obligation, namely of chastity and of Religion.

1168. Questions. - Query 1° Whether sins of lust even merely internal are opposed to the vow of chastity?

Resp. Affirmatively. 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 wounds chastity, he incurs a double guilt, namely of lust and of sacrilege.[1]

1169. ○ Query 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 entirely the same as against the Sixth and Ninth precept of the Decalogue, namely 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 lust, nor can the fault be light except from imperfect consent, according to the things said n. 484, 485.

1170. ○ Query 3° Whether or what difference there is between the virtue and the vow of chastity?

Resp. 1° No difference is given by reason of object, since the vow extends as widely as the virtue itself. Yet 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. Therefore the vow can sometimes be violated without the virtue itself being wounded.

Resp. 2° 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.

C. On the Obligations from the Vow of Obedience.

1171. Principles. - I. A Religious from the vow of obedience is held to all things which the Superior prescribes according to the rules and constitutions of the Order, whether directly and expressly, or indirectly and implicitly.[2] Yet that there be sin against the vow, it is required that the Superior truly prescribe, and not merely advise; and this indeed will be clear from the words, mode of speaking, and various circumstances of things.

II. The Superior has the right of prescribing 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 to be fulfilled rightly, or to its right administration. The reason is that a religious binding himself to observing the special constitutions of the Order obliges himself to all those things which are wisely established or prescribed for obtaining this end.

III. A Religious by force of his vow is not held to obey a Superior prescribing a thing a) impossible, or b) evidently illicit (as to reveal a secret which he is not held to reveal from another reason), or c) gravely harmful to himself. - And indeed 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 foreign to the mind of Religion, and heroic acts commonly and implicitly do not fall under a vow, just as they do not fall under a precept. Yet except if it is a question of offices to be fulfilled within the limits of religious life, for example of caring for pestiferous religious of the same Order, etc.

Hence a subject is not held to obey a Prelate commanding that he walk upon waters, etc.; but if examples are reported by which it is clear that such obedience was approved by God and confirmed by miracles, it must be said that then the divine good pleasure had been manifested by a singular and supernatural light both to the one prescribing and to the one obeying.

Notes to n. 1171. (1) L. V. 37. (2) Ib. 38.

1172. Questions. - Query 1° What difference intervenes between the virtue and the vow of obedience?

Resp. The same as was indicated above n. 1166 concerning poverty; namely the object of the vow is the external execution of the mandate of the Superior, while the virtue reaches even to internal submission, and effects perfect obedience itself.

But not only sins against the vow, but also against the virtue, must be carefully avoided by a Religious; and this indeed is usually wounded more frequently. For it happens (would that it were more rarely!) that a subject indeed obeys the mandate of the Prelate integrally by external action, but with a reluctant, sad, and bitter will. Then indeed, although he satisfies the vow, yet he recedes far from the virtue.

Therefore a Religious disobedient to a Superior truly prescribing more probably[2] commits a double sin, 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 living a common life under the same Rule without the bond of vows, the disobedient are not exempted from sin if they are rebellious against Superiors, but they commit one sin.

1173. ○ Query 2° Whether a religious is held to obey in doubt whether the thing prescribed is licit, or exceeds the power of the Superior?

Resp. Affirmatively, because then presumption favors the Superior. Besides, the opposite opinion would disturb order in religious families. Except if the thing prescribed is either very difficult, or exposes the subject or a third party to danger of grave damage, provided that in this double case the subject acts from an opinion solidly probable. The reason is that then the morally certain right of the subject prevails over the uncertain right of the superior.[1]

1174. ○ Query 3° When does a religious sin gravely against the vow of obedience?

Resp. He sins gravely in the following cases, which rarely occur, namely: 1° when he refuses to obey in grave matter a Superior prescribing in virtue of holy obedience, or in the name of Jesus Christ, or through other similar formulas, which must be used very rarely by Superiors; 2° when to a Superior prescribing he responds: I do not wish to obey, I do not wish to do it, I will not do it, or some other similar thing which smells of formal contempt of the authority prescribing; 3° when from disobedience there follows grave scandal of others, whether of subjects or of secular persons, or grave inconvenience either for the Community or for others, for example for the salvation of souls, etc.

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 are to be reputed as venial. - Much more rarely still do sins committed against the virtue alone become mortal. - But a Rule ordering obedience in all things is to be understood of the perfection of obedience, not of obligation from the vow.[2]

1175. ○ Query 4° To whom must obedience be given?

Resp. Obedience must be given not only to greater Superiors, but also to lower ones, or ministers, or superiors prescribing from the mandate of Superiors, since the authority which enjoins the mandate is the same.

Query 5° How must obedience be given?

Resp. That the full perfection of obedience may be clear, obedience must be given: 1° from a supernatural motive, as the Apostle prescribes:[1] *Not serving to the eye, as pleasing men.... Serve the Lord Christ*. - 2° Cheerfully, or with joy and a willing soul: *For God loves a cheerful giver.*[2] - 3° Promptly, that is, either immediately, or at the prescribed time, and with due care, without sluggishness. - 4° Entirely, or by completing the whole prescribed work.

Notes to nn. 1175-1186 - note sequence 1. (1) Bouix, T. II. p. 576. (2) L. V. 40. (3) Ib. (4) T. II. p. 549, 550. (5) L. V. 42. (6) Bouix, T. II. pp. 549. 550. Notes to nn. 1175-1186 - note sequence 2. (1) L. V. 43. 44. H. A. Tr. XII. 17. (2) Ib. n. 73. Notes to nn. 1175-1186 - note sequence 3. (1) L. V. 40. (2) L. V. 41. (3) L. V. 42. Notes to nn. 1175-1186 - note sequence 4. (1) De Syn. L. XIII. c. XI. n. 16 et seq. Notes to nn. 1175-1186 - note sequence 5. (1) Craisson, Man. n. 1090, sq. (2) S. C. Episc. et Reg. May 6, 1864. See Acta, Vol. I. p. 449 sq. (3) Craisson, Man. n. 1091. Notes to nn. 1175-1186 - note sequence 6. (1) Benedict XIV, C. Emanavit, Apr. 29, 1755. Notes to nn. 1175-1186 - note sequence 7. (1) Cfr. Gury, Edit. Rom. 1872. T. I. p. 578. Note (K). (2) Trid. Sess. 25. c. 15. de Regul. (3) Billuart, de stat. rel. Diss. 4. a. 2. (4) Craisson, Man. n. 2651. (5) Ib. n. 2652-2655.

§ II. On the Obligation of Observing the Rule

1176. Questions. - Query 1° How great is the obligation of the rule?

Prelim. Under the name of rule in this question also come Constitutions or Statutes which proceed from the Prelates alone or the Chapters of Religions.

Resp. 1° "Rule ... is not mere counsel," says Suarez; since violations of rule can be punished by the Superior. See Bouix.[3]

2° There can be a rule which obliges under mortal sin, or under venial sin, or only to penalty.

"If the rule obliges under sin, its transgression is against the vow and sacrilegious; the reason is that such a rule is not less preceptive than the voice of the Superior; ... therefore ... a Carthusian, for example, eating meats, or a Franciscan not fasting on Friday, sins against obedience and against temperance." - Thus Busembaum apud St. Alphonsus.[4]

3° If in the rule it is expressly said that it obliges as much as it can, its violation will be a mortal or venial sin according as the matter is grave or light; because the rule is not less obliging than the voice of the Superior, and the Superior can oblige according to the gravity of the matter.

4° Rule of itself does not oblige even under venial sin if this is declared in it. But if the rule is altogether silent concerning this, it is disputed. The opinion is to be preferred, says D. Bouix after Suarez, which holds that the rule then does not oblige under grave sin, and that it must be discerned from circumstances and from the interpretation received in each Religion whether it obliges under light sin or only to undergoing penalty:[1] but if someone from a good end transgresses some rule, for example of silence so that he may console a sad companion, he in no way sins.[2]

Yet several Doctors rightly note that transgressions of this kind rarely lack every fault, on account of negligence, contempt, or another inordinate affection; indeed he would sin gravely who frequently and almost by custom transgressed the rule, gravely disturbing religious discipline, for example if he were never willing to observe silence, nor to pray, nor to walk modestly; if he were to enter the rooms of all the religious, and transgress similar statutes of Religion.[3] - He also sins gravely who infringes the rule from formal contempt of the Superior, as, for example, that he may show the Superior to be despised by him and held as nothing; likewise if he does this from hatred against Religion or its persons, or from the will of resisting the Prelate; likewise if he exposes himself to the proximate danger of falling into mortal sin, or foresees that he will for this reason be expelled. But if someone proposes never to observe the rule, it can scarcely happen that contempt is not present. Thus Suarez apud D. Bouix,[4] and St. Alphonsus.[5] - But the mere frequency of infractions does not seem sufficiently to prove contempt, since this frequency can arise from great sloth, in which nevertheless the slothful man can still hold the rules, Superiors, and Religion in great esteem.[6]

1177. ○ Query 2° Whether those professed according to a mitigated rule are held to reformation if it is introduced?

Resp. Affirmatively, if the reformation is made through statutes at least indirectly pertaining to the mitigated rule, or is necessary for the conservation of the Order, for example because with the present observance either very few strive to arrive at perfection, or the religious live with scandal of secular persons, or the essential vows and other statutes of Religion would not otherwise be observed. Otherwise negatively, because profession is made according to the rule, whether primitive

or mitigated. Thus as certain, if the mitigation was introduced by the Pope; as probable, if by custom.[1]

1178. ○ Query 3° Whether a Prelate gravely sins at some time by neglecting to correct light defects of subjects?

Resp. Affirmatively, with St. Alphonsus[2] and the common opinion against Lorca, in the case in which there were several defects and such (for example concerning silence, fasts, etc.) that they can relax discipline: whence concerning these he must inquire in order to correct them, yet without excessive solicitude: sometimes prudently dissembling, if the defects do not bring scandal, or if he foresees that the subject will become worse from correction, or if a more opportune time must be awaited. - But just as the Superior is held to correct, so he who has the office of Zelator is held to warn him concerning the transgressions of others.

Notes to n. 1178. (2) L. V. 46.

§ III. On the Obligation of Tending to Perfection

1179. Principle. - A religious is held, not indeed to be perfect, but to tend in some way to perfection.

I say: 1° He is not held to be perfect, as a Bishop, who by force of his duty is obliged to acts of perfection, for example to laying down life for the sheep, since a religious per se, or by force of his state, is not held to acts of this kind.

I say: 2° He is held in some way to tend to perfection. For obligation to the evangelical counsels implies obligation of tending to perfection, since once these are observed, by that very fact you tend to this. For by exercising himself in these counsels, on the one hand he removes from himself the obstacles of charity or perfection, namely the threefold concupiscence, of the eyes by poverty, of the flesh by chastity, and the pride of life by the exercise of humble obedience; but on the other hand the observance of the same counsels disposes man so that he may become wholly God's, by handing over to Him all the things which he has, namely the goods of fortune by poverty, the body by chastity, the soul by obedience.

1180. Questions. - Query 1° By what means is a religious held to tend to perfection?

Resp. 1° He is held to tend primarily through the essential means of the religious state, namely through the observation of the three vows of poverty, chastity, and obedience.

Resp. 2° 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 the religious is judged to omit the rules from contempt when he transgresses them with the mind of not subjecting himself to them or to his Prelates; or if he holds them as empty.[1]

1181. ○ Query 2° When does a religious sin gravely against the precept of tending to perfection?

Resp. In this he offends gravely: 1° If he infringes the vows very often in a grave matter, as is clear; because he omits means essential and consequently altogether necessary for preserving this obligation. - Thus all. 2° If he generally transgresses the rules from contempt, as has just been said.

But otherwise, if he violates them led by concupiscence, or because he thinks 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 set aside, does not exceed venial sin. - Thus expressly St. Alphonsus.[2]

1182. ○ Query 3° Whether a religious sins gravely who intends to observe only the mandates obliging under grave obligation, and to care in no way concerning the rest?

Resp. The denying opinion is the more common, and to St. Alphonsus[3] the more probable. The reason is that by the very fact that the religious wishes to fulfill those several things which oblige under grave obligation, he already tends to perfection, since he wishes to fulfill several things which with respect to others do not oblige, but are of mere counsel.

Moreover the Holy Doctor rightly notes that a religious so disposed can be living in grave danger of sinning mortally under other heads, for example by reason of danger of transgressing the vows, or of inflicting grave damage on Religion as to discipline, etc.

Notes to n. 1182. (1) L. V. 47. (2) Ib. 40.

§ IV. By What Reason the Obligations Existing from Profession Cease or Are Changed

1183. ○ Although obligations existing from valid Profession are by their nature perpetual, yet they can cease, or even be changed.

They cease by dispensation of the Supreme Pontiff, or of him to whom this power has been given by the Supreme Pontiff, for example through the Rule. This is clear from those things which we said in the Treatise on Laws n. 158 and on the Second Precept n. 391. - Indeed even in solemn vows the Supreme Pontiff can dispense for a most grave cause. The reason is that solemnity of vows was instituted from ecclesiastical Law alone, as is clear from the Extravagant of John XXI, tit. 6, and from the bull *Ascendente Domino*, in which Gregory XIII says: "We considering that the solemnity of the 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 that by which the former differ from these is of mere ecclesiastical institution. But according to all he can dispense in simple vows. Therefore, etc. This is also clear from various examples related in ecclesiastical history, that several Supreme Pontiffs used power of this kind. Especially in most recent times Pius VII granted several dispensations of this kind to solemnly professed monks and nuns for revalidating marriages sacrilegiously entered.

1184. ○ Change in obligations existing from profession can happen in three ways, namely: 1° through ejection from Religion, in which case those ejected are undoubtedly bound per se by both the substantial vows of Religion and the other peculiar vows of their Order, yet in such a way that the vow of chastity indeed must be guarded by them without change, but the remaining vows of poverty, obedience, and any others annexed to their profession undergo a certain moderation in use and practice itself, which is adapted and congruent to the peculiar circumstances of each; but they must be subject to the jurisdiction of the Ordinary of the place and obey his commands. Cf. Benedict XIV;[1] 2° through transition to another Religion (n. 1157. 2°. d); 3° through indult of

> secularization, which sometimes for a just cause is granted by the Supreme Pontiff, yet for the most part with the caution that, as far as can be done, the three vows emitted be observed, and that some trace of the religious habit be continually worn in the world. - But a Religious who is assumed to the Episcopate is not by that very fact released from the vows (since personal vows accompany the person), although their observance is modified under these circumstances. For the one promoted can legitimately acquire goods; but he acquires the use for himself, and the property for the church over which he presides and of whose goods he is dispenser. Likewise the vow of obedience does not cease, since he obtains the Supreme Pontiff as Superior.[1]

As regards the Rule, a regular Bishop, according to the prescription of the Constitution of Benedict XIII *Custodes*, is held to observe the rules of his Religion which determine the matter of the vow of poverty; likewise he is held to observe other rules and observances not repugnant to Episcopal dignity and office, with the same obligation, grave or light, by which he was held before he attained Episcopal dignity: yet in such a way that in particular cases he can prudently bring judgment whether they agree with dignity and office.[2] But he is held to recite the divine Office according to the rite of his diocese.[3] Say almost the same concerning observance of the Rule concerning a regular promoted to a parish. (t) p. 483.

Appendix annotation (t), to n. 1184. p. 454. col. 2. A regular Bishop is held to retain the habit of his Religion as to color, not as to form. Except Canons Regular of St. Augustine, regular clerics, and universally those who have emitted only simple vows. Ferraris, V. Episcopus, art. VII. n. 62. Th. C. T. III. 65.

CHAPTER II: ON THOSE THINGS WHICH ARE PROPER TO RELIGIOUS WHO PROFESS SOLEMN VOWS

1185. ○ I. The things especially altogether proper to solemnly professed Religious are these:

1° Perpetuity of obligation such that it is dissolved only by an extraordinary way, for example through the Supreme Pontiff and only on account of a most grave and public cause, and most rarely.

2° Inability to contract matrimony validly, and dissolution of matrimony contracted but not consummated, since a simple vow of chastity of itself neither dissolves a contract nor invalidates one to be contracted, but only renders it illicit.

3° Exemption from the power of Ordinaries, or liberty from the power and jurisdiction of the Ordinary with immediate subjection to the Apostolic See; and this exemption is not acquired by Congregations of simple vows except by special communication of the Holy See. - But although these Congregations are subject per se to the Bishop, nevertheless they are subject only to his jurisdiction, and indeed excepting the Institute, in whose form and rule consequently he can change nothing. - I said: only to his jurisdiction; for economic and dominative power (that is, that which is from the vow) pertains to the Congregation itself. Hence, for example, elections of Superiors, admissions and expulsions of subjects, etc., pertain to it.[1]

4° Incapacity of dominion in particular, or with respect to the individual. I say: in particular, for the Friars Minor of the Observance and Capuchins (but these alone) cannot possess immovable goods even in common.

Hence all gifts which are made to solemnly professed Religious are by that very fact acquired for the Monastery, not excepting legacies and inheritances, from the very well-known principle of Canon Law: "Whatever a Monk acquires, he acquires not for himself, but for the Monastery." This principle also holds 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 can accept and acquire legacies and inheritances, although they cannot dispose of them without permission. As to other donations, they fall to the Monastery, unless they are made specifically by regard to the private person and not insofar as Religious. But then the Religious cannot accept without at least presumed permission, or under the condition of permission to be obtained.

But a Religious not solemnly professed retains direct dominion, and this dominion extends: 1) to temporal goods which he possessed before the vows; 2) to fruits or revenues of the same goods; 3) to those things which come to him by law without a new acceptance, as paternal inheritance, legacies, etc.; 4) to all goods which from parents, relatives, friends ... he accepts with permission of Superiors. Yet if these are consumable by use, they must be applied to the common use of the monastery according to custom, at least generally speaking.

5° Papal enclosure, without which a monastery with solemn vows cannot exist, although with it there can also exist a monastery in which simple vows only are pronounced.[1]

I said: especially these are the things. For:

1186. ° II. There are some things so proper to them that, although they are also found in very many Institutes of simple vows, nevertheless they are not necessary in all. Of this kind by common law are:

1° That the Novitiate (unless it is a question of places of heretics, in which by legitimate custom or dispensation of the Supreme Pontiff the contrary obtains) be made in habit; and last for a year, to be computed from the habit having been received,[2] and that year a) so entire that neither a day, and in the opinion of many, neither a quarter nor even a moment be lacking, and in a bissextile year one day be added;[3] and b) so continuous (or not interrupted) that it is not morally repugnant to probation. But Profession made otherwise is null.[4] - But interruption certainly is not had from sickness which prohibits from exercises, unless it was insanity; nor from violent abduction from the Novitiate, for example in a time of political disturbance, or of violent ejection; nor from a journey undertaken with the Superior approving, for example for managing his affairs; nor from dismissal to which a false accusation gave occasion.

Interruption certainly is had when someone, the habit having been laid aside and with the mind of not returning, goes out from the Novitiate. (There are those who deny that the Novitiate is interrupted when someone, the habit being retained, or indeed laid aside, but only for a few days, for example three or four, goes out, because interruption after the greater part of the Novitiate has already been completed would seem harsher. To decide an occurring case belongs to Superiors); likewise when someone by his own authority goes out of the house of probation in which he began the Novitiate, and passes to another house or province of the same Order, unless nevertheless this was done from levity and only for a few days; finally when someone passes to another Order.[5]

2° That donations and renunciations, even sworn, which are made by those entering Religion, be void unless they are made with permission of the Bishop or of his Vicar, within the two months nearest before profession, and profession afterwards follows. - Thus Trent, Sess. 25. c. 16 de Regul. The renunciation of a benefice is comprehended by the same Tridentine decree, and it also remains suspended.[1] The end of this decree is to remove from Novices the necessity of emitting profession; and so its disposition has place only in donations and renunciations which are made by regard to, or from the impulsive cause of, entrance, or under the condition of profession to be emitted; but not in others which are not made with that mind, or which do not prejudice liberty of going out, for example in a small donation; in a codicil; in a testament; in a donation *mortis causa*; for these are revocable up to profession.[2] Trent excepts the Society of Jesus from this decree of its own. The same Trent, in the cited place, under penalty of excommunication on givers and receivers, prohibits that during Novitiate anything from the goods of the novice be handed over to the monastery, and commands that to those departing before profession all things must be restored, expenses nevertheless for food, clothing, and other necessary and customary things being deducted, which those entering brought in and which were theirs.

3° That, if it is a question of men, conversi and laymen not emit solemn vows before the completion of the twenty-first year of age, Clerics before the sixteenth; nor these before the nineteenth, those before the twenty-fourth year, emit simple vows.[3]

4° That he who has been professed nullly, once five years have elapsed from the day of profession, can no longer make reclamation, unless from a just cause he has been restored *in integrum* by the Supreme

Pontiff.[4]

Notes to n. 1186. (1) Coloss. 3. 22. 24. (2) 2 Cor. 9. 7. (3) De Regul. T. II. p. 543. 548. (4) L. V. 41.

1187. ○ III. From the Decree of Pius IX promulgated through the encyclical letters of the S. Congregation of Regulars given to the Superiors of Religious Orders, March 19, 1857, religious men of those Orders in which solemn vows are emitted, in the future, the novitiate having been completed, emit only simple vows, at least for three years; then they are admitted to solemn vows, if they are found worthy by their Superiors. But for just causes solemn profession can also be deferred longer, although not beyond the completed age of twenty-five years.[1]

But from the declarations of the S. Congregation of Regulars given on Feb. 25, 1859, etc., and pertaining to the aforesaid decree, the simple vows in 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 by the 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 can be dismissed on account of infirmity arising after profession of simple vows. Moreover the professed of these vows become participants in all graces and privileges by which the solemnly professed enjoy in the same Order.

Notes to nn. 1187-1189 - note sequence 1. (1) Trid. Sess. 25. c. 17. de Reg. Const. Pii V. Etsi mendicantium. (2) Bouix, de Reg. tom. I. pp. 641-648. (3) Craisson, Man. n. 2733. sq. Notes to nn. 1187-1189 - note sequence 2. (1) Varceno, p. 188. (2) In C. Porrectum, de Reg. Bouix, de Regul. t. I. pp. 611-616. (3) Craisson, Manuale, n. 2608. (4) L. V. 8. II. Craisson, Manuale, n. 2721. (5) Clement. L. III. T. X. c. 2. Notes to nn. 1187-1189 - note sequence 3. (1) Bouix, de Regul. T. II. pp. 393, 394. (2) Ib. p. 396. (3) Craisson, Man. n. 2928-2932. Notes to nn. 1187-1189 - note sequence 4. (1) L. V. 51. 52. (2) Ib. 53. 54. (3) Craisson, Man. n. 3043. (4) L. IV. 1032 sub 2. L. V. 58. 61. 1. (5) Traite de l'etat relig., Append. Art. 2. § 4. Vol. II. pp. 202. 203. (6) S. C. Ep. et Reg. year 1854. See Analecta, 4th Series, Col. 1325. 1326. (7) L. V. 60-64.

CHAPTER III: ON THOSE THINGS WHICH ARE PECULIAR TO NUNS

Prelim. Under the name of nuns, unless otherwise noted, here come those solemnly professed or to be professed. But they are either exempt or not. Of the exempt, some are subject to Regulars, others are not.

1188. ○ Dispositions of law proper to the Novitiate and Profession of nuns. - I. They are not to be admitted to the habit, a) before the completed fifteenth year of age (nor are they validly professed before the sixteenth).[2] b) The practice commonly in force requires permission either of the Bishop, if it is a question of non-exempt nuns or of exempt nuns who are not subject to regulars; or of the regular Prelate, if they are subject to regulars. I said: the practice commonly in force; because as to written law it is disputed.[3] Moreover nuns, even if not exempt and professed by simple vows only, cannot be compelled by the Ordinary to receive some novice, or to manifest the cause why they do not admit her. Thus commonly. - The Decree of the S. C. on the State of Regulars, concerning which n. 1157. 7°, does not pertain to nuns.

II. They cannot licitly be admitted to profession: 1) unless the Bishop, or, he being absent or impeded, his Vicar, or another deputed by them, has previously examined them (the same must be done before receiving the habit). The examination can be made only within fifteen days after the Bishop has been made certain concerning the time of profession, which notification must be made by the Superior a month before profession. The examination must be performed at the grates of the monastery, and other questions are prohibited than those which the Council of Trent orders to be made, namely, whether she is being dedicated to God under compulsion; whether she has been seduced; whether she knows what she is doing? Yet those three questions can be expressed in various formulas; but one must avoid, by varying the formulas, running out into other matters; for example the question would be undue: whether she has at any time thought about entering Matrimony; whether she has lived as a Christian; whether she is liable to temptations or falls of the flesh, etc.

Although by the aforesaid law of the Council of Trent the Bishop is not bound except as to nuns who emit solemn vows - for the Council and St. Pius V speak of those to be received in order to Profession, which in law is solemn Profession - yet the Bishop can, if he wishes, forbid girls, even in Congregations which have either only simple vows or no vows, to be admitted to the habit or profession before an examination made by him, in which then he is not bound to the form determined by the Council of Trent and St. Pius V, but only to the prudence and equity prescribed by natural law.[1]

2. If, the year of probation having been completed, the Bishop for a just cause has deferred profession.

3. If it is a question of a choir-nun, and the dowry, taxed by the Bishop and to be paid in money, has not been furnished. But Nuns cannot alienate the dowry, nor transfer it into another monastery into which the nun is transferred, unless this monastery is compelled to admit the

nun. But it must be restored to one departing from the monastery if only simple vows are emitted in it. Yet it seems equitable that some part of the dowry be left to the monastery in compensation for expenses which were made for her support.[3]

4. The profession would be invalid if a novice who went out of the monastery on account of infirmity, afterwards, when she recovered, did not begin the novitiate anew.[1]

5. The profession of nuns must be made principally into the hand of the Ordinary or his delegate, but not of the Abbess.... Yet it is valid if it is made into the hand of the Superioress with the consent of the greater part of the Chapter. - Thus by common law: for by particular law, custom, or Statutes of the Order confirmed, the right of admitting to profession can belong to the Bishop alone also. - Thus Fagnanus.[2]

6. The Decree of the S. Congregation of Regulars, dated March 19, 1857, which we related above n. 1187, does not pertain to nuns.

7. Solemnly professed Nuns cannot be transferred to another monastery without Indult of the Holy See, by which dispensation is made with the same concerning the law of enclosure.[3]

8. Causes of nullity of profession for non-exempt nuns are to be judged by the Ordinary alone; but for exempt nuns who are subject to regulars, by the Ordinary jointly with the Prelate to whom the governance of the monastery has been committed. In the case in which those judges would not agree, the case would have to be decided by the Apostolic See.[4]

1189. ○ III. Dispositions of law pertaining to the governance of nuns.

1° Once in the year the Bishop through himself or through another must make the canonical visitation of nuns; and indeed by force of his ordinary jurisdiction if they are not exempt; but if they are exempt and immediately subject to the Holy See, as delegate of the same See; if finally they are exempt and subject to regular Prelates, visitation must be made by regular Prelates, but at the same time the Ordinary can visit the monastery by reason of enclosure, that is, as to all things which pertain to the observance of enclosure.[5]

2° It belongs to the Bishop through himself or through another to preside over the election of the Superioress: and indeed by ordinary right, if the monastery is subject to him; but if it is immediately subject to the Apostolic See, the Bishop presides over it as delegated by the same See; but if it is subject to a regular Prelate, the Bishop can also, if he wishes, be present and preside, but only directively, not jurisdictionally: wherefore in this case he cannot receive the votes, but only hear and know them; but to receive them belongs to the regular Prelate, while the Bishop knows and hears. The elected Superioress must be confirmed either by the regular Prelate, if the monastery is subject to him; or by the Bishop, if it is not exempt: but if it is immediately subject to the Apostolic See, confirmation must be sought from the Supreme Pontiff.[1]

3° The Bishop can demand each year an account of the administration of the temporal goods of nuns, even of exempt nuns, but as Apostolic delegate; he can remove administrators, whether they are regulars or seculars, but if it is a question of exempt nuns, he cannot constitute them; he will also be able, if it is a question of nuns who are not subject to Regulars and custom so has it, to exercise

several other acts of administration concerning the goods of nuns, for example to require that for matters of greater moment his consent be had.[2]

4° If convents of nuns scattered in diverse dioceses are subject to a Superioress General, the power of the respective Bishop is to be determined in the following way. Either the Holy See, in approving the Constitutions of Congregations of this kind, determined the mode by which the nuns would depend on the various Ordinaries, as Benedict XIV determined in his Constitution *Quamvis*, April 30, 1749, as to the English Virgins, and then the rules thus given are certainly to be observed; or no such thing was determined, and then the nuns certainly also depend on each respective Bishop of the place where they reside, as to those things which are of episcopal jurisdiction, since this belongs to each respective Ordinary by reason of episcopal duty independently from others, and he cannot be deprived of them except in cases expressed in law. - But as to those things which are of mere economic administration, it does not seem possible to admit that nuns depend on each respective Ordinary when they are subject to a Superioress General; for these, as we have already said, do not pertain to Bishops by reason of episcopal duty, but only by reason of custom (this n. under 3°); but custom is not to be observed unless it is good and reasonable, which this certainly would not be. For if, for example, one Bishop wished to put over an Order or monastery a nun whom another Bishop wished to retain for himself; if certain religious certainly had to be cast out from one monastery or transferred elsewhere, with another Ordinary or the Superioress General refusing this very thing, how in these and six hundred other similar cases could unity of governance be present, or even could the Congregation itself stand? Therefore the custom is not reasonable by which, under the reason of economic governance, nuns subject to a Superioress General depend on each respective Ordinary; but they must depend on her alone.

5° Superioresses possess dominative power, by force of which, according to the opinion which is absolutely more probable to St. Alphonsus,[1] they can prescribe in virtue of holy obedience and irritate the vows of the professed;[2] deprive them of Communion on some day, but not oblige them to receive it more frequently or more rarely than seems good to their confessor.[3] But they lack jurisdiction. Wherefore they cannot properly dispense in the Rule or ecclesiastical precepts, but either only declare cases in which subjects are excused from them (n. 147), or dispense from the commission of the regular Prelate to whom they are subject,[4] or, as Gautrelet thinks,[5] of the Bishop, if they are not subject to a regular Prelate. (u) p. 483.

6° If Superioresses by force of the Rule require an account of conscience, nuns are not held to declare to them their sins, whether present or past.[6] (v) p. 483.

7° Nuns, even non-exempt, enjoy those privileges of Religious of their Order of which, according to their condition, they are capable.[7]

Concerning the obligation of nuns to choir, see the things said n. 1090. I, 1095, 1096; 1098. q. 9°; concerning the enclosure and confessors of nuns, the things to be said in the Treatise on Penance and on Censures.

Notes to n. 1189 - note sequence 1. (1) Ben. XIV, C. Ex quo dilect. (2) L. IV. 935. (3) Bizz. p. 906. Trid. S. 25. c. 15. de Reg. (4) Trid. S. 25. c. 19. and Ben. XIV, C. Si data, March 4, 1748. Notes to n. 1189 - note sequence 2. (1) Analecta I. P., series 2, col. 2955. (2) Ferr. V. Monial. I. 72. Trid. S. 25. c. 15. Reg. (3) Bouix, de Reg. T. I. pp. 559-564. Appendix annotation (u), to n. 1189. 5°. p. 458. col. 2. The periodical Revue des Sciences ecclésiastiques, T. 40. p. 379, limits the power of a Superioress of depriving some nun of Communion, from the practice, as they say, of the City, to the sole case in which

some nun, after her last Confession, had admitted a fault which the sisters would reasonably judge scandalous; and they contend that the prohibition ceases after the nun has confessed again. They teach besides, ib., from the declaration of the S. C. C. of April 14, 1725, that determining the greater or lesser frequency of Communion is left to the judgment of the ordinary confessor alone, not of the extraordinary confessor. Appendix annotation (v), to n. 1189. 6°. p. 458. col. 2. Rules which impose upon nuns that they render an account of conscience to Superioresses can scarcely be held among preceptive ones today; for the matter has given occasion to such abuses that the S. C. of Bishops and Regulars constantly expunges from articles of rules submitted to its approval those imposing this burden upon nuns.

CHAPTER IV: ON THE PRIVILEGES OF REGULARS

§ I. On the Privileges of Regulars Universally

1190. By what reason their privileges have been granted to Regulars. - Privileges are granted I. either by writing or by oracle of the living voice. II. either directly or indirectly, that is, by communication with others privileged. Communication is made either in common form, embracing only those things which commonly and without difficulty are accustomed to be granted, or in special form, by which even unusual things and those which are of rare and difficult concession are comprehended, except nevertheless, unless they are expressed by name:

a) Indulgences, under which privileged altars also come. This follows from proposition 37 condemned by Alexander VII, p. XIV.

b) Proper Offices, which are not communicated to those using the Roman Calendar, and new ones, for which those who have a proper Calendar need an indult. This is clear from the declarations of the S. R. C. dated Sept. 30, 1679 to 3, and March 20, 1706 to 1 and 3.

c) Exemption from the jurisdiction of Ordinaries. Cf. n. 1185. 3°.

But by no communication, however broad, are comprehended:

1.) Certain wholly specific prerogatives which the Holy See has granted to certain Orders exclusively and privatively, with the faculty given to their Superiors General of communicating them to other Religions, Congregations, or even priests in particular.[1]

2.) Odious privileges and those which are contrary to their own Statutes.[2]

3.) Those granted only for a certain time.[3]

4.) Those given on account of a special motive cause with a condition, either express or tacit: as long as the cause perseveres.[4]

5.) Those granted to some convent, province, or religious of some Institute existing in certain lands, unless the same or a similar reason militates for the other religious, convents, or provinces of the same or another Institute.[1]

6.) Those generally revoked by Trent or through Apostolic Constitutions, unless they have been granted anew.[2]

7.) Those granted with a clause that they are not to be communicated to others, or declared incommunicable, unless nevertheless some succeeding Pontiff, or the same one afterwards, has either granted or confirmed a most ample communication with all other Religions in special form, with efficacious clauses added by which derogation is made from all Constitutions and Apostolic Ordinances to the contrary, and from all other derogatory clauses.[3]

1191. Confirmation of privileges. - Direct or indirect concessions of privileges by the Holy See are sometimes confirmed, and this either in common form, which does not give a new right and

leaves individual privileges in that state in which they were before, or in special form, which not only, as the common form, corroborates valid things, but also revalidates invalidated things, and indeed in such a way that things lost, or granted with a clause that they are not to be communicated to others, are judged to be acquired anew. But if privileges are confirmed more often, and in one confirmation certain things are omitted which are had in another, omitted things are in no way judged revoked, except if they were opposed to Trent or to some Apostolic Constitution which had generally revoked privileges of this kind.[4]

1192. Various matters. - 1° Whatever has been granted to Superiors, whether General or Subaltern, of one Religion, is understood to have been granted to all Superiors also (General or Subaltern) of the other Religions which communicate with them, although the denominations of Offices are various. This rule must also be applied to conditions under which, and to other persons (for example private regulars) to whom some privilege was granted.[5]

2° If a privilege granted to some Religion is not accepted by it, or is not brought into use, or ceases by renunciation or contrary use, or is revoked by the Holy See in particular, or even the Religion is extinguished, no prejudice is thereby created for another Religion which communicates with it.[1]

3° Individual members of a Community cannot renounce privileges which have been granted to Communities. See n. 196.

4° Superiors, yet from a just cause, can limit the use of one or another privilege for their subjects, indeed even entirely and generally prohibit it,[2] except nevertheless lower Prelates, who can use this power only for individual cases or subjects. But if Superiors have neither limited nor prohibited, nor has this condition been added in express words in the indult itself, subjects need no delegation, assignment, or permission from them in order to bring privileges into use.

5° Other Superiors cannot use privileges granted to the General alone; on the contrary, he legitimately uses their privileges.[3]

6° Privileges 1) communicated to subjects by the General, whether by himself or through subaltern Superiors, generally, that is, not for some special case, endure until they are revoked by him or, he being dead, by his Vicar or successor (n. 151).

2. Those communicated by their own right by subaltern Superiors constituted for a time expire when the term fixed for their office has ended, that is, when the new Superior has entered into his office.

3. Those to be granted for a certain number of cases cease only when the number has been exhausted, not when the office of the one granting has ended (n. 151).

7° Regulars are held to exhibit to the Ordinaries of places:

1. Although not requested, and before they can use them, privileges with the clause: the Ordinaries of places having been informed; likewise new indulgences before they are published.

2. When requested, yet without meanwhile being able to be interdicted from use of the privilege, special privileges of exemption, that is, those which are not contained in the common and

notorious law of all regulars. (Cf. n. 195.)

8° Privileges of regulars:

1. Are to be interpreted most broadly, and in that way that they may operate something (n. 193).
2. The Holy See alone interprets authentically and definitively, or juridically. Yet the same must be said of Prelates of regulars in relation to subjects and for the forum of conscience.[1]

§ II. On the Privilege of Exemption

I. What the Exemption of Regulars Is and What It Comprehends.

1193. ○ Exemption is a privilege by which either some place or some person (physical or moral), or place and person together, within the territory of some ordinary jurisdiction, is withdrawn from the same.

Some exemptions are granted by the Supreme Pontiff, others by Bishops; some are from episcopal jurisdiction, others from parochial or even from lower jurisdiction; some are personal, others local, others personal and local at the same time.

The exemption of Regulars is a) granted by the Pope, b) from episcopal jurisdiction, c) from parochial jurisdiction, d) personal and local at the same time.

Notes to nn. 1193-1194 - note sequence 1. (1) H. A. Tr. XX. 11. (2) Ib. 12. (3) Ib. 9. (4) Ferr. V. Priv. II. 6. 11. (5) Ib. V. Indulgentia V. 75, 76. Notes to nn. 1193-1194 - note sequence 2. (1) H. A. Tr. XX. 9. (2) L. V. 64 and Tr. de Priv. n. 6. (3) S. Alph. Tr. de Priv. n. 6. Notes to nn. 1193-1194 - note sequence 3. (1) S. Alph. Tr. de Priv. n. 6-8. 78. (2) H. A. Tr. XX. 79. 88. Cfr. (x) p. 483. (3) Ib. 72. Appendix annotation (y), to n. 1193. F). p. 462. col. 1. "Yet as regards the forum of goods which were bestowed upon the mission or Regulars in view of the mission, Bishops have the right to exact an account from the same regular missionaries, equally as from pastors of the secular clergy." Const. Romanos Pontifices, May 8, 1881.

1194. ○ Generally it comprehends the following.

I. Neither the church of regulars, to which parochial care of souls or, as among us, quasi-parochial care is not annexed, nor the house, whenever twelve subjects dwell in them (under whose name lay brothers and novices also come), nor oratories, whether public or private, united to their houses, nor chapels and altars of laymen or lay confraternities erected in their churches, are subject to visitation of the Ordinary.[2]

II. Generals and Provincials enjoy quasi-episcopal jurisdiction, or they can do in their subjects what Bishops by law can do in their diocesan subjects. Local Superiors possess the same jurisdiction, provided nevertheless that it has not been legitimately limited by Superiors of a higher order, and all their subjects are exclusively subject to the jurisdiction of all these in odious things.[3]

But under the name of subjects come not only professed persons, both priests and lay brothers, but also in favorable things: 1) Novices. 2) Candidates from the time in which they are tried for the religious state, although they have not yet received the habit. 3) Familiars, that is, all secular persons actually serving convents of regulars, even for wages, provided they live inside their cloisters as constant table companions and under obedience to the Superiors (although only by reason of

service). But whether residential students also are to be counted as familiars, setting aside privilege, which for example has been granted to Benedictines, Sulpicians, etc., is disputed. Therefore jurisdiction over these is doubtful by a doubt of law. See n. 1394. q. 5°.

Notes to n. 1194. (1) Ferr. V. Confratern. I. 22. sq. and V. Indulg. IV. 22-27. (2) H. A. Tr. XX. 11. (3) Ib. (4) Ib. Appendix annotation (x), to n. 1194. I. p. 460. col. 2. In the Constitution Romanos Pontifices, Leo XIII, May 8, 1881 (Acta, T. XIII. p. 481 sq.), it is read: "By common law it has been constituted that houses which do not contain at least six religious members must be altogether in the power of Bishops." Cf. Bizzarri, Collect. p. 396. Minorum Conventual. Yet Regulars dwelling in residences of missions, such as universally are those which are had in the Federated States, however few they may be, are not subject to Bishops, "except in cases expressly named by law, and generally in those things which concern the care of souls and the administration of the Sacraments." The same Const. - Monasteries of men which are deprived of regular connection with a Province, and are not subject to General Chapters, if they have neglected to do those things which according to the decree of the Council of Trent, Sess. 25 de Reg., c. 8, must be furnished by them, are subject to the Bishops in whose dioceses they are situated, as delegates of the Apostolic See. Trent, ib. Chapels and altars of laymen are called those which are erected not by ecclesiastical authority, but from lay funds or revenues, although the funds had been accepted by permission of ecclesiastical authority, and clerics were named to them by the same authority. Craisson, Man. n. 5378. Van de Burgt treats at length of these, De eccles. n. 298 sq. Lay confraternities erected in the churches of Regulars are withdrawn from the visitation of the Ordinary only as regards the chapel, altar, and furnishings of the confraternity. Yet if "the burden of maintaining the altar and its worship lies upon the confraternity," the Bishop's visitation is not excluded "concerning those things which regard the maintenance itself, the worship, and the ornaments of the altar or chapel, the burdens of Masses and of divine offices to be celebrated there, and concerning all those things which have a relation to the obligation of the same confreres." S. C. C. in Nucer. Pagan., June 23, 1719. See Luc. Ferraris, V. Confraternitas, art. III.

1195. ○ By force of this quasi-episcopal jurisdiction, and of special privileges, the following things belong to the Superiors of regulars.

A) The General by himself or through his Visitors, and Provincials, can and must visit individual houses, persons, and churches subject to them, the visitation of Bishops being excluded, except in the cases indicated n. 1194. I.

B) The General against individual professed persons, and Provincials, and, at least with their consent, local Superiors against their subjects, similarly professed, are able to bring all those censures which can be inflicted on persons.[2]

C) Superiors can dispense with their subjects in those things and in that mode in which Bishops by law can do this with diocesan subjects, especially:

1° As to servile works on Sundays and feast days. H. A. Tr. XX. 106.

2° In fasting, both as to the one refection and as to abstinence. Ib.

3° In the Divine Office: a) after the likeness of Bishops, in particular cases, for a brief time, and, as is clear of itself, from a just cause, which Doctors say is present in doubt concerning moral inability to recite. Besides:

b) To a subject occupied with sacred studies, preaching, or hearing Confessions, or impeded by infirmity or the ministry of the sick, they can impose in place of the Office a certain number of psalms to be assigned by them (that is, by the Superiors), not fewer than seven, or six with division, with seven *Pater* and two *Credo*.[3]

4° As to prohibited books, Superiors, after the likeness of Bishops, can in a particular case of great necessity permit their reading and retention to their subjects.

5° As to irregularities.

They can dispense with their own: 1) in all occult irregularities, as Bishops with diocesan subjects. Besides, they can dispense in irregularity from voluntary homicide, but in the forum of conscience only and provided it was not committed after entrance into Religion. Thus from the Constitution of St. Pius V, *Dum ad Congregationem*, July 15, 1571. See Ferraris V. Irregularitas III. 18. 2) In all irregularities from defect in which dispensation can and is usually made. St. Alphonsus enumerates most of these.[1]

6° As to any inabilities and penalties contracted from delict, as of privation of office, benefice, voice, place, etc., and this although they were reserved to the Pope.[2]

7° As to vows.

a) Except the vow of passing to a stricter Religion, they can directly irritate all the rest of the vows of the professed, even those to whose emission either they themselves, or a predecessor, or a subaltern Superior consented (n. 389).

b) The personal vows of novices can be suspended while they prejudice governance and the exercises of probation or are an impediment.

c) By themselves or through others, even outside Confession, they can relax by dispensing or commuting all vows of subjects, except those of the three pilgrimages; yet these, as was just said under a), they can irritate.

D) As to Orders to be received, see the Treatise on Order.

E) As to the diocesan Synod and conferences of cases of conscience, Regulars who are subject to general chapters, by force of personal exemption, are not held to come to diocesan synods, except those who have care of parochial or other secular churches, even annexed ones.[3] - Similarly, unless they exercise parochial or quasi-parochial care, they are not obliged to assist at conferences of cases of conscience; and not even those regulars who are subject to the jurisdiction of Bishops, because the convent lacks the number of twelve subjects, can be compelled to this. Nor is it permitted to the Bishop to add to approval of Regulars for hearing Confessions of the faithful the condition that they assist at these conferences.[4] For England and Scotland see Const. *Romanos Pontifices*, May 8, 1881.

F) As to temporal goods.

a) In administering them they do not depend on Bishops.[1] (y) p. 484.

b) Churches of regulars, to which parochial or, as here, quasi-parochial care of souls is not annexed, owe them no Cathedraticum (n. 631).

c) If an inheritance is left to an Order with the burden of pious works (under which also Masses come) to be fulfilled either within or outside the Order, Bishops cannot inquire concerning their fulfillment; and the same must be said of Masses, whether founded or manual, even in churches of regulars to which care of souls is annexed.[2]

G) As to the administration of the Sacraments.

a) It belongs to Superiors to approve confessors of their respective subjects, and to administer the Sacraments to them or take care that they be administered.

Under the name of subjects come the same ones who were enumerated above n. 1194. II.

b) Those making a journey with permission of Superiors can confess to a suitable companion of the Order, although not approved, or, if this one is lacking - and if you except Capuchins, who nevertheless from the concession of Benedict XIV, Const. *Quod communi*, March 30, 1742, can confess to a priest approved by the Ordinary if they are staying in places where neither a convent nor hospice, nor any brother confessor of the same Order, is found - to any priest similarly suitable, whether secular or regular, even not approved by the Ordinary of the place.[3] - But the response which could be opposed, of the S. C. C. to the Bishop of Hildesheim, dated Nov. 18, 1769, is in no way contrary, since there the speech is concerning religious who had companions of their own Order at hand, as is clear from the acts of the same Congregation.

c) Confessors of regulars:

1. Can absolve their own, and, unless it is a question of a case brought before the contentious forum before their entrance, also novices, candidates who are being tested for the novitiate, and familiars from cases which Bishops have reserved to themselves in their dioceses.[4] Concerning residential students recall the things said n. 1194. II.
2. As to censures and cases reserved to the Pope:

1° Regulars are numbered among those impeded from going to Rome, and therefore can ordinarily be absolved by their Prelates from any such things.[1]

2° To the doubt: "Whether Regular Prelates after the Constitution *Apostolicae Sedis* enjoy the same privileges which they had before, that is, whether they can absolve their priests from papal cases simply reserved in the said Constitution?" The S. Penitentiary on Dec. 5, 1873 responded: "Negatively, with other faculties preserved, which flow from particular Rescripts granted for a time." The reason of the Response is that privileges of absolving had been abolished in the said Constitution; but the Tridentine faculty (Sess. 24. c. 6. Ref.) belonged to Regular Prelates only by privilege.[2]

Yet Regular Prelates can absolve, as before, from special censures which regard the internal governance of their Order, likewise from censures reserved by ordinary right (n. 1733-1735), because in these nothing was changed by the Supreme Pontiff through the Constitution *Apostolicae Sedis*. Concerning striking a cleric, see n. 1753. q. 2°. under 2°.

Notes to n. 1195 - note sequence 1. (1) H. A. Tr. XX. 74. (2) Acta, T. I. p. 98. 1). (3) Bull. Rom. Ed. Taur. T. VI. p. 160. § 1, 2. Notes to n. 1195 - note sequence 2. (1) H. A. Tr. XX. 104. 105. (2) Ib. n. 108. (3) Ib. 78. Trid. S. 24. c. 2. Rf. (4) Ferr. V. Regulares. II. 60. 61. Bouix, de Reg. P. V. Sect. II. c. 2. § 7. qu. 28, 29. Notes to n. 1195 - note sequence 3. (1) H. A. Tr. XX. 81. (2) Ib. and S. C. C. Jan. 31, 1681. - Ben. XIV, de Syn. L. XIII. C. XXV. n. 5. 6. - Ferr. V. Missa. XV. 12. (3) H. A. Tr. XX. 81. (4) Ib. 95. Notes to n. 1195 - note sequence 4. (1) L. V. Decr. T. XXXIX. c. 2. 32. (2) L. VII. 101. (3) Manuale, n. 611. sq.

1196. As to exemption from parochial jurisdiction, where it exists by law, and insofar as in fact it is in force.

A) In the things in which regulars are exempt from episcopal jurisdiction, in the same things a fortiori they are exempt from parochial jurisdiction.

B) The following must be specially designated from Craisson[3] and Van de Burgt, *de Eccl.*

1° In their churches or houses, not only the professed, but also novices, candidates, and familiars can receive Paschal Communion, Viaticum, and Extreme Unction. Yet strangers do not enjoy this privilege if they fall ill in one of their houses. But if they have died there, they cannot be buried in the churches unless they have chosen burial in them, in which case nevertheless, and unless a contrary custom exists, the fourth of funeral things (emoluments, for example from candles) is owed to the Pastor.

2° First Communion is not necessarily to be received from the Pastor or in one's own parish. The statutes of Bishops and diocesan customs must be consulted.

1196. B) 3° Although processions cannot generally be made by regulars and by confraternities which are erected in their churches outside the cloisters without permission of the Bishop, nevertheless that permission suffices without the consent of the Pastor. If the church lacks a cloister, the procession can be made without permission of the Bishop near the walls of the church, or by going out from one door of the church and entering by another. Through the Octave of Corpus Christi, the procession can be made outside the limits of the convent, without the permission of either the Pastor or the Bishop having been sought.

4° Regulars, simply approved for Confessions, can through the whole year, even in Paschal time, hear Confessions of secular persons; likewise hear the sick, but, once their Confession has been heard, they must make the Pastor more certain, at least by a writing left with the sick person; which can be prescribed to them by the Bishop (who nevertheless cannot prohibit either) under penalty of suspension from hearing Confessions. Thus from the S. C. C., Sept. 22, 1668, and from Clement X, Const. *Superna*.

5° Likewise they can distribute the Eucharist in their churches, even against the will of Pastors, except, outside the case of contrary custom, only on Easter day.

6° The Pastor cannot compel that his subjects satisfy the precept of hearing Mass in the parochial church; for they can fulfill the precept also in churches of Regulars.

7° All functions of Holy Week (the blessing of the font excepted) can freely be performed by regulars in their churches. Yet on Holy Saturday they cannot ring the bell before, or on Thursday in the Supper of the Lord after, the more worthy church, unless there is a custom or the churches are very distant.

8° In their churches they can perform all blessings, except those of the Baptismal Font, nuptial blessing, of the houses of laymen on Holy Saturday, and, as De Herdt well proves (*Pr. Rit*. c. 9. n. 5), of women after childbirth.

9° Funeral Masses and, in the case in which someone has chosen it among regulars, burial, are not of strictly so-called parochial rights; but the fourth of funeral things must be paid, as above 1°. (z) p. 484.

10° The Pastor cannot prevent regulars in their churches from celebrating, preaching, and announcing the feasts, vigils, and fasts of the following week at an hour pleasing to themselves.

Appendix annotation (z), to n. 1196. 9°. p. 463. col. 1. Hence in another church also and among Regulars, it will be lawful to sing a Requiem Mass for the deceased (if the Rubrics permit it; otherwise of the day), with relatives and friends also called together as is customary in obsequies, even if the funeral Mass for the same is not celebrated in the parish church (Acta T. XII. pp. 333, 334). On this occasion, namely outside the case of burial chosen in a church of Regulars, the funeral fourth is not owed. What today is to be understood by burial chosen in a church of Regulars, see, if you wish, in Acta, T. XIII. p. 416. The case of this election among us is not practical.

II. What the Exemption of Regulars Does Not Comprehend.

1197. A. As to the foundation and abandonment of houses. - 1) They cannot erect a regular house or a hospice broadly so called, or one which has a church or public oratory, except with the consent of the Ordinary, and, per se, also of the Pope. Const. *Romanos Pontifices*, May 8, 1881. - There is no need of the consent of the Pastor: he is only to be heard if the future church of the Regulars would be parochial, or would be erected with prejudice to strictly and exclusively parochial rights:[1] nor is there need of the consent of Religious having a convent within the space of 560 Florentine ells from the house to be built, if it is a question either 1° of a house to be founded in some city, or 2° even in the country, but with those religious unjustly contradicting them, or 3° of the vicinity of other convents than those of Mendicant Friars, as is clear from the decision of the Rota dated June 22, 1615. Outside these cases they are regularly to be heard, unless it is otherwise clear that they will not suffer grave detriment from the new foundation.[2]

2. They can erect hospices strictly so called [above 1)] without permission of the Ordinary.[3]

3. By common law they are free to abandon their houses and churches, even against the will of the Ordinary, and, if they had been built from their own revenues or alms, once abandoned, all things pertaining to them in the name of the Order remain in their dominion, and they can freely dispose of these.[4]

Notes to n. 1197. (1) Acta, T. XII. p. 352. (1) p. 353. (1). (2) H. A. XX. 88. (Cfr. Acta T. I. p. 708 sq.) (3) Ib. 89. (4) Ib. 89.

1198. B. Concerning preaching. - 1) Approved by Superiors, they can preach: a) in their own churches, with permission of the Ordinary having been sought and not expressly denied; b) in others' churches, with it obtained, a moderate and discreet examination having preceded, if this seemed good to the Ordinary (Clement X, Const. *Superna*), or even in a place where the Ordinary is not actually present, with permission of the Pastor alone, if while passing through they were staying for only a brief time in some place in which the Bishop is not present.

2. Similarly any priest, whether secular or regular of another Order, needs the permission of the Bishop for preaching in churches of regulars.

3. If the Bishop himself preaches in some place, he can prohibit sermons from being given at the same time in other churches, even of regulars. Likewise, that on some day they preach, so that the whole people may gather at the Cathedral.

4. They cannot: a) publicly, without permission of the Ordinary, commend to hearers needy persons or families, unless nevertheless there is danger in delay, or it is a question of a church to which parochial or quasi-parochial care of souls is annexed; b) publicly, by express name,

rebuke someone, or preach concerning a determined time of Judgment or Antichrist, or revelations of this kind; c) as to publishing indulgences, see n. 1192. 7°.

5. The Bishop can suspend some regular (not all of some convent as to preaching in their own churches), "for reasonable causes, although occult, yet concerning preaching," from preaching, Clement X, Const. *Superna*.

Note. 1° By the rigor of law the Ordinary cannot prescribe that regulars preach in their churches to which parochial or quasi-parochial care of souls is not annexed; nor 2° compel them to accept secular preachers or preachers of other Orders in their churches;[1] nor 3° prohibit them from preaching in their churches at the same hour at which a sermon is to be had in the parochial church, if he himself is not present at that sermon, H. A. XX. 124-128.

C) Concerning hearing the Confessions of the faithful, see the things to be said in the Treatise on Penance.

Notes to n. 1198. (1) They can send them repeatedly to their parochial churches, S. C. C. Sept. 18, 1740.

1199. D) Concerning the celebration of Masses. -

1° Except the cases related n. 1196 under 6°, 7°, 9°, 10°, in which they are not subject to Bishops, in the remaining things they are held to observe both diocesan statutes and special ordinances of Bishops concerning the celebration of Mass, and as to these things they are subject to them even as Apostolic delegates, H. A. XX. 75.

Yet notwithstanding the statute of the Bishop that it is not permitted to any wandering and unknown priest to celebrate Mass without his permission, nevertheless Regulars, after examining letters of their Superiors and of promotion to the priesthood, will be able to grant this in their churches to religious, even unknown, of their own or another Institute, with no permission sought from the Ordinary. *N. Rev. Th.* T. XI. p. 867 sq.

2° Concerning the tax and table of Masses, see the things said n. 637.

1200. E) Concerning the distribution of Holy Communion.

1° Concerning the forbidden distribution of Holy Communion on Easter day, see n. 1196. 5°, and concerning First Communion, ib. 2°.

2° Although Bishops cannot generally restrict distribution of Holy Communion to certain days in any week, nevertheless they can assign Communions to some one of their diocesan subjects in particular.[1]

3° Regulars cannot without permission of the Bishop or Pastor carry the Eucharist publicly through the streets to the sick, unless a contrary custom is in force. Secretly? Canonists dispute in the case in which it is not a question of Viaticum.[2]

F) Concerning Viaticum, Extreme Unction, and Burial.

They cannot minister Viaticum and Extreme Unction to outsiders outside the case of necessity without permission[3] of the Pastor.[4] Yet they can keep Sacred Oil in their churches for the use of the professed, novices, and familiars. They can bury the same in their churches, and likewise other

faithful who have chosen burial in them, with the fourth of funeral things preserved, as was said n. 1196. 1°. But it is not permitted to induce them to this by means of a vow, pact, or irrevocable promise.[5]

G) Concerning exposition of the Most Holy Sacrament.

1° Public exposition is not permitted to regulars except by permission of the Bishop, or by right of legitimately prescribed custom. But public exposition is that which is made with the Sacrament uncovered and with doors open. Therefore the permission of the Bishop is not required if it is made either with the Most Holy veiled, or with secular persons excluded.[6]

2° But once the permission of the Ordinary has been obtained, the consent of the Pastor is not required; and not even the permission of the Ordinary is needed through the Octave of Corpus Christi, whether among the solemnities of Masses or at Vespers.[7]

H) Concerning Blessings, see the things said n. 1196 under 8° and those to be said in the Treatise on the Sacraments in general, n. 1247.

Notes to n. 1200. (1) H. A. Tr. XX. 128. (2) L. VI. 240. (3) At least legitimately presumed. (4) H. A. Tr. XX. 128. (5) Ib. 91-94. (6) L. VI. 424. Bouix, de Reg. P. V. Sect. III. Sol. 1; q. XIII. (7) S. C. R. Apr. 20, 1641.

1201. I) Concerning Processions. - The Bishop can bind regulars to be present at them, provided he calls them not by public edict, but personally through some messenger, and excepting those who perpetually live in stricter enclosure, or are exempted by privilege or by force of their Rule.

1202. K) Concerning Indulgences (see n. 1192. 7°), Most Holy Relics, and Images.

1° Relics cannot be exposed for public veneration unless with previous recognition by the Bishop (n. 327. 4)).

2° No unusual image at all can be placed in a church unless approved by the Bishop [n. 328. 2) c)].

3° The Relics of those not yet Beatified cannot be recognized for public cult, nor can images, nor "anything else whatever bearing before itself and indicating veneration and cult, be placed in oratories, or public or private places, or churches." Those who act contrary can be punished by the Ordinary [n. 328. 2) a)].

L) Concerning acts of homage to be furnished to Bishops.

Bishops can exercise pontificals and use a baldachin in churches of regulars, and they are to be received reverently.[1] On the contrary, in churches of regulars no one else can exercise pontificals except with the consent of the Ordinary.

M) Concerning parochial or quasi-parochial care of souls. In those things which pertain to it, regulars are subject to the jurisdiction, visitation, and correction of Bishops. How far this jurisdiction extends and how visitation is to be made, see H. A.[3]

It is also permitted "to Bishops to divide missions," even those over which Regulars have been placed, the form of the Holy Council of Trent (Cap. 4, Sess. 21, de ref.) being preserved, "as to missions which are truly and properly so-called parishes; but as to the rest," even without this being preserved,

yet from sufficient causes and with the right of appealing preserved, if the matter demands, from the episcopal decree to the Holy See only in devolutive: nor in the division of a mission is the Bishop held "to prefer" religious sodales themselves to others in putting a Rector over the mission which is newly erected. Const. *Romanos Pontifices*, May 8, 1881.

N) Concerning the Statutes of diocesan and provincial Synods. Regulars are held to these: 1° as to directive force, when their observance is necessary for avoiding scandal. 2° As to coercive force: a) By reason of a quality not exempt in the exempt, for example of a duty dependent on the Bishop, and insofar as dependent, as of Pastor or quasi-Pastor, confessor, preacher, etc. b) As to the publication and observance of interdict. See n. 1695. I. 1°. II. 1°. c) As to the observance of feasts prescribed by the Bishop in his diocese, yet with their rite preserved as to Masses and the other divine offices. d) As to statutes concerning things to be observed and avoided in the celebration of Masses, as above n. 1199. 1°, 2°,[1] and generally as to those decrees which by common law, whether ordinary or delegated, also affect Regulars. Const. *Romanos Pontifices*, May 8, 1881.

1202. O) Concerning the coercive power of Bishops, to which regulars are subject:

1° Those transgressing their precepts in an exempt place, when these have been legitimately brought for places of this kind.

2° Those gravely delinquent in the preaching of the word of God, in hearing Confessions, in the administration of any Sacrament.

3° Those gravely offending Bishops, or impeding their jurisdiction, or delinquent concerning the enclosure of nuns.

4° Regulars a) living outside cloisters in a permanent manner (that is, without permission of the Superior, or in a place so far away that they cannot be punished by the Superior except after a long time; but not transitorily, for example for the cause of preaching or hearing Confessions, etc.) can be visited, punished, and corrected by the Bishop as delegate of the Apostolic See. Yet Regulars who dwell in residences of missions and there live under the discipline of the prefect of the province are exempt from the jurisdiction of the Ordinary, however small the number with which they cohabit. Const. *Romanos Pontifices*, May 8, 1881. b) Others than Superiors, living within cloisters and perpetrating a notorious delict outside them, or within them but with scandal of the people, must be punished by their Superior within a time to be defined by the Bishop; but if after repeated admonition of the Bishop they are not punished by the Superior, they can be punished by the Bishop. But if the Superior has sent the delinquent unpunished outside the diocese, he must be chastised by him under penalty of privation of office, within the time prescribed by the Bishop, wherever he may be; and if this is neglected, he must be punished by the Bishop of the place to which he has been sent.

5° Regulars in a cause of heresy and in other matters pertaining to the Tribunal of the Holy Office (what these are, see, if you wish, Craisson[2]) are subject also to Bishops, as delegates of the Apostolic See.[3]

6° "It is lawful ... for Regulars to appeal" from the interpretation which Bishops have given of synodal decrees, "only in devolutive as to the interpretation of decrees which by common law, whether

ordinary or delegated, also affect Regulars: but as to the interpretation of other decrees, also in suspensive." Const. *Romanos Pontifices*, May 8, 1881.

In what cases a Bishop can compel disobedient regulars through censures will be said in the Treatise on Censures.

P) Various matters.

1° All controversies concerning precedence relative to processions in which regulars intervene, and in accompanying the bodies of the dead, the Bishop can decide for that act.[4]

2° As to confraternities. Excepting those which Generals of Orders erect by right granted to them by the Supreme Pontiff, they cannot be erected or aggregated without permission of the Ordinary; they are subject to his visitation, and it belongs to him to make, examine, correct, and renew their statutes. Except if the statutes had been confirmed by authority of the Holy See, or made by force of a contract. Craisson.[5]

3° As to the printing of books, they are subject to the Ordinary.[6] Yet he will refuse permission unless it is clear to him concerning permission granted by the Regular Superior.

Notes to n. 1202 - note sequence 1. (1) H. A. Tr. XX. 78. (2) Clem. L. V. T. VII. c. 2. (3) H. A. Tr. XX. 75. Notes to n. 1202 - note sequence 2. (1) H. A. Tr. XX. 78.

§ III. Various Privileges

1203. ○ I. With secular persons. 1° They can dispense in all occult irregularities from delict, as a Bishop can;[7] 2° they can dispense and commute vows and oaths, as a Bishop;[1] 3° they can dispense with spouses in the impediment of demanding the debt on account of incest committed with a blood-relative of the other spouse, yet with special permission of the Superior, at least of his own monastery.[2] - Besides, Religious can dispense in the vow of chastity with spouses in order to the use of Matrimony, whether the vow was emitted before or after Matrimony was entered.[3] - Nor is the opinion affirming that Mendicant regulars and those communicating with them can dispense with betrothed persons improbable to St. Alphonsus, yet in a case of necessity, so that notwithstanding the same vow they may enter Matrimony.[4]

II. Regulars can celebrate Mass one hour before dawn, that is, three hours before sunrise, and from a just cause two after midnight, but only in their own churches, in which secular priests also can do this from the same privilege. After midday, from a privilege granted by Eugene IV, they can celebrate three hours after midday has elapsed.[5]

III. To the Nuns of St. Dominic, and therefore also to the other regulars by force of communication, in the case of illness, lethal in the judgment of a physician, it is permitted to emit profession before the year of Novitiate has been completed, provided nevertheless that they have the required age. St. Pius V, Const. *Summi sacerdotii*. Yet those convalescing, according to the opinion of many, are held to complete the year of Novitiate and emit a new profession.[6]

IV. "All regular Orders communicate in the privileges of other Orders, whether Mendicant or not." Thus St. Alphonsus.[7] (E) p. 477.

Notes to n. 1203 - note sequence 1. (2) Elem. n. 873. (3) L. V. Decr. T. VII. c. 9. § ult. Trid. Sess. 5. c. 2. Ref. Bouix, de Reg. T. II. p. 140. (4) Craisson, Man. n. 641. (5) Elem. n. 709. 710. (6) Craisson, Man. n. 598. (7) H. A. Tr. XX. 104. Notes to n. 1203 - note sequence 2. (1) L. IV. 257. H. A. Tr. XX. 108. (2) H. A. Tr. XX. 108. (3) Ib. 109. (4) Ib. (5) Ib. 122, which seems to be preferred to n. 342. L. VI. (6) Craisson, Man. n. 2649. (7) L. V. 60. Appendix annotation (E), to n. 1203. IV. p. 466. col. 2. Under the name of Mendicants are comprehended those to whom by rule or constitutions approved by the Apostolic See revenues and possessions in common are forbidden, although they may have these by dispensation of the Pontiff, just as today in Trent, sess. 25 de Regula, cap. 3, dispensation is given to all Mendicants except the Friars Minor of the Observance and Capuchins. Therefore to the Mendicant Orders belong the four more ancient Orders of St. Dominic, of the Friars Minor, of the Hermits of St. Augustine, and of the Carmelites, of whom mention is made in cap. unic. § sane, de Relig. domibus in 6; and besides these the Orders of the Servants of Mary, of the Minims of St. Francis of Paola, of St. Jerome, as St. Pius V declared in Const. 35 Romanus Pontifex, and 48 Apostolicae Sedis; and the Society of Jesus, from the Bull Dum indefessa (Acta, T. I. p. 727).

CHAPTER V: ON RELIGIOUS DISPERSED BY FORCE

1204. Principles. - I. They remain bound by all the obligations which they contracted from their profession, except those which are not compatible with the state of dispersion. Hence 1° as regards the vow of poverty, each one by that very fact is deputed, as it were, steward of himself as to necessary or useful things (but not as to things pleasurable or not befitting his state) for all cases in which recourse to the Superior cannot be had. 2° By force of the vow of obedience they remain subject to their legitimate Superiors, unless the Supreme Pontiff has assigned the Ordinary of the diocese in which they are staying for the time as their regular Superior, who in defect of the Prelate may rule and govern them. But the legitimate Superiors of the dispersed, as long as they have not been recalled to their own Province or convent, from the Decree of the S. Congregation on the discipline of regulars, Aug. 5, 1872, are both the Provincial of the territory in which they are staying, and the local Superior of the monastery in which they live.[1]

II. By the fact of violent expulsion and dispersion, religious do not lose their rights and privileges. For from Rule of law 64 in 6°: "Those things which are done contrary to law must certainly be held as not done."

Hence religious can return without permission of the Ordinary to their old convents, in the case in which they are restored to them, and in towns and villages in which before dispersion they had convents, they can acquire for themselves new buildings, if the old ones have been destroyed or are unjustly detained, or even have been alienated by authority of the Apostolic See, without loss of their ancient rights and privileges. And all these things indeed hold, although only one religious of the Institute remained. See Bouix.[2]

Yet these principles concerning the obligation and right of dispersed regulars can be modified as to application by Declarations, Decrees, or Indults of the Holy See.

CHAPTER VI: ON THE CONDITION OF RELIGIOUS IN THE ECCLESIASTICAL PROVINCES OF THE UNITED STATES

1205. ○ I. A novice who, with permission of the Superior, when going out of the house changes the garment according to the custom of this region, is not judged to have laid aside the habit, and therefore not to have interrupted the year of probation.[1]

II. "Religious having benefices, by law and custom, can administer the revenues of these for their support and for pious uses; but they sin by spending them on profane uses, or by bestowing them on relatives who are not poor. Those who by permission of Superiors are engaged in Missions are in a similar condition, but the documents given to individuals must be attended to."[2]

III. "Those who in these provinces fulfill the offices of Pastors or Missionaries far from cloisters, and with almost no authority of Superiors acknowledged, seem plainly to be subject to the correction of Bishops."[3]

IV. "Regulars deputed to the care of souls in places of Missions can be recalled by their Superiors, or removed by Bishops, according to equitable judgment, with no cause assigned to either party (Benedict XIV, Const. *Firmandis*, 1744); but if the regular Superior recalls them, he must propose others to be substituted, with the Bishop approving. S. Congr. Prop., July 27, 1822, approved by Pius VII."[4] - Yet some Order or Congregation can abandon its houses and churches, if either it has undertaken no obligation of remaining perpetually, or has not assumed the governance of properly so-called diocesan works, that is, those which are supported by monies and other means taken from the diocese. But those which have assumed works of this kind, although no obligation of remaining perpetually has been undertaken, cannot be deserted against the will of the Ordinary, unless at least six months have elapsed from the time in which he was made certain concerning the intention of acting thus; and their goods, which either by gift or by offerings of the faithful were acquired to be spent on works of charity and religion, belong to the Ordinary, unless it appears and is clear in writing that they were handed over to the Congregation or Order for its use, or unless something else was agreed between the Order and the Ordinary, always preserving the rights of a third party, especially of those benefactors who gave movable or immovable goods, so that some good work in species might be established or fostered in some determined place, or under other pre-established conditions.[1] - But by what reason Regulars among us must preserve their goods safe and sound, see n. 623.

V. As to nuns, by decree of the S. C. of Bishops and Regulars, Sept. 3, 1864, it was declared and constituted: 1° "The vows which are emitted by Nuns named from the Visitation of the Blessed Virgin Mary in the monasteries of the places Georgetown, Mobile, Kaskaskia, St. Aloysius, and Baltimore, with attention to the Rescripts already obtained by them from the Holy See, are solemn."

2° "As to enclosure, the aforesaid Nuns can use the faculties granted to them in various Rescripts by the Holy See to the Archbishop of Baltimore."

3° "Regard being had to the circumstances of places and times, in the future the same Nuns of the Visitation, after the novitiate has been completed, must emit simple vows; and after five (read: ten,

from the Decree of Jan. 24, 1868,[2]) years have passed from profession of simple vows, they can be admitted to pronouncing solemn vows, with spiritual exercises for ten days preceding; but those professed of simple vows shall use and enjoy all and singular graces and spiritual favors which those professed of solemn vows use and enjoy."

4° "The vows which are emitted by other Nuns in Monasteries already erected are simple, except in the case in which a Rescript for emitting solemn vows has been obtained from the Apostolic See."

5° "Finally, in Monasteries to be erected in the future in the individual United States, the vows must be emitted as simple by Nuns."[3]

VI. Questions. - Query 1° Whether, with the consent of those concerned, our Bishops can dispense nuns from vows?

Resp. 1° Negatively as to those who have emitted solemn vows, as is clear of itself.

Resp. 2° Likewise negatively, if it is a question of recent Congregations which are governed by a Superioress 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 the Bishop release Nuns from the bond of vows, although they emit only simple vows and do not depend on a Superioress General, if this Congregation has been approved by the Holy See.

Resp. 3° Affirmatively, with attention to the faculty of our Bishops of dispensing in the vow of chastity - as to pious Congregations sanctioned by themselves or by their predecessors and not yet approved by the Holy See. - The same would have to be said of another certain species of Nuns, namely of those who in ancient Institutes, in which formerly solemn vows were emitted, now emit simple ones. For unless Institutes thus changed have been approved by the Holy See, or at least their houses exist with the same Holy See approving, they do not come under the name of Congregation approved by the Holy See. This is clear from those things which the *Collectanea in usum Secretariae S. C. Episc. et Reg.*, p. 499 sq., have.

In some Institutes simple vows are emitted in such a way that they persevere as long as the professed remains in the Institute; in which case the vows of those who either depart spontaneously or are dismissed by the Superior cease without any dispensation. See the same *Collectanea*, p. 503. § *In aliquibus*.

In others vows are first emitted for a determined time. When this term has elapsed, they cease. But when a subject is dismissed before the term, they either cease according to the rule, or can be dispensed by the Bishop. As to those who emit simple vows prior to solemn profession, see n. 1187.

Query 2° Whether Nuns of the Visitation of B. M. V., since they recite only the office of the B. M. Virgin, are held to this under grave obligation?

Resp. Affirmatively, if it is a question of those who are solemnly professed (see this n. V. 1°). The reason is that this Office has been substituted for them in place of the greater Roman Office. Cf. Gury, *Casus conscientiae*, Part II. n. 129.

Note. - In Kaskaskia no monastery of Nuns of the Visitation of B. M. V. exists any longer. Therefore whenever it is a question of Nuns of the Visitation, with the word Kaskaskia added, the survivors from this monastery, living in other monasteries of the same Order and solemnly professed, are to be understood.

Notes to n. 1205 - note sequence 1. (1) Kenr. Tr. VIII. n. 3. (2) Kenr. Tr. VIII. n. 5. (3) Ib. Tr. IV. App. 77, 77q. Cfr. n. 1202. O), 4°. a). (4) Ib. n. 10. Notes to n. 1205 - note sequence 2. (1) Conc. Pl. Balt. II. a. 407. 408 and p. XXVIII. ad VI. (2) See p. CLI. Decr. VII. (3) Ib. n. 419.

Appendix of Annotations

Reader's note: The following printed appendix annotations have also been attached to their corresponding places in the body text. The links below jump from this printed appendix to those attached in-body notes.

Attached annotation links, part 1 of 5.

Appendix annotation	Original printed locator	Attached in body
(α)	n. 475. q. 1°. R. 2°. p. 210. col. 2. and q. 2° p. 211. col. 1.	attached note
(β)	n. 550. p. 243. col. 2.	attached note
(γ)	n. 552. q. 3. p. 244. col. 2.	attached note
(δ)	n. 557. q. 2°. p. 246. col. 2.	attached note
(ε)	n. 891. 1°. p. 357. col. 2.	attached note
(ζ)	n. 1138. p. 438. col. 1.	attached note
(η)	p. LI.	attached note
(θ)	n. 435-440. p. 195-199.	attached note
(ι)	n. 370. 4°. p. 168. col. 2.	attached note
(κ)	p. LXXIII. Note 2 at the bottom of the page, and n. 374. 8°. p. 170. col. 1.	attached note
(λ)	n. 408. 1°. p. 184. col. 1.	attached note
(μ)	n. 409. q. 4°. Resp. to d). p. 185. col. 2.	attached note
(ν)	n. 553. 3°. p. 244. col. 2.	attached note
(ξ)	Before n. 573. p. 250. col. 1.	attached note
(ο)	n. 573. 2°. p. 250. col. 2.	attached note
(π)	n. 600. 3°. p. 261. col. 2.	attached note
(ρ)	n. 768. R. 4°. p. 315. col. 2.	attached note
(σ)	n. 793. p. 324. col. 1.	attached note

Attached annotation links, part 2 of 5.

Appendix annotation	Original printed locator	Attached in body
(τ)	n. 807. p. 329. col. 2.	attached note
(υ)	n. 828. 3°. p. 337. col. 2.	attached note
(φ)	n. 828. 4°. p. 337. col. 2.	attached note
(χ)	n. 854. Resp. 1°. p. 345. col. 1.	attached note
(ψ)	n. 874. p. 352. col. 2.	attached note
(ω)	n. 892. p. 358. col. 1.	attached note
(A)	n. 930. Resp. to 2nd under 2°. p. 372. col. 1.	attached note
(B)	n. 1159. 2°. p. 447. col. 1.	attached note
(Γ)	n. 1159. II. p. 447. col. 1.	attached note
(Δ)	n. 1163. R. to 2nd. p. 448. col. 2.	attached note

Appendix annotation	Original printed locator	Attached in body
(E)	n. 1203. IV. p. 466. col. 2.	attached note
(Z)	p. LXXII. Fac. 27.	attached note
(H)	p. LXXII. Note 2 at the bottom of the page.	attached note
(Θ)	n. 116. p. 56. col. 1.	attached note
(I)	n. 117. p. 56. col. 2.	attached note
(K)	n. 146. Query. p. 65. col. 2.	attached note
(Λ)	n. 151. 4°. p. 67. col. 2.	attached note
(M)	n. 151. 6°. p. 68. col. 2.	attached note

Attached annotation links, part 3 of 5.

Appendix annotation	Original printed locator	Attached in body
(N)	n. 170. at the end, p. 76. col. 2.	attached note
(Ξ)	n. 172. 3°. p. 77. col. 2.	attached note
(O)	n. 174. p. 79. col. 2.	attached note
(Π)	n. 349. q. 4°. p. 158. col. 1.	attached note
(P)	n. 391. II. p. 177. col. 2.	attached note
(Σ)	n. 434. q. 8. p. 194. col. 2.	attached note
(T)	n. 468. q. 19. p. 208. col. 2.	attached note
(Y)	n. 469. q. 4°. p. 209. col. 1.	attached note
(Φ)	n. 476. 1°. p. 211. col. 1.	attached note
(X)	n. 480. q. 2° p. 213. col. 1.	attached note
(Ψ)	n. 480. q. 3°. R. 1°. p. 213. col. 1.	attached note
(Ω)	n. 521. p. 232. col. 2.	attached note
(a)	n. 524. p. 233. col. 1.	attached note
(b)	n. 527. p. 234. col. 2.	attached note
(c)	n. 532. q. 4°. p. 236. col. 2.	attached note
(d)	n. 532. q. 5°. p. 236. col. 2.	attached note
(e)	n. 568. q. 5°. p. 249. col. 1.	attached note
(f)	n. 569. p. 249. col. 1.	attached note

Attached annotation links, part 4 of 5.

Appendix annotation	Original printed locator	Attached in body
(g)	n. 723. p. 300. col. 2.	attached note
(h)	n. 731 R. 1°. and R. 3°. p. 302. col. 2.	attached note
(i)	n. 734. p. 303. col. 2.	attached note
(j)	n. 738. p. 305. col. 1.	attached note
(k)	n. 747. p. 307. col. 2.	attached note
(l)	n. 769. q. 3°. p. 315. col. 2.	attached note
(m)	n. 928. p. 371. col. 1.	attached note
(n)	n. 932. II. p. 372. col. 2.	attached note
(o)	n. 1017. p. 402. col. 2.	attached note

Appendix annotation	Original printed locator	Attached in body
(p)	n. 1019. p. 403. col. 1.	attached note
(q)	n. 1072. q. 3°. p. 418. col. 2.	attached note
(r)	n. 1098. q. 10°. R. to 2nd. p. 426. col. 2.	attached note
(s)	n. 1150. p. 444. col. 2.	attached note
(t)	n. 1184. p. 454. col. 2.	attached note
(u)	n. 1189. 5°. p. 458. col. 2.	attached note
(v)	n. 1189. 6°. p. 458. col. 2.	attached note
(x)	n. 1194. I. p. 460. col. 2.	attached note
(y)	n. 1193. F). p. 462. col. 1.	attached note

Attached annotation links, part 5 of 5.

Appendix annotation	Original printed locator	Attached in body
(z)	n. 1196. 9°. p. 463. col. 1.	attached note
(1)	n. 104. IV. p. 51. col. 1.	attached note
(2)	n. 164. p. 72. col. 2.	attached note
(3)	n. 178. p. 81. col. 2.	attached note
(4)	n. 207. p. 92. col. 2.	attached note
(5)	n. 150. p. 67. col. 2.	attached note
(6)	p. LXXI. note 2 at the bottom of the page.	attached note

(a) n. 475. q. 1°. R. 2°. p. 210. col. 2. and q. 2° p. 211. col. 1.

If the mother must not be killed, as St. Thomas teaches,[1] in order that the child may be saved, neither must the child be killed in order that the mother may be saved; and the intention of saving the mother, however much it may be considered principal and predominant, does not prevent the procurement of abortion from being direct, and willed *in itself*. Nor can those procuring abortion be excused from sin on the ground that they only hasten the death of offspring otherwise certainly about to die; for a direct hastening or anticipation of death, and willed in itself, not I say on account of itself, is true homicide. - For the same reason that is not lawful even on account of conferring Baptism upon offspring which otherwise would not be baptized. And in truth, St. Thomas[2] says that the mother is not to be killed so that the child may be baptized. But although St. Alphonsus[3] says that "it is lawful to baptize with cold water a child soon about to die, if no other can be had, even if it were feared that death would be hastened from this," he permits this only because "such an action does not tend to killing, but to washing," and a just cause is present; but at the same time he warns that "it is never lawful to throw an infant into a river in order to baptize him" (which baptism nevertheless is probably valid), "although he is soon about to die without Baptism; because it is never lawful, for any cause whatever, directly to kill an innocent." Therefore he kills the infant as directly who directly procures abortion as he who throws him into the river.

Notes to preceding text - note sequence 1.

1 3. q. 68. art. 11, ad 3. | **2** Ib. | **3** L. VI. 106.

Nor is it lawful to equate an animated fetus, endowed with its own life, with an unjust aggressor; for one who from the sole course of natural things, for example a man infected with plague, becomes the cause of death to another, cannot be held as an aggressor, either formally or materially unjust. - Nor can he be compared with an innocent who is killed together with an unjust aggressor, because: 1° a dangerous or death-bringing delivery will never rightly be called an unjust aggressor of the mother; 2° it is never lawful to assume the death of an innocent as a means for killing an enemy; but in the case, abortion or the killing of the infant is assumed as a means for freeing the mother from dangerous childbirth. - Finally, from the fact that a mother in shipwreck is not held to sustain a child above the waters with peril of her own life, it would not rightly be concluded that she can provide for her own safety by abortion; for the preservation of another's life by means or positive action, such as sustaining a child above the waters, pertains to the affirmative precept of charity, which does not oblige always nor with grave harm; but the prohibition of abortion pertains to the negative precept of not killing, which never does not oblige. And indeed the mother by abortion not only does not retain, or ceases to retain, the infant within the womb, but rather casts him outside the womb; and in like manner, in the example adduced, although she is not held to sustain the child, she is entirely held, even if she must perish, not to immerse him. Thus rightly Dumas.[1]

Notes to preceding text - note sequence 2.

1 P. I. n. 403. 2°. 4°. 9°. 10°.

(β) n. 550. p. 243. col. 2.

Since, beyond my expectation, not a few copies of my work have been sold outside the Federated States and in those regions in which parishes properly so called are had, it has seemed good here to add the following questions concerning the place in which Paschal Communion, by common law, is to be received.

Query 3° Whether the precept of communicating in the parish obliges under grave sin?

Resp. Affirmatively, at least per se. The reason is that the matter seems grave in itself. For to what purpose would there be so many constitutions and decrees of the Supreme Pontiffs for establishing a light obligation? - Thus commonly. - Yet some assert that it is only light if someone once or twice in life should communicate elsewhere, because he does not seem to inflict a grave injury on the pastor, especially if he had communicated several times during the year in the parish. - Tamburini, *meth. comm.*

Query 4° Whether the precept of communicating in the parish still presses when the Paschal time has elapsed and the precept has not been satisfied?

Resp. Affirmatively, with the common sentence. The reason is that the end of the law always remains to be obtained. Yet in practice here good faith can easily be supposed; and this would be disturbed most imprudently unless fruit is hoped for.

Query 5° Whether he satisfies the precept of the Church who communicates in the cathedral church or from the hand of the Bishop outside the parish?

Resp. Negatively, notwithstanding any custom whatever, even immemorial, as is clear from the decisions of the S. C. C. The reason is that he has not communicated in his own parish. - Thus

commonly.[1]

Query 6° Who can give the permission by force of which the precept of communicating is satisfied outside the parish?

Resp. 1° The diocesan Bishop and Vicar General; 2° the parish priest himself to parishioners, since the law was made in his favor and otherwise this is clear from custom. Indeed, permission morally certainly presumed is sufficient.[2] But the parish priest ought not give general permission that any parishioner whatever may communicate outside the parish church. - S. C. C., Sept. 7, 1615.

Query 7° Where can the following satisfy the precept of Paschal Communion: 1) pilgrims and wanderers; 2) soldiers; 3) servants; 4) Regulars and their domestics and boarders; 5) priests?

Resp. to 1). In any church, provided, if it is a question of pilgrims, they are so absent from their own parish that they cannot conveniently approach it.[3]

Notes to preceding text - note sequence 3.

1 L. VI. 300 sub 4. Sab. | **2** Ib. | **3** Ib. sub 2.

Resp. to 2). Those staying in a station or having domicile in the city, in the parish in which they are staying; otherwise in any church.

Resp. to 3). Servants and all others having quasi-domicile are bound by the same law as inhabitants of the place.

Resp. to 4). If they are exempt, see n. 1195. G). a). But those not exempt must receive Holy Communion either from the hand of the pastor, or, if they are not impeded by enclosure, in the parish church. - *Anal.*[1]

Resp. to 5). If they celebrate, anywhere.[2]

Query 8° Whether he who has communicated sacrilegiously in the parish is held to communicate again in the parish?

Resp. Negatively, because he has fulfilled the end of the precept as regards the circumstance of place; therefore it suffices that he communicate in any place whatever in order to satisfy the precept of Paschal Communion, which he did not fulfill by sacrilegious Communion. Nor is he held to make Paschal Communion in the parish who in Paschal time has received Sacred Viaticum; for the end of the law has been sufficiently fulfilled.

(γ) n. 552. q. 3. p. 244. col. 2.

To the doubt whether, when either by the Bull of the Crusade or for another cause an indult is granted for the use of melted lard (commonly *strutto*) by the title of condiment alone, those who are held to fasting can use that condiment also in the evening refection? - The S. Penitentiary, Jan. 16, 1834, by the express oracle of Leo XII, replied ... that those who are held to fasting can lawfully use in the evening refection also the condiments permitted in the Indult, because by force of the Indult they hold the place of oil, provided a restriction has not been placed in the Indult that they may be employed in the one meal.[3]

(δ) n. 557. q. 2°. p. 246. col. 2.

Most Blessed Father,

"N. sets forth the custom of taking in the morning on days of fast, in a small quantity, coffee or chocolate with a little piece of bread, which has prevailed in many regions, and also in dioceses of the United States of North America, ... but has not yet been introduced into Canada. Therefore, in order that he may be able to reply something certain to those who ask whether it is also lawful in Canada, the said Orator suppliantly begs Your Beatitude that you may graciously deign to declare whether with safe conscience it can be tolerated or permitted in the aforesaid region of Canada that in the morning on days of fast there be taken, in a small quantity, coffee or chocolate with a little piece of bread?" The S. Penitentiary, after maturely weighing the matters set forth, judged that the reply should be given: "Those who follow such a custom are not to be disturbed." Nov. 21, 1843. *Nouv. Rev. Théol.* T. IV. p. 431.

(ε) n. 891. 1°. p. 357. col. 2.

Someone perhaps will have wondered that I said nothing about the revocability of a donation after its acceptance. The reason why I said nothing is that those causes on account of which Roman Law decrees that even an accepted donation can be revoked (see these, if you wish, in St. Alphonsus[4]) are not acknowledged by English Law. "The English law," says Kent,[2] "does not indulge in these refinements" of the Roman law, which indeed, if I may say what I think, is to be regretted. Therefore among us, "when the gift is perfect by delivery and acceptance, it is then irrevocable, unless it be prejudicial to creditors, or the donor was under a legal incapacity, or was circumvented by fraud."[3] Yet Louisiana does not use English Law. See "Civil Code of Louisiana."[4]

Notes to preceding text - note sequence 4.

1 Ser. 4. col. 2280 sv. | **2** L. VI. 300 sub 1. | **3** Acta, T. I. p. 429. n. 17. | **4** L. IV. 738-740.

(ζ) n. 1138. p. 438. col. 1.

In the Province of San Francisco there are certain parishes properly so called, in which, although they are not ruled by pastors properly so called, the faithful and their pastors or rectors, by force of common law, are bound to one another by the same offices by which parishioners and pastors properly so called are bound. This is clear from the following words of the Fathers of the First Provincial Council of San Francisco, in 1874: "We declare that the Rectors of those parishes which are held as parishes properly so called are held to fulfill all the duties of pastors toward the faithful established within the limits of their churches; but that the faithful have the right to receive spiritual helps from them as from their own Rectors of souls, and are specially held to recur to them for Paschal Communion, Baptism, Viaticum, Extreme Unction, and Matrimony."[5]

Notes to preceding text - note sequence 5.

2 T. II. n. 440. | **3** T. II. n. 440. | **4** Art. 1559-1569. | **5** Conc. Prov. S. Franc. I. n. XVI.

From these things it seems to be concluded that these Rectors, no less than pastors properly so called, are held to offer Mass for the people, and validly and lawfully to hear the Confessions of their

parishioners everywhere.

(η) p. LI.

A doubt was proposed by the Bishop of Bayonne, whether the obligation of not mixing fish with flesh-meat on days of Lent touches all who by force of an indult can eat meats, or only those who fast.

On June 23, 1875, in the General Congregation of the Holy Roman and Universal Inquisition, held before the Most Eminent and Most Reverend Lord Cardinals General Inquisitors, when the above-written Doubt had been proposed, and the vote of the Lord Consultors had been had beforehand, the same Most Eminent and Most Reverend Fathers ordered that reply be made: Affirmatively as to the first part, Negatively as to the second part; and let the Decree of March 24, 1841 be given, namely to the Doubt, Whether the law of not mixing permitted and forbidden foods also regards those who are not held to one meal, such as young persons before they have completed their twenty-first year, and others reasonably excused from the same on account of inability or labor; the Most Eminent Fathers decreed: It is not lawful.

(θ) n. 435-440. p. 195-199.

INSTRUCTION ON PUBLIC SCHOOLS TO THE MOST REVEREND BISHOPS IN THE FEDERATED STATES OF NORTH AMERICA.

Extracts.

First of all, there had to fall under deliberation the very plan of educating youth which is proper and peculiar to schools of this kind. But to the S. Congregation this seemed even of itself (1)[1] full of danger, and very adverse to the Catholic cause. For the pupils of such schools, since their own plan excludes every doctrine of religion, will neither learn the rudiments of Faith, nor be instructed in the precepts of the Church, and therefore will lack the knowledge most necessary to man, without which one does not live Christianly. In truth, in schools of this kind young persons are educated already from earliest boyhood and almost from tender years, at which age, as is clear, the seeds of virtue or vice adhere tenaciously. Therefore, if an age so flexible grows up without religion, this is surely a great evil.

Notes to preceding text.

1 The numbers (1), (2), etc. correspond to the numbers of the notes which are found at the foot of this Instruction.

Moreover, in the aforesaid schools, since they are separated from the authority of the Church, teachers from every sect indiscriminately are employed, and otherwise no law has made provision that they not bring ruin upon youth; thus it is free for them to pour errors and the seeds of vices into tender minds. Further, a certain corruption threatens from this also, that in the same schools, or at least in very many of them, adolescents of both sexes are gathered into the same room for hearing lessons, and males are ordered to sit on the same bench next to females. All these things bring it about that youth is wretchedly exposed to harm concerning the Faith, and morals are endangered.

But unless this danger of perversion is rendered remote from being proximate, such schools cannot be frequented with safe conscience. The natural and divine law itself proclaims this. ...

Therefore it is necessary that the Most Reverend Prelates, by whatever help and labor they can, keep the flock committed to them away from every contagion of public schools. But by the consent of all, nothing is so necessary for this as that Catholics everywhere have schools proper to themselves, and that these not be inferior to the public schools. Therefore, with every care provision must be made for Catholic schools, whether to be established where they are lacking, or to be enlarged and more perfectly furnished and prepared, so that in instruction and discipline they equal the public schools. (2.) And in executing so holy and so necessary a design, members from Religious Congregations, whether men or women, will not be employed uselessly, if it has seemed so to the Bishops; and that the expenses necessary for so great a work may be supplied by the faithful the more willingly and abundantly, when a suitable occasion has been offered, whether by pastoral letters, or sermons, or private conversations, it is seriously necessary that they themselves (3) be reminded that they would gravely fail in their office unless with every care and expense they can (4) they provide for Catholic schools. Concerning this, especially to be admonished are all those among Catholics who surpass others in wealth and authority among the people, and who are enrolled in assemblies for passing laws. ...

Moreover the S. Congregation does not ignore that circumstances of affairs sometimes are such that Catholic parents can in conscience commit their offspring to public schools (5). But they will not be able to do this unless they have sufficient cause for acting thus (6); and whether such a sufficient cause is present or not in some particular case will have to be left to the conscience and judgment of the Bishops (7), and according to the matters related then it will generally be present when either no Catholic school is at hand, or the one which is at hand is not sufficiently suitable for instructing adolescents conveniently and congruently to their condition (8).

But in order that public schools may be approached in conscience, the danger of perversion, which by their own plan is more or less always connected with them, must be rendered remote from proximate by suitable remedies and precautions. Therefore it must first be seen whether in the school about whose attendance inquiry is made, the danger of perversion is of such a kind that it cannot be rendered plainly remote, as often as there either are taught or are done certain things contrary to Catholic doctrine or good morals, and which cannot be heard or done without detriment to the soul (9). In truth such a danger, as is clear of itself, must altogether be avoided with any temporal harm whatever, even that of life. Moreover, youth, in order that they may be committed to public schools in conscience, must duly and diligently receive necessary Christian instruction and education, at least outside school time. Therefore pastors and missionaries, mindful of those things which the Council of Baltimore most providently established concerning this matter (10), should diligently devote themselves to catechetical instructions, and chiefly apply themselves in explaining those truths of Faith and morals which are more attacked by unbelievers and heterodox persons; and they should strive to fortify youth exposed to so many dangers, both by frequent use of the Sacraments and by piety toward the Blessed Virgin, and again and again excite them to holding religion firmly. But parents themselves, or those who are in their place, should watch solicitously over their children, and either themselves, or, if they themselves are less suitable, through others, should question them about the lessons heard, review the books handed over to them, and, if they find anything harmful

there, should provide antidotes, and should entirely keep and forbid them from familiarity and company with fellow pupils from whom danger to Faith or morals could threaten, or whose morals have been corrupt. But whatever parents neglect to impart this necessary Christian instruction and education to their children; or who allow them to frequent such schools in which the ruin of souls cannot be avoided; or finally who, although a Catholic school is present in the same place, suitable and aptly instructed and prepared, or although they have the faculty of educating their Catholic offspring in another region, nevertheless commit them to public schools without sufficient cause and without the necessary precautions by which the danger of perversion is rendered remote from proximate: if they are contumacious, it is manifest from Catholic moral doctrine that they cannot be absolved in the Sacrament of Penance (11).

Notes to These Extracts.

(1) Therefore public schools are intrinsically or of themselves evil, yet in the sense explained in n. 26 (under 3°) of this Compendium; namely, so that sometimes for a just cause and with the danger of perversion removed, they can be approached, as also the Instruction itself, which wholly rests on this principle, clearly teaches.

(2) Cf. this Compendium n. 440. 3°. b).

(3) Namely the faithful.

(4) Cf. this Compendium n. 440. 3°. c).

(5) Therefore, as a rule, that must be held, that public schools cannot be approached in conscience; but place is given for exception, yet under three conditions, which the Instruction sets forth.

(6) This therefore is one of the three conditions which must be present so that parents can in conscience commit their children to public schools. The second is that the danger can be rendered remote from proximate. The third, that the danger is truly rendered remote from proximate. Cf. note (1) above.

(7) Therefore in doubt about the sufficiency of the cause the Bishop is to be approached. I say: in doubt; for the S. Congregation must not be thought to have wished this, that in all and singular cases the Bishop's judgment concerning the sufficiency of the cause be sought; for a cause judged undoubtedly either sufficient or insufficient does not require the Bishop's judgment.

(8) To this belong Case IV, n. 436, and Case IX, n. 439, set forth in this Compendium.

(9) Here is set forth the second condition which must be present so that public schools can be approached in conscience. See note (6) above. What those things are which cannot be heard without detriment to souls, there is no need to say. But what things cannot be done without the same detriment, you have in Case I, n. 435, of this Compendium.

(10) Cf. n. 440. 3°. d) of this Compendium.

(11) Here you have the three chief cases in which, because one of the three conditions enumerated above in note (6) is lacking, absolution is to be denied to parents.

(1) n. 370. 4°. p. 168. col. 2.

I add also this resolution of St. Alphonsus (L. IV. 150). "Certain simple persons seem sometimes able to be excused from mortal perjury by reason of lack of consideration, when they use certain oath-formulas, such as: By my soul, may God punish me. For although they know this to be called an oath, nevertheless they do not apprehend that to swear is something grave and is to call God as witness, but they apprehend only some confused notion of evil, not of so great moment. See Bon. loc. cit. Laym. c. 14." Thus Busembaum. St. Alphonsus adds: "Indeed it must be noted that commonly country people do not apprehend the gravity of perjury, when, confessing themselves concerning oaths, they distinguish little or not at all true oaths from false; and I have long since understood this from practice in missions. Therefore for those who have the custom of perjuring in such a way, I judge confessors should rather abstain from instructing such persons concerning the grave sin which truly is in perjury, lest material sins in them, on account of the evil habit they have, become formal, according to the general rule, as Busembaum teaches concerning the Sacrament of Penance with Lugo, Sanchez, and Laymann, etc. See book 6. n. 610. Yet such customary sinners are indeed to be strongly warned that henceforth they cease to swear falsely. Moreover, it is not always expedient to warn a rude penitent of this kind concerning the gravity of perjury, if the warning is foreseen not easily to be profitable."

(κ) p. LXXIII. Note 2 at the bottom of the page, and n. 374. 8°. p. 170. col. 1.

It is useful to add here certain declarations given by Alexander VII, both in the Brief *Cum circa*, July 20, 1660, and in the Response approved by him of some Cardinals of the S. C. de Propaganda Fide, dated April 8, 1661.

1. In the cited Brief the Pontiff established that the profession of those who, after emitting this oath, were to enter Religion without permission of the Holy See, would be null by the law itself, and that they, notwithstanding profession, could be recalled to their former state by the Congregation de Propaganda Fide (*Bullar. S. C. de P. F.* T. I. p. 141).

2. In the same Brief the same Pontiff blamed those "who, not understanding the gravity of the office of secular Priests admitted to Apostolic Missions, or what, especially with attention to the circumstances of times and affairs, conduces more to the propagation of the Holy Faith and to the good of the universal Church, still dare to assert that an oath of this kind, in that part in which it prohibits entrance into any Religion, is altogether invalid as impeding a greater good." Ib.

3. To the question (IIIrd): "Whether namely it is of the mind of His Holiness to prohibit Alumni entrance into Religion, even if by the counsel of spiritual Fathers it should be judged most conducive to their salvation": the appointed Cardinals responded: "It has been said that the Brief" (Alex. VII, *Cum circa*) "does not forbid Alumni from becoming Regulars, but reserves to the judgment of the Apostolic See the weighing of reasons and moments, when it is to be judged fitting, and when not; among which that is certainly most important, namely whether the public good should, in those circumstances, be preferred to the private good of the Alumnus; namely by that reason by which it has been granted to some Orders, that their Religious may not pass even to a stricter one without permission of their own Superiors," Ib. p. 146.

4. To the supplication "for some declaration concerning the perpetual subjection of Alumni to the Holy See, even after, permission having been obtained, they have entered some Religion, because otherwise they will be received with difficulty by Superiors," they responded: "The continuation of the bond of applying themselves to the help of souls, even if with permission of the Apostolic See ... they have entered Religion, is found expressed in the Formula of Oath issued by order of Urban VIII, of holy memory, which from that time has always been furnished by Alumni; nor for that reason have Superiors of Religions abstained from admitting the same, or especially for this reason, that, with one or two excepted, there is almost no Order of Regulars in which they cannot fulfill the office of this kind of helping souls, to which they have devoted themselves; but if Alumni wish to enter some Religion which is in no way vacant for this office, or however much it may have been vacant, or if they are not permitted to exercise in it the offices prescribed in the foundation of the College, or to benefit the Nations to which they devoted themselves, it will be altogether equitable that they be excluded from it." Ib.

(λ) n. 408. 1°. p. 184. col. 1.

It is said: *to whom it is harmful to go outside*. But from these are to be distinguished those to whom it is harmful to be in church. For there are not lacking those who, although they can go outside without some injury to health, cannot be present in church without the same injury to health. This happens from a twofold cause: from the unhealthy air, namely, which from various causes pervades churches, especially those crowded with many people; and from a physiological condition proper to someone. If one or other of these causes were truly present in a particular case, and from that a probable danger to health truly existed, it would surely excuse from the precept. I say: truly; truly existed; for experience proves more than sufficiently that the danger of hallucination in judging each cause is by no means chimerical. See the excellent work of Dr. Capellmann, *Medicina Pastoralis*, p. 87 sq., where the matter is illustrated by practical examples.

(μ) n. 409. q. 4°. Resp. to d). p. 185. col. 2.

The words: *unless they already go out of the house for other things*, are to be restricted to the sole case designated, namely of a custom that women after childbirth approach the church only after some determined time, for example six weeks. For it can happen that within that time they usefully go out of the house for the sake of their health itself, and nevertheless, on account of one or other of the causes just set forth under (λ), are excused from approaching the church. Indeed the above-praised Capellmann, p. 90, says it is advisable that women after childbirth and those recovering from illness, before they approach the church, go out once or twice into the open air.

(ν) n. 553. 3°. p. 244. col. 2.

As regards abstinence from flesh-meat, Capellmann (*Med. Past*. p. 97) warns that, except those who are truly sick or recovering from a grave infirmity, there are few who are excused from it precisely because they do not receive necessary nourishment from other foods. Eggs, he says, furnish as much nourishment as meats.

(ξ) Before n. 573. p. 250. col. 1.

Exemption or dispensation from abstinence does not of itself include exemption or dispensation from fasting. "Yet the case is excepted in which dispensation to meats is granted on account of infirmity or weakness of strength, as the Doctors commonly say, and as" by Benedict XIV "was declared in the Bull *In suprema*, where it is said: provided no certain and dangerous reason of affected health intervenes, or otherwise necessarily requires it to be done." H. A. Tr. XII. 9.

(ο) n. 573. 2°. p. 250. col. 2.

Capellmann, *Med. Past*. p. 92, holds that women in the time of menstruation also are excused from fasting. The same author, ib. p. 98, likewise notes that meats are not permitted to pregnant women who are not weak for this reason, as some think, that they vehemently desire them, but only then when other foods cause insuperable nausea for them; and even in this case he requires the previous counsel of a physician.

(π) n. 600. 3°. p. 261. col. 2.

Thus the common opinion. Yet there are some (among whom is also Lugo, *de Just*. D. 3. n. 14-16) who contend that their capacity must be derived from civil law alone.

(ρ) n. 768. R. 4°. p. 315. col. 2.

Likewise otherwise, if by his vote he could recall the previous voters from an unjust sentence. But in doubt it ought by no means be presumed that the previous voters will be recalled from an unjust sentence if they culpably carried it; otherwise, if by inculpable error. L. IV. 566. § *fin.*

(σ) n. 793. p. 324. col. 1.

I said: *other things being equal*. St. Alphonsus explains this in these words (L. IV. 598. § *Secunda sententia*, at the end of the §): "Yet Lugo himself, n. 188, and Croix, n. 373, with Illsung and Haunold, rightly warn that the damage of the creditor and of the debtor must be weighed comparatively to the subject: for it can happen that damage of ten coins with respect to a poor debtor is far greater than damage of one hundred with respect to a wealthy creditor; and so conversely."

(τ) n. 807. p. 329. col. 2.

Crolly, *de Juris alieni violatione* n. 1269, explains the matter very well by this argument of common sense: "If ... Caius should say to Julius: Do you think that it is therefore not lawful for me to kill Marcus, who has violated my daughter, because he owes you money, Julius can reply" (and this response of common sense will indeed be consonant with those principles of theology on which St. Alphonsus relies): "I do not say to you, that it is therefore not lawful for you to kill Marcus because he owes me money, but that it is not lawful to do it in such a way that you prevent me from obtaining my just debt" (credit?).

(υ) n. 828. 3°. p. 337. col. 2.

"The agreement is either under seal or not under seal. If under seal, it is denominated a specialty, and if not under seal, an agreement by parol; and the latter includes equally verbal and written contracts not under seal." Kent, T. II. n. 450.

(φ) n. 828. 4°. p. 337. col. 2.

"These" contracts "are divided by the civilians into four species. 1. *Do, ut des*: as when I give money or goods, on a contract that I shall be repaid in money or goods for them again. Of this kind are all loans of money upon bond, or promise of repayment; and all sales of goods, in which there is either an express contract to pay so much for them, or else the law implies a contract to so much as they are worth. 2. The second species is, *facio ut facias*: as when I agree with a man to do his work for him, if he will do mine for me; or if two persons agree to marry together, or to do any positive acts on both sides. Or it may be, to forbear on one side on consideration of something done on the other, as that in consideration A, the tenant, will repair his house, B, the landlord, will not sue him for waste. Or it may be for mutual forbearance on both sides; as that in consideration that A will not trade to Lisbon, B will not trade to Marseilles; so as to avoid interfering with each other. 3. The third species of consideration is, *facio ut des*: when a man agrees to perform anything for a price, either specifically mentioned, or left to the determination of the law to set a value to it. ... 4. The fourth species is, *do ut facias*: which is the direct counterpart of the preceding. As when I agree with a servant to give him such wages upon his performing such work: which we see is nothing else but the last species inverted; for *servus facit, ut herus det*, and *herus dat, ut servus faciat*." Blackstone's Comm. T. II. n. 445.

(x) n. 854. Resp. 1°. p. 345. col. 1.

"If the contract be entered into by means of violence offered to the will, or under the influence of undue constraint, the party may avoid it by the plea of duress." Kent's Comm. T. II. n. 453. "If a person be under an arrest for improper purposes without a just cause, or where there is an arrest for a just cause, but without lawful authority, he may be considered as under duress." Ib.

(ψ) n. 874. p. 352. col. 2.

"A valuable consideration is one that is either a benefit to the party promising or some trouble or prejudice to the party to whom the promise is made. Any damage, or suspension, or forbearance of a right, will be sufficient to sustain a promise." Kent, T. II. n. 465. "The rule, that a consideration is necessary to the validity of a contract, applies to all contracts and agreements not under seal." Ib. n. 464.

(ω) n. 892. p. 358. col. 1.

"Though an estate be conveyed, it passes to the grantee subject to the condition, and laches are chargeable upon the grantee, even though such grantee, or his assignee, be an infant or feme covert, for non-performance of a condition annexed to the estate." Kent's Comm. T. IV. n. 126.

(A) n. 930. Resp. to 2nd under 2°. p. 372. col. 1.

Worthy of note is the Response which the S. Penitentiary gave on Jan. 21, 1873, to the Bishop of Como, who asked in these words:

"Most Eminent and Most Reverend Lord:

"Titius, in the year 1860, when this government[1] had not yet given compulsory use to paper money in the Lombard Province, lent to Sempronius at interest by note one hundred and twenty gold coins, commonly called *marenghi*, with these conditions given and accepted.

"I. The principal will have to be restored in the same species, any other thing substituted for metallic money being excluded, and this even in the case in which some civil law might permit this substitution, namely of paper money, for extinguishing debts of whatever kind, the debtor from now renouncing the privilege which the law perhaps might grant to him.

"II. If it should happen that a law of this kind be passed, and from it the creditor be forced to accept such paper money as payment, the debtor obliges himself to restore the aforesaid sum by handing over paper money, not according to its nominal or legal value, but according to its commutative value, or by handing over such a sum of paper money that from it, by exchange, the aforesaid 120 gold coins can be had; and likewise the owed interest in metallic money.

"With these agreements, Sempronius gave interest according to their tenor up to this day; but now, when compelled by Titius to render the said principal, he refuses to stand by the agreements; namely, he neither wishes to pay gold money, nor to add upon the paper money as much as presently is required so that it may be equated with gold according to the difference, commonly *aggio*; and he brings forward this reason, that the civil law, by decreeing that paper money is to be accepted by all in place of metallic, has besides declared wholly void the preceding agreement concerning restitution of the capital sum and payment of interest to be made in metallic coins and not in paper coins.

"Therefore for the direction of souls it is asked:

"I. Whether the simple[3] condition attached in the note concerning restitution to be made not otherwise than in metallic money loses its force even in the forum of conscience through a subsequent civil law invalidating it? And, if affirmatively:

Notes to n. 4 - note sequence 1.

1 The Italian one, namely. | **2** I report the conditions only substantially, translated from Italian into Latin. **3** That is, with no agreement added by which the debtor renounces the benefit of a law perhaps to be passed.

"II. Whether Sempronius, in this case, that is, by special conditions as stipulated above,[1] can safely conform himself even in the internal forum to this civil law so very useful to himself, when this law, even in these circumstances, would have favored him in the external forum?

"May Your Eminence deign, etc.

"PETER, Bishop of Como.

"Como, on the fourth day before the Kalends of January 1873."

"The Sacred Penitentiary, having maturely considered the proposed doubts, replies:

"To I. Regularly[2] affirmatively, unless peculiar circumstances obstruct, concerning which recourse must be had in particular cases, after they have been diligently set forth.

Notes to n. 4 - note sequence 2.

1 By which he renounced the benefit of a law perhaps to be passed. | **2** i.e., unless the law, for example, is unjust.

"To II. With attention to the quality of the agreements, and also with attention to the tenor of the law of which there is question in the case, negatively.

"A. PELLEGRINI, Regent of the S. P.

"L. CAN. PEIRANO, Secretary of the S. P.

"Given at Rome in the S. Penitentiary, Jan. 21, 1873."

(B) n. 1159. 2°. p. 447. col. 1.

The Congregation on the State of Regulars, on Feb. 7, 1862, declared that the conventual Chapter must indeed be heard for the instruction of the mind of the Superiors; but that the Superior General, or his subdelegate, is by no means bound to stand by the resolution of the same Chapter. Bizzarri, *Collect*. p. 912.

(Γ) n. 1159. II. p. 447. col. 1.

"Profession is distinguished as twofold; one express, the other tacit. The former is that which is expressed by word, writing, or another sign sufficiently declaring consent. But the latter is that which is made neither by voice, nor by writing, nor by another sign, but is judged to be induced through one or more acts proper to those professed. - As regards religious, tacit profession has been abrogated (S. C. on the State of Regulars, June 12, 1858, n. XL. Cf. Bizzarri, *Collect*. p. 907). In monasteries of Nuns there can still be place for it, either by wearing the habit of the professed for the time required by law, c. 1, 3, *de Regul.* in 6°; and Clem. 2, *de Regul.*; or by involving oneself in acts proper to the professed. But that tacit profession be valid, besides age and novitiate, it is required 1° that the habit was taken, or the act exercised, with the consent of the Superior who can admit to Religion, or at least that it was done with him knowing and not contradicting. 2° That the novice know that tacit profession is induced through such an act or wearing of the habit. 3° That the act or wearing of the habit be done with the mind of professing. 4° That the act or wearing of the habit be done freely and not by compulsion." Van der Velden-Piat, T. I. n. 241 (4).

(Δ) n. 1163. R. to 2nd. p. 448. col. 2.

St. Alphonsus adds, L. V. 18: "Yet Elbel, t. 2. p. 632. n. 644, and Lugo, n. 128, with Suarez and Sanchez, warn that after such acceptance a religious is held, if he conveniently can, to manifest the matter to the Prelate, so that thereafter he may lawfully retain it. The same" (namely, that presumed permission suffices) "Elbel says, p. 631. n. 640, if the Superior is accustomed easily to grant

permission for certain things, especially things to eat and drink; but in well-ordered monasteries such permissions are not usually granted everywhere, as Lessius says, l. c., except for very small things and those frequently occurring."

(E) n. 1203. IV. p. 466. col. 2.

Under the name of Mendicants are comprehended those to whom by rule or constitutions approved by the Apostolic See revenues and possessions in common are forbidden, although they may have these by dispensation of the Pontiff, just as today in Trent, sess. 25 *de Regula*, cap. 3, dispensation is given to all Mendicants except the Friars Minor of the Observance and Capuchins. Therefore to the Mendicant Orders belong the four more ancient Orders of St. Dominic, of the Friars Minor, of the Hermits of St. Augustine, and of the Carmelites, of whom mention is made in cap. unic. § *sane*, *de Relig. domibus* in 6; and besides these the Orders of the Servants of Mary, of the Minims of St. Francis of Paola, of St. Jerome, as St. Pius V declared in Const. 35 *Romanus Pontifex*, and 48 *Apostolicae Sedis*; and the Society of Jesus, from the Bull *Dum indefessa* (*Acta*, T. I. p. 727).

(Z) p. LXXII. Fac. 27.

To the doubt proposed by the Bishops of the Province of San Francisco in California, "whether by force of the general faculty made to Bishops under n. 27, namely: of dispensing, when it shall seem expedient, concerning the eating of meats, eggs, and lacticinia in the time of fasts and of Lent, all the faithful of the diocese can be dispensed by a general decree concerning abstinence from meats on some days of Lent": the S. Inquisition, Feria IV, Sept. 15, 1880, replied: "Negatively."

(H) p. LXXII. Note 2 at the bottom of the page.

In the year 1750 the S. C. of the Holy Office wrote these things in rescript to the Procurator General of the S. C. de Propaganda Fide dwelling at Macao: ... "The principal hinge of your doubts rests upon consideration of the faculties which are contained in the first formula, under n. 28 of the aforesaid formula. Since you have seen it noted that the aforesaid faculties cannot be communicated by Apostolic Vicars except to suitable priests who shall labor in their dioceses, for this reason, since you dwell at Macao, where you discharge the office of Procurator for this S. C. de Propaganda Fide, not undeservedly do you suspect that you could indeed have been appointed and declared Vicar General of the province of Houkouang by the Reverend Father Lord of Ecrin, Apostolic Vicar of the same province; but that he could not communicate to you apostolic faculties for the diocese of Houkouang, from which, since you are far absent otherwise, for that reason you do not labor in it. ..." *Collect.* p. 24. n. 35.

(Θ) n. 116. p. 56. col. 1.

A fiction of law "is a disposition of law contrary to truth in a possible matter and from a just cause." Reiffenstuel, L. 1. T. II. n. 176. The words: *in a possible matter*, import possibility not only in fact, but also in law; which others express in this manner: *that is, for inducing some juridical effect not repugnant to natural equity*. Id. ib.

(I) n. 117. p. 56. col. 2.

Therefore it can be asked whether Titius, a Bostonian, contracting marriage at Philadelphia with Bertha before a magistrate, would incur excommunication? For in each diocese those contracting thus are punished with excommunication. According indeed to the sentence of St. Alphonsus he would incur it. But whether he holds his own sentence as certain can be doubted somewhat; for he states it with the addition: "although Sanchez with Diana contradicts this." L. I. 156 § *fin.* It can be added that censure is not incurred unless the sin was certain. - Yet take care not to confuse this question with that concerning the faculty of a simple confessor as regards absolution from a sin reserved to the Bishop with excommunication, in the case in which, because of ignorance of the censure, the excommunication had not been contracted: concerning this question see n. 1401. q. 2°. R. 2°.

(K) n. 146. Query. p. 65. col. 2.

You ask why in the use of epikeia, outside the case in which observance of the law would become harmful, the Superior must be approached, if he can easily be approached, but not in interpreting law? I respond, because, as I hand down in n. 140, there is place for interpretation where the words of the law are more obscure, but for epikeia where they are clear. Therefore, positing the case in which the more obscure words of the law admit with equal probability both the stricter and the milder signification, without consulting the Superior you will apply the principles of Probabilism; but if it were not lawful to apply these in this way, it would follow that Probabilism could not be reduced to practice, while the Superior can easily be asked about the sense of the more obscure words of the law. - But the matter stands otherwise in epikeia, since from what is equitable and good it conjectures the mind of the legislator contrary to his clear words. See St. Thomas, 1. 2. q. 96. a. 6 ad 2.

(Λ) n. 151. 4°. p. 67. col. 2.

To the doubt of the Vicar Apostolic of Western Tonkin, whether after the time for which faculties (of the formulas) are granted has elapsed, they still avail in the case in which, without his fault, their prorogation has been delayed, the S. C. de Propaganda Fide, Jan. 16, 1797, replied that they avail until the obtaining of a new prorogation. *Collect*. p. 25. n. 40. - The same Congregation, April 2, 1740, with the Most Holy approving, declared that the time of the same faculties is to be computed from the day of reception, not of concession. Ib. n. 39.

(M) n. 151. 6°. p. 68. col. 2.

Citation (verbal, namely) is an act proceeding from the command of the judge, by whose order someone is called into judgment, by words or letters, for the sake of trying a right.

Joinder of issue is a legitimate act by which the plaintiff before the judge proposes his petition, but the defendant denies that he will yield to the petition, taking upon himself the judgment and the lawsuit.

(N) n. 170. at the end, p. 76. col. 2.

Yet De Angelis judges that the force of authentic collection must be denied to the Extravagants, whether of John XXII or the Common ones, *Prel. Jur. Can.* T. I. P. I. p. 14. Nevertheless he affirms that they have universal force of obliging, since all their Chapters have it; which, however, others deny. See *Zeitschrift für kath. Theol.*, Innsbruck, 1880. p. 526.

(Ξ) n. 172. 3°. p. 77. col. 2.

On Sept. 19, 1671, by mandate of the Most Holy (Clement X), it was enjoined that whenever resolutions of doubts made by the S. C. of the Holy Office and Propaganda Fide are sent to missionaries and the other ministers of the S. C. de Propaganda Fide, they are not sent as definitions, but as simple instructions by which in occurring doubts they can and must be governed. - *Collect. Const. etc. ad usum Soc. Miss. ad exteros*, p. 3. n. 5.

(O) n. 174. p. 79. col. 2.

It is useful to add also certain other formulas which the Holy Congregations use.

A cause is said to be argued while preserving the order of law, when the parties appoint procurators, and the cause is discussed by chosen advocates. Otherwise it is said to be treated *economically*.

By *summary of prayers*: this indicates that it is not a question of some doubt from the graver ones or of a contentious cause (for if it is a question of these, the formula is used: *let it be placed on the sheet*); but only of prayers exhibited to the Holy See, or of the manner in which the prayers deserve to be heard.

Let him consult approved authors. There are not lacking those who always would wish in their doubts an authentic response from authority; as if the laws of moral prudence were lacking, or these did not suffice for acting rightly. To these such a response is usually given.

(Π) n. 349. q. 4°. p. 158. col. 1.

It is asked whether it is sacrilege unjustly to retain legacies left to the Church for its service? Lessius affirms, L. II. c. 16. n. 30. But Tamburini and others deny, because until the said goods are possessed by the Church, they are not sacred. St. Alphonsus, L. IV. 42. q. 3.

It is likewise asked whether it is sacrilege not to pay tithes? Some affirm; others deny. Yet they say it is a graver sin of irreligiosity, because the payment of tithes is ordered to the recognition of divine dominion. Ib. q. 4.

(P) n. 391. II. p. 177. col. 2.

That the sentence of the Holy Doctor is not to be contemned is clear from the Response which the S. C. de Propaganda Fide gave on May 3, 1828, to the Vicar Apostolic of Eastern Tonkin: "But concerning the doubt which you proposed, asking whether the faculty of commuting and dispensing simple vows is extended also to simple vows confirmed by the bond of an oath, it was consulted, and by Decree it was established that supplication should be made to the Most Holy for sanation, insofar

as there is need, as regards the past, and for caution for a faculty in the future also as regards sworn vows. Which likewise was done, as you will know from the document of the Apostolic Indult already mentioned." *Collect. Juris miss.* p. 630. n. 1183.

(Σ) n. 434. q. 8. p. 194. col. 2.

"In mixed marriages the Catholic party near death sometimes not without reason fears that the faith of the children will be endangered, if they are committed to the care and guardianship of heretics" (Marres, *De justitia*, L. I. C. 3. n. 41). By what juridical means this danger can be forestalled will have to be discerned from the laws of each State.

(T) n. 468. q. 19. p. 208. col. 2.

The obligation of abstaining from the killing of a materially unjust aggressor, who is known certainly to be in mortal sin, supposes that the person attacked prudently judges himself to be in the state of grace. Therefore if either this prudent judgment or that certain knowledge is lacking (and both will rarely be present together), the one attacked cannot be deprived by this uncertain obligation of his certain right of defending himself. Nor is he deprived of it if there shines no prudent hope that the aggressor, if spared, will obtain salvation. Cf. Marres, p. 368. n. 238 under 2°. Haine, T. I. p. 280. q. 132.

(Y) n. 469. q. 4°. p. 209. col. 1.

What in regions where the civil law permits the killing of an unjust aggressor only for legitimate defense of oneself or of others? There are those who pronounce a law of this kind just and therefore to be observed (Marres, p. 369. n. 240 under II). Yet even those who contend for the justice of such a law admit that it is lawful to protect one's goods even by force and arms, and if a thief either of his own accord or induced by this defense uses force also, and now no longer attacks the goods but the very body of the owner, it is lawful, as is clear from the things set forth in n. 469. q. 3°, to provide for one's own safety even with the death of the thief; likewise that it is lawful in the nighttime to slay by a weapon, even sent from a distance, thieves violently breaking doors, since from aggression of this kind not only loss of goods but also danger of death is to be feared.

(Φ) n. 476. 1°. p. 211. col. 1.

"In doubt whether the fetus lives, it must be presumed by the physician to live, no otherwise than any sick person, concerning whose death it is not certainly clear." Marres, p. 387. n. 274.

(X) n. 480. q. 2° p. 213. col. 1.

"It easily happens that a defensive war is just, even if cause has been given for war: for if reparation of the injury has been offered" and no response to it is given by the enemy, or "excessive vengeance is sought, the citizens justly defend the fatherland." Kenrick, Tr. V. 26.

(Ψ) n. 480. q. 3°. R. 1°. p. 213. col. 1.

"While civil war is raging, he who obtains mastery over affairs judges citizens resisting him to be rebels, and kills them when captured by hanging, or by another infamous death. As often as it is a question of seditious persons, namely of those who from a slight cause or from the sole lust of ruling or growing rich disturb the republic, punishment is just; but if it happens that a great part of the people contends with arms, even without a just cause, fear can be struck into the rest by the punishment of a few, without raging against the multitude. If a people oppressed by tyranny seeks its rights by arms, the prince ought to satisfy it by conceding what is equitable; for this reason, if he cannot placate it, he will be able to punish after the manner of rebels those who labor to overturn public order and government." Kenrick, Tr. V. n. 28.

(Ω) n. 521. p. 232. col. 2.

"To this sentence a new strength is added today from the fact that through railways the distance of places almost vanishes, and the things which ancient theologians taught concerning inhabitants of a very neighboring place, namely that a matter can be manifested without the fault of detraction, now have force for the inhabitants of an entire region." Marres, p. 416. n. 330.

I add from St. Alphonsus, L. IV. 974: "Fr. Concina in this question distinguishes, and says that when a delict is public by notoriety of fact, that is, if it has been perpetrated publicly, then it can be manifested in every place; but when it was public only by notoriety of fame, with respect to its manifestation he thus concludes: All must be cautious, because this public fame is easily feigned."

(a) n. 524. p. 233. col. 1.

"Yet he seems to be excused from mortal sin who privately fishes out the crime of another without any intention of further publishing it, because then ... no grave harm is brought upon the other's reputation; or who, having suspected something light, contrary to opinion induces another to grave detraction, since that is done outside his intention." Marres, p. 417. n. 332, from Sporer, Tr. V. C. IV. n. 105.

(b) n. 527. p. 234. col. 2.

"That someone sin mortally by detraction, these conditions are required:

"1°. That someone either truly bring grave harm upon another's reputation, or believe that he is bringing it;

"2°. That he not have, or not invincibly believe that he has, a legitimate reason for injuring another's reputation;

"3°. That he attend at least in confused fashion to the mortal malice of the action, or to the grave harm to be inflicted on another." Marres, p. 416. n. 332.

(c) n. 532. q. 4°. p. 236. col. 2.

From the things said in this place concerning compensation, and at the same time from the things handed down in n. 531 under 6° concerning presumed condonation of the obligation of restoring

reputation, some (see Marres, p. 431. n. 362) adhere to Sporer (Tr. V. C. IV. n. 116), who writes: "I think that commonly men, especially common people, are excused among themselves from restitution of reputation; for since generally they know that others everywhere detract, and that restitution is never made, nor do they themselves demand restitution, they can be judged to wish mutually to remit to one another the debt of restoring; or certainly to wish to use mutual compensation in not restoring."

(d) n. 532. q. 5°. p. 236. col. 2.

They ask whether it is lawful for one to compensate himself by money in secret for reputation which another either cannot or does not wish to restore. St. Alphonsus denies against others. See L. I. 35 in the note of Fr. Heilig to this number.

(e) n. 568. q. 5°. p. 249. col. 1.

The S. Penitentiary, under June 14, 1880, declared that meats seasoned with fish sauce are not comprehended under the forbidden mixing of fish and flesh-meat.

(f) n. 569. p. 249. col. 1.

We transcribe here the response given on Jan. 24, 1881, to a certain Bishop by the Most Eminent Prefect of the S. Congregation de Propaganda Fide, and graciously transmitted to me. "I have received your letters ... by which you sought an Indult concerning the eating of meats outside the one meal on days of fast, in favor of those who, by daytime labor in procuring livelihood for themselves, could with difficulty obtain other food. As regards this, you know that an Apostolic Indult is by no means necessary; for according to the doctrine commonly received from approved authors, those who are devoted to heavy labors, since they are by no means held to fast, can eat meats on all the days on which dispensation concerning the eating of meats was granted by the Apostolic See, whenever they eat. Although the response does not speak about those who by reason of age or affected health are not held to fast, nevertheless it must also be applied to these, since the reason of the resolution has force for them also: 'since they are by no means held to fast.'" This is clear from the response of the S. Penitentiary, *Acta*, T. 14. p. 568.

(g) n. 723. p. 300. col. 2.

Where the civil law attributes to a possessor of good faith all fruits perceived up to the day on which the action of eviction (n. 988) was begun against him, in the forum of conscience he seems able to use the favor of this law no less than the benefit of prescription. Natural fruits are judged perceived when they have been separated from the fruitful thing, for example from branches or roots; civil fruits are judged to be received by days, so that they fall to the possessor of good faith according to the proportion of time through which he possessed another's thing in good faith. Marres, p. 252. n. 30. 31.

(h) n. 731 R. 1°. and R. 3°. p. 302. col. 2.

If anywhere the civil law establishes that a thing bought in good faith in a forum or public market, or from him who is accustomed to sell things of this kind ("a sale made in market overt"), must be restored to the owner only after the price has been paid, the owner who refuses to pay the price cannot recover the thing and is deprived of the right mentioned under Resp. 1°, and the buyer is not held by the obligation of which there is discussion under Resp. 3°.

(i) n. 734. p. 303. col. 2.

Where the civil law does not free a thief from the civil obligation in the cases in which we have said in this number that he is freed by natural law, that is, if the civil law obliges him, in whatever way finally the thing perished in his possession, this burden of restitution will have the character of a penalty, which is to be undergone from obedience only after the sentence of a judge. Marres, p. 255. n. 34.

(j) n. 738. p. 305. col. 1.

"When restitution of another's thing must be imposed, the confessor should not compute with the penitent too anxiously the sometimes very uncertain price both of the thing itself and of its fruits, and the expenses to be deducted, either perhaps spent or perhaps incurred for labor and industry; nor should he scrupulously estimate damage of any kind perhaps brought upon the owner; but, after looking at the circumstances, in the name of the owner whose affair he usefully manages, he should compose the matter from what is equitable and good with the unjust possessor: 1° lest by asking too much and obtaining nothing, he harm rather than favor the owner; 2° because he can reasonably presume that the owner, so that he may recover his thing more certainly, does not demand the last farthing in the restitution owed to him; 3° because unjust possessors are not usually foreseeing every damage inflicted, not even in confused fashion.

"Prudence requires that the confessor also attend to the good faith and mind of the penitent, more or less ready to make due restitution; he should also note, as de Lugo warns (D. 17. n. 53), that it can happen that an unjust possessor who was of bad faith by reason of the thing has nevertheless perceived the fruits in good faith and either consumed or destroyed them." Marres, p. 257. n. 39.

(k) n. 747. p. 307. col. 2.

"He who has suffered damage by the juridical fault of another can with safe conscience ask for its repair, even after imploring the sentence of a judge, although he knows certainly that the other acted without theological fault, because anyone can lawfully use a faculty granted to him by a just law." Marres, p. 267. n. 59.

(l) n. 769. q. 3°. p. 315. col. 2.

Hence, supposing theological fault and efficacious influence, he is liable to restitution who abstains from giving a vote when he ought to give it from office, by which he is to protect the public or private good, for example a judge in a tribunal, members of a college which must provide for the good of the Republic, State, County, Municipality (members of Congress, of Legislatures, County commissioners,

Members of city councils), or also members of a college to which the private affairs of others are to be managed, as trustees of a moral body, society, etc.; because by taking up that office they have obligated themselves by a tacit contract, and therefore from strict justice, to manage the affairs of others and forestall the harm of others.

The right of electing magistrates, where it has been granted, as among us, is an Office and not only a privilege; for society has the right that only worthy magistrates be set over it, and the office of appointing these has been entrusted to citizens by legitimate authority. Therefore those who abstain from giving a vote can sin, yet not against commutative justice, but against legal justice, and accidentally against religion, in the case in which by not excluding an unworthy man they harm it. But that they sin in fact, it is required 1° that a worthy man whom they may elect can be found; 2° that they foresee that by abstaining they effectively promote the election of an unworthy man; 3° that they are not excused from giving a vote by a sufficient reason, for example by notable harm threatening them from it. Marres, p. 295. n. 117. 118; 4° that, as more often happens, they do not invincibly ignore this obligation of theirs, for example holding their right only as a privilege.

(m) n. 928. p. 371. col. 1.

The dominion of an individual thing which is received by mutuum is transferred to the borrower to this extent, that that very individual thing is no longer the lender's. But the lender, by force of the contract of mutuum, reserves for himself a personal action against the borrower himself for a thing the same in species and goodness. But since this action itself, as an incorporeal thing (n. 593), is the object of dominion, it follows that this transfer of dominion in mutuum is not to be accepted in that exclusive sense in which, for example, it is accepted in donation. Pruner, *Mor. Th.* p. 608.

(n) n. 932. II. p. 372. col. 2.

Oppressive usury, even with a title otherwise just, toward the poor, such in fact and in hope, injures not only charity but also justice. The reason is that, although a mutuum is owed to them from charity alone, nevertheless oppressive exaction cannot be the object of a valid contract. Pruner, *Mor. Th.* p. 607. 1.

(o) n. 1017. p. 402. col. 2.

To these our and the English jurists add lease of custody, which differs from the contract of deposit only to this extent, that the latter is gratuitous, the former onerous; lease of work for carrying goods, which can be referred to lease of work (this number under 4°); and lease of work to be made, concerning which we treat in n. 1023 in the Note. Kent treats of the dispositions of our law concerning various species of lease, Lect. XL. LII. LIII.

(p) n. 1019. p. 403. col. 1.

The necessary expenses of repairing a leased thing, a building, are called in English "substantial repairs," which "include repairs to the main walls, roofs, timbers, etc."; they are distinguished from repairs which are called moderate, in English ordinary repairs, for instance, "the common reparations

to windows, shutters, doors, etc." (Smith, n. 157). Whether the lessor is held to moderate expenses, or rather the lessee, in defect of a special agreement, must be determined from particular laws or the custom of places.

(q) n. 1072. q. 3°. p. 418. col. 2.

"At common law an appellate court takes cognizance characteristically only of matters of law. Matters of fact in that system can be revised only upon a new trial. ... The review upon points of law is had, at common law, upon a writ of error." *The Amer. Cyclop.* V. Appeal.

(r) n. 1098. q. 10°. R. to 2nd. p. 426. col. 2.

The S. C. of Rites, Aug. 4, 1877 (see *Acta*, T. XIII. p. 429. col. 2), in one case of the Order of Premonstratensians, to the doubt whether Premonstratensians absent from Choir are held under some sin to the private recitation of the Office of the Dead on Nov. 2 and of the Litanies on the day of St. Mark and the triduum of Rogations, replied: "Affirmatively, that is, they are held, as all are held who have the burden of reciting the Canonical Hours."

(s) n. 1150. p. 444. col. 2.

Among the Doctors it is controverted whether a special vocation, distinct namely from that general one by which Christ the Lord commends the evangelical counsels, is necessary for the religious state. Yet even those who deny the necessity of a special vocation universally admit these things: 1. There are those who by divine or ecclesiastical law are impeded (n. 1157) from taking up the religious state. 2. They sin who, led by an undue end, embrace this state; likewise those who know that there are lacking to them, with or without their own fault, those conditions of soul or body without which they either will not be able to observe, or in fact will not observe, the evangelical counsels or the rules of the special Religion which they are going to profess.

(t) n. 1184. p. 454. col. 2.

A regular Bishop is held to retain the habit of his Religion as to color, not as to form. Except Canons Regular of St. Augustine, regular clerics, and universally those who have emitted only simple vows. Ferraris, V. *Episcopus*, art. VII. n. 62. Th. C. T. III. 65.

(u) n. 1189. 5°. p. 458. col. 2.

The periodical *Revue des Sciences ecclésiastiques*, T. 40. p. 379, limits the power of a Superioress of depriving some nun of Communion, from the practice, as they say, of the City, to the sole case in which some nun, after her last Confession, had admitted a fault which the sisters would reasonably judge scandalous; and they contend that the prohibition ceases after the nun has confessed again. They teach besides, ib., from the declaration of the S. C. C. of April 14, 1725, that determining the greater or lesser frequency of Communion is left to the judgment of the ordinary confessor alone, not of the extraordinary confessor.

(v) n. 1189. 6°. p. 458. col. 2.

Rules which impose upon nuns that they render an account of conscience to Superioresses can scarcely be held among preceptive ones today; for the matter has given occasion to such abuses that the S. C. of Bishops and Regulars constantly expunges from articles of rules submitted to its approval those imposing this burden upon nuns.

(x) n. 1194. I. p. 460. col. 2.

In the Constitution *Romanos Pontifices*, Leo XIII, May 8, 1881 (*Acta*, T. XIII. p. 481 sq.), it is read: "By common law it has been constituted that houses which do not contain at least six religious members must be altogether in the power of Bishops." Cf. Bizzarri, *Collect*. p. 396. *Minorum Conventual*. Yet Regulars dwelling in residences of missions, such as universally are those which are had in the Federated States, however few they may be, are not subject to Bishops, "except in cases expressly named by law, and generally in those things which concern the care of souls and the administration of the Sacraments." The same Const. - Monasteries of men which are deprived of regular connection with a Province, and are not subject to General Chapters, if they have neglected to do those things which according to the decree of the Council of Trent, Sess. 25 *de Reg.*, c. 8, must be furnished by them, are subject to the Bishops in whose dioceses they are situated, as delegates of the Apostolic See. Trent, ib.

Chapels and altars of laymen are called those which are erected not by ecclesiastical authority, but from lay funds or revenues, although the funds had been accepted by permission of ecclesiastical authority, and clerics were named to them by the same authority. Craisson, *Man*. n. 5378. Van de Burgt treats at length of these, *De eccles*. n. 298 sq.

Lay confraternities erected in the churches of Regulars are withdrawn from the visitation of the Ordinary only as regards the chapel, altar, and furnishings of the confraternity. Yet if "the burden of maintaining the altar and its worship lies upon the confraternity," the Bishop's visitation is not excluded "concerning those things which regard the maintenance itself, the worship, and the ornaments of the altar or chapel, the burdens of Masses and of divine offices to be celebrated there, and concerning all those things which have a relation to the obligation of the same confreres." S. C. C. in *Nucer. Pagan.*, June 23, 1719. See Luc. Ferraris, V. *Confraternitas*, art. III.

(y) n. 1193. F). p. 462. col. 1.

"Yet as regards the forum of goods which were bestowed upon the mission or Regulars in view of the mission, Bishops have the right to exact an account from the same regular missionaries, equally as from pastors of the secular clergy." Const. *Romanos Pontifices*, May 8, 1881.

(z) n. 1196. 9°. p. 463. col. 1.

Hence in another church also and among Regulars, it will be lawful to sing a Requiem Mass for the deceased (if the Rubrics permit it; otherwise of the day), with relatives and friends also called together as is customary in obsequies, even if the funeral Mass for the same is not celebrated in the parish church (*Acta* T. XII. pp. 333, 334). On this occasion, namely outside the case of burial chosen

in a church of Regulars, the funeral fourth is not owed. What today is to be understood by burial chosen in a church of Regulars, see, if you wish, in *Acta*, T. XIII. p. 416. The case of this election among us is not practical.

(1) n. 104. IV. p. 51. col. 1.

"It is certain that there is in men a power of making laws; but this power, as regards civil laws, belongs by nature to no one except the community of men, and from this it is transferred into one or into many, by whom the community is ruled." St. Alphonsus, L. I. n. 104. What Busembaum writes, ib. n. 94, with St. Alphonsus not reproving it, agrees. Cf. law 1. *Quod principi placuit*, Dig. L. I. T. IV. Yet some received it immediately from God, as Saul and David.

As regards Bishops, Pius VI writes in a Brief to the Bishop of Mottola, Sept. 16, 1788: "The episcopal dignity as regards order is immediately from God, and as regards jurisdiction from the Apostolic See" (Haine, T. I. p. 55. q. 7), that is, as regards the jurisdiction of this or that see or person (Zaccaria apud Bouix, *de Episcopo*, P. I. S. I. C. VI. § 1 at the end).

(2) n. 164. p. 72. col. 2.

There are those who explain the matter in this way. If the dispensation is concerning an individual matter, which namely consists in one act concerning some impediment of Marriage or irregularity, it does not cease: because the impediment has already been removed. Otherwise, if it is concerning a divisible and successive matter, for instance concerning the precept of fasting, of the divine office. Haine, T. I. p. 89. q. 90.

(3) n. 178. p. 81. col. 2.

Therefore civil law obliges in conscience even in a case in which by the will of the legislator it is reputed merely penal:

1°. "If the rights of citizens among themselves are defined by law, which otherwise would be uncertain" [for example, many of those things which occur between neighbors (n. 685)], "Blackstone holds ... that conscience is bound." Kenrick, Tr. VI. 20.

2°. If "it prohibits things which are evil in themselves, or commands that those things be observed which are prescribed by divine law; ... since from a higher law, whether natural, or divine" positive, "the obligation is derived, which is fortified by the added civil sanction." Kenrick, l. c. Concerning other civil laws undoubtedly obliging in conscience, treatment will be made in its own place.

To this belongs the distinction between natural and civil obligation. Civil obligation is called that which rests on mere civil law, and it can be called civil obligation, provided that by this name the bond of conscience is not excluded, supposing that the legislator wished to bind conscience; for example, the obligation of the owner toward the owner of a neighboring estate, insofar as it exists not from the nature of the thing itself, for instance from the position of the estate, nor from agreement, but from law alone (n. 681. 1°).

An obligation is called natural and civil when civil law protects the obligation of natural law, for example by establishing penalties against bigamy, or by attributing an action, that is, the faculty of imploring the office of a judge, to one having a right against another, for example from a note.

It can also happen that civil law does not at all care for some natural obligation, for example of paying legal interest, by attributing to the creditor no action against the debtor after some years: this obligation then is called merely natural.

That can be named merely civil obligation which is imposed by civil law giving a right or complaint against the prescriptions of divine law, whether natural or positive; for example, the right of petitioning for divorce, or a complaint against the legitimate owner of some thing granted to the possessor of this thing whose bad faith, although truly such, cannot be proved in a legal manner. Civil laws of this kind not only do not bind conscience, but are opposed to the obligation of conscience. Marres, p. 14. n. 11.

Here, with Marres, p. 13. n. 10, we note that very often civil law attributes to some party the faculty of petitioning for certain things by juridical action, for example the rescission of a testament invalid by civil law, but not by natural law, without nevertheless intending to oblige the other party, whom a testament of this kind favors, to furnish the same things, to renounce the inheritance, before the sentence of a judge.

(4) n. 207. p. 92. col. 2.

It is pleasing here to add certain things concerning the causes and effects of sins.

1°. God cannot be the author of sin, since sin is adverse to Him. It is of faith. Trent, Sess. 6, Can. 6.

2°. The immediate cause of sin is the human will. The mediate causes are either extrinsic, namely the devil (1 Pet. V. 8) and the world, that is, perverse men who try to draw one another and the just to evil, both by word and example and by force and fear; or intrinsic, namely ignorance, that is, lack of consideration concerning motives which could avert a man from sin, such as concerning the baseness and penalties of sin, etc. (Jer. XII. 11), and concupiscence, which is threefold: of the flesh, of the eyes, and pride of life, that is, the inordinate appetite of things which delight the flesh, of riches, and of honors.

3°. The effects of sin are stain, the privation of the brightness of the soul, and indeed total from mortal sin, partial from venial; and the liability of punishment.

One sin *per se* cannot be the punishment of another, because sin proceeds from the free will of man; but it can be, and very often is, *per accidens*, insofar as God, in punishment of sin, withdraws helps, deprived of which man voluntarily falls into other sins, as happened to the gentiles, concerning whom Rom. 1. 26. 27. Likewise venial sins dispose to mortal sins.

(5) n. 150. p. 67. col. 2.

If some series of faculties is delegated by the Holy See to Bishops, and of these some are permitted to be subdelegated, the other faculties of the same series, whose subdelegation is not expressly permitted, cannot be subdelegated. You have examples in the extraordinary faculties C, p. LXXII,

LXXIII. - Likewise, if certain faculties are permitted to be subdelegated to certain persons, they cannot be subdelegated to others besides these. Let the extraordinary faculties D, p. LXXIII. n. 8, and E, p. LXXIV. LXXV. § *fin.*, be an example. - The reason of each resolution must be sought from that well-known principle: "The inclusion of one" (of some faculties or persons) "is the exclusion of another" (of the other faculties or persons). It is true indeed that one delegated for the universality of causes can subdelegate; but this principle is not so absolute that it can be applied even when its application is excluded: but it is excluded, at least implicitly, in each hypothesis which we have set forth. Cf. T. II. p. 427 (44).

(6) p. LXXI. note 2 at the bottom of the page.

Since this faculty was granted on Jan. 24, 1868, it is deservedly doubted whether it belongs to those of our Bishops who were created after this day. Moreover, to all Ordinaries, when the case occurs, there is ready at hand the faculty of absolving a priest guilty of this crime, if he is impeded for at least five years from personally approaching the Holy See for absolution. See p. LXXXI under 6, and n. 1402. II. 2).

Addenda and Corrigenda

Tom. I.

Page 15, column 2, line 1 reads: *dans seu conditiona et*. Read: *Dens seu conditionata*.

Page 67, column 2, line 26 reads: *alteri*. Read: *alteri in perpetuum*.

Page 77, column 2, line 29 reads: 497. Read: 479.

Page 82, column 1, line 10 from below reads: 1702. Read: 1704.

Page 91, column 1, line 18 reads: *expressa*. Read: *explicita*.

Page 106, column 2, line 2 from below reads: *creditor*. Read: *debitor*.

Page 152, column 1, line 5 from below reads: 384. Read: 334.

Page 153, column 2, lines 4 and 25 from below read: 335. Read: 335, II.

Page 169, column 1, line 12 from below reads: *At metum passus - excusetur.* Read: *At metum passus potest juramenti relaxationem petere, ut ab obligatione solvendi excusetur;*

Ibid., last line reads: 717. Read: 177.

Page 209, column 2, line 13 from below reads: above. Read: n. 461.

Page 276, column 1, line 20 reads: 661. Read: 651.

Page 316, column 2, line 5 reads: *petente*. Read: *petenti*.

Page 427, column 2, n. 1101, q. 5°. I confirm the sentence of St. Alphonsus, according to which more probably the recitation of Matins must be repeated if it was had before that time at which the sun holds the middle of its course between midday and setting, from the declaration which is read apud

Muhlbauer. But it was asked whether this declaration is to be understood in such a way that he would not satisfy his obligation who recited Matins with Lauds on the evening of the preceding day before the sun holds the middle of its course between midday and setting. The S. C. responded on 13 July 1883: "Approved Authors are to be consulted." Among the approved authors who have written on this question, that St. Alphonsus is second to none is not something I need say.

Page 431, column 1, n. 1119, and page 432, column 2, n. 1124, q. 12°. Add the Response of the S. C. R., 18 May 1883, in Marionopolitana. "Doubt IV. If it happens in private recitation that Matins is separated from Lauds, it is asked how Matins is to be concluded: ... and how Lauds are to be begun?" The response was: "In the case, Matins is to be concluded with the prayer of the Office of the day; Lauds are to be begun as in the Psalter."

Page 486, column 1, line 2 reads: 000. Read: 427 (44).

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New-York, February 12, 1876.

Very Rev. Dear Sir:

Please accept my best thanks for the copy which you have kindly presented to me of your work on Moral Theology, which, besides being an excellent compendium of the larger works of St. Alphonsus Liguori, contains many additions which give to it a more practical value, both as a text-book for our Theological students and as a book of reference for the reverend clergy of this country.

I take pleasure in adding my commendation to the many others which it has already received, and most justly deserved. With best wishes for your health and happiness,

I remain, Very Reverend Sir,

Very truly your friend and Servant in Christ,

JOHN CARD. McCLOSKEY, Archbishop of New York.

Very Rev. A. Konings, C.SS.R.

Very Reverend Father:

With a most grateful mind I have received the book in which you set forth, compendiously and methodically, the moral doctrine of the most recent Doctor of the Church, and adapt it to the circumstances both of this age and of this region. In my own opinion, moreover, and in that of others whose judgment concerning this matter was communicated to me, in your work there shines forth a clear manner of speaking, singular prudence, judgment trained by experience, and an equitable estimation of our times and affairs. Wherefore from my heart I congratulate you, and I pray the most merciful God that he may accompany this labor of yours with his abundant kindness and blessing.

J. ROOSEVELT BAYLEY, Archbishop of Baltimore.

Baltimore, January 1, 1876.

Cincinnati, August 10, 1876.

Rev. Dear Sir.

In perfect accord with prelates and learned professors, I hail the forthcoming second edition of your own and St. Liguori's Moral Theology. The first edition is already regarded as a light and guide in the often dark and tangled thickets of questions in Moral Theology, by the professors and students of the Seminary, and the priests of the Archdiocese of Cincinnati. Please accept my thanks and my felicitations.

J. B. PURCELL, Archbishop of Cincinnati.

John Joseph Lynch, Archbishop of Toronto, to the Very Reverend Father A. Konings, C.SS.R., greeting.

We have read through your distinguished work, in which you have treated anew the Moral Theology of the divine Alphonsus and adapted it especially to the use of our parts; and we judge it altogether worthy that we should earnestly commend it as very useful to priests, as being missionaries, and also to lecturers in Theology, and we gladly make known to you this our judgment.

Given at Toronto from the archiepiscopal residence, on the feast of the Assumption of the Blessed Virgin Mary, in the year of the Lord one thousand eight hundred seventy-six,

By command of the Most Illustrious and Most Reverend Archbishop,

PATRICK CONWAY, Chancellor.

Very Reverend Father:

Since I came into possession of the book entitled: *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium... By A. Konings, C.SS.R.*, it has often fallen to me to consult it for the solution of rather intricate moral questions;

then, questions which regard the morals of the New World. I could not but admire the clear method which the author has used, not only in setting forth the doctrine of the most illustrious Doctor St. Alphonsus, but also in applying the principles defended by him to questions which are scarcely touched by European authors. Therefore it is very pleasing to me to commend this work earnestly.

E. A. TASCHEREAU, Archbishop of Quebec.

Quebec, August 18, 1876.

Very Reverend Father A. Konings, C.SS.R.:

I have just received with a most grateful mind the book: *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium*, etc.

Such a work for the Clergy, especially in these regions, I consider with other Prelates to be exceedingly useful and opportune; consequently a new edition of the same Compendium will be most acceptable to very many.

- JOHN M. HENNI, Archbishop of Milwaukee.

Milwaukee, Wis., Aug., 1876.

Cathedral, Logan Square, Philadelphia, August 26, 1876.

Very Rev. A. Konings, DD., C.SS.R.:

Very Rev. Dear Father: Many thanks for the copy of your admirable work on Moral Theology, in which you so closely follow the steps and illustrate the doctrines of the illustrious Doctor of the Church, St. Alphonsus M. di Liguori. It affords me much pleasure to add my feeble voice to the commendations it has already received from so many distinguished prelates of the church, and to assure you of my sincere veneration and esteem.

Very truly, your obedient servant in Christ,

- JAMES F. WOOD, Archbishop of Philadelphia.

Very Rev. Sir:

We are thankful for your kind offer of your valuable work "Theologia Moralis Sancti Alphonsi Novissimi Ecclesiae Doctoris." On our tour through our Diocese we were pleased to see that several of our priests were provided with the precious volume, and we ourselves have read some of its treatises, and are highly pleased with them. Therefore, considering it worthy of our approbation, we recommend it to our clergy, and hope that from its perusal they will derive much good for the direction of souls.

Given in the City of Los Angeles, Cal., the 18th day of August, A.D. 1876,

- THADDEUS AMAT, C.M., Bishop of Monterey and Los Angeles.
- FRANCIS MORA, Bishop of Mosinopolis in part. inf., Coadjutor.

Burlington, Vt., August 9, 1876.

Rev. and Dear Sir!

I can not but approve and recommend your excellent work, "Theologia Moralis," etc. All the clergy who have consulted it unite in praising it, and I am delighted to know that a second edition is about to make its appearance.

Respectfully and truly yours,

- L. DE GOESBRIAND, Bishop of Burlington, Vt.

Rev. A. Konings, C.SS.R.

Loretto, August 25, 1876.

Very Reverend Father:

It has always been my judgment that God, who by a special providence watches over the Church as his spouse, and rules, protects, and sustains her, raised up St. Alphonsus for the good of that Church, so that by his writings, filled with such heavenly wisdom, especially by his Moral Theology, he would be a great aid to her. Therefore, Very Reverend Father, again and again I rejoice, and I give you many thanks, because you have brought into light the Works of the Most Recent Doctor of the Church, St.

Alphonsus, on Moral Theology, in a compendious and methodical manner, and one duly adapted to the circumstances both of this age and of this region. Your work will be a great aid not only for students, preparing them rightly to undertake the Sacred Ministries, but also for priests already constituted in the Sacred Ministry and devoting themselves to it.

M. DOMENEC, Bishop of Allegheny.

Marysville, January 3, 1876.

Rev. Dear Father Konings:

In common with the venerable Prelates of the United States, I hailed the appearance of the first edition of your Moral Theology. Need I say that a second edition of the same work would be still more welcome to me? Your close adhesion to the doctrine of St. Alphonsus, in the first edition, is a sufficient guarantee to me that, in the second, you will not depart from your great model.

Believe me to be, sincerely yours in Christ,

- E. O'CONNELL, Bishop of Grass Valley.

Rev. A. Konings, C.SS.R.

Very Rev. A. Konings, C.SS.R.:

Very Rev. and Dear Father - I hereby send you my hearty approval of your Moral Theology, and when some typographical errors which have crept into the first edition shall have been corrected in the second, which you are about to publish, your valuable work will then be perfect in every respect.

Yours respectfully, in the Sacred Hearts of Jesus and Mary,

- C. M. DUBUIS, Bishop of Galveston.

Little Rock, Ark., August 24, 1876.

Rev. Dear Sir:

I have had your admirable Compendium of St. Liguori's Theology for some time, and consider it one of the most useful books of the kind that the young student of theology can possess.

I cordially unite with the others whose names you have sent me, in recommending your work to the venerable clergy of the United States.

- EDWARD FITZGERALD, Bishop of Little Rock.

A. Konings, C.SS.R.

Erie, Aug. 18, 1876.

My Dear Father Konings:

A more flattering recognition of the merits possessed by your Moral Theology could not be desired, than the fact that it is to be found in the libraries of most of our Priests.

I have occasionally consulted it, and am of opinion that, whether in the hands of theological students or in those of our American missionaries, it will be found extremely serviceable, and I am glad to hear the first edition has given such general satisfaction as to render a second necessary.

Sincerely yours,

- T. MULLEN, Bishop of Erie.

Richmond, December 28, 1875.

I am glad to learn that the Clergy and students of America have so well appreciated and patronized your excellent Moral Theology, as to justify you in preparing a second edition.

The chief merit of your learned work, among its many excellencies, is found, in my humble judgment, in the practical solution it gives to so many delicate questions which have sprung from the peculiar condition of the Church in this country, and from our complicated relations with our separated brethren.

In your treatise *De Fide*, for instance, your answers are characterized by a Christian tenderness and precision which relieves the conscience, and satisfies the doubts of many an anxious confessor.

Praying God to give you grace *ad consummandum opus*, I remain,

Your devoted servant in Christ,

- JAMES GIBBONS, Bishop of Richmond.

Rev. A. Konings, C.SS.R.

On the Vigil of the Epiphany, 1876.

Very Reverend Father:

The work on Moral Theology, brought to light by your cares and labors, and which you are now applying yourself to recognize again, is plainly that of which it would not easily have been possible to be deprived any longer; since you have adhered more closely to the footsteps of that Doctor who by the Supreme Judge of the Church on earth has very frequently been called "praiseworthy in his opinions" and to be imitated with safe step by anyone in this science, whose pupil also you are said to be; and his footsteps, safest for us to follow, even from afar, it was always dear to our heart to pursue. For it falls to us to imbue certain young men with these disciplines, and nowhere could we find things in order more narrowly defined, more admirably arranged, or more abundantly explained for our countrymen. And therefore, with all who handle such matters, both we and at the same time the studious youth give to you, Very Reverend Father, the greatest thanks from the depth of our heart, though unequal to your merits in composing this book, as fair and favorable estimators.

- THOMAS A. BECKER, Bishop of Wilmington.

Given on the Vigil of Epiphany, 1876.

I judge that the book which is inscribed *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium*, etc., by A. Konings, C.SS.R., not only sets forth the genuine

doctrine of the Holy Doctor, but is also clearly composed and most excellently adapted to the condition which is peculiar to these regions. Hence it seems to me to deserve to be earnestly commended before the others to the Venerable American Clergy for universal use.

- MICHAEL HEISS, Bishop of La Crosse.

La Crosse, January 17, 1876.

Buffalo, August 9, 1876.

Rev. Dear Father:

I am happy to be able fully to indorse the high commendations which your work on Moral Theology has received from so many Most Reverend Prelates and distinguished Professors of Theology throughout the country. Its clear, concise, and practical treatment of many important questions, arising out of our peculiar circumstances, can not fail to make it deservedly popular among the clergy of our country.

Yours, etc., very respectfully,

- S. V. RYAN, Bishop of Buffalo.

Albany, August 15, 1875.

Very Rev. Dear Father:

I most cheerfully add my word of approval and commendation to those that have already reached you from every part of this country, and even from abroad. I have had a copy of your work in my possession almost from the date of its publication, and I have had ample opportunity of appreciating its value and its excellence. I hope that it will find its way, as a text-book, into our seminaries, and a place, as a book of easy reference, in the study of every member of the clergy.

I remain, very sincerely and devotedly, your obedient servant,

- FRANCIS, Bishop of Resina, i. p., Admr. Apost. of the Diocese of Albany.

Very Rev. A. Konings, C.SS.R.

Providence, R. I., August 11, 1876.

Very Rev. Father:

I am in possession of one of the first copies of your Moral Theology that came from the press. The work is admirable all through, and a most valuable addition to our libraries. The priesthood of this country owe you a debt of gratitude for this precious book, and our colleges will thank you for having placed in their hands a treatise of such great merit. It will surely win its way everywhere.

Very faithfully yours,

- THOMAS F. HENDRICKEN, Bishop of Providence.

Very Rev. A. Konings, C.SS.R.

Ogdensburg, August 10, 1876.

Rev. Dear Father:

I am glad you forwarded to me the prospectus of the second edition of your Moral Theology, and thereby given me an opportunity to add my commendation to the valuable work.

I find your Theology in the libraries of many of the reverend clergy of the Diocese. It is of especial use to us in our conferences, and I heartily commend it to all.

Very sincerely in Christ,

E. P. WADHAMS, Bishop of Ogdensburg.

Very Reverend and Most Beloved Father:

Your work *Moral Theology of the Most Recent Doctor of the Church, St. Alphonsus, reduced into a compendium and adapted to the use of the Venerable American Clergy*, has seemed to me and to learned men whose judgment I sought to be of such a kind that all things which are read in it correspond entirely to the excellent title with which you have marked it. For you hand down in it the doctrine of the Most Zealous Doctor of the Church, St. Alphonsus, which anyone may go through with unoffending foot, and you hand it down adapted to the use of our countrymen in such a way that, while you have regard for brevity, you do not hinder clarity. In addition to this, you gather into it an abundance of matters, especially American matters, with such ease of expression that you carry a torch before not only our priests but also the Prelates. Wherefore it has seemed good to me also to deliver your book to be lectured on before the students of Sacred Theology in my Seminary.

- WILLIAM, C.SS.R., Bishop of Savannah.

Newark, December 17, 1875.

Rev. Dear Father:

I am glad to have this opportunity of expressing my great appreciation of your Moral Theology. The Professors in the Seminary are delighted with it, and I myself have found in it solutions of practical cases coming up in this country - solutions sought for in vain in other authors. Besides this, the order and arrangement are so good, the style so clear, and the mere mechanical execution of your work so excellent, that it is a real pleasure to read it. I remain, dear Rev. Father,

Very truly yours,

- MICHAEL, Bishop of Newark.

Rev. A. Konings, C.SS.R., Ilchester, Md.

Sherbrooke, August 16, 1876.

Rev. and Dear Father:

I am most happy to join my recommendation of your Moral Theology to that of so many eminent Bishops and Divines who have examined it.

The best proof of its intrinsic merits seems to be in the fact that the first edition has been rapidly exhausted, and that you are preparing a new edition for September. I feel confident, Reverend Father, that when the venerable members of our clergy in Canada shall become acquainted with your good and learned work, they will adopt it, and give it an honorable place in their libraries, alongside the standard treatises on Moral Theology.

Wishing you complete success in your good undertaking,

I remain, very Reverend Father, your devoted servant in Christ,

- ANTOINE, Bishop of Sherbrooke.

Rev. A. Konings, C.SS.R.

Abbey of St. Louis-on-the-Lake,

St. Joseph P. O., Stearns Co., Minn., August 20, 1876.

Very Rev. Dear Father Konings, C.SS.R.:

I have carefully perused your "Theologia Moralis," and am satisfied that in perspicuity, precision, and solidity, it is inferior to no theological compendium in the field, and that it is of incalculable value to both professors and students in America. Let the information that I have introduced your Theology into our class-rooms be to you a sufficient pledge of my good faith. I have the honor of being

Yours in Christ,

ALEXIUS EDELBROCK, Benedictine Abbot.

Louvain, May 11, 1875.

Very Rev. Father:

I have received your valuable work, "Theologia Moralis Novissimi Ecclesiae Doctoris, Sancti Alphonsi." The work pleases me exceedingly. I have perused it with care and attention. Orderly, clear, and in every respect to the point, it is practical not for America alone, but for other countries also, where society is mixed; it is neither too concise nor too diffuse, but very accurate, and therefore well suited for a text-book. I would not be surprised to see it supersede all others as soon as it becomes known. But especially for America it is and should be the text-book. I will persuade all my students to purchase a copy of it.

J. J. PULSERS,

Professor in the American College, Louvain.

Mount St. Mary's of the West,

Cincinnati, O., December 16, 1875.

Having looked through a considerable portion of Father Konings' "Moral Theology," and given some attention to its peculiar features, I can safely say that it is a clear, accurate, and admirably arranged compendium of the writings of St. Alphonsus on Moral Theology, and contains, moreover, whatever is of most value in many other important works on the same subject.

Its special merit for ourselves, and that which will recommend it as a text-book in the Theological Seminaries of the United States, is the author's familiarity with American law, and his able treatment of it in its relations to his subject wherever the two come in contact.

F. J. PABISCH,

President of Mount St. Mary's of the West, Cincinnati, and Professor of Moral Theology in the same.