Institutiones Morales Alphonsianae, Volume I - Part II - English Translation

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Institutiones Morales Alphonsianae, Volume I - Part II

On the Precepts of the Decalogue and of the Church

Part II

On the Precepts of the Decalogue and of the Church

Prologue

418. In this second part, in which we enter upon SPECIAL THEOLOGY, there comes to be treated the exercise of virtues, or the acts by which due order is preserved and man attains his end, that is, eternal life. But those things which must be done or avoided for this end are contained in the DECALOGUE, according to that saying of the Lord (Matt. 19:17): But if thou wilt enter into life, keep the commandments.

Now some things are had explicitly in the Decalogue, namely those which are enunciated in the several precepts; others implicitly, and indeed in two ways: for they are either preambles to the Decalogue, namely the theological virtues: FAITH, HOPE, and CHARITY; or they are as it were consequences of the same, such as the positive laws of the Church, more strictly defining certain offices of men and establishing diverse penalties.

Therefore there will be three sections of this second part:

SECTION I. ON THE PREAMBLES TO THE DECALOGUE, or on the theological virtues.

SECTION II. ON THE SEVERAL PRECEPTS OF THE DECALOGUE.

SECTION III. ON ECCLESIASTICAL PRECEPTS AND PENALTIES.

Section I

On the Preambles to the Decalogue

Or On the Theological Virtues

Prooemium

419. "Preambles to law," says St. Thomas (2.2, q. 22, a. 1), "are those things without whose existence law cannot have place. But of this kind are the precepts concerning the act of faith and the act of hope: because through the act of faith, the mind of man is inclined so that it recognizes the author of the law as such, to whom it ought to subject itself; but through hope of reward, man is induced to the observance of the precepts." But charity is the very end of the law, according to that saying (1 Tim. 1:5): The end of the precept is charity from a pure heart, and a good conscience, and faith not feigned. For it moves to observing the whole law, according to that saying (1 John 5:3): For this is the charity of God, that we keep his commandments; and finally all the precepts tend together toward love of God and neighbor, according to that saying of St. Augustine: "Whatever we are prohibited by God's law, and whatever we are commanded to do, we are prohibited and commanded for this, that we may fulfill these two" (tr. 87, toward the end).

Those three preamble virtues are called theological, because they have God himself for their object; the Apostle commemorates them, writing to the Corinthians (13:13): And now there remain faith, hope, charity. Through FAITH we know God, who has revealed and proposed himself to us as the end to be attained; through HOPE we are raised up into him, so that with confidence we expect beatific possession of him; finally through CHARITY we adhere to him, loving him for his own sake, and our neighbors on account of him.

Therefore there will be three treatises:

TREATISE I. On Faith.

TREATISE II. On Hope.

TREATISE III. On Charity.

Treatise I

On Theological Faith

We shall treat of three things in this treatise: 1. the nature of faith; 2. the necessity of faith; 3. the vices and sins opposed to faith.

Chapter I

On the Nature of Faith

St. Thomas, 2.2, q. 2, a. 1 seqq.; St. Alphonsus, II, tr. 1; ed. G., I, p. 295; *H. Ap.*, IV, 1; Lugo, *de Virt. Fid.*, disp. XV; Suarez, disp. I and VII; Wilmers, *de Fide divina*; Lahousse, *de Virt. theol.*, p. 70; Scheeben, *Dogmat.*, I, § 38, etc.

420. Things to be noted beforehand. The name faith signifies assent which is given to another's sayings on account of his authority. If this assent is given on account of the authority of man, it is human faith; if on account of the authority of God, it is divine faith. This, if it is considered in act, is called actual; if in habit, it is called habitual.

DEFINITION. Faith is a theological virtue infused by God, inclining us to assent firmly, on account of divine veracity, to all things which God has revealed, and has proposed to us through the Church as to be believed.

In the definition are expressed: 1. the material object of faith; 2. the formal object of faith; 3. the subject of faith. - A few things concerning each.

§ 1. On the Material Object of Faith

421. The primary MATERIAL object of faith is God himself, the highest Truth in being; the secondary object is other truths revealed by God to us. To the point, thus the Vatican Council (*Const. Dei Filius*, III): "All those things are to be believed with divine and Catholic faith which are contained in the word of God, written or handed down, and are proposed by the Church, whether by solemn judgment or by ordinary and universal magisterium, as divinely revealed and to be believed."

The Holy Council says 1. Which are contained in the word of God, written or handed down; both to indicate the twofold font of the whole of revelation, that is, Sacred Scripture and tradition; and to exclude any other revelations whatsoever made to certain Saints, which of themselves cannot become the object of Catholic faith.

2. Proposed by the Church as divinely revealed, to indicate the divinely instituted organ by which alone men can be taught what things are to be believed with divine and Catholic faith.[1]

3. Which are proposed whether by solemn judgment..., to indicate the extraordinary mode which the Church is accustomed from time to time to use in proposing truths to be believed with divine and Catholic faith; when namely, through the Supreme Pontiff speaking ex cathedra, or through the episcopate gathered in an ecumenical council, it singularly and determinately defines certain points and enjoins them to be believed. Truths thus solemnly proposed are called defined dogmas of faith, and the contrary and pertinacious error is held as heresy. By the same appellation those truths also are to be denoted which appear immediately contained in Sacred Scripture, for example, Christ's birth in Bethlehem, his agony, scourging, etc.; for these truths also become known through the solemn proposition of the Church, namely through that general proposition by which it defined the whole of Scripture to be divinely inspired.

4. Or by ordinary and universal magisterium, to indicate the ordinary mode which the Church uses in proposing truths of faith: when namely, through its pastors and doctors, it universally affirms that certain truths are revealed by God; although they may have been defined by no decrees of councils or of Roman Pontiffs. And points of faith of this kind must be believed with divine-Catholic faith.

Truths which have been revealed by God in a particular mode are to be believed with faith simply divine; but explicitly by those alone to whom they become known in a certain mode, for example, by that theologian alone who evidently finds the truth in Sacred Scripture, by that person alone who has received the divine revelation (VII, 262).

[1] "But whether those things which the Church hands down not as revealed, but as connected with revealed things, or deduced by reasoning from them, are an object of divine faith, is not settled. Most refer these things to ecclesiastical faith, or mediately divine faith.... This faith is called mediately divine, because the authority of the Church's magisterium is divinely revealed, and therefore he who believes on account of the authority, or infallibility, of the Church teaching, mediately rests upon divine revelation, from which the infallible magisterium of the Church is established." Piscetta, II, n. 5.

§ 2. On the Formal Object of Faith

422. The FORMAL object of faith is the authority of God revealing, who, since he is the highest Truth, can neither be deceived nor deceive. Whence the most holy Vatican Council (l. c.) defined: "faith ... to be a supernatural virtue, by which ... we believe the things revealed by him to be true; not on account of the truth of the things seen through by the natural light of reason, but on account of the authority of God himself revealing, who can neither be deceived nor deceive."

From these things you will gather: 1. The assent of faith is formally resolved into the first truth revealing, or the very authority of God revealing (Becanus, *de Virt. theol.*, c. 8, q. 8; Tanquerey, II, 618).

We said: resolved formally; for dispositively, it is resolved into the motives of credibility; directively, into the authority of the Church proposing and deciding what is to be believed; effectively, into God and the infused habit of faith. Cf. n. 423.

2. The knowledge of faith is more certain than any natural knowledge. Thus St. Thomas (2.2, q. 5, a. 8, ad 2).

3. Divine and Catholic faith is necessarily universal, that is, comprising all truths divinely revealed and proposed as such by the Church. The reason is that the formal object of faith is the authority of God revealing. Therefore he who knowingly rejects one article of faith, for example the eternity of the punishments of hell, cannot have theological faith as regards the others.

§ 3. On the Subject of Faith

423. The SUBJECT of faith is the intellect, which is moved by the will so that it assents to things to be believed. This is expressed in the definition by these words: inclining us to assent.

Faith is in the intellect as in its subject; but because faith pertains to the intellect according as it is moved by the will, there ought also to be a habit in the will, namely charity, so that the act of faith may be perfect, that is, so that it may proceed connaturally from both powers and be meritorious; not, however, so that it may be perfect in the notion of assent: for to this a firm adhesion of the intellect from the pious motion of the will, without the habit, suffices (Billuart, *de Fide*, Diss. 3, a. 1).

From the things said, the ACT OF FAITH can be defined: An act by which the intellect, illuminated by God through grace, from the command of the will likewise excited and aided by divine grace, assents to things to be believed.

Chapter II

On the Necessity of Faith

St. Thomas, 2.2, q. 2, a. 3-8; St. Alphonsus, II, 2; VI, 505; *H. Ap.*, IV, n. 3; Billuart, *de Fid.*, disp. 3; Pesch, n. 426-465; Lahousse, *de Virt. theol.*, disp. II, c. V, a. 4; Viva, *Thes. damn.*, P. I, prop. I.

424. Things to be noted beforehand. 1. A twofold necessity as regards salvation is distinguished, one of means, the other of precept: a) That is necessary by necessity of precept which, if omitted inculpably, does not harm salvation, as the real reception of the Eucharist. b) That is necessary by necessity of means without which, even if it is omitted inculpably, in the present order of Providence salvation cannot be obtained.

This necessity of means again is twofold: strict, if it can be supplied by no other means; thus sanctifying grace in the last moment of life is strictly necessary for salvation; broad, however, if another means of supplying is present. Thus, for example, charity can succeed into the place of baptism. Cf. n. 1451.

2. It is certain that HABITUAL FAITH is strictly necessary, by necessity of means, for eternal life. For no one can be saved without infused habitual justice. But the habit of faith is either a part or the foundation of this justice. Therefore. But this faith, in baptized infants and the perpetually insane, suffices for salvation, since it is equally certain that all dying with the grace of baptism become partakers of eternal life (Suarez, disp. 12, s. 1, n. 4).

Therefore the whole question concerns ACTUAL FAITH, and indeed the act of faith both internal and external, with respect to adults who enjoy the use of reason.

The internal act of faith can be either explicit or implicit. It is called explicit when one adheres to a revealed Truth apprehended in its own terms: for example, I believe that Christ is the Incarnate Word. It is called implicit when one adheres to a revealed Truth contained in another Truth apprehended in its proper terms: for example, I believe all things which are proposed by the Church as revealed.

§ 1. On the Necessity of Faith as Regards the Internal Act

425. PRINCIPLES. I. The internal act of faith is necessary for all adults for justification by necessity of means. It is established from Scripture (Epistle to the Hebrews 11:6): Without faith it is impossible to please God. For he that comes to God must believe that he is, and that he is a rewarder to those seeking him. And from Trent (Sess. 6, c. 6): "Without faith justification never happens to anyone." God does not justify adults unless through their own acts they tend into him.

Nor does faith in desire, or faith improperly or broadly so called, suffice;[2] for faith properly so called (according to Trent, Sess. 6, c. 8) "is the beginning of human salvation, the foundation and root of all justification," and consequently it presupposes nothing in which its desire would be included. Suarez judges this conclusion so certain (disp. 12, s. 2, n. 101) that he denies it can be rejected without error in faith. Yet from this it cannot be inferred that there are men who are in an impossibility, properly so called, of obtaining salvation. For "to him doing what is in him, God does not deny grace."

Whence St. Thomas (*de Verit.*, XIV, a. 11, ad 1): "If someone," he says, "nurtured in forests or among brute animals..., should follow the guidance of natural reason in desiring good and fleeing evil, it must most certainly be held that God would either reveal to him by internal inspiration the things which are necessary to be believed, or would direct some preacher of the faith to him, as he sent Peter to Cornelius." Cf. St. Alph., *Gran mezzo della pregh.*, P. II, c. 4.

426. II. The act of faith is necessary for all by necessity of precept. It is established from Scripture (Mark 16:16): He that believes not shall be condemned. Likewise from the twofold proposition condemned by Innocent XI, namely the 16th: "Faith is not considered to fall under a special precept, and according to itself"; and the 17th: "It is enough to elicit the act of faith once in life."

This obligation of eliciting the act of faith can be either on account of faith itself or on account of another obligation. Concerning the former St. Alphonsus speaks thus: "It is certain," he says, "that man is bound by the natural law to turn himself to God through faith, hope, and charity, and therefore to elicit acts of those virtues, since each virtue lives by its acts" (II, 6).

Hence the PRECEPT OF FAITH urges: 1. Per se, that is, independently from every other circumstance: a) at the beginning of spiritual life, that is, when someone, for example a boy or a non-Catholic, shall have known both those things which must be believed and the obligation of believing (cf. n. 436); likewise when some truth to be believed is proposed by the Church; b) more often in life, at least once in the year, as Doctors admit with sufficient probability (II, 7); c) in the article or danger of death, as is more commonly taught, because then we are especially bound to tend into God as our ultimate end (II, 5; *H. Ap.*, IV, 13; *Conf. dir.*, IV, 6).

2. Per accidens, that is, from a peculiar circumstance: a) when a grave temptation against faith is pressing, which cannot otherwise be conquered; b) when a precept must be fulfilled which requires faith, for example of penance, of profession of faith, of communion, etc.; c) after a lapse into heresy or faith denied; because the injury inflicted upon the First Truth must be repaired. Thus all (II, 5).

Take note: 1. We are never strictly bound to recite the customary formulas of the act of faith. A man who lives Christianly (at least by fulfilling the paschal precept) sufficiently satisfies the precept of faith (and of hope), because in him who has already learned and believed generally the truths to be held by faith, implicit or exercised acts suffice, such as to pray, to adore the crucifix, to sign oneself with the sign of the cross (II, 7). Cf. Ferreres, I, 188.

2. A heretic, so long as he judges his own sect to be more credible, or equally credible, and Catholics to reject and persecute the word of God, is not bound to believe, because the faith is not yet sufficiently proposed to him, and he would act imprudently. Cf. n. 441.

3. "If a doubt about his sect should arise for someone, he is bound to inquire further and to ask light from God: but if he neglects this, he sins against faith. But if afterwards our faith is sufficiently proposed to him, he is bound to embrace it" (II, 9).

4. Questions. QUAER. 1. What things are to be known and explicitly believed BY NECESSITY OF MEANS?

Resp. 1. They are two: a) that God is; b) that he is the rewarder of good, and avenger of evil. For the Apostle (Heb. 11:6) says: He that comes to God must believe that he is, and that he is a rewarder to those seeking him. It is established also from the 22nd proposition condemned by Innocent XI, which said: "Only faith in one God seems necessary by necessity of means, but not explicit faith in him as rewarder" (II, 2; *Exam. Ord.*, n. 131).

[2] There are among recent theologians some who teach (as Fr. Smid, apud Noldin, *de Praec.*, n. 7) that sometimes that faith suffices (as an extraordinary way of salvation) by which the mind embraces truth, known by the natural light of reason, under the actual influence of grace. But the contrary doctrine must be held with St. Thomas and others. Cf. Piscetta, II, n. 13.

2. As regards the mysteries of the Most Holy TRINITY and of the INCARNATION and DEATH OF JESUS CHRIST, there is controversy. The first opinion, sufficiently probable, denies that these must be explicitly believed, supported by this reason: that, after the promulgation of the Gospel had been made, the condition of those who have heard nothing of Christ was not changed for the worse; whence now, as formerly, those can be saved who believe with explicit faith in God as rewarder, and with implicit faith in the Redeemer. Thus very many more recent authors with Lugo, Sylvius, etc. - But the second opinion, which seems more probable to St. Alphonsus, affirms; because many texts of Sacred Scripture and of the Holy Fathers seem to require faith in Christ, so that man may be united to his Redeemer and be justified through this union. Thus more commonly the ancient theologians.

This opinion is favored (especially for practice) by the response of the Congregation of the Holy Office, which, having been asked whether an adult who was in the article of death and who promised that, after health was recovered, he would learn the truths of faith, could be baptized, wrote back, on January 25, 1703: "the promise does not suffice; but the missionary is bound to explain to the adult, even dying, who is not altogether incapable, the mysteries of faith which are necessary by necessity of means, as are chiefly the mysteries of the Trinity and Incarnation." This decree was renewed on March 30, 1898 (*Mon. eccl.*, X, P. II, p. 30).

Finally, for practice, the 64th proposition condemned by Innocent XI urges: "A man is capable of absolution, however much he may labor under ignorance of the mysteries of faith; and even if, through negligence even culpable, he does not know the mystery of the Most Holy Trinity and of the Incarnation of Our Lord Jesus Christ."

From these things conclude: 1. The CONFESSARIUS sins by absolving (outside the case of necessity) one who is ignorant of the aforesaid mysteries, since he exposes the sacrament to danger of nullity. Therefore he ought either first to instruct a penitent of this kind, or to dismiss him until he shall have been instructed. But it is better briefly to teach him, and to elicit with him acts of faith, hope, charity, and contrition (*Prax.*, n. 22). 2. A PENITENT who notices that his confession, on account of such ignorance, was probably valid, but also probably null, is bound, after having been taught those mysteries, to repeat the confession. The reason is that "with respect to him who has certainly gravely sinned, the obligation of fulfilling confession not only probably, but certainly valid, always urges and possesses antecedently" (cf. n. 83). Thus St. Alphonsus (II, n. 2, at the end), reforming his former opinion. See ed. G., I, p. 298.

Note. Invincible ignorance concerning the aforesaid mysteries can scarcely be found among us. If someone exists so dull that he cannot grasp them, he is rather to be assimilated to an infant (Aertnys, II, tr. 1, n. 4; Tanquerey, II, n. 438).

QUAER. 2. What things are to be believed or known BY NECESSITY OF PRECEPT?

Resp. "Explicitly, by necessity of precept, there ought to be known and believed, at least in substance, as St. Charles Borromeo teaches (*Instr. ad Conf.*): the Apostles' Creed; the Lord's prayer and the angelic salutation; the precepts of the Decalogue and of the Church; the sacraments which are necessary to anyone, such as baptism, Eucharist, and penance; for concerning the others it suffices to have implicit faith, since explicit faith is necessary only for those who receive them" (*H. Ap.*, IV, 3; *Conf. dir.*, IV, 2).

Hence: 1. They sin (mortally or venially, according to the gravity of the matter) who neglect to learn the aforesaid things;[3] likewise pastors who do not teach these things to their sheep, as also parents and other Superiors who do not teach them to their children or subjects, either by themselves or through others. 2. He who is ignorant of the aforesaid things even inculpably can indeed be absolved the first time, provided that, after being admonished, he firmly proposes to learn them. But if afterwards he has altogether neglected to fulfill the obligation, he must be treated as a recidivist (cf. n. 1829). 3. He who neglects to learn the same by memory sins venially. But this light obligation chiefly urges the uneducated, because otherwise they can scarcely have sufficient knowledge of them (II, 3; *Prax.*, n. 22).

§ 2. On the Necessity of Faith as Regards the External Act

We ought also to profess faith externally, according to the words of Christ the Lord (Luke 9:26): He that shall be ashamed of me and of my words, of him the Son of man shall be ashamed, when he shall come in his majesty; and of Paul (Rom. 10:10): With the heart one believes unto justice, but with the mouth confession is made unto salvation. There is added the reason that the Church ought to know its faithful.

This precept is at once affirmative and negative.

428. PRINCIPLES. I. The precept of professing faith, insofar as it is affirmative, obliges, in certain circumstances, either by divine right or by ecclesiastical right.

[3]Yet from this do not conclude that all things contained in the Creed are to be learned from precept, for example, that Jesus Christ suffered under Pontius Pilate. Not learning this or another similar thing is not a sin. See Lehmkuhl, I, n. 394.

1. By divine (or natural) right there is given an obligation of professing faith externally in a twofold case, "namely, when, through omission of profession, either the honor owed to God or usefulness to be bestowed upon neighbor would be taken away privatively or contrariwise."

We said: a) privatively, as if a great honor toward God or usefulness redounding to one's neighbor would therefore cease; b) contrariwise, as if otherwise God would be affected with injury, or one's neighbor with a grave evil, for example, if the conversion or perversion of others, contempt of religion, scandal, etc., depended upon it. For then the act of virtue seems prescribed when it is necessary for the end of the precept; and this occurs here, because the end of the precept is charity (II, 10).

Hence, "if heretics trample images and afflict the faith with other injuries, a Catholic is bound to protect it by his confession, if indeed he prudently hopes for profit from this." But otherwise, if the honor of God and the usefulness of neighbor counsel prudent dissimulation (II, 11).

2. By ecclesiastical right some are bound to emit the profession of faith alone, others the profession of faith together with the oath against modernism.

To THE PROFESSION OF FAITH ALONE are bound, besides those to be baptized (who namely are bound through sponsors, if they are infants), and more probably personally, not through a proxy: a) Primates, Archbishops, and Bishops, in the first provincial synod at which they are present (Trent, Sess. 25, *de Ref.*);[4] b) all beneficed clerics who by right are present at the diocesan synod, the first time (ibid.); c) all prelates of religious institutes; likewise all to be promoted as doctors, masters, regents, and professors, where the decree of Pius IV on this matter is in force;[5] d) heretics returning to the Church, who are bound both to abjure heresy and to emit an express profession of faith before witnesses, as is commonly done, and reason counsels, and right confirms. Cf. n. 1833.

To THE PROFESSION OF FAITH TOGETHER WITH THE OATH AGAINST MODERNISM are bound: a) those to be ordained to major orders, at least before the Subdiaconate; b) priests, before they are given the faculty of hearing confessions or preaching (especially solemnly during Lent), but not as often as the faculty is prolonged; c) pastors (also succursalists), canons, beneficed clerics, without delay before entering into possession of the benefice (the profession of faith is to be renewed when they are transferred to another benefice); d) all officials of episcopal Curias, tribunals, Roman Congregations; e) readers of theology and philosophy in Seminaries of secular clerics and in Colleges of religious, annually before beginning lectures; f) moderators of religious before they enter upon office. Cf. the Motu proprio *Sacrorum Antistitum*, September 1, 1910; declaration of the S. C. Consist., September 25, October 25, December 17, 1910; February 10, 1911; Vermeersch, *Period.*, V, p. 197, 229, 252, 271; Hilling, *die Reform. des Papst. Pius X*, I, p. 184.

Note. 1. The obligation of itself is grave. Yet it primarily affects Superiors, who ought to call subjects to professing. 2. The internal assent is diverse for diverse points: it is the assent of faith in the profession of faith; it is assent of a diverse grade of certitude, according to the points assigned in the oath, as is established from the various expressions accompanying the several parts, for example I admit, I acknowledge, I hold, with firm faith I believe, I altogether reject, I hold as certain, etc. 3. The mode of emitting it is that the oath, in writings indeed to be preserved, be given to the respective Superior, namely according to the various title by which one ought to profess. Thus, for example, moderators and readers of religious, as such, ought to profess before the moderator either immediate or major; those to be ordained, even exempt religious, before the Bishop or Vicar general, who previously has himself made the profession of faith. In particular cases, for a just cause, some priest, whether secular or regular, constituted in some dignity or office, can be delegated to receive the profession. 4. An exception has been made in Germany only for those who are Doctors in public Universities of the State, so that, from the benign interpretation of the Pontiff, they use their right by not emitting the oath. 5. There must be denounced to the Holy Office not only those who have violated the oath, but also those who have refused to subscribe to it.

429. II. The precept of professing faith, insofar as it is negative, prohibits: denying the true faith, professing a false faith, or simulating it. It prohibits these three things even if they were done externally (II, 12).

1. Denying the true faith. For the Apostle says (2 Tim. 2:12): If we shall deny him, he also will deny us. - Whence the Church always punished with most grave penalties those who had denied the faith in persecutions. For exterior denial of faith is a lie harmful to one's neighbor and most injurious to the truth of God.

2. Professing a false faith. For this is manifestly to renounce the true faith.

[4]Today all promoted to the episcopate emit the profession of faith also privately in the hands of the Apostolic Nuncio or another Bishop deputed to this by the Roman Pontiff (Gen., 1, 197).

[5]Cf. De Angelis, *Prael. Juris can.*, l. I, tit. 1, n. 2, where he warns: "The Constitution of Pius IV has not been received in use as regards those prelates who are placed over the government of regulars, not by the Holy See, but by their Superiors or by the chapter."

Hence, he sins gravely against faith who, even when questioned by a private person about his religion, replies that he is a Turk, or a Jew, or a Gentile; for this is just as if he denied himself to be Christian. But it would not be mortal nor against faith if someone denied that he was a priest, a religious, or that he had been present at the sacrifice of the Mass (Piscetta, II, p. 22).

3. Simulating a false faith; for it matters very little whether someone lies by word or by deed. Hence Benedict XIV, in the year 1742, declared that it was not licit for Chinese Christians to exhibit external signs of adoration to an idol, although the intention were directed to a cross hidden under the garment (Scavini, l. 2, n. 820, 4; Zitelli, *App. Jur. eccl.*, l. II, App.).

4. Questions. QUAER. 1. Whether it is licit to HIDE faith, or to dissimulate it?

Resp. 1. When the precept of confessing it externally urges, it is not licit, as we said above (n. 428, 1).

Hence deservedly, as being too general, the 18th proposition was condemned by Innocent XI: "If someone is interrogated by public power, I counsel ingenuously confessing faith as glorious to God and to faith; I do not condemn keeping silent as sinful per se." Cf. Viva, P. II, on this proposition.

2. When the precept does not urge, it is licit, for a just cause, to hide faith, or to cover the truth by words or other signs ambiguous and indifferent.

Hence, one interrogated about faith outside the order of law can keep silence, or respond obscurely. "For generally it is not true that one interrogated (even by public authority) is bound positively to profess faith, except when this is necessary lest he seem to those present to have denied faith" (II, 13, 2). Much more will someone be able to refuse a response to those who ask from curiosity, unless, having been asked about the faith in hatred of religion, he would seem to those present to deny the true religion.

Note. He who flees in time of persecution is not considered to hide his faith. Cf. Matt. 10:23. Yet pastors of souls are bound not to abandon their sheep (II, 14).

QUAER. 2. Whether it is licit to use the SIGNS or GARMENTS of unbelievers?

Resp. 1. If the garments or signs are proper to that region, even if the whole region is unbelieving, it is licit; for these, of themselves, are not referred to religion. - 2. If they are religious garments or signs, one must distinguish: either they are common, and then it is licit to use them, provided a grave cause underlies it; or they are ceremonial and indicate profession of religion, and then it is not licit except from a most grave cause (Piscetta, II, p. 23). - 3. But if these garments or signs, from their own nature or from use, are solely protestative of a false religion (as would be the equipment and garments whose use is in sacrifices, or certain signs of the Masonic sect), it is in no way licit, unless necessity makes every religious signification absent, for example in a fire.

QUAER. 3. Whether Catholics, in the intercourse of COMMON and PUBLIC LIFE, are bound positively to profess faith?

Resp. Affirmatively; because also in the order of earthly things, all things must be directed to the highest good as to the ultimate end. Besides, all human actions, at least in the concrete, either agree or disagree with natural and divine right, and therefore are subject to the judgment and jurisdiction of the Church. Yet it suffices if, through an exercised act, in civil life Catholics profess faith and exercise external acts when they ought to be exercised (Mausbach, *Kath. Mor.*, s. 365).

Hence: 1. Catholics, individually or associated, ought to acknowledge the rights of the Church's authority in controversies and social causes, for example concerning hours of work, the manner of wages, voluntary cessation of labor, etc. 2. Societies which primarily and principally pursue the temporal good of one or another order of civil life (such as associations for cultivating letters and arts, for promoting the temporal lot of workers, for sustaining political parties), on account of mixed questions which cannot fail to occur for Catholics, ought of themselves to be confessional. Yet societies of this kind that are interconfessional are tolerated where a just cause counsels it, as would be a great inconvenience to be avoided, provided that suitable cautions are applied for avoiding the dangers to faith and religion to which Catholic men are necessarily exposed in such groups. - 3. The mode by which confessional Catholic and non-Catholic societies can labor together for the common good is to be preferred here: with distinction remaining and special caution being applied, they should rather be joined to one another by an exterior league. Cf. Letter of Leo XIII, May 1892; Letters *Graves de Communi* (*A. S. S.*, 33, p. 385); Letter of Pius X to the Sillonists, November 22, 1909 and August 25, 1910; Encyclical Letter *Singulari quadam caritate*, September 24, 1912. Cf. also Mausbach, *die Kath. Moral.*, p. 2, c. 9 and 10; *Ami du Clerge*, 1913, *Les cath. et les oeuvres non confessionnelles*; Hiptmair, in the periodical *Linz. Quart. Schr.*, 1914, article *Kirchl. Zeitlaufe.*

431. From the things said, you will resolve:

A. CONCERNING THE HIDING OF FAITH:

1. "When you are not asked about faith, often it is better, for the honor of God and the usefulness of neighbor, to cover faith than to confess it: as if, hidden among heretics, you do more good; or if from confession more evil would follow, for example the exasperation of a tyrant, danger of defection if you were tortured."

2. "To redeem with money, lest an inquiry be made concerning your faith, is licit; and often it is a great virtue of discretion to preserve life for the glory of God, and to cover faith by licit modes."

3. "Likewise a licit mode is, when a Catholic passes through heretical places, and grave danger threatens him (of life, for example, or of goods), for dissimulating faith, to eat meats on a prohibited day, because the precept of the Church does not oblige under such danger" (II, 14, 15). Cf. nevertheless n. 154, 3.

4. B. CONCERNING COMMUNICATION WITH NON-CATHOLICS.

Things to be noted beforehand: a) The discussion concerns communication in the exercise of divine worship or in those acts of civil life which are consecrated by religion, as, for example, in the celebration of marriage, in funeral rites.

b) This communication can be active, namely when a Catholic is present at the sacred rites of non-Catholics; or passive, namely when non-Catholics, with Catholics consenting, are present at their sacred rites.

c) Again, it can be public or private. It is public if a Catholic is present at sacred rites which a group of non-Catholics celebrates as a group: for example, at sacred rites which take place in a non-Catholics' temple. It is private if he is participant in a sacred thing which is done by a non-Catholic as a private man, not as a minister of a sect; as if, for example, you recite the Lord's prayer with a non-Catholic.

433. Therefore in particular:

I. CONCERNING ACTIVE COMMUNICATION.

1. To hear sermons of heretics generally is not held as a sign of profession of faith; although from these, if there is scandal, danger, or special prohibition, one must certainly abstain. Thus Paul V (Brief, September 16, 1606) forbade the English to obey a law prescribing this (II, 16, 13).

2. To conduct a funeral as far as the doors of the temple or cemetery is considered a civil courtesy. But regularly it is not licit to be present at the religious ceremonies, because ordinarily it has the character of communication in sacred rites, or presents the appearance of it. Except if, from the circumstances of place, time, etc., something else is signified (II, 16; Gury-Cretoni, I, p. 555).

3. To stand by at the celebration of nuptials, for example as a maid of honor, is for the most part assessed as a testimony of respect toward the spouses, without the heretical rites therefore being approved. Moreover, a Catholic who, with contempt of the laws of the Church, contracts nuptials before a minister of a non-Catholic religion incurs excommunication, and no Catholic can approve this by his presence. Indeed parents and those more closely joined by blood are generally bound positively to disapprove this (Kon., 254, 2). Cf. n. 1314.

4. A servant can, after the example of Naaman the Syrian (4 Kings 19), carry his master by carriage to heretical temples, or accompany this man's daughter or wife to them for the sake of guardianship, yet so that he does not participate in the heretical rites; likewise he can carry infants to be baptized and support them on his arm while they are baptized by a heretical preacher. For all these things pertain to service, and attest no partnership of worship (II, 16, 12).

5. He who receives supper or sacred communion from heretical ministers, or from schismatic priests, even in paschal time or in danger of death; or absolution, except in the article or danger of death; or baptism, unless any other Catholic baptizer whatsoever is lacking; or contracts marriage religiously before them, is guilty of mortal sin against faith (II, 16, 14).

6. Those who, for the sake of a religious rite, sing hymns in the temples of heretics, play organs, respond to the minister, plainly become participants of worship, and therefore in some way betray the faith. - Those who build, restore, or sweep temples do not always seem to enter into partnership of religion; but they provide a certain work, from which one must abstain, especially in a Catholic region, unless a most grave cause urges (Kenrick, tr. 13, n. 37; *A. S. S.*, vol. 11, p. 174). Cf. n. 523, 2.

7. It is not licit for schoolmasters to teach boys Protestant hymns, or a heretical catechism, or to use a Protestant version of Sacred Scripture, although parents or rectors of schools demand it (Kenrick, tr. 13, n. 38).

8. It is not licit to go to musical concerts of heretics, if by occasion of the place the concerts put on the notion of worship, or if the profits from these redound to the usefulness of heresy, or otherwise favor heresy (ibid., n. 39).

9. To bend the knees with heretics praying (whether publicly or privately, but not formally) does not seem to be denial of faith; for it is understood to be done for the sake of civility, provided that it be done only occasionally. - But a custom in these matters is altogether to be disapproved, as favoring heresy and full of danger. Therefore it is in no way to be permitted to servants whom masters are accustomed to urge to this. Resolve the same concerning a servant who would be ordered to read Protestant bibles to a master becoming blind, or ill (Kon., n. 254, 5).

II. CONCERNING PASSIVE COMMUNICATION.

This can take place in a twofold mode: merely passively or negatively, or actively or positively, when non-Catholics positively do or contribute something.

1. Negative communication is permitted; for example, a non-Catholic can be admitted to hearing Catholic sermons, to assisting at the sacrifice of the Holy Mass, to participating by his presence alone in ecclesiastical ceremonies.

2. But positive communication is interdicted according to the things said above, because it easily falls back into illicit communication, and, where it is formal, becomes a sign of the unity of two religious confessions.

3. Thus are understood several decisions of the Sacred Roman Congregations concerning the invitation of non-Catholics into choir, the bestowal of the peace, of ashes, of candles, admission to carrying torches and lights, kissing the instrument of peace, carrying the body at funerals or holding the cloth, and even singing separately and not without scandal in the musical choir.

4. It is licit to invite non-Catholics to play the organ.

5. As regards admitting Protestant or schismatic girls into Catholic houses of education, several decrees exist, especially for houses situated in Italy, and prescriptions are given for the Superioresses of the same Institutes. Cf. *Ami du Clerge*, 1908, p. 445; *Monit. eccl.*, X, 86; XI, 434.

CERTAIN RESPONSES OF THE SACRED CONGREGATIONS.

1. To the doubt: Whether it is licit for Catholics to go to the temples of heretics, the Sacred Congregation of the Holy Office, on January 14, 1718, responded: "It is licit, if they go for the sake of mere curiosity, without any communication in sacred rites, in which such going is commonly held for an act protestative of a false religion; since, just as to go to profane buildings, so also to the temples of heretics, is an act indifferent per se, which becomes evil only from a depraved end or from circumstances."

2. The same Sacred CONGREGATION, on May 10, 1770, decreed: "It is regularly not licit for Catholics to be present at sermons, baptisms, and marriages of heretics or schismatics." To undertake also the office of sponsor in the baptism of heretics is strictly prohibited by the same decree (cf. *Intr.* Card. Vicar, July 7, 1878, apud Gury-Cretoni, I, p. 554; Lehmkuhl, I, 816).

3. The Sacred Congregation DE PROPAGANDA FIDE, having been asked in the year 1674: Whether Catholic missionaries, asked by schismatics, can preach in their churches, responded: "Either they are invited to the effect that Catholic truth be preached there indefinitely, and even against the errors of the same schismatics, and affirmatively; or only that a discourse be made concerning virtues and vices which commonly ought to be exercised and avoided both by Catholics and by schismatics, and negatively." Scavini, II, n. 911, 14).

4. The Congregation of the HOLY OFFICE, having been asked: "Whether it is licit for nuns having care of the sick in a hospice to call a heretical minister, who for the sake of religion would be sought by a sick heretic; likewise, whether this would be licit for a Catholic in whose house a heretic was sick?" responded on March 15, 1848: According to the things set forth, it is not licit; let them have themselves passively.[6] This response was renewed by the same Sacred Congregation on February 5, 1872, and on December 14, 1898 (*N. R. Th.*, 31, p. 402). - Yet otherwise, as is clear, if, when the sick person asks, greater evils would threaten from the denial, for example, desperation, outcries against the Church, blasphemies, scandal of others, etc. Then the little minister could licitly be called, so that he may visit the sick person (Scavini, l. c., 8; Kon., 313, 3; *Monit. eccl.*, IX and X).

[6] A nun has herself passively if she does not obey the requests and does not attend to those things. She also has herself passively if she does not indeed directly call the little minister, but announces the requests of the sick person to another benevolent non-Catholic, so that he, according to his own will, may execute them.

N. B. See other things at n. 447 seqq., where concerning dangers of faith, and n. 523, where concerning cooperation, and apud Lehmkuhl, I, n. 809; Villada, *Cas. consc.*, II, 52.

Chapter III

On Sins Opposed to Faith

St. Thomas, 2.2, q. 10-12; St. Alphonsus, II, 17; ed. G., I, p. 309; Lugo, disp. XVIII seqq.; Aertnys, l. II, n. 9; Lehmkuhl, 1, 410; Tanquerey, II, n. 655; Gury-Ferreres, I, n. 205 seq.; Gopfert, 1, § 47.

434. To the virtue of faith is opposed, by EXCESS, rash credulity, by which, from levity of heart, things are believed as belonging to the Christian faith and religion, when they are not such; as, for example, if someone lightly believed and handed on to others private revelations very suspect and doubtful. - Hence St. John warns (1 Ep. 4:1): Dearly beloved, do not believe every spirit, but test the spirits whether they are of God. But, the danger of losing true faith being excluded, the aforesaid credulity will be a venial sin, or none.

By DEFECT, to the virtue of faith are opposed: 1. Sins of omission, namely negligence in learning truths of faith necessary to know; and omission of acts which the affirmative precept of faith prescribes (cf. n. 428). Yet by these sins the infused habit of faith is not lost. 2. Sins of commission, namely denial of faith, whether external or internal, which the negative precept forbids (cf. n. 429). But since internal denial of faith is made especially through infidelity, heresy, and apostasy, and since the dangers of these sins also are prescribed to be avoided, we shall treat here: a) of infidelity; b) of heresy and apostasy from faith; c) of avoiding dangers of losing faith.

Article I

On Infidelity

435. DEFINITION. Infidelity properly so called is lack of faith in a man not baptized. For those are called infidels who have not yet received the infused habit of faith.

DIVISION. A threefold infidelity is distinguished: negative, of those who have heard nothing about the faith; privative, of those who from vincible ignorance do not know the truths of faith; positive or contrary, of those who resist faith sufficiently proposed, or contemn it (*Instr.*, IV, 4).

436. PRINCIPLES. I. Negative infidelity is not a sin. The reason is that it is not voluntary; and therefore this 68th proposition of Baius was deservedly condemned: "Purely negative infidelity in those to whom Christ has not been preached is a sin." Cf. n. 425.

II. Privative infidelity is a grave sin. For it proceeds from ignorance which is vincible, and therefore gravely culpable.

III. Positive infidelity is a most grave sin; because it contains grave injury and contempt of divine authority. Whence, he who has not believed shall be condemned (Mark 16:16).

The principal SPECIES of positive infidelity are: paganism, Judaism, Mohammedanism, and other sects of unbelievers. To these are numbered atheism, pantheism, deism; finally rationalism, from which is born either incredulity, which rejects all religions as fictions, or indifferentism, which estimates all religions as equal. Yet these, in a baptized man, are rather referred to apostasy and heresy (cf. n. 438).

437. IT IS ASKED. Whether unbelievers can be compelled to receiving faith?

Resp. They cannot be compelled directly, both because the Church has no power over the non-baptized, and because the reception of faith, so that it may be true, ought to be voluntary. This is confirmed by canonical right and by the practice of the Church itself, which has never used coercion, but persuasion (l. V Decr., tit. 6 and c. 3).

We said directly: "for the Church, and any supreme prince, can indeed compel Jews and pagan subjects to hearing our faith" (II, 19). The prince can also prohibit idolatry, since this is repugnant to the natural law; and thus, the Church applauding, Constantine and Theodosius proscribed such impiety. Likewise, he can prohibit, even by arms, that faith be impeded. "And for this reason," says St. Thomas (2.2, q. 10, a. 8), "the Christian faithful have frequently waged wars by right against unbelievers."

Article II

On Heresy and Apostasy From Faith

Three things come to be considered here: the sins of heresy and apostasy, the ecclesiastical sanction against these sins, the reconciliation of heretics.

§ 1. On the Sins of Heresy and Apostasy

438. NOTIONS. I. Heresy is a pertinacious error against faith, in one who has received the faith.

For heresy which is punished by canonical penalties there is required: 1. on the part of the person, profession of the Christian religion, and baptism validly received (for a catechumen cannot yet be punished by the Church); 2. on the part of the intellect, error, that is, assent, or a formed judgment; 3. on the part of the will, pertinacity, by which someone knowingly and willingly does not wish to submit his judgment to the Church teaching infallibly (which is characteristic of this sin); yet it is not required that someone adhere tooth and nail and with a delay of time to such error; 4. on the part of the matter, error against Catholic faith, that is, against some point of faith explicitly defined or proposed by the Church; 5. on the part of the act, that the error be externalized, whether by a deed or by a word indicating internal heresy (VII, 300 seqq.).

Before God, anyone is a heretic who rejects some truth which he knows to be revealed, even by voluntarily doubting (cf. 421, 4).

II. Apostasy is total departure from the Christian faith received through baptism.

Note. For the crime of apostasy the profession of some false religion is not required. Therefore, under the name of apostates come also Masons, nihilists, anarchists, more probably socialists properly so called, free-thinkers, rationalists, deists, pantheists, spiritists, and generally all those who, after baptism received, have completely withdrawn from Christian faith, although they have not passed over to Judaism or to another infidelity. Cf. L. Jaugey, *de Fide*, n. 161; Tanquerey, II, p. 387, note 2; *Stimmen aus Maria-Laach*, vol. 16, *die Quellen des Ungl.*; vol. 48, *Atheismus u. s. Folgen.*

Note. There will be discussion of apostasy from Religion or from Sacred Order in Part IV.

DIVISION. Heresy is distinguished in many ways:

1. By reason of the sin, it is formal, if someone adheres to error with pertinacity, that is, knowingly and willingly; or material, if there is error in the intellect without pertinacity in the will.

2. By reason of the act, it is internal, if it lies hidden in the mind; or merely external, if someone by mouth, for example by uttering a heretical blasphemy, or by deed, for example by prostrating himself before an idol, denies the faith which he retains in the heart; or externalized or manifested, if it is in the mind and is produced exteriorly.

3. By reason of manifestation, it is occult, if it becomes known to no one or to only a few; and public, if it is known to very many and cannot be concealed (Perrone, *de Virt. fid.*, n. 481-490). Cf. n. 1199.

4. PRINCIPLES. I. Formal heresy, and apostasy from faith, are most grave sins. The reason is: 1. because they contemn the authority of God revealing, and therefore attack God himself; 2. because they directly impede the remission of other sins, since faith is "the foundation and root of all justification, without which it is impossible to please God, and to come to the fellowship of his sons." Trent, Sess. VI, c. 8, and Vatican, Sess. III, c. 3.

5. II. Material heresy, of itself, is free from fault. For it proceeds from ignorance. Yet except if it proceeds from culpable ignorance; because then it will be culpable in the same degree as the ignorance itself, although it does not yet reach formal heresy (St. Alph., *de Prohib. lib.*, c. I, n. 1-6; VII, 301).

The signs of heresy, whether material or formal, are the following:

1. He is considered only materially a heretic, and therefore, from the faith received in baptism, belonging to the Church of God: a) Who is prepared to submit himself to the judgment of the Church when he has recognized the error, although meanwhile he may defend his own opinion tooth and nail. b) Who has known nothing concerning the Catholic faith, and has never doubted concerning his own. c) Who, while doubting, has studied to recognize the truth as much as he could. - But he who culpably procrastinates his conversion to the faith is not for this reason a heretic; nevertheless he sins against the affirmative precept of faith if he puts it off for a long time.

2. He must be considered a formal heretic: a) Who doubts, and from pertinacity or from contempt of the Church refuses to inquire further. b) Who deliberately turns the intellect away from truth sufficiently proposed, so that he may adhere to his own sect or opinion. c) Who, after the truth has been recognized, perseveres in contradicting the Church, as heresiarchs are accustomed to do from hatred of the Pope or of the Church. These are the three principal GRADES of pertinacity, of which the first is founded upon truth studiously neglected; the second upon truth sufficiently proposed but contemned; the third upon recognized truth maliciously opposed (Voit, I, 378-379).

3. Questions. QUAER. 1. Whether he is a formal heretic who DOUBTS concerning matters of faith?

Resp. 1. If he positively doubts concerning some dogma already defined or proposed by the Church, judging it to be uncertain on account of opposed reasons, beyond doubt he is a formal heretic. In this case, that saying of right strictly holds: "One doubtful in faith is an unbeliever" (c. 1, *de Haeret.*; cf. *H. Ap.*, XIX, 53).

2. If he doubts negatively, namely by suspending judgment concerning some article of faith, one must distinguish thus: either a) deliberately and pertinaciously he suspends his assent, because he thinks the judgment of the Church is not a sufficient foundation for believing; and then he likewise is a formal heretic; or b) deliberately indeed, but not pertinaciously, he suspends assent; and in this case, although he sins gravely against faith, he is not nevertheless strictly a heretic, because there is not present a pertinacious choice; or c) neither deliberately nor pertinaciously, but from temptation, he remains so suspended that he neither dissents nor assents: in this case he does not sin, or at most only venially, because perhaps he resists the temptation tepidly (II, 19; VII, 302).

QUAER. 2. What is to be thought about those who adhere to opinions which are marked not only by the Sacred Congregations, but by the Church, indeed with a dogmatic censure, yet lighter than heresy?

Beforehand note. DOGMATIC censure, proceeding from the supreme and universal magisterium of the Church, condemns some thesis as heretical, or erroneous, or proximate to heresy or error, or rash. DISCIPLINARY censure, which corresponds rather to the prerogative of government than of magisterium, is not condemnatory of doctrine, as dogmatic censure is, but prohibitory of the same. This is also called ECONOMIC or PRUDENTIAL, when the enunciation of some doctrine is prohibited not on account of an intrinsic cause, but on account of causes or reasons of prudence, namely that dissensions may be removed, peace consulted, scandal guarded against (Konings, n. 268, q. 3).

Resp. Of themselves, they are not guilty of heresy, but certainly they sin mortally. We say of themselves; for those adhering to opinions of this kind as true and licit virtually deny the infallibility of the Church: and if they are conscious to themselves of this denial, they are guilty of heresy (I, 104). Cf. n. 1328.

From these things are to be judged followers of liberalism who embrace various errors concerning liberty, condemned by the Church in the Syllabus, or demand excessive tolerance for favorers of errors. Concerning these below (n. 445). Concerning liberalism cf. Aertnys, *Theol. past.*, P. III, a. 5; Godts, *Les droits en matiere d'education: la liberte*, Ch. II; Berardi, *Exam. Conf.*, n. 2455 and *Casus Consc.*, a. 1894.

§ 2. On the Sanction Against Heresy and Apostasy

442. PRINCIPLES. I. Heretics and apostates are punished with spiritual and temporal penalties. Cf. n. 438, 1314, 1351.

1. The SPIRITUAL penalties are: a) Excommunication latae sententiae, reserved in a special way to the Supreme Pontiff, which is incurred also by those believing heretics ... and generally all their defenders. b) Irregularity, likewise reserved to the Supreme Pontiff, which is extended also to the sons of those who persist in heresy or have died in it, to the first and second degree through the paternal line, but through the maternal line to the first only (*N. R. Th.*, 22, p. 601; 24, p. 276), even in Germany and in other places where heresies rage with impunity (S. Off., Dec. 14, 1890). c) Incapacity for any ecclesiastical office and benefice whatsoever. d) Privation by the right itself (but after a declaratory sentence) of every dignity, benefice, and office. e) Privation of ecclesiastical burial.

2. The TEMPORAL penalties are: perpetual prison, confiscation of goods, etc.; but these no longer have force (Soglia, *Inst. Jur. priv.*, § 232).

II. There is given an obligation of denouncing heretics and those suspected of heresy.

1. By force of the edicts of the HOLY INQUISITION, the following must be denounced to Ordinaries or to the inquisitors themselves, under penalty of excommunication ferendae sententiae (if someone has neglected to denounce for a month): a) formal heretics, and their favorers; b) all suspected of heresy, such as sorcerers, heretical blasphemers, those abusing the sacraments (for example, those who celebrate or absolve without priesthood), confessors soliciting

to base things, those contracting nuptials while a spouse is living or with a solemn vow (III, 123; IV, 251-54; VII, 249).

These decrees indeed are not observed in many places, because on account of the liberty of worship asserted for all, the errors of heretics rage with impunity, and therefore the denouncing of them imposed by the law of the Church by no means obliges. Yet clerics seem to have to be denounced in every case, so that the Bishop may meet the harm both of the people and of the clergy specially committed to himself (Scavini, II, 845, 3).

2. By force of the natural law, one must denounce either heretics or those suspected of heresy, as often as it is a question of avoiding grave harm of souls, to which the Superior can bring a remedy.

Let it be noted: 1. This obligation from the natural law will be able to urge even in places where heretics are everywhere mixed with Catholics, for example, if it is a question of an unusual danger which threatens the Catholic religion through them, the Superior being unaware, and to which the Superior can provide in at least some way. 2. Formal heretics, even if they are not dogmatizing, anyone is bound to denounce, even with danger of grave harm; even a blood-relative, brother, indeed wife, son, or father. The reason is that heresy is so harmful a plague that it has a remedy with difficulty and easily turns to common harm. 3. Those suspected of heresy generally are not bound to be denounced by blood-relatives or others fearing grave harm from it. The reason is that since in those suspected there is only doubtful heresy, only a doubtful evil can be feared from it, and the danger of common harm is considered remote (IV, 249-50).

§ 3. On the Absolution of Heretics

443. I. ANY CONFESSOR can absolve both those guilty of merely internal heresy and also heretics who have incurred no censure.

II. The BISHOP, or INQUISITOR, can in the external forum, by himself or through another, absolve notorious heretics. It matters little whether they were denounced or appeared spontaneously. Yet abjuration must be premised before a notary or someone delegated by the Bishop for this (S. O., March 28, 1900) and witnesses. Thus from the Bull *Cum sicut* of Clement VII, January 15, 1530 (*Anal. eccl.*, VIII, p. 191); cf. *Coll. de Prop. Fide*, n. 1682.

Note. 1. Nevertheless it is granted by the aforesaid Sacred Congregation de Propaganda Fide that sometimes abjuration be made before a few witnesses, without a notary (*Coll.*, n. 1686 and 1681).

2. In places of mixed religion, Bishops are accustomed commonly to have and communicate a delegated faculty of absolving. - The formula of abjuration is that which the Holy Office composed on July 20, 1859.

3. Any confessor can absolve from the sin of heresy those guilty persons thus absolved from censure (VII, 83; *H. Ap.*, XX, *de Privil.*, 39).

III. ONLY THE ROMAN PONTIFF can absolve (by himself or through another) heretics whether notorious or occult. It is supposed that they have not yet presented themselves to the judicial forum of the Ordinary, either from delation or spontaneously (Bened. XIV, Const. *Pastor bonus*, 1744).

Hence: 1. Protestants, or other notorious heretics, who wish to abjure their heresy, can be absolved by the Bishop or by his delegate. For their heresy, in every case, must be brought to the external forum.

2. The contrary must be said of a Catholic who privately fell into heresy, or lived in some sect so occultly that his heresy became known to only a few. For he would be in a case of occult heresy, nor could he be absolved by the Bishop,

so long as his delict had not been brought to the judicial forum. Whence, if he refuses to manifest his heresy in the external forum, he will need an indult of the Holy See (that is, of the Major Penitentiary) to obtain absolution (Bouix, *de Episc.*, II, p. 222). See nevertheless the things to be said at n. 1314.

Note. The MODE of reconciling heretics will be treated at n. 1832 seqq.

Article III

On the Dangers of Faith

There are especially three things which bring danger to faith, namely: 1. liberty of worships conceded by a prince; 2. communication with heretics or unbelievers; 3. reading of depraved books.

In voluntarily incurring these dangers there is given a fault of imprudence, which nevertheless is not always mortal, nor opposed to faith; and therefore it does not necessarily expel the habit of faith (Tanquerey, I, 655-659). If the imprudence is against faith, from the fact that someone proximately exposes himself to danger, there will be present a grave sin of infidelity.

§ 1. On Liberty of Worships

444. Note beforehand. That liberty or equality of worships lies greatly in ambush against the Catholic faith, nothing is more evident than this. For through it there is brought into Catholic kingdoms that horrible system, most repugnant even to the natural light of reason itself, "of the indifference of any religion whatsoever, which, after every distinction of truth and error has been taken away, boldly asserts that men can attain eternal salvation in the worship of any religion whatsoever," and thus it casts peoples down into the abyss of incredulity (Pius IX, Enc., November 9, 1846).

445. PRINCIPLES. I. Liberty of worships, considered as doctrine, is a false principle of liberalism, which a Catholic legislator ought to impede by all the ways in which he can. Reason: he who cannot favor lesser vices, how much more ought he to resist those things which tear out the foundations of the commonwealth (St. Alph., *de Prohib. lib.*, c. 1, n. 4; opusc. *Fedelta dei vassalli*).

Liberalism is a politico-religious system which professes an independence of the State from the Church so complete that the State rules itself, no respect being had to Religion, as if this did not exist, and all religions were in reality equal in themselves.

Moreover, the Supreme Pontiffs have always reprobated this liberty and equality of worships: "What more insane can be devised?" exclaims Pius VI in the Letter to Cardinal La Rochefoucauld (on March 10, 1791). Gregory XVI, in the Encyclical *Mirari vos*; Pius IX, in the Encyclical *Quanta cura* (December 8, 1864) and in the Syllabus (propositions 77, 78, and 79); Leo XIII, in the Encyclical *Libertas* (June 20, 1888), condemned this system by their supreme authority. The same Pontiff spoke thus concerning this doctrine in the Encyclical *Immortale Dei*: "If it differs from Atheism in name, in reality it differs not at all."

Note. But what kind of sin against faith he commits who professes liberalism was said above at n. 441.

II. Liberty of worships and of conscience can sometimes be tolerated where the prince cannot impede it without graver detriment to the true religion and commonwealth. Thus the Angelic Doctor teaches (2.2, q. 10, a. 11): Human rule is derived from divine rule, and ought to imitate it. But God, although he is omnipotent and supremely good, nevertheless permits some evils to be done in the universe which he could prohibit, lest, by their being removed, greater goods be taken away, or even worse evils follow. St. Alphonsus is plainly consonant with the Angelic Doctor (II, 18). Cf. Zigliara, *Summa Phil.*, p. 247.

III. Liberty of worships, existing in fact, creates a twofold danger for the faithful, both of embracing the theoretical error concerning the equal value of religions, and of confusing political tolerance with dogmatic tolerance (Villada, *Casus Consc.*, I, p. 59).

The matter is clear. From this twofold danger it must always be discerned whether someone in reality has fallen into a sin opposed to faith, or has only undergone the danger of falling into it, and whether the matter is one of doctrinal liberalism, or only of political parties.

446. From these things you will resolve: A. As regards liberalism, as it is doctrine:

In order to determine what sin against faith he commits who professes this liberalism, one must carefully inspect (as Genicot says) what he understands by the sentence to which he gives assent, since among those who have not completely turned aside to atheism or rationalism and who wish to remain Catholics, this word liberalism is taken with manifold variety; then one must see how far, by reason of ignorance and good faith, each one is excused from formal sin.

Hence: 1. He is a heretic who: a) fully embraces the doctrine of liberalism, that is, the full independence of the State from the Church, or (what is worse) the subjection of the Church to the authority of the State. For some subordination of the State to the Church is manifestly contained in the full power with which Christ furnished Peter and his successors; b) the same must be said of those liberals who pertinaciously hold certain particular doctrines which are also adverse to divine faith, for example, that by force of a merely civil contract there is given among Christians a true marriage. Cf. Sarda y Salvani, *Le liberalisme est un peche.*

2. They are excused from heresy, but expose themselves to danger, who defend these errors on account of ignorance for the most part culpable, and yet do not bear the mind of retaining them when they shall have known them to be

reprobated by the Church. Likewise, by defect of religious assent, they sin gravely against prudence or reverence owed to the Church who hold only some secondary error, but one by no means contrary to divine faith, for example the 76th proposition of the Syllabus, concerning progress going to follow for the Church from the abrogation of the civil empire. But here some good faith can easily be admitted.

B. As regards liberalism, as it denotes political parties.

Before all things one must examine whether those who adhere to such parties nevertheless otherwise seem to fulfill the offices of good Catholics. Then it must prudently be explored whether they themselves admit something evil in doctrine or manner of acting, or without sufficient reason cooperate in the evil counsels of others; and according to these things let them be judged.

Concerning cooperation of this kind a question often occurs when there is question of schools, assemblies, and other social works.

§ 2. On Communication With Heretics and Unbelievers

447. Communication is either RELIGIOUS or in sacred rites, or CIVIL or political. The former is prohibited by reason of itself, by divine and ecclesiastical right, on account of scandal and cooperation in sin; namely insofar as it is simulation of false faith, or approbation of false religion (see n. 432). - The latter is prohibited chiefly by reason of the danger of perversion which it induces.

PRINCIPLES. I. Civil communication with unbelievers, heretics, and apostates is forbidden by the natural and divine law, if it is dangerous to those communicating. This is established from the things said at n. 374, and from several places of Sacred Scripture, for example the Epistle to Titus (3:10): Avoid a heretical man, and Romans (16:17, 18): Decline from them. For men of this kind do not serve Christ our Lord, but their own belly: and by sweet speeches and blessings they seduce the hearts of the innocent (cf. *de Prohib. lib.*, c. 1).

Note. 1. From civil communication a threefold danger arises: a) lest the Catholic religion suffer detriment; b) lest someone make shipwreck of his own faith; c) lest others take scandal.

2. Apostates, free-thinkers, and heretics entice more to their errors than unbelievers do; because their speech creeps like a cancer (2 Tim. 2:17), and because Satan, so that he may more easily deceive the simple and unwary, with their help and work, is transfigured into an angel of light. The danger grows in places of heretics or unbelievers where there does not exist some church with a Catholic priest to whom it is free to exercise our rites publicly.

3. Formerly a more severe prohibition, even general, was had against civilly communicating, without just cause, with heretics and others denounced by name (cf. n. 1295). It was forbidden to Christians (cf. title *de Judaeis* in Canon Law) to dwell with Jews in the same house, to be present at banquets, to use a common bath, to employ them as physicians ... or to serve Jews. But these things, says Tanquerey, have passed more or less into desuetude, and today attention must rather be given to the danger of perversion (II, n. 677, note). Cf. Gury-Ferreres, I, n. 210; D'Annibale, I, n. 110.

4. For ITALIANS Clement VIII, Const. *Cum sicut*, established: a) That under whatever title they dare not dwell in places of heretics where there does not exist a church with a Catholic priest. b) That they not depart to dwell in the aforesaid places except after opportune admonitions have been received from the Ordinaries or inquisitors for guarding against the danger of subversion. c) That they not use heretical physicians if a suitable Catholic is present (Scavini, II, n. 820).

5. II. Religious communication with unbelievers, heretics, and apostates is of itself illicit and prohibited by the Church. It is established from reason and from the decisions cited above.

Note. 1. The prohibition is absolute in those things which contain heresy, as happens in active, public, and formal communication; it is only conditioned in those things which are administered in the Catholic rite, for example in mixed marriages, provided the dangers of religion are absent and ecclesiastical prohibition does not urge (cf. D'Annibale, l. c.; Gury-Ferreres, I, n. 209). The reason is clear, for the first is the same as truly to deny the true faith, to profess and simulate a false one (cf. n. 429), which is never licit; the other contains only the appearance of adhesion to a condemned sect, although it brings danger; yet all these things can and ought sometimes to be removed.

2. It can more easily be admitted that heretics communicate with us in our rites; for this has less danger than if we communicate with them.

3. It is more strictly prohibited to communicate in sacred rites with unbelievers, because besides other inconveniences there is almost always present participation in superstitious worship (cf. D'Annibale, l. c., and above n. 432).

4. IT IS ASKED. Whether DISPUTATION with heretics is prohibited?

It must be noted beforehand. A twofold disputation is given: public, which, with day and hour fixed, has place before a multitude and judges appointed; private, which is made before a few hearers.

Resp. 1. For laymen, Alexander IV (c. 2, § 1, *de Haeret.*, in Sexto) established thus: "We prohibit that it be licit for any lay person to dispute publicly or privately concerning the Catholic faith. But he who shall do contrary, let him be bound by the snare of excommunication" (excommunication ferendae sententiae). The law is founded on the presumption that laymen are not sufficiently taught. Therefore exception must be made if the controversy is made by learned men with the Bishop's permission, or in a case of great usefulness, or of introduced custom, as in Germany.

2. "Disputation is prohibited to clerics by no right, provided that they are suitable, and from the circumstances a happy outcome can be hoped; but public disputation with heretics cannot be made without permission" (namely, of the Supreme Pontiff). Thus the Sacred Congregation of the Council, March 6, 1625, and several times the S. C. Prop. Fide. Yet in a case of necessity, if there is danger in delay, the Ordinary of the place can grant this license (Konings, n. 255).

Disputations with socialists are subject to the same rules, the Sacred Congregation for extraordinary affairs declared, January 27, 1902 (*A. S. S.*, 38, p. 107. Cf. *Canon. Cont.*, XXV, p. 335; *Etudes*, August 20, 1905, p. 480; *Ami du Clerge*, 1905, p. 354).

450. From these things you will resolve: 1. Marriages with heretics and unbelievers, as being generally dangerous for the Catholic party and offspring, are, regularly speaking, gravely illicit. Yet sometimes, for a grave cause, and every danger being removed, the Church permits marriages of this kind to avoid a greater evil (II, 19). See the treatise on Matrimony (n. 1986).

451. It is not licit to serve heretics when there is danger of perversion. The same must be said if the servant is for the most part impeded from fulfillment of the precepts of the Church; but otherwise if he is only rarely impeded.

452. To send little children, young men, or girls into schools of heretics or of impious men is a great sin and a very great evil, ordinarily never repairable (cf. n. 713 seqq.). See the Instruction of the Eminent Cardinal Vicar to the pastors of the Fair City, July 12, 1878 (*A. S. S.*, vol. 11, p. 176). Likewise, parents sin gravely who for the sake of gain send their still tender children, or allow them to go, to places of heretics, without any necessity and due cautions.

453. Also with the greatest caution must young people be permitted to frequent associations called scholastic or postscholastic, or associations of Popular Universities, because often faith runs into danger there. See the things said at n. 432.

§ 3. On the Reading of Depraved Books

Through the publication of books opposed to faith (or to good morals), especially in this our age, an immense slaughter of souls is made (*de Prohib. lib.*; ed. G., I, p. 253).

451. PRINCIPLES. I. By force of the natural law, there is given a most grave obligation of avoiding the danger of perversion which arises from the publication, retention, and reading of depraved books. For: 1. "If a pernicious word, which immediately flies away, creeps like a cancer and wounds unto death: what evil does an improper book not bring, which can become a perpetual font of subversion?" (l. c., n. 2). 2. If a continual occasion of lust must altogether be removed, so that the penitent may deserve to be absolved, how much more a pernicious book inducing danger of losing faith?

Hence it is inferred: 1. Bishops, pastors, fathers of families, princes, magistrates, teachers, etc., ought to use the greatest vigilance in this matter.

2. Although someone has been furnished with the faculty of reading prohibited books, nevertheless he cannot read them if he knows or experiences that reading of this kind is harmful to him, or proximately dangerous, for example if he does not know how to distinguish truth from error (ibid., n. 12).

3. "In this matter, it is ordinarily expedient to follow the stricter opinions" (ibid., c. V, n. 8).

4. II. By force of positive law, books prohibited by the Church, whether with censure or without censure, without legitimate license, can neither be read nor retained. The Church has received jurisdiction from the Lord himself for prohibiting to the faithful the reading of books which contain something against religion, good morals, or

the discipline of the Church. If this faculty were not with the Church, and the faithful were not bound to obey it in this, neither could faith be preserved unharmed, nor would Christ have sufficiently provided for his Church. Hence the Doctors rightly teach that the judgment of the Church concerning books is altogether infallible (ibid., c. 2, n. 1).

It was said: 1. Books prohibited by the Church. Under the name book is understood a writing which consists in some bulk and unity of object, which must be judged from the judgment of prudent persons. Therefore positive prohibition is not extended to newspapers, letters, flying sheets, unless special mention is made of these. But periodical booklets, whose several fascicles are joined into one, are to be counted among books properly so called (S. Off., January 15, 1892). 2. Whether with censure, such as by the Constitution *Officiorum* are both books of heretics or apostates defending heresy and books of any author whatsoever prohibited by name through apostolic letters. 3. Or without censure, that is, all books which are contained in the Index of prohibited books or comprehended by the general rules. 4. Can neither be read nor retained; but it is required and suffices that you destroy books of this kind in whatever way, or hand them over to one having the faculty of retaining them, because even by acting thus you do not retain them. 5. Without legitimate license: which license is to be obtained from the Roman Pontiff, for example through the S. Congregation of the Index; for the faculty of permitting belongs to him whose office it is to prohibit. The Congregations of the Holy Office and de Propaganda Fide enjoy the same power; likewise the Master of the Sacred Palace for the City. Sometimes, however, Bishops, by force of special faculties, are able to grant this license to priests (*A. S. S.*, 7, p. 302). Cf. Const. *Officiorum*, which we shall explain more fully in the Appendix.

453. III. All Bishops by divine right, for their dioceses, have the power of proscribing and prohibiting, even under censure, either books, or even daily papers, of harmful reading. This belongs essentially to their office. Indeed, because knowledge of all harmful books cannot so easily and immediately come to Rome, it is often preferable that they be proscribed by their own authority without any delay interposed (VII, 290).

"Ordinaries, even as delegates of the Apostolic See, should strive to proscribe books and other harmful writings published or spread in their diocese, and to remove them from the hands of the faithful. Let them refer to Apostolic judgment works or writings which require more subtle examination, or in which, for obtaining a salutary effect, the sentence of supreme authority may seem to be required." Const. *Officiorum*, n. 29.

454. IT IS ASKED. Whether necessity can sometimes excuse from the law of the Index?

Resp. "That which several Doctors teach does not seem improbable, ... namely that by just epikeia a truthful, pious, and learned man reading a heretical book is excused, if he necessarily needs such reading for convincing some heretic from his own, for instance by finding contradictions, concessions, fallacies, and similar things; provided necessity urges, and besides recourse to Rome or to one's own Bishop is not open." Thus St. Alphonsus (*de Prohib. lib.*, c. 5, n. 2). Cf. Const. *Officiorum*, n. 25.

Outside these cases, to the question: "Whether one who is morally certain that the reading will not harm him can read a prohibited book without license?" St. Alphonsus responds (VII, 291): "Whatever others may say, it must altogether be denied." Cf. n. 451, 452.

455. Note. The INDEX OF PROHIBITED BOOKS was first made by order of Paul IV. Pius IV and Clement VIII perfected it. - It prohibited books partly through general decrees, which are called Rules of the Index, partly by indicating in alphabetical order either the titles of books or the names of authors. But lastly Leo XIII, by the Constitution *Officiorum ac munerum* (January 25, 1897), after abrogating the general decrees hitherto in force, instituted new ones and approved and confirmed a new Index, through the Brief *Romani Pontifices* (September 17, 1900).

Treatise II

On Theological Hope

In this treatise one must treat: 1. of the nature of hope; 2. of its necessity; 3. of the sins opposed to it.

Chapter I

On the Nature of Hope

St. Thomas, 2.2, q. 20, 21; 3 Sent., D. 26, q. 1, a. 3; St. Alphonsus, II, n. 20; ed. G., I, p. 313; *H. Ap.*, IV, n. 6; Laymann, 2, tr. 2, c. 1; Mazzella, *de Virt.*, p. 622; Lahousse, *de Virt. theol.*, disp. III; Billot, Thes. 25-26.

456. DEFINITION. Hope, taken generally, is a movement of the soul tending toward a future, arduous, and possible good (St. Thom., 2.2, q. 17, a. 1). - Theological hope is a divinely infused virtue by which, with certain confidence, we expect eternal beatitude and the means of attaining it, through the help of God (*H. Ap.*, IV, 6). This last, that is, certain and firm expectation, is proper to hope.

I. The primary MATERIAL OBJECT of hope is eternal beatitude, which is God himself to be possessed; but the secondary object is divine graces and our good works, to be carried out by divine help (II, n. 20).

II. Some say the FORMAL object is the mercy of God; others divine omnipotence, as the Thomists commonly hold; others the divine promise. Wherefore St. Alphonsus says: "I think one must conclude that the three aforesaid motives constitute the formal object of hope, namely divine MERCY and OMNIPOTENCE, by which God imparts helps to us for overcoming the enemies of salvation: and St. Thomas expressly teaches these two motives.... I judge besides that a third motive must altogether be added to these two: namely the divine promise, ... or divine FIDELITY concerning the promise which he displayed, of saving us on account of the merits of Christ; otherwise, without this promise, we would not be able to hope for salvation with certain confidence" (II, 21; *H. Ap.*, IV, 6, 7).

And indeed in reality: the formal object ought to be fitted to the proper act of hope, that is, of firm expectation, which tends into God as good, as helper willing to supply our misery, impotence, and hesitation. Moreover, so that all these things may be gathered into one, it can be said: the formal object of hope is the BENEVOLENCE OF GOD, considered as presupposing omnipotence, and as bound to us by fidelity, through the promise of saving us in view of the merits of Jesus Christ (St. Francis de Sales, *Theotim.*, II, c. 15).

III. The SUBJECT of the virtue of hope is the will, not the intellect. All the faithful can elicit an act of hope, not only the just, but also sinners, as is established from Trent (Sess. 6, c. 6). Likewise souls being purified, from the common opinion. Cf. n. 417.

IV. The acts comprehended in hope are: 1. the explicit act of expectation of eternal beatitude, and of those things which conduce to it; 2. love of concupiscence toward God, simple desire, effort or efficacious raising of the soul against occurring difficulties; these acts are virtually included in the proper act of hope; 3. firm confidence of obtaining, and fear of losing, the things which we expect; these acts inseparably accompany the proper act of hope (II, 20; Reuter, n. 61).

457. On fear. Fear is distinguished as fourfold, namely: human, servile, initial, and filial (2.2, q. 19, a. 2, 4, and 8).

458. Human, or worldly, fear is flight from temporal evil through offense of God. It is mortally or venially evil, according as it induces into mortal or venial sin. Hence that saying (Matt. 10:28): Fear ye not them that kill the body.... And (Luke 9:26): He that shall be ashamed of me, and of my words, of him the Son of man shall be ashamed, etc. Yet it does not constitute a peculiar species of vice (Perrone, n. 135, annot.).

459. Servile fear of God (formally, called by others servilely servile) is that by which the soul fears punishment to be inflicted by God, without pursuing fault with hatred; so that it would wish to sin if punishment did not threaten. This fear is evil and vicious (VI, 442).

460. Initial fear (or materially, called simply servile by others) is fear by which the soul truly turns away from fault, although on account of punishment, abstracting from what it would do if punishment were absent. This fear corresponds to the virtue of hope, and is good: for it arises from love of oneself well ordered. Whence Christ the Lord (Luke 12:5): I will show you whom you shall fear: fear HIM who, after he has killed, has power to cast into hell: yea, I say to you, FEAR HIM. And Trent (Sess. 6, can. 8): "If anyone shall say that fear of hell, through which, by grieving over sins, we flee to the mercy of God or abstain from sinning, is a sin, or makes sinners worse: let him be anathema." - It is called initial, because it belongs to those beginning to walk the way of the commandments of the Lord; whence it is said (Ps. 110:10): The fear of the Lord is the beginning of wisdom (Polman, 2.2, n. 174).

461. Filial (or chaste) fear is fear of sinning, for avoiding offense of God. It belongs to sons to fear the offense of a father (2.2, q. 19, a. 2). This fear is best and arises from charity; indeed it grows as charity grows. This fear besides wonderfully assists hope; for we have a greater reason for hoping the more we avoid the offense of God (*Pratica d'amar G. C.*, c. 16).

462. Corollaries. I. It is not licit to hope in some creature as in the first cause moving toward beatitude. But it is licit to hope in that creature as in a secondary and instrumental cause. And in this way we turn to the saints (St. Thom., 2.2, q. 17, a. 4), and we call the Blessed Virgin Mary OUR HOPE, indeed "the whole reason of our hope" (St. Alph., *Glorie di Maria*, c. 3 and 5).

II. On the part of God, our hope is certain and firm. For it rests upon his mercy, omnipotence, and fidelity in the promise of saving us on account of the merits of Our Lord Jesus Christ. Cf. St. Alph., *Storia delle eresie*, conf. XIV, n. 19-21.

III. On our part, hope is uncertain. For unless we faithfully cooperate with divine grace, we cannot attain salvation, according to that saying of St. Augustine: "He who created you without you will not save you without you." Hence we must always fear, as the Apostle writes (Phil. 2:12): With fear and trembling work out your salvation.

Note. There are two things which are uncertain in us: a) Our justification is uncertain; for man does not know whether he is worthy of love or of hatred (Eccli. 9:1). Yet this uncertainty is morally taken away through the exercise of charity. b) Our perseverance even unto death is also uncertain. For perseverance is a special gift of God, which is strictly owed to no one, which no one can merit for himself de condigno. But this uncertainty also can be taken away in great part, if we implore that great gift of perseverance by DAILY PRAYER, and are true worshipers of the Virgin Mother of God, who is called Mother of perseverance (*Op. dogm. in Trid.*, Sess. 6, n. 48; *Appar. alla morte*, cons. 9).

Chapter II

On the Necessity of Hope

St. Alphonsus, l. c.; Perrone, *de Virt.*, n. 82; Lahousse, op. cit., c. 2, a. 2; Billot, Thes. 27-28; Lehmkuhl, 1, n. 430; Aertnys, l. II, n. 21.

Necessity, as we have already said, is either of means or of precept; but it regards hope, both habitual and actual.

459. PRINCIPLES. I. Habitual hope is necessary for all men, by necessity of means, for salvation. It is established from Trent (Sess. 6, c. 7): "Faith, unless hope and charity accede to it, neither unites perfectly with Christ, nor makes a living member of his body."

460. II. Actual hope, at least implicit, is necessary for all adults endowed with reason, by necessity both of means and of precept.

461. By necessity OF MEANS; for if it is a question of the just, they need hope so that they can rightly ask for the graces necessary for persevering. Whence St. Paul (Rom. 8:24): By hope we are saved. If it is a question of sinners, they need hope so that they may dispose themselves for justification (Trent, Sess. 6).

462. By necessity OF PRECEPT; both because the natural law prescribes that the means necessary for obtaining the end be applied; and because the divine letters positively inculcate hope. Wherefore the Apostle (1 Tim. 6:17): Command them not to hope in the uncertainty of riches, but in the living God. See n. 470.

IT IS ASKED. When does the precept of hope oblige?

Resp. 1. It obliges by reason of the virtue, that is, PER SE: a) at the beginning of the use of reason, or, more rightly, of spiritual life, when namely eternal beatitude has been sufficiently proposed as the end; b) in danger of death, so that man may be strengthened against temptations, and be borne into God, the ultimate end soon to be attained; c) more often in life (at least once in any year), because without an act of hope we can neither persist in divine justice nor operate meritoriously.

For the rest, there is no reason why the faithful person should be anxious about this obligation, for virtual hope suffices, which is everywhere exercised by the faithful, for example when he prays or receives the sacraments.

2. It obliges by reason of a peculiar circumstance, therefore PER ACCIDENS: a) when someone is in danger of desperation; b) when from precept an act of other virtues must be elicited, for example of prayer or penance, which cannot be exercised without at least an implicit act of hope; c) in every temptation, when there is danger of consenting unless hope raises up the soul (II, 20; *H. Ap.*, IV, 13).

3. From these things you will gather: 1. It is not dishonorable, as Calvinists, Baianists, and Jansenists affirm, but most pleasing to God, to be moved by theological hope to operating well. This is confirmed by the words of Trent: "If

anyone shall say that the justified man sins while he operates well in view of eternal reward: let him be anathema" (Sess. VI, c. 31).

4. There is not given, in this present life, a state of love so perfect that the mind is never moved either by fear of punishments or by desire of remuneration, as the Quietists dreamed, especially since hope and fear, in time of temptation, often seem necessarily required against a fall (cf. St. Alph., *Pratica d'amar G. C.*, c. 16). - Wherefore that 7th proposition of Michael Molinos was condemned by Innocent XI: "The soul ought not think either of reward or of punishment; nor of paradise, nor of hell; nor of death, nor of eternity" (cf. *Storia delle eresie*, c. 12, a. 5).

5. The notion of reward, which is had in hope, does not include any imperfection in the Christian religion, as the Kantians and Evolutionists said. Nor are we bound directly, from a special precept, to exercising explicit acts of fear, insofar as fear is distinguished from hope or from other acts of virtues. Thus commonly Valentia, Sanchez, etc.

Chapter III

On Sins Opposed to Hope

St. Thomas, 2.2, q. 20 seqq.; St. Alphonsus, II, n. 21; Suarez, disp. II, sect. 2-3; Perrone, op. cit., n. 145; Lehmkuhl, I, n. 433; Gopfert, 1, 250.

Things to be noted beforehand. 1. Sins contrary to hope are some of omission, others of commission. But by these the virtue of hope is lost only when they contradict the formal object of the virtue.

2. Sins of commission are opposed, some to the desire of eternal beatitude, others to the confidence of obtaining it.

462. I. To the desire of eternal beatitude is opposed: 1. the affection of this age, by which earthly things are desired more than heavenly things; 2. the inordinate affection of heavenly happiness, by which beatitude is sought from weariness of life and labor.

The former affection, when it passes into act, is a mortal sin if the ultimate end is placed in earthly things; for example, if someone is so disposed that he would desire to leave heaven to God if God would leave earth to him. The latter does not exceed venial sin, unless there is express rebellion against divine providence. But one licitly wishes death for himself in order to avoid sin or some other immense evil, provided that he submits himself to the divine will (II, 20; *Cat. Rom.*, on the 1st precept, n. 7). Cf. n. 755, II.

463. II. To the fiducial expectation of eternal beatitude, desperation is opposed by defect, presumption by excess.

464. DESPERATION is diffidence of obtaining beatitude, or the means necessary for attaining it. It is a mortal sin, and indeed most grave and most dangerous; for hope having been taken away, men slip unrestrainedly into vices. Yet it is less grave than the sin of infidelity and hatred of God, because it is not directed against God according as he is in himself, but against God according as his good is participated by us. St. Thom., 2.2, q. 20, a. 3. - Whence desperation properly so called does not admit smallness of matter.

The causes of desperation are reckoned: defect of faith, inordinate adhesion to pleasures, spiritual sloth, presumption, a melancholic disposition (Tanquerey, II, p. 421).

The CONFESSOR ought to examine whether, from an affection of desperation, the customary offices of piety, especially when the precept urged, were interrupted or not: from this he will have a sufficiently safe indication of consent given or denied. Yet let him take note that many penitents despair not of the mercy of God, but of their own cooperation with grace: this is called pusillanimity, and admits smallness of matter (Panzuti, II, 33).

2. PRESUMPTION (which is more frequent than desperation) arises from defect of the fear of God, and is customarily defined: rash expectation of eternal beatitude or of the means for attaining it. It is of itself a grave sin, because it inflicts grave injury both upon divine justice, as if sin were to be held as nothing, and upon divine mercy, which the presumptuous man abuses for sinning more freely (Scavini, II, n. 849).

Hence: 1. He sins through presumption who hopes for salvation either only on account of his own merits or only on account of the merits of Christ, without any cooperation of his own works. - Likewise, he who is induced to sin by hope of pardon, so that hope of remission to be obtained from God is the motive inducing to sin, that is, the reason why he more easily either repeats sin or perseveres in sin, because God forgives ten sins as easily as five. But otherwise if someone, for example, should say: I shall accuse ten sins as easily as five or six; this of itself is only venial. 2. He who sins from passion with hope of pardon does not contract guilt of presumption properly so called: namely when hope of pardon to be obtained sometime through penance only accompanies the sinner while he sins or perseveres in sin, yet without

being the reason or motive influencing toward sin. But men of this kind, persevering in sin under hope of sometime doing penance, are with difficulty excused from grave sin against charity owed to themselves, since they expose themselves to great danger of damnation (II, 21; *H. Ap.*, IV, 8).

464. PRACTICAL RULES. 1. One must diligently inquire from the penitent why he despaired or presumed, in order to know whether the sin is or is not against hope, or even against faith. 2. One must inquire into the causes and effects of the sin; into the causes, so that the confessor may bring a remedy, by prescribing humility to the exalted, confidence and vigor of soul to the pusillanimous; but into the effects, so that from them he may come into knowledge of many other sins which are accustomed to be born from desperation or presumption. 3. The confessor should strive to excite in all penitents, together with divine fear, a great hope of eternal life, and true confidence toward God, Our Lord Jesus Christ, and the Virgin Mary Mother of God. For desire supplies strength, and a man without confidence is like a soldier without a shield. 4. Especially in the dying, let him raise hope with true detestation of sin; for many either yield to desperation, or are affected only by servilely servile fear, which does not suffice for salvation. Cf. *Pratica d'amar G. C.*, c. 8 and 16; *H. Ap.*, App. 2, § 2, n. 2).

Treatise III

On Charity

Charity is the end of the precept (1 Tim. 1:5), and the bond of perfection (Col. 3:14). Often, in moral matters, the question is instituted: whether an action is according to or against charity, or against another virtue, for example justice. Hence with particular diligence one must treat: 1. of charity toward God; 2. of charity toward neighbor.

Chapter I

On Charity Toward God

St. Thomas, 2.2, q. 23 seqq.; St. Alphonsus, II, 22 seqq.; ed. G., I, p. 315; *H. Ap.*, tr. IV; Suarez, *de Carit.*, disp. I seqq.; St. Francis de Sales, *Traite de l'amour de Dieu* (*Theotime*); Lessius, *de Summo Bono*; Aertnys, l. 2, n. 29; Lehmkuhl, I, n. 440.

There are three things to be treated in this chapter: 1. the nature of charity; 2. the necessity of charity toward God; 3. sins especially opposed to the love of God.

Article I

On the Nature of Charity

465. Things to be noted beforehand. Love, taken generally, is a willing of good. It is distinguished, by reason of the person in whose favor the good is desired: 1. Love of complacency, or willing of good in itself, which equally redounds to the favor of the one loving and of the beloved. 2. Love of concupiscence, or willing of good for the advantage of the one loving. 3. Love of benevolence, willing of good for the advantage of the beloved.

But love of benevolence, if it is a simple act of the will by which we will good to someone, is called benevolence, as if to will well; if it is with election of one good before another, it is called dilection, as if selection; if it is of some good which is esteemed greatly, it is called charity, as if very dear; if finally it is with reciprocal love and some communication of goods, it is called friendship (St. Thom., 1.2, q. 26).

DEFINITION. Charity is a theological virtue by which we love God for his own sake, and ourselves and our neighbor on account of God.

The material OBJECT of charity is twofold, namely primary and secondary. The primary is God, whom we are bound to love above all things, as our ultimate end. The secondary is we ourselves, and our neighbor, whom we ought to love as ourselves, because God has prescribed this to us (St. Franc. Sales, *Theotim.*, P. II, l. 4, c. 11).

The formal OBJECT of charity is not some particular attribute of God (as in faith and hope), but "is the infinite goodness of God, according as it is the aggregation of all perfections, or infinite perfection. Hence, from the common sense of the wise, a true act of love is to say: My God, because thou art infinite goodness, or, because thou art infinitely good, I love thee above all things" (II, 24; *H. Ap.*, IV, 9).

From these things you will gather: 1. There is one virtue of charity by which we love God, ourselves, and our neighbor; for the reason of loving is one, namely divine goodness, in itself, and insofar as it is communicated or communicable to us and to our neighbor.

Likewise, charity in the way and in the Fatherland is one and the same; in the Fatherland it is more perfect, yet it retains the same object (Lessius, *de Summo Bono*, l. 2, c. 14).

2. The elicited ACTS of charity are many, although they proceed from one motive. The principal ones are: a) Complacency or joy concerning the infinite perfections of God considered in themselves, and concerning all those things which please God or amplify his glory. From this joy proceeds praise of God. b) Benevolence, or desire of divine goods, for example, of the glory of God to be promoted both in us and in others. From this is born full conformity of our will with the divine will. c) Sadness concerning all evils which are opposed to the divine good. From this holy sadness flows zeal, which ardently repels those things which are against the honor and will of God (2.2, q. 27, a. 2).

3. To these elicited acts add all commanded acts, namely those which are elicited by other virtues from the motive of charity (Muller, l. 2, § 19).

4. PRINCIPLES. I. For the notion of charity it is required that it be love of complacency and benevolence. For it is required that God be loved as Infinite Good in himself and for his own sake, not on account of another. Yet charity by no means excludes love of concupiscence, or hope (cf. n. 461). Thus St. Alphonsus (*Vera Sposa*, c. 22, § 1, n. 3). Elsewhere (VI, n. 442) he says with St. Francis de Sales: "If someone loved God on account of his own good and were thus affected [by act], that if he hoped nothing from God, he would in no way love him, this man certainly would sin, because he would positively exclude charity." Cf. Perrone, *de Carit.*, n. 32.

467. II. Charity ought to be sincere, complete, and supreme. It ought to be sincere on account of the supernatural perfection and excellence of God; complete, that is, both affective, namely that which is in the heart and by which we will good to the beloved, and effective or efficacious, which puts itself forth in works by doing those things in which the beloved delights; and finally supreme, by which God is loved above all things.

Note. 1. It is not indeed required that it be supreme intensively, namely that we love God before all other things with a greater striving of will and heart. It suffices that it be supreme appreciatively, insofar as we hold God in greater estimation than all other goods, and will a greater good to him than to any others whatsoever (Mazzella, *de Virt. infus.*, n. 1280).

2. Yet it pertains to the notion of charity that love be predominant, so that man makes no creature of greater value than God, and wills rather to lose all things than to offend God mortally. Whence, "if love is so weak that it does not yet attain the object of charity, namely, does not yet love God above all things, this is not true charity, but the beginning of charity; but if it suffices for the notion of charity, which consists in the love of God above all things, this, however remiss it may be, is true charity" (VI, 442).

3. Corollaries. 1. The desire of POSSESSING GOD is an act of charity. For charity tends into God as ultimate end; and therefore the desire of possessing God, who is indeed our ultimate end, is a proper act of charity, indeed more perfect than others: for the possession of God is consummated charity. Hence the Apostle said: having a desire to be dissolved and to be with Christ (Phil. 1:23). And St. Augustine expressly teaches this, writing: I call charity a movement of the soul toward enjoying God on account of himself (*de Doctr. christ.*, l. 3, c. 10, n. 16). Cf. St. Alph., II, 24.

4. To love divine goodness as convenient TO US is sometimes an act of charity, sometimes not.

If in an act of this kind we regard our own good as the term, such an act is in reality of love of concupiscence, which pertains only to hope. But if we regard our good as the term of the glory of God, by loving divine goodness as convenient to us, because it helps us toward attaining our ultimate end, which is to love God, and on account of which God created us, this is a true act of charity. Cf. St. Augustine on Ps. 134, n. 11.

3. The same must be said of love of God on account of his benefits. If the benefits are regarded as conferred on us, it is an act of gratitude; but if they are regarded as communications of divine goodness, it is an act of charity (II, 24).

Note. The principal PREROGATIVES of charity are the following: 1. It renders man just, according to that saying (1 Pet. 4:8): Charity covers a multitude of sins. 2. It constitutes true friendship between God and man, according to that saying (Wis. 7:14): They who have used it have been made participants in the friendship of God. 3. It perfects all virtues, renders their acts meritorious of eternal life. 4. It renders the yoke of the Lord sweet and the burden of the law light, etc. Whence

the Apostle (Rom. 8:28): To those loving God, all things work together unto good. See the Ascetical writers, for example Alvarez de Paz, *de Vita spir.*, l. 4, throughout.

Article II

On the Necessity of Charity Toward God

469. Things to be noted beforehand. It is certain 1. that the habit of charity is necessary for all, both adults and little children, by necessity of means. It is certain 2. that in the New Testament the act of charity is not necessary by necessity of means, except hypothetically, when justification and salvation are not obtained by means of a sacrament or martyrdom. Yet for all adults there is given a negative precept of charity, by which we are prohibited: a) from ever having hatred for God; b) from postponing him to any creature, by doing something which dissolves our friendship with him, namely by sinning mortally.

As regards the affirmative precept of charity, behold what must be established.

470. PRINCIPLES. I. There is given a special precept, or one distinct from others, by which we are commanded to love God. It is established 1. from the words of Christ (Matt. 22:37): Thou shalt love the Lord thy God from thy whole heart, etc. This is the greatest and first commandment; 2. from various condemned propositions, notably from the 1st condemned by Alexander VII: "Man, at no time whatsoever of his life, is bound to elicit an act of faith, hope, and charity, by force of the divine precepts pertaining to those virtues"; 3. from reason: because the other virtues do not attain the ultimate end except through charity (Billuart, *de Carit.*, Diss. 4, a. 7, § 1).

It is said: special precept, and therefore not only effectively, namely by the observation of other commandments, but truly also affectively, that is, by an internal act of the will, ought we to elicit an act of charity; otherwise it would not be a special precept.

471. II. For fulfilling the precept of charity, it is required and suffices that we love God appreciatively above all things. Thus St. Thomas (2.2, q. 27, a. 3). For charity appreciatively supreme, even in a remiss grade, is true and perfect charity (II, 22; VI, 442). Cf. the things said at n. 467.

Hence: 1. It is not a sin if someone loves a creature with a more intense love than God, provided that, by an act of the will, he loves God appreciatively above all things.

2. These three grades pertain to the greater perfection of charity: a) that from love of God we are prepared to avoid everything which offends him even lightly; b) that we avoid those things which are less pleasing and acceptable to him, but seek above all those things which please him more; c) that we pursue him with a more intense and tender love than any creature whatsoever. See St. Francis de Sales, *Theotim.*, P. II, l. 4, c. 4 and 5.

3. Questions. QUAER. 1. When does the AFFIRMATIVE precept of charity toward God oblige?

Resp. 1. It obliges PER SE: a) At the beginning of the use of reason and of spiritual life, namely when divine Goodness, lovable above all things for its own sake, has been sufficiently proposed to someone, as they commonly teach with St. Thomas. For then man ought to deliberate concerning attaining the ultimate end, and to direct himself and his acts to it: which cannot be done without an act of charity (Salmant., tr. 21, c. 6, n. 7). b) Most probably, in the article of death, because then the safest way must be chosen, and because no one is absolutely certain that he is in the state of grace.[7] c) More often in life; as is established from the 5th and 6th propositions condemned by Innocent XI, of which the former is this: "Whether he sins mortally who elicits an act of love of God only once in life, I do not dare to condemn"; and the latter: "It is probable that the precept of charity toward God does not per se oblige even rigorously in each five-year period."

2. It obliges PER ACCIDENS: a) When someone is bound to be contrite, for example one about to die or about to celebrate, if namely a confessor is lacking to him; the reason is that contrition includes an act of charity. b) When there is danger of falling into hatred of God, or into another grave sin, unless an act of charity is elicited; for he who is bound to the end is bound to the necessary means (II, 23; *Inst. cat.*, P. I, c. 1, n. 26).

QUAER. 2. How often, in life, is an act of charity to be elicited?

Resp. One must distinguish the obligation of eliciting an act of charity insofar as it is an excellent virtue, and insofar as it is a MEANS TO THE END, that is, to the observance of the precepts. There is not one opinion of all: some say that it must be elicited under grave obligation once a year; others once a week, or on any feast. But St. Alphonsus speaks thus

[7] Ballerini undeservedly contradicts St. Alphonsus, saying that no solid reason, neither intrinsic nor extrinsic, supports the opinion of the Holy Doctor (*Vind. Alph.*, I, p. 173).

(*H. Ap.*, IV, 13; *Conf. dir.*, IV, 6): "Concerning the act of charity, the opinion of those who require it once a month is more pleasing to me, since he who does not frequently exercise his love toward God by positive acts will with difficulty be able to observe the divine law." Cf. *Vind. Alph.*, P. II, q. 3; Lehmkuhl, I, 451; Perrone, *de Virt. theol.*, P. 3, c. 5, n. 253.

473. From these things you will resolve: 1. There is no obligation of always acting from the motive of charity; for the precept of charity, insofar as it is affirmative, obliges only at stated times. Recall the things said at n. 307.

474. A special obligation lies upon those to whom the care of children or of the dying has been entrusted, that they suggest to these and those, at due time, acts of charity (St. Alph., *de Assist. morib.*, § 3). Yet, as regards the dying, exhortation rather than strict admonition is to be used.

475. Those who remain in the state of mortal sin for months do not of themselves satisfy the precept of charity. Nor do they satisfy it if with attrition alone they receive the sacrament of penance; because attrition does not attain to the notion of true charity (cf. n. 1675).

476. Those who live Christianly easily satisfy this obligation. "For there is no need that these acts be made reflexively and explicitly, with the intention of satisfying the precept; but it is enough if they are made in an exercised way, although from another end, namely for casting away temptation, for eliciting contrition, if someone wishes to confess. Thus also acts of charity are all acts of uniformity with the divine will and all virtues exercised for the complacency of God" (*H. Ap.*, IV, 3). Likewise, satisfaction can be made through prayer, notably through the Lord's prayer, when it is said from the heart: Hallowed be etc…., thy kingdom come etc…., thy will be done etc.

Article III

On Sins Opposed to Charity Toward God

Besides sins of omission against the affirmative precept of divine charity, there are three sins which are opposed to the same charity, namely: inordinate love of a creature; hatred of God; sloth. Concerning sloth we have already spoken in the treatise on Sins (n. 372).

474. PRINCIPLES. I. Every inordinate love of a creature, passing into act, is a mortal sin. Thus Sporer (tr. 2, c. 5, sect. 4, § 4) with the common opinion.

It is said: 1. inordinate, that is, by which a creature is preferred to God; 2. passing into act; otherwise actual sin cannot be given. It is established from the things said concerning the obligation of loving God appreciatively above all things, and from the words of the Lord (Matt. 10:37): He who loves father or mother more than me is not worthy of me. Whence here lightness of matter cannot be imagined.

It must be noted: 1. Inordinate love of a creature is sometimes a special sin, sometimes not: a) It is a special sin when someone knowingly and willingly loves a creature so inordinately that on account of it, by actual consent thereafter elicited, he is prepared to transgress any precept whatsoever and mortally offend God. It is, I say, a special sin against charity, because it is repugnant to no precept in particular. b) But it is not a special sin against charity if someone from inordinate love transgresses some precept, for example of justice; but it is the same in number with the transgression of this precept: because charity is always wounded in every grave sin.

2. Such love is the cause of all sins, even of hatred of God itself. St. Thomas explains this nearly thus (2.2, q. 34, a. 1 and 6): "First, man is inordinately occupied and captured by love of himself or of some creature, or wishes it to be well with himself in such a creature. Then, because often it cannot be well with him thus unless he transgresses the law of God, therefore from love of this creature he consents to sin. Further, because he experiences God as a severe legislator and avenger of sin, the impious sinner proceeds to formal hatred of God."

3. II. Formal hatred of God is a special sin, and indeed the gravest of all. The reason for the first is that any hatred of God whatsoever turns away from God as troublesome to itself; whence it is opposed to the charity of God, and directly and formally destroys it. The reason for the second is that the gravity of fault consists in aversion from God. But that aversion is stronger and greater in hatred of God, in which it is per se and directly, than in other sins, in which it is indirectly and per accidens (2.2, q. 34, a. 2; St. Alph., V, 60).

Note. 1. We said: formal hatred, because in every sin by which divine friendship is dissolved there is found some hatred of God, but virtual and interpretative, by which a special fault is not constituted.

2. This formal hatred of God is twofold: one of abomination (opposed to love of concupiscence), by which someone hates God insofar as he experiences or apprehends him as contrary to himself; the other of enmity (opposed to

benevolence and friendship), by which someone hates God in himself and according to himself, willing evil to him, insofar as it is evil to him. So great a malice is present in this latter hatred that a greater cannot be conceived. Yet hatred of enmity itself and hatred of abomination, with respect to God, do not differ in species; because although hatred of abomination of itself arises from desperation, nevertheless the will cannot come all the way to hatred of God unless God is attacked in himself, by hatred of enmity (II, 20, 24; Lehmkuhl, I, 434).

3. From hatred of God can proceed blasphemies, execrations, curses, sacrileges, persecutions against the Church, etc. Such hatred adds a species to these sins, as is plain (Sporer, tr. 2, c. 5, sect. 4).

Chapter II

On Charity Toward Neighbor

St. Thomas, 2.2, q. 25; St. Alphonsus, II, n. 25; Billuart, disp. V; Laymann, l. 2, tr. 3, c. 3; Elbel, II, n. 207; Suarez, l. c.; Van Roey, *de Natura et Ordine carit.*; Steinmuller, *die Feindesliebe*; Berardi, *Theol. mor.*, II, n. 96.

476. Things to be noted beforehand: 1. That the secondary object of charity comprises ourselves and neighbor was said above (n. 465).

2. But under the name NEIGHBOR come all who are capable of eternal beatitude, or already enjoy it, that is, Angels, the Blessed in Heaven, souls in Purgatory, and especially men wayfarers, whether just or sinners. Hence that saying of Gerson (*Summa*, l. 5, q. *de Carit.*): "Everything which is beatifiable is to be loved from charity." Only the damned are excepted.

3. The norm of this love of neighbor is supernatural charity which we ought to have toward ourselves. The precept of loving oneself has not indeed been imposed on man in express words, because the tendency of loving oneself is too connatural to each rational being; whence express promulgation of this precept was not necessary. Nonetheless it is a strict and urgent precept.

4. From this necessity of love there follows that each one is bound to wish for himself and procure those goods which are fitting to himself:

a) Supernatural goods, which are: knowledge of the supernatural end and of the means to the end, sanctifying grace, conversion after sin, sacraments.

b) Spiritual goods, such as: instruction, firmness of will, whence each one can devote himself to those things which are imposed on him by office.

c) Bodily goods, under which are comprehended food, clothing, and habitation. Yet moderation must necessarily be present in these. We are bound to those things which health, modesty, and the state of the family require; but attention must be given to those restrictions which temperance and diversity of condition impose.[8]

d) External goods of the person, such as honor and reputation. It belongs to charity toward oneself to care for a good name, to seek that it be recovered. But someone can, the things to be posited having been posited, renounce this right.

e) External goods of fortune. This is required by reason of preserving life, or feeding a family, or fulfilling an office. From this arises the obligation of laboring and of embracing a certain state of life (*Ami du Cl.*, 1898, p. 1084). Yet besides necessary riches, we are bound to acquire no riches. Cf. Lehmkuhl, I, 727; Noldin, II, 66; Tanquerey, I, n. 764.

These things having been premised, the following will be better understood.

477. PRINCIPLES. I. There is given a precept, both affirmative and negative, of loving neighbor. For 1. just as we pursue him with natural love because our image shines forth in him, so we ought to love him with supernatural love on account of that which is of God in him (St. Francis de Sales, *Theotim.*, l. 7, c. 8). 2. It is established from the words of the Lord, saying: Thou shalt love thy neighbor as thyself (Matt. 22:39), and more often repeating that commandment of his, and prescribing love of enemies themselves.

But we ought to love neighbor: a) with affective love; for to love is to will good to someone. This is established from the 10th proposition condemned by Innocent XI, which sounds thus: "We are not bound to love neighbor by an internal and formal act." b) With effective love, according to that saying (1 John 3:18): Let us not love in word nor with the tongue, but

[8] From these things it is seen how less prudently he would act who rejected a priori gymnastic exercises and bodily games; but how prudently those act who exhort workers to this, and provide help to them, so that they may acquire proper, healthy homes for themselves.

in deed and in truth; for the will is always effective of those things which it wills, provided that faculty is present (2.2, q. 25, a. 1, and q. 44, a. 7; St. Alph., *Vera Sposa*, c. 12).

478. II. The precept of charity, insofar as it is affirmative, obliges sometimes to an internal act of love, and to an external one according to circumstances; but insofar as it is negative, it forbids, forever, all and each acts repugnant to charity. The general reason is that we are bound to love neighbor as ourselves. But we love ourselves by an internal and external act, according to the demand of circumstances.

But because in charity a RIGHT ORDER, or proportion of love to the lovable, as St. Thomas speaks, ought to be preserved, it follows that one must discuss three things, namely: 1. the order of charity; 2. the acts which charity prescribes; 3. the acts which it forbids.[9]

Article I

On the Order to Be Preserved in Charity

ORDER, in general, according to St. Augustine (*de Civit. Dei*, l. 19, c. 13, n. 1), "is the disposition of equal and unequal things assigning to each its own places." Hence the order of charity, which in some things participates in the virtue of justice, consists in this, that we assign to each lovable object its own fitting place (cf. n. 484).

479. PRINCIPLES. I. Some order in love must altogether be preserved. For not all goods are to be estimated equally, nor are all persons to be loved equally. Whence St. Augustine (*de Doctr. christ.*, l. 1, c. 27): "He lives justly and holily who is an unimpaired estimator of things: and he is the one who has ordered love." St. Thomas teaches the same (2.2, q. 44, a. 8).

480. II. The order to be preserved in love regards both persons and goods. For to love is to will good to someone: therefore love is referred both to persons and to the goods which we will to them.

481. As regards PERSONS, both comparison to God must be attended to, according to which some are nearer to God than others on account of greater excellence; and comparison to us, according to which some are more joined to us than others (II, 27, resp. 2).

482. As regards GOODS, each one ought to love and will more those things which are more excellent and more necessary.

But the first place is obtained by supernatural goods; the second, by natural and bodily goods; the third, by external goods. Cf. n. 476. Likewise, other things being equal, the common good is to be preferred to private good; certain good to uncertain good.

Spiritual things of themselves are superior to temporal things, intrinsic things to extrinsic. Yet not on that account does any and every, or even the least, good of a higher order surpass, in moral estimation, any good whatsoever of an inferior order. Thus no one would prefer to suffer the loss of an immense sum rather than suffer a very slight headache for one hour (Genicot, I, 215).

3. EVIL is opposed to good, by which neighbor is constituted in necessity; whence also the necessity of neighbor must be attended to.

NECESSITY (whether spiritual or temporal) is distinguished as threefold. It is called: a) Extreme, when someone cannot without the help of another free himself from danger of damnation, or from death or another evil nearly equal to it. To this is equated quasi-extreme necessity, when it is very difficult for someone without the help of another to free himself from a very grave evil which will soon happen. b) Grave, when someone, unless he is helped, is able with difficulty to escape danger of the soul, or of bodily life, or of another grave loss of goods or status. c) Common or middling, when someone can provide for himself without great difficulty. In this necessity, in the spiritual order, ordinary sinners are placed; but in the temporal order, most poor persons begging (II, 27).

These things having been premised, let us establish the special rules which the order to be preserved in charity prescribes, comparison being made both between ourselves and neighbor and among neighbors themselves.

§ 1. On the Order of Charity Between Ourselves and Neighbor

The order of those to be loved is generally expressed thus: God, our soul, the soul of neighbor, our body, the body of neighbor.

[9] If we compare charity with justice, it is evident that acts against charity in themselves contain greater malice than acts against justice. But on the other side, justice wounded imposes graver offices than charity wounded. The greatest difference between the two virtues is placed in this, that charity for the most part more easily excuses from positive external acts than justice does. See Lehmkuhl, 1, 785, note.

481. PRINCIPLES. I. After God, each one is bound, absolutely speaking, to love himself more than neighbor. Whence that common axiom: Charity well ordered begins from oneself. It is established 1. from natural inclination, which grace perfects; 2. from the words of Christ: Thou shalt love thy neighbor as thyself. From these words it is gathered that the love of a man toward himself is as the exemplar of the love which is to be had toward another. But the exemplar is rather than the exemplified (2.2, q. 26, a. 4).

"But the mode of love is assigned when it is said: as thyself; which must not be understood as regards this, that someone should love neighbor equally to himself, but SIMILARLY to himself. And this in a threefold way: first indeed, on the part of the end, namely that someone love neighbor on account of God, so that thus the love of neighbor may be HOLY; second, on the part of the rule of love, namely that someone not condescend to neighbor in some evil, but only in goods, ... so that thus the love of neighbor may be JUST; third, on the part of the reason of love, namely that someone not love neighbor on account of his own usefulness or delectation, but for the reason that he wills good to neighbor, ... so that thus love of neighbor may be TRUE; for when someone loves neighbor on account of his own usefulness or delectation, he does not truly love neighbor, but himself" (2.2, q. 44, a. 7).

482. II. In those things alone necessary for salvation, this principle is to be applied to each one absolutely, that is, without any exception. For the order of charity, and the obligation of preferring oneself, is preserved in this, that each one wills more to himself than to another his own end, that is, the supreme and uniquely necessary good (Valentia, t. 3, disp. 3, q. 4).

Whence it is never licit to sin in order to consult the salvation of neighbor, neither gravely nor lightly; nor to expose oneself to danger of sinning, unless the danger by some reason becomes remote (cf. n. 375).

Hence: 1. Someone can deprive himself of spiritual goods not necessary for salvation, on account of the spiritual or bodily good of neighbor, for example by deferring entrance into Religion in order to provide for a parish, or to feed parents or children (II, 26; IV, 78).

2. Someone can per se, and from the motive of virtue, immolate his own life for preserving another's. "To hand oneself over to death on account of a friend," says St. Thomas (3 Sent., D. 29, a. 5, ad 3), "is the most perfect act of virtue: whence the virtuous man desires this act more than his own bodily life." It was said that this is licit per se; for per accidens it is sometimes not licit, for example if someone is necessary to children, wife, parents. Cf. n. 753.

3. III. By order of charity we are sometimes bound to procure the good of neighbor, our own good being put after it. It is said by order of charity; for from the title of justice, piety, or office, peculiar obligations can intervene, to be discussed in their own places (2.2, q. 26, a. 5).

But in order that the obligations of charity may be defined more precisely, certain RULES can be established. Yet these have force only with the required conditions posited: that is, a) that equally certain hope of success is present; b) that another is not present who can and wishes to help; c) that a graver evil is not feared from it (II, 27).

RULE 1. In extreme public necessity (that is, of one's own community), even temporal, each one is bound to undergo any inconvenience whatsoever, indeed even loss of life.

This is clear from this, that a member is ordered to the body, a part to the whole, a private person to the community. Hence, a private man is bound to expose his own life to danger for saving the life of a man who is necessary to the Republic. Likewise, in war it is not licit for a citizen, not even for the sake of avoiding death, to indicate to the enemy means by which he can capture the city, etc. (2.2, q. 26, a. 3).

RULE 2. In extreme private spiritual necessity, neighbor must be helped even with danger of life; in the same bodily necessity, he must be helped with great inconvenience.

St. Augustine declares the first thus (*de Mendacio*, c. 6, n. 9): "A Christian will not hesitate to lose his temporal life for the eternal life of neighbor; for this example went before, that the Lord himself should die for us. For to this he says: This is my commandment, that you love one another, as I also have loved you." Whence, if neighbor would not be saved without our help, that saying urges (1 John 3:16): And we ought to lay down our lives for the brethren. The second is clear from this, that the obligation of doing good to neighbor urges when he is placed in necessity (n. 482 and 485, 2); and consequently it urges the more, the greater the necessity is: yet without our being bound, for saving neighbor, to cast ourselves into the same necessity.

Hence: 1. You are bound, with danger of your life, to baptize an infant about to die; likewise, to absolve a dying man habituated in sins, if he is so uneducated that he does not know how to elicit an act of contrition. A mother is bound to undergo a dangerous operation so that the infant can be extracted and baptized. 2. You are not bound to save the life of a

private person with your greatest inconvenience. Thus, for example, you can, but are not bound from charity to, protect the life of an innocent person with fear of enmities, of public justice, etc. (III, 390).

RULE 3. In grave necessity, whether spiritual or temporal, neighbor must be helped from charity with only middling inconvenience.

The reason is that when neighbor absolutely can free himself from danger, charity does not seem to oblige us to assist him with great difficulty, since he is not constituted in a case of strict necessity.

Hence: 1. You are not bound, with danger of life, reputation, or fortune, to draw others, even those proximately about to die, back from sins from which they can free themselves by themselves. Nor are you bound to sail for converting the Indians, since there are others who can do this, and otherwise the fruit is uncertain. - Yet you are bound from charity to come to the aid of a neighbor laboring under grave necessity of soul, if you can without grave inconvenience, and hope for fruit.

2. A simple priest is not bound, with danger of life, to minister sacraments to one constituted in grave necessity, unless it is a public necessity, for example in time of plague or war, and the people is destitute of every priest. For then extreme necessity is presumed to be present for several. Likewise, if someone spreads heresy somewhere, you are bound with danger of life to impede him, if you can do this efficaciously, and no one else impedes him (II, 27).

RULE 4. In common or ordinary necessity of either order, neighbor must be helped with light inconvenience.

Indeed one must help; but with light inconvenience, because neighbor himself can fairly easily extricate himself from that necessity; or also because it is not too troublesome to him. Nor are you bound to help all those placed in common necessity: for this would be impossible, or at least too grave.

§ 2. On the Order of Charity Among Neighbors Themselves

484. PRINCIPLES. I. With love of complacency, more excellent and holier creatures are to be loved before the rest. "He who is better," says St. Alphonsus with Busenbaum, "is to be loved more, and with that love which is accompanied by joy concerning goods possessed, likewise honor, worship, and reverence. Thus holy men are to be loved more than wicked parents, parents more than children or wife, benefactors more than those to whom we do good" (cf. n. 479).

II. With love of benevolence, those who are nearer to us are to be loved more. But these ought to be preferred to others according to those goods in which conjunction or friendship is founded. The reason is that, on account of the special bonds by which God has bound them to us, we ought to apply greater zeal to providing for them goods not yet possessed, and to forestalling impending evils. Whence the Apostle says thus (1 Tim. 5:8): But if any man have not care of his own, and especially of those of his house, he has denied the faith, and is worse than an unbeliever.

Corollaries. A. As regards the application of the rules.

1. In goods pertaining to preserving nature and bodily life, if the necessity is extreme, or quasi-extreme, on both sides, parents, since they have given life, are to be preferred to wife and children. If necessity on both sides is only grave or middling, help is to be given: a) to wife, because she is one flesh with the man; b) to children, as those for whom by natural right parents are bound to provide more than children are for parents; c) to parents, and indeed to the father before the mother, because the father has the more excellent notion of principle; d) to brothers and sisters; e) finally to relatives, domestics, and familiars.

2. "In matters pertaining to civil communication, fellow citizens are to be preferred; in military matters, fellow soldiers; in spiritual matters, spiritual sons, fathers, brothers. Yet Bannez probably teaches that carnal parents, even in spiritual matters, are to be preferred before all others: because carnal conjunction is the foundation of other conjunctions."

3. Per accidens it can happen that he who would naturally be placed after another is to be preferred to him, because attention must be given not only to the conjunction of persons, but also to necessity and to the goods to be procured. Thus a good mother, useful to the offspring, can be preferred to a bad father harmful to the offspring. Likewise a son necessary to the household matter, to a useless and clamorous wife (Kon., n. 279). Likewise a friend who snatched you from death is to be loved more than a brother who wished to inflict it on you.

B. As regards inversion of order and gravity of fault.

1. Inversion of order as regards necessity, if it is a question of grave or extreme necessity, contains grave sin; because it wounds charity in grave matter, by taking away the order itself.

2. Inversion of order as regards conjunction of persons is a grave sin if the excess is notable; for example, if in grave matter strangers or remotely joined persons are preferred to those proximately joined. It is a light sin if the excess is slight; for example among those proximately joined, as among parents, spouses, and children, among whom it is not openly established who is really to be preferred (Aertnys, tr. 3, n. 45).

Article II

On Acts of Charity Toward Neighbor

The precept of charity, as was said above (n. 470), obliges to acts both internal and external.

485. PRINCIPLES. I. The internal act is to be elicited from a supernatural motive, more often in life. For if it were not made on account of love of God, or so that we may obey the precept of Christ, there would be no place for the precept: A new commandment I give unto you, that you love one another (John 13:34). - But it is to be elicited, just as the act of charity toward God, more often in life, because both are subject to the same rules. Cf. n. 472.

But he already satisfies the precept who pours forth prayers for all, for example by reciting the Lord's prayer. Likewise, these acts of charity are well exercised on the occasion of avoiding hatred or of giving alms. And since occasions of this kind occur frequently, hence it is morally impossible that the faithful living Christianly should not abundantly satisfy this precept.

II. The obligation of eliciting external acts of charity is to be determined from various circumstances. But it is determined according to the necessity of neighbor, and our faculty of helping him. It is established from the things said at n. 483 seqq.

External acts by which another's necessity is relieved, whether from precept or from counsel, are called WORKS OF MERCY.[10]

The corporal works of mercy are numbered as seven, namely: to visit the sick, to give drink to the thirsty, to feed the hungry, to redeem captives, to clothe

the naked, to gather in guests, and to bury the dead. - The spiritual works are likewise numbered as seven, namely: to give counsel to the doubtful, to correct the sinner, to teach the ignorant, to console the afflicted, to forgive injuries to the offender, to bear the troublesome and fastidious, to pray for all. Hence that twofold little verse:

I visit, give drink, feed, redeem, cover, gather, bury.

Counsel, reprove, teach, console, forgive, bear, pray.

Here we shall treat of two principal works of mercy: 1. of almsgiving strictly so called; 2. of the spiritual alms which is fraternal correction.

§ 1. On Almsgiving

486. DEFINITION. Almsgiving is a work by which something is given to one in need, from compassion, on account of God. Thus defined, almsgiving is an act of mercy, commanded by charity. It can also be commanded by another virtue.

PRINCIPLES. I. There is a precept, grave of itself, of bestowing alms. It is established both from reason, which commands us to do for another what we would wish to be done for ourselves, if we were placed in the same condition; and from the words of Christ (Matt. 25:41): Depart from me, ye cursed…; for I was hungry, and ye gave me not to eat…; and from 1 John 3:17: He that hath the substance of this world, and shall see his brother have need, and shall shut up his bowels from him: how doth the charity of God abide in him?

487. II. In order that the precept of almsgiving may urge, two things are required: necessity on the part of the one receiving, and superfluity of goods on the part of the one giving. The first is established from the definition itself; the second from the order of charity. For he who has only things necessary for life cannot distribute them without preferring another's life to his own. The words of the Lord Savior are consonant: That which remaineth, give alms (Luke 11:41). Cf. 2.2, q. 32, a. 1; Bouquillon, *de Carit.*, n. 483-90.

[10]St. Thom., 2.2, q. 30-32; cf. St. Alph., *Inst. cat.*, P. I, c. 1, n. 43, and *Vera Sposa*, c. 12, 23. "Christian religion chiefly taught us the virtue of mercy. For although the law of nature inclines man from compassion to relieving another's misery, nevertheless the notion of mercy among the Gentiles was so obscured and its exercise so neglected that Plato wished to relegate the poor from the republic, and Seneca thought mercy a vice of the soul." Thus Noldin, II, n. 86. Cf. *Ami du Clerge*, 1897, p. 562, 978; *Kirchenlexicon*, v. *Armenpflege*.

Moreover, just as the NECESSITY of one in need is distinguished as THREEFOLD, as was said above (n. 480, 3), so also, on the part of the giver, GOODS are of three kinds: a) things necessary for life, that is, goods without which we cannot preserve our own life, or that of our people; b) goods superfluous for life, but necessary for one's state, that is, goods without which indeed we can preserve life, but cannot live in that manner which befits our state; c) finally, goods simply superfluous, that is, which are necessary neither for life nor for state. And here it must be noted that, by things necessary for the decency of state, generally are to be understood all those things which are required, not only for sustaining children and servants and guests, but also for making honorable donations, banquets, and moderate displays of magnificence (II, 31; confer Kon., n. 484).

488. But in what way, according to the diversity either of necessity or of the superfluity of goods, alms is to be given, will be established by the following RULES, with the things always to be posited being posited, that is: a) that the use alone of the thing does not suffice; b) that the required means are not extraordinary, which men commonly are not accustomed to employ; c) that the common or public good of the community is not brought into danger (II, 31, resp. 3 and 4; Gen., I, 222).

RULE 1. In extreme necessity, neighbor must be helped from goods superfluous for life, even though necessary for state. The reason is clear from the order of charity (n. 483, Rule 2).

Whence no one is bound to give alms from goods necessary to himself for life, unless the poor man were such that the safety of the republic depended upon him.

RULE 2. In grave necessity, neighbor must be helped from goods superfluous for state, but with only middling inconvenience. Thus commonly; and the reason is again clear from the order of charity.

But the obligation urges under grave sin, unless it is prudently judged that another will come to his aid; for, "since in Scripture men are frequently condemned on account of neglected works of mercy, these are not to be restricted to extreme and rare necessity" (II, 31). And it seems clearly inferred from the condemnation of the twelfth proposition by Innocent XI: "Scarcely among secular persons will you find what is superfluous to state, even among kings; and thus scarcely anyone is bound to almsgiving, when he is bound only from what is superfluous to state."

RULE 3. In common or middling necessity, neighbor must be aided from goods superfluous for state, but with only light inconvenience. This also the order of charity requires. But whether under mortal sin? Many deny it with St. Antoninus; for the common misery of the poor is usually light and tolerable. But St. Alphonsus affirms, with the more common opinion (II, 32; l. El. qq. ref., n. 4), if it is a question of the poor in general, and not of some particular poor person. The principal reason is that, if the rich did not have an absolute obligation of commonly aiding beggars, they could be left by all in their necessity, and thus their necessity would become grave. Therefore, by the words of the Lord (Luke 11:41): That which remaineth, give alms, there is expressed a precept grave of itself, as the Holy Fathers commonly interpret (Sylvius, 2.2, q. 32; Bellarmine, *de Bonis Oper.*, l. 3, c. 7).

The rich are indeed not bound to distribute the whole of what is superfluous; but neither does it suffice to distribute so little, in proportion to the quantity of one's substance, that, if other rich men used the same parsimony, help would be lacking to the poor. - Commonly the rich are judged to satisfy by distributing to the common poor the fiftieth part of the revenues which remain over (or 2 gold-pieces out of 100); but not in the same proportion, if the riches greatly exceed.[11] Except beneficed persons, who are bound to distribute the whole superfluity to the poor or to pious places, as will be seen in its own place (n. 2249).

But, "if some rich and abounding person for a long time refuses all alms, with the intention of giving in a better and more suitable place and time, or to persons in greater need, or of converting it to another pious use, he does not sin, since he has a just cause for refusing. But if such a person, without reasonable cause, inhumanly repels all poor persons from himself, Laymann says that he is in a bad state." Cf. II, 32; H. Ap., IV, 19; *Conf. dir.*, IV, 11; *Istr.*, IV, 19.

From these things you will deduce: 1. Except in the case in which the poor are fed from public stipends, a rich man sins mortally who determines to give no alms in common necessities, or who in this is notably negligent, and accumulates all superfluities for attaining a higher state. Indeed, even in the case in which many things are assigned from public stipends for relieving the poor, the rich man does not act rightly who, by fixed intention, would wish to give nothing further. For in

[11] Other authors abstain from a mathematical determination concerning things necessary or superfluous for state. "For such decency," says St. Thomas (4 D. 15), "does not consist in something indivisible: because, when many things are added, a man does not exceed the condition of his state; and also, when many things are taken away, the condition of the state is decently preserved." Nevertheless, on account of the diversity of opinions, St. Alphonsus judged that the norm should be established as above. Whatever Ballerini may say, that rule in no way sounds like something absurd (*Vind. Alph.*, I, p. 186).

not a few matters the solicitude of the State fails in practice; whence such a rich man's denial would tend to the detriment of many. Nor certainly do modest alms impede anyone from ascending honorably to a higher state.

2. Physicians, advocates, etc., are bound to expend their labor for the poor gratuitously, when these are in true necessity and cannot be helped by others (2.2, q. 71, a. 1).

3. "Private men are not bound to seek out the poor. Yet if they doubt concerning someone's extreme need, they are bound to inquire into the truth" (II, 31, resp. 4, ad 1).

4. Questions. Q. 1. To which poor persons must alms be given?

Resp. It must be given to all who are truly in need, whether they are faithful or unbelievers, natives or foreigners; yet so that, other things being equal, an old man is preferred to a young man, a noble to an ignoble, an invalid to a strong person, a faithful person to an unbeliever, a Catholic to a heretic, a good man to a bad man, a native to a stranger, etc. For this is what the order of charity requires.

There is no obligation of giving alms, and sometimes it would be illicit to give it, to poor persons unwilling to work. Yet one must beware lest those be numbered among the voluntarily idle who have fallen into misery because of lack of work. Moreover, it would be more advisable to furnish work to these, from which they may live (II, 32, ad 5).

Q. 2. From which goods must, or can, alms be given?

Resp. 1. From one's own goods, of which one has free administration.

We say: from one's own. Therefore it is not licit from goods liable to restitution; nor is it licit with harm to creditors; nor is it licit for children from the goods of parents; for servants from the goods of masters. We say: of which one has free administration. Hence a wife cannot give extraordinary alms without the consent of her husband, unless from goods wholly her own, of which, namely, she has 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; and this even if the husband were unwilling, because custom grants her this right (II, 33; III, 540).

2. From another's goods, if either the poor man is in extreme necessity and you cannot give from your own; or the owner consents, or is reasonably presumed to consent.

Hence children can bestow small alms, and servants bread and similar things. Likewise tutors and curators can, from goods committed to them, give those modest alms which those whose goods they administer would have to give, since they bear their person (II, 33, 2, 3).

Note. 1. Let the confessor of the rich remember the words of the Apostle (1 Tim. 6:17): Charge the rich of this world… to do good, to be rich in good works, to give easily, to communicate, to lay up in store for themselves a good foundation against the time to come, that they may lay hold on true life.

2. Yet absolution is not easily to be denied to a rich man refusing alms to common beggars: both because of the doubt and dissent of the Doctors; and because the rich, almost always, bring forward excusing reasons which, in practice, the confessor will not easily be able to reject as empty (II, 32, 3).

§ 2. On Fraternal Correction

490. DEFINITION. Fraternal correction is a suitable admonition, given from charity to one's neighbor, for the end that he may be amended from sin, or removed from committing it (II, 34 and 39, query).

It differs both from judicial correction, which proceeds from a judge, for the chastisement of the guilty, on account of the common good; and from paternal correction, by which a Superior, without the form of judgment, rebukes the delinquent, for amending him and for taking away scandal. Concerning this latter we shall say a few things below; concerning the former elsewhere (n. 2256).

491. PRINCIPLES. I. There is a precept of fraternal correction. 1. For from the law of charity we are obliged to aid the soul of neighbor in need. 2. The evangelical law commands (Matt. 18:15): But if thy brother shall sin against thee, go, and rebuke him. It is said: against thee, that is, against thee, or before thee, or with thee knowing, as St. Augustine explains (*Sermo* 82, c. 7, n. 10).

This precept obliges under grave or under light sin according to the matter. Grave matter is understood as any mortal sin into which neighbor either is about to fall, or has already fallen and in which he perseveres. In practice, a private person is scarcely bound to take notice in light matter, unless he can do so most easily (II, 34, 35).

But matter in this, as in other precepts, can be GRAVE either of itself or on account of circumstances. Thus, for example, if in some religious order it is foreseen that through light violations of the rules the vigor of discipline will be relaxed, there lies upon one a grave obligation of correction, not only upon prelates and confessors, but also upon private persons (IV, 13).

492. II. The precept of correction obliges all, but Superiors more strictly. For the office of charity, of itself, extends itself to all. Yet Superiors are held more strictly, because a special care lies upon them of providing for the spiritual salvation of their subjects (II, 40).

From these things you will deduce: 1. Even inferiors are held by the obligation of admonishing Superiors; yet with modesty, discretion, and reverence, as the Apostle says (1 Tim. 5:1): Rebuke not an elder, but entreat him as a father. Hence children are bound to admonish parents when they notice that they retain another's goods, do not take care of their eternal salvation, etc. 2. Even sinners are held by this precept. For correction, says St. Thomas (2.2, q. 33, a. 5), pertains to someone insofar as right judgment of reason flourishes in him; but this is not destroyed by sin. Yet if he is a public sinner, ordinarily he ought to abstain from correction; for it is said (Rom. 2:21): Thou therefore that teachest another, teachest not thyself; thou that preachest that men should not steal, stealest… For the name of God through you is blasphemed among the Gentiles.

493. III. In order that the precept may urge, it is necessary that the spiritual necessity of neighbor demand it, and that there be a founded hope of amendment, without grave inconvenience threatening. Thus the Doctors commonly.

It is said, 1. That the spiritual necessity of neighbor demand it; for which three things are required: a) That it be certainly established to you concerning the sin of neighbor, or concerning his proximate danger of sinning. For charity is not rash, does not think evil; nor in doubt are you bound to inquire, unless you are a Superior, or unless it is a question of a common evil or of a most grave evil to be averted, for example homicide. b) That correction be judged necessary for the amendment of the guilty party; for if amendment is reasonably hoped for from elsewhere, or if the guilty person has already become wise again, it is clear that no obligation is given. c) That there is not another equally or more suitable person, who is believed about to correct; because then true and absolute necessity is not present.

2. That there be a founded hope of amendment: because, when the end is despaired of, there is no reason for applying the means. Hence you are not bound to correct if the correction will certainly not be profitable.

But in doubt whether it will be profitable or harmful, you are not bound; unless the one to be corrected is in danger of death, or infection of others in faith or morals is to be feared. Prudence generally counsels that correction be omitted of those whose disposition is wholly unknown, lest, receiving it with an unjust spirit, they become worse.

3. Without grave inconvenience threatening. For charity does not oblige with such inconvenience, unless the spiritual necessity of neighbor is extreme, or unless there is added an obligation of justice, as in a prelate, pastor, or magistrate toward subjects (II, 38, 39).

Hence you will resolve: 1. Private persons among themselves are rarely held to correction, at least under grave sin, unless they are familiarly joined among themselves: because rarely are all the required conditions found to be present. Still more rarely toward Superiors, because of defect of suitability. For the same reason the scrupulous also, at least ordinarily, are excused. See also n. 1202, where correction of one detracting is treated.

2. He seems to sin lightly who, from fear, pusillanimity, or shame, judges himself not to be so strictly obliged, or less suitable, for correcting his brother. - But he sins gravely who, although he can easily impede the mortal sin of neighbor, omits to do it on account of a vain fear of temporal evil (II, 37; H. Ap., IV, 21).

3. IV. That order in correction is to be preserved which Christ the Lord prescribed (Matt. 18:15). Whence 1. Let correction be made secretly: rebuke him between thee and him alone. But if this does not profit, let it be made 2. before witnesses: take with thee one or two (witnesses). 3. Let the fault

be referred to the Superior: but if he will not hear them, tell the Church. This order obliges of itself under grave sin, since it is a question of consulting the reputation of neighbor. Nor can a Superior exempt from it, because it is founded in the law of charity (II, 41).

We said of itself: for, per accidens, with previous admonition omitted, the matter CAN immediately be brought to the Superior as to a father: 1. If the sin is public, or soon to be public, because the reason for preserving the delinquent's reputation ceases. 2. If the delinquent's amendment, which is the principal end of the precept, is hoped to be able to be obtained more easily or more efficaciously: which case is more frequent in religious communities. 3. If neighbor has

yielded his right, as is the case among certain religious; yet this yielding is so understood that the crime is revealed to the prelate as to a father, but not as to a judge (IV, 240, 245).

But the matter MUST immediately be brought to the Superior if, through this evangelical denunciation, the desired fruit is hoped for, which otherwise either could not be obtained, or only with grave inconvenience. This chiefly holds if the sin of neighbor tends to the harm of a third person or of the community, as conspiracy, heresy, corruption of youths, etc. The reason is that then a remedy is to be applied not only to him who has sinned, but also to others to whose harm the crime tends. Hence, in communities living under a rule, in colleges, seminaries, etc., if it is a question of a matter of great importance, it is generally expedient that correction be made by way of denunciation to the Superior as father.

495. Corollaries. The duties of the one denouncing, the duties of a Superior in general, and the duties of a Superior obligated by stipend are to be distinguished.

496. If it is certainly established that a brother has perfectly amended an occult sin, and from it there is no danger of relapse, or of harm to himself or another, it is not licit to denounce him to a father or prelate, unless the brother expressly consents to that denunciation (II, 42; IV, 244, 245, q. 4).

497. It is not licit to defer the delict to mediate Superiors if the immediate Superior can correct by himself, and there is no probable suspicion that this one will fail in his office; for the reputation of neighbor is to be consulted as far as can be done (II, 42, 3; IV, 247 fin.).

498. A Superior, by force of knowledge obtained through a simple denunciation made to him as father, cannot proceed judicially; because the delict was not manifested to him as judge (IV, 246).

499. Superiors are bound to watch over their subjects, sometimes to inquire into their sins, and to meet their evils even when doubtful; yet not to ask much and curiously concerning some sin in particular, unless someone has given a special sign of it. But voluntary accusers are not easily to be admitted; because they, under the appearance of the common good, often seek themselves (II, 42, 4).

500. They are bound to correct delinquents, even if a small hope of amendment shines forth, whether for avoiding every appearance of connivance, or, if the correction is public, for casting fear into the rest. Yet where no good can be hoped from correction, it will have to be omitted; for the Church tolerates many things which she in no way approves. - Thus similarly preachers are bound to rebuke public sins, by reason of the common good, even if amendment of the delinquents is not hoped for, provided fruit in the people can be hoped for sooner or later.

501. If they are stipendiaries, as Bishops, parish priests, magistrates, they are bound both from office and from justice to correct and admonish subjects, even with danger of life, in their necessity not only extreme but also grave, as is commonly taught with St. Thomas (2.2, q. 185, a. 5).

502. But others, as parents, confessors, masters, husbands, teachers, tutors, curators, are not bound with great detriment to themselves: because they are not obligated from strict justice, but only by the office of piety (II, 40; H. Ap., IV, 22).

503. Questions. Q. 1. Whether he who sins FROM IGNORANCE is to be corrected?

Resp. Distinguish. 1. If he sins from vincible ignorance, certainly he is to be corrected, because then he is in bad faith, and is not excused from sin.

2. If he offends from invincible ignorance, he is to be admonished: a) when it is a question of things necessary for salvation, or of avoiding the scandal of others. Nor is correction to be passed over, even if amendment of the delinquent can scarcely be hoped for, lest perhaps others judge that to be licit which is not corrected; b) when, even if only materially, divine law, natural or positive, is violated, and profit from the admonition can be hoped for; for knowledge and observance of a certain law is always a good most greatly to be desired. Thus commonly (*Conf. dir.*, IV, 12).

But whether he who ignorantly transgresses a human law is to be admonished, for example concerning fasting, concerning reciting the Office, is disputed probably on both sides. Yet the affirmative opinion is more probable and more common (II, 36; l. El. qq. ref., 5); because that transgression, although material and not intrinsically evil, nevertheless, the law being posited, is still evil, and easily becomes formal, or induces a depraved habit, and therefore by admonition, if it can be done, is to be impeded. But certainly those who from office are bound to teach subjects, as prelates, confessors, teachers, ought to take notice of such a delinquent (VI, 610, Obj. 1, and 616).

Q. 2. Whether pupils are to be obligated by the confessor under grave sin to denounce occult corrupters?

Resp. Distinguish. 1. If the harm of only one or another is feared, the obligation does not seem to be urged with grave inconvenience of the one denouncing, for example if he would thence have to confess his own crime, or incur the infamy of a delator. The reason is that, since there is not extreme necessity of neighbor, charity does not oblige with so great an inconvenience.

2. If grave common harm is present, namely the corruption of several or the infamy of the house, the obligation of denunciation is to be urged in almost all cases, notwithstanding the grave inconvenience of the penitent, even if the confessor foresees that his admonition will not be profitable or that the denunciation will be without efficacy. The reason is that here the common good urges. Confer St. Alph., *Regole pei Sem.*, § 1, n. 5; Berardi, *de Recid.*, II, n. 273; Lehmkuhl, I, 971; Genicot, I, 221. Behold the words of the Holy Doctor: "It must be adverted that, since here it is a question of a common evil, many times they would by no means be excused from grave inconvenience or harm."

Article III

On Sins Adverse to Charity Toward Neighbor

497. The sins which are specially opposed to charity toward neighbor are the following: hatred, envy, malediction, schism, discord, contention, brawl, sedition, war, duel, scandal, and cooperation in the sins of others.

Of duel and war there will be discourse in the treatise on the fifth precept. Of the rest we shall treat here, in a threefold article, namely: 1. of hatred, to which we shall attach a scholium on kindred sins; 2. of scandal; 3. of cooperation in the sins of others.

§ 1. On Hatred of Neighbor

498. NOTIONS. Hatred is an act of the will by which someone is borne toward something with malevolence. It is twofold: 1. hatred of enmity (or of the person), by which we are averse to someone, and will evil to him insofar as it is evil to him; 2. hatred of abomination (or of the quality), by which we are averse to neighbor not according to himself, but according to some quality of his disagreeing with us. Cf. n. 475, note 2.

Hatred ordinarily arises from an offense, and manifests itself externally by denial of signs of love.

But some SIGNS of love are common, others special. Those are called common which are usually shown to others of the same state; for example, by a Christian to a Christian, by a fellow citizen to a fellow citizen, by a kinsman to a kinsman. Special signs are those which are shown on account of a special title, for example of friendship, which is not the same toward all of the same condition (II, 28). See what is to be said below, n. 501.

499. PRINCIPLES. I. There is a precept of loving enemies, by which hatred of enmity is prohibited as a sin grave of its kind. It is established from the words of the Lord (Matt. 5:44): Love your enemies..., and in the same place (6:15): But if you will not forgive men, neither will your Father forgive you your sins. Whence (1 John 3:15): Whosoever hateth his brother is a murderer.

We said, 1. Enemies, by which name are signified those who persecute us with hatred, or have affected us with offense or injury.

2. Hatred of enmity, for hatred of abomination, or of aversion, is of itself indifferent, and takes its moral species from the nature of the quality which we abhor. Thus, for example, if in neighbor you pursue with hatred his bad qualities, pride, etc., the hatred is good and can pertain to charity, according to that saying (Ps. 138:22): I hated them with perfect hatred (sinners). But one must watch lest hatred of the quality pass into hatred of the person. If you hate in him qualities simply good and honorable, justice, piety, etc., the hatred is so evil that by its nature it is a mortal sin, as we said concerning envy (n. 368).

3. As a sin grave of its kind; for hatred admits smallness of matter: in an internal act, for example if you wish a light evil to an enemy, or rejoice concerning it after it has happened; in an external act, if it betrays a hatred lightly offensive, or induces light scandal; as often happens among those who live together (Kon., n. 282).

4. II. The precept of loving enemies does not impose a special obligation, that is, one diverse from that by which we are held toward all men. It requires only this, "that one loving God and neighbor not exclude his enemies from that generality of love of neighbor." Thus all with St. Thomas (2.2, q. 25, a. 8; cf. St. Alph., II, 28, 1). Therefore special love is not of the necessity of charity, except according to the preparation of soul, by which, namely, a man is prepared for this, that in particular he would love his enemies and, when necessity requires it, would furnish special benefits to them.

Hence: 1. Those sin who wish evil to neighbor insofar as it is evil to him, whether this is done from vengeance or from aversion toward his person. But sometimes it is licit to wish a temporal evil to neighbor, insofar as it is good for him, as we said n. 349.

2. Those sin, of themselves gravely, who refuse pardon to an enemy; or do not accept suitable satisfaction, or demand greater than is fair; who bring the guilty person into judgment from hatred and vengeance, or rejoice concerning an enemy's evil. But you are not bound to forgive the satisfaction which is owed to you for injury and harm: for this you can demand, not indeed as an evil of the enemy, but as a good owed to you, all hatred being removed and charity preserved. Nor ought a feeling of indignation or the memory of injury be confused with hatred (II, 29).

3. "A private person, who, being averse to another, flees from him, if he does this in order to deprive him of his conversation and solace, and thus to sadden him and make it be ill with him, is hatred of enmity and a sin. But if, wishing no evil, you only flee because he is unlike your nature, or is accustomed to be troublesome to you, it is hatred of aversion, and a sin if it is without reason: such it will not be if the person is very harsh, provided contempt, scandal, and the desire of vengeance are absent" (II, 30, 3).

4. III. Common signs of love and benefits are owed, of themselves, to enemies; but not special ones. The reason for the first is that to deny to an enemy those things which are owed to all would be a manifest sign of hatred and vengeance. Such denial will be a grave or light sin, according as, from the circumstances, contempt is present or is reputed grave or light. The reason for the second is that special signs, which are indications of restored former friendship or of perfect reconciliation, proceed not from debt, but from liberality (*Ami du Cl.*, 1913, p. 203).

From these things you will deduce: 1. We are bound, speaking of itself, to return the greeting of an enemy greeting us,[12] to respond to one asking or writing, to sell exposed merchandise to one wishing to buy, not to exclude him from common prayers and alms, to furnish common services to him, to avert his harm if we easily can, etc. - For all these things are numbered among common signs.

2. Per accidens we are not bound to these things when charity or justice demands something else, or a reasonable cause excuses. And indeed a) Charity, as if, from signs or benefits denied, the enemy is hoped to be amended; if he is believed to become worse from the same signs being granted, or to interpret them badly; if, from speaking with him, it is feared that quarrels, contempt, etc., may be repeated. b) Justice, as if parents or Superiors, for the just punishment and correction of a son or subject (for example, on account of an infamous delict, an unworthy marriage), deny him sight, speech, entrance into the house, even after petition of pardon; yet provided that such a punishment does not exceed the gravity of the delict, and lasts only for a time, namely as long as it will seem expedient for amendment. c) A reasonable cause, for instance, if they are omitted for a short time, not from hatred, but as a signification of just pain or sadness on account of a recently received injury; if the enemy does not respond to signs of charity. Yet one must always beware both the danger of hatred and the scandal of others (II, 28, 2).

3. We are not bound of ourselves to receive an enemy with hospitality or at a banquet, to console him when sad, to visit him when sick, to admit him to familiar conversation, to greet him when met on the way, not to exact from him reparation of the harm inflicted, to leave him immune from the public vindication of the delict by not citing him before a judge on account of the common good.[13] For these are special signs, which fall under counsel alone.

4. Per accidens those special signs are sometimes owed: namely, when either by reason of circumstances they become common, as if someone must, as physician, visit the sick, or as innkeeper receive travelers at table and lodging, etc.; or when from elsewhere an obliging reason is added, for example, for avoiding scandal. Wherefore it is wicked to omit special signs of this kind: a) If the omission would be scandalous to others, or would confirm the hatred of the enemy. b) If by some sign of love you could, without grave inconvenience to yourself, reconcile the enemy to you and to God. c) If the enemy's grave necessity, bodily or spiritual, demands a special benefit, etc. d) If the enemy asks pardon, or offers suitable satisfaction; for then remission of the offense must be externally signified, for which, ordinarily, common signs do not suffice, but some special sign is required. e) If previously you had been accustomed

[12]Note that these things are imposed only in the case in which the enemy first greets. If it is a question of a greeting first to be made by the offended person, it must be said that this is a sign of special love. Therefore, regularly speaking, you are not bound to greet an enemy. Yet per accidens you are sometimes bound to this, for example if he is your Superior, or is found among several others whom you greet all together; if greeting, in some place, has been received as a common sign, provided the other responds, etc. (II, 28).

[13]Citation before a judge, for mere conservation of justice, is very dangerous and too liable to delusion, especially if the offense was wholly personal, does not redound to the harm of others, and was inflicted occasionally by a man who otherwise is well-mannered. But if the offense tends to the common detriment, for example of religion, of public security, or has been inflicted by a man who is accustomed to violate the rights of all: the petition of public vindication will be very useful, for the amendment of the sinner, or for his restraint and the quiet of others; for in such a case the danger of acting from hatred is easily excluded (II, 29; III, 985; H. Ap., IV, 17; St. Thomas, 2.2, q. 108, a. 1).

to show peculiar signs to an enemy: then total omission of any special sign whatsoever seems to carry before itself an appearance of contempt or hatred, and therefore is not licit, unless you signify that it is not done from hatred, and thus remove scandal.

5. IT IS ASKED. What are the RULES to be observed in the reconciliation of enemies?

Resp. 1. If injuries intervened on one side only, the offender is bound, as far as can be done by him, to seek pardon and reconciliation by himself or by another, and to repair the harms following from the injury; for in whatever way charity was destroyed, in the same way it must also be restored.

Except, unless a legitimate reason excuses, for example if the offense was not grave, or the offended person is absent, or does not care for a petition of pardon, does not accept it, or on account of another reason is judged already to have been satisfied. Likewise, if between two offenders one offended the other more gravely or first, that one is first bound to show signs of reconciliation.

2. If the injuries on each side were morally equal and simultaneous, each enemy is bound, when the occasion is given, to begin reconciliation by greeting, conversation, invitation, benefit, etc. Moreover, generally speaking, among equals he ought first to greet and address who passes while the other is standing or sitting before him, or who unexpectedly arrives.

3. A suitable time is to be sought; for although the offended person is bound from the beginning to forgive the offense, nevertheless he is not bound (at least under grave sin) so to forget it or to bear it with an even mind that he is immediately ready for reconciliation. For this seems violent and above human frailty, as they commonly teach. - "Ordinarily," Gousset observes (*Theol. mor.*, I, 365), "the matter does not succeed except through the mediation of friends and prudent men." But if it is a question of restitution of a temporal good, the real right must rightly be distinguished from the injury to the person; otherwise reconciliation will be able to succeed but little prosperously.

4. Note. 1. For judging hatred itself, the confessor should believe the deeds rather than the words of the penitent; and, as regards the gravity of hatred, let him attend to three things: whether grave contempt was present, great sadness was inflicted, notable harm followed.

5. Ordinarily those cast suspicion of hatred who, although they say that they forgive, nevertheless refuse to address an enemy or to respond to him; a fortiori, those who assert that they will never speak even a word to him: unless this can be forgiven to the disturbance and horror of a recent injury. Wherefore let the confessor proceed cautiously, lest he absolve penitents of this kind too hastily.

6. Penitents who accuse themselves of hatred are not immediately to be accused of sin, especially grave sin: for often they confuse hatred properly so called, or of enmity, with hatred of abomination, or of quality or defect, or even with some natural and invincible aversion of soul. Here the question will help: Why do you have hatred for your neighbor? and what have you done from it?

Scholium

On Sins Kindred to Hatred

504. Seven sins kindred to hatred are numbered: envy, malediction, schism, discord, contention, brawl, and sedition.

1. ENVY is a capital vice, concerning which we treated n. 368 seqq.

2. MALEDICTION is the imprecation of evil, insofar as it is evil. It proceeds from anger or hatred. Three things are required for malediction to be mortal, namely: a) that the evil uttered is truly desired; b) that it is desired with perfect deliberation; c) that the evil desired is grave (V, 83). Cf. St. Thomas, 2.2, q. 76, a. 3.

3. SCHISM is the voluntary separation of a baptized person from the unity of the Catholic Church. The Angelic says (2.2, q. 39, a. 1): "Those are called schismatics who refuse to be subject to the Supreme Pontiff, and who refuse to communicate with the members of the Church subject to him (in doctrine, worship, sacraments, etc.)": from which it is clear that schism is a most grave sin, whether it is pure, or joined with heresy. - See n. 1317.

4. DISCORD is a disagreement of wills concerning the good of God and neighbor, in which we are bound from charity to consent. It is mortal or venial, according to the measure of the matter (V, 66). It differs much from disagreement of intellect; which is not a sin, if it obtains concerning opinions whose use is licit: as was the disagreement between Paul and Barnabas (Acts 15:36-40).

5. CONTENTION is an inordinate fight of words, which obtains when truth is either attacked, or defended in an undue mode. "It is mortal when, with the spirit of contradicting, you altercate concerning truth pertaining to faith, or to the salvation of soul or body" (ibid., at the end).

6. BRAWL is a fight of hands and words, among private persons; namely, when from anger one unjustly attacks another. "Brawls, if they do not exceed measure, as also slight fights, are venial; otherwise if they progress to seditions, wounds, slaughters. And these are commonly sins on the part of the one beginning the brawl; for the other can defend himself with the moderation of blameless defense" (V, 83, end). Cf. n. 734.

7. SEDITION is an aggressive war by which one part of the republic unjustly rises up against another. If it is against the legitimate prince, it is called rebellion. Concerning these, recall the things said n. 148 and n. 150, q. 2.

§ 2. On Scandal

505. NOTIONS. *Scandalum* in Greek is the same as *offendiculum* in Latin, a stumbling-block placed in the way, against which a traveler incautiously stumbling falls. Whence the name scandal, transferred from physical things to morals, signifies everything which can furnish to neighbor an occasion of spiritual ruin, and also the spiritual ruin itself arising thence.

Therefore the essence of scandal is not to be sought in the admiration caused, nor in the knowledge stimulated, nor in the irritation produced; but in this, that it can furnish, or is capable of furnishing, an occasion, or an occasional cause, of sinning, for example if at the least rash judgment, unjust suspicion, or rumor would follow.

It differs from positive induction or seduction, which is rather cooperation in sin or an external action by which another is explicitly and directly provoked to sin (II, 58). Cf. Noldin, II, n. 110.

DIVISION. Scandal is twofold: namely, active and passive.

I. Active scandal is: "A less right word or deed, furnishing another an occasion of spiritual ruin" (2.2, q. 43, a. 1).

It is said: 1. word or deed, under which name also comes an external omission, for example the omission of Mass on a day on which the precept urges; 2. less right, that is, what either is evil in itself (as if you speak filthy things before a youth), or has the appearance of evil in the eyes of others (although in itself it is good), as if from a just cause, before others ignorant of it, you omit Mass on a feast day, leave parents in order to follow the evangelical counsels, eat flesh on a forbidden day; 3. furnishing another an occasion of spiritual ruin: for, for the notion of scandal, it is not required that spiritual ruin actually be brought upon neighbor; but it suffices to furnish to him an occasion of fall or an occasion of sinning in such a way that, the circumstances being attended to, his fall is probably to be feared.

Active scandal is subdivided into direct and indirect. 1. It is DIRECT if the ruin or sin of another is intended. But it can be intended either formally, namely if something is therefore done so that neighbor may fall into sin, and then the scandal is called diabolical; or materially, namely if neighbor is therefore exposed to sin so that his sin may serve the usefulness or pleasure of the one intending it, and then the scandal is called simply direct. 2. It is INDIRECT if the sin of neighbor is not indeed intended, but nevertheless is foreseen as probably going to follow from a word or deed posited (without just cause) (II, 43).

II. Passive scandal is the spiritual ruin itself of neighbor, or the sin for which an occasion is furnished to neighbor. It is similarly divided into two parts: 1. Scandal is GIVEN if it arises from active scandal, namely from a deed which is evil in itself or at least has the appearance of evil. 2. Scandal is ACCEPTED if it does not arise from active scandal. And this latter can happen in two ways, namely: a) if it arises from weakness alone or ignorance. Then it is called scandal of the little ones, because, from a deed which contains neither evil nor the appearance of evil, an occasion of sinning is taken solely on account of weakness or ignorance; for example, if a young man from the modest adornment of a girl takes occasion of desiring her basely; b) if it arises from malice alone, and then it is called pharisaical. Thus the Pharisees conceived hatred against Christ on the occasion of his words or deeds; so also one who sees a priest walking, and from this maliciously takes an occasion of saying that the ministers of the Church labor under sloth.[14]

506. From these things you will gather: 1. Sometimes active and passive scandal are found together, namely when someone, from an occasion of sinning which neighbor furnished to himself, actually falls into sin. Sometimes there

[14]Since authors differ in explaining this last division, one must see, among individual authors, what they understand by passive scandal and scandal of the little ones.

is active scandal without passive, namely when someone induces another by word or deed to sin, but the effect does not follow. Sometimes there is passive scandal without active, as happens, for example, in pharisaical scandal.

507. "It is not always scandal if you sin before others; but only when, the circumstances both of the person acting and of those before whom the act is done being attended to, it can probably be feared that by this act those who otherwise would not sin are drawn to sin" (II, 43, 3). Wherefore those are not guilty of scandal who, living with a man prone to blasphemies, posit actions lightly evil, for example words of impatience, or even indifferent actions, from which new blasphemies can be foreseen; all the more because it is morally impossible to abstain from all these things (Aertnys, l. 2, tr. 3, n. 62).

508. "He is not judged to give scandal who, although he sins publicly, nevertheless does it before those who are either so vile, or infamous or wicked, or who are so upright, that no one is moved to sin: for example, if someone fornicates before others who are prepared to do the same and are not moved by his example; or if before the meek someone contends, brawls, or strikes another" (II, 44, 6; VI, 257).

These things having been posited, let us consider: 1. the malice; 2. the permission; 3. the reparation; 4. the frequency of scandal.

1. On the Malice of Scandal Passive scandal does not have a special malice; for it is nothing other than the sin itself of the one scandalized. Here only ACTIVE scandal is treated, and it is asked what kind and how great its malice is.

507. PRINCIPLES. I. Every scandal has at least a twofold malice: one against charity, the other against the virtue to the wounding of which neighbor is exposed. As regards direct scandal, theologians generally agree. As regards indirect scandal, some say that through it one sins only against the virtue wounded; others think that one sins only against charity. Yet the opinion affirming that by each scandal one sins both against charity and against the virtue is to be preferred, with St. Alphonsus. Against charity indeed, because if from charity we are bound, when we can, to impede the sin of neighbor, much more are we bound not to be the occasion for neighbor of committing it. Against the virtue, because each virtue prohibits someone from being the cause or occasion to others of wounding it. And a very urgent reason against the first opinion is this: because where it is a question of consent in sin, the direct and indirect voluntary belong to the same species.[15]

We said at least twofold; because direct diabolical scandal sometimes also wounds charity toward God. Besides, every scandal can contain several malices: either on account of the quality of the person scandalizing, for example if a father scandalizes children, a Superior subjects, a teacher pupils; for these are held, not only from charity but also from office, to forestall the ruin of their subjects; or on account of the quality of the person scandalized, as if someone induces a married person, or one bound by a vow of chastity, to filthy things. All these malices, diverse in species, can also be several in number: for there are as many sins of scandal as there are persons scandalized (cf. n. 331). See St. Alph., V, 46; *Selva*, P. I, c. 8; P. II, c. 2.

508. II. Scandal is a mortal sin of its kind. The reason is that it is opposed to the precept of charity toward neighbor, since the greatest of harms is inflicted upon him. Whence Christ said in Matt. 18:7: Woe to that man by whom scandal cometh.

But the gravity of scandal is measured: 1. from the more or less explicit intention of the ruin of neighbor; whence direct scandal is graver than indirect; 2. from the greater influence upon the ruin of neighbor; wherefore the scandal of a priest or religious is regularly graver than the scandal of a layman; 3. from the gravity of the sin of which it is the occasion. The reason is that it participates in the malice of this sin, as is established from the things said (n. 507). Hence it can happen that a sin grave according to itself is venial by reason of scandal, for example if your grave theft is the occasion to another of committing a light theft. Conversely, a sin light according to itself can be grave by reason of scandal, for example if a religious utters a less honorable word before women, or those who can thence take occasion of mortal sin (II, 44).

509. Corollaries. 1. To ask from another something which he himself will not furnish without sin, if he is already PREPARED to sin, is a sin of scandal, if the thing which is asked is intrinsically evil, so that in no way can it be furnished without sin; for example, fornication with a prostitute is certainly a sin of scandal, even if the other is already prepared to sin. The reason is that thus an occasion is given of greater ruin (II, 47; l. El. qq. ref., n. 8 and 16).

[15] Thus II, 45; H. Ap., IV, 25; l. El. qq. ref., n. 6; cf. Lugo, disp. 16, s. 4, n. 159; Salmant., tr. 21, c. 8, n. 53. Modern authors generally say that in indirect scandal only charity is wounded. Their reason is that, in relation to the virtue, there is a mere permission of the will, a rather interpretative volition (Lehmkuhl, I, 789). Yet this reason does not please. For, in indirect scandal, the will not only does not impede the violation of the virtue, but becomes the cause (surely moral) of this violation. For the rest, a sufficient response is desired to our argument, sought from the specific similarity of the direct and indirect voluntary.

Yet he will not be guilty of scandal who, from a just cause, asks for a thing good or indifferent in itself, although the other, in furnishing it, commits sin. Thus, for example, it is lawful, for the sake of necessity or usefulness, to ask a loan from a usurer, the sacraments from a sacrilegious priest, the conjugal act from an abusing spouse. Cf. n. 315. But if a just and proportionate cause is lacking, it is not licit, without guilt of scandal, to do these things (II, 47, 77, 79).

2. To advise a LESSER EVIL, so that a greater may be avoided, to the execution of which another is already determined, is licit of itself, according to the more probable opinion (whether this lesser evil which is advised is of the same species or of a diverse species); namely, when the one acting is so firmly determined to execute the evil that in no other way can he be turned away from the execution. The reason is that then the one advising does not seek evil, but good, namely the choice of the lesser evil. Hence, to one prepared to kill an enemy, it is licit to advise that he rather strike him, or steal something from him (II, 57). Cf. *Stimmen aus Maria-Laach*, 1911, p. 380.

Yet per accidens, by reason of justice, this is not licit: namely, if he is advised that a lesser evil be inflicted upon some other determinate person, which that person here and now is not bound to suffer (III, 565). Cf. n. 980.

3. To PERMIT an occasion of sinning (not evil of itself) is licit; even if the fall of another is thence foreseen, or probably feared; namely, if a cause is present, for example, that the delinquent may be corrected. For permission of itself is not induction; it is a merely indirect volition.

In this way, a father and a master can refrain from removing an occasion of stealing from sons or servants whom they have known to be prone to theft, so that, being caught, they may be punished and come to their senses; for one theft is reasonably permitted so that several may be avoided. Thus also it is licit for custodians of fields, vineyards, and forests to hide themselves, so that those causing damage may be caught, and, being punished, may be turned away from inflicting further damage.

Thus finally a man having a suspect wife can lay snares for her and catch her in the crime, in order that he may provide. Thus St. Thomas and others rather commonly. Cf. II, 58; H. Ap., IV, 30.

4. Probably it is also licit to PLACE an occasion, if a just cause is present; for only an indifferent act is posited, and the evil is permitted with sufficient reason.

Hence, probably the master does not sin who deliberately leaves open the chest in which money is kept, for the end that he may test the doubtful fidelity of a servant. St. Thomas (2.2, q. 78, a. 4) gives this general rule: "To induce a man to sin is in no way licit: yet to use the sin of another for good is licit."

5. In sins which necessarily have an ACCOMPLICE, the circumstance of induction is not to be explained in confession, according to a sufficiently probable opinion. For since in sins of this kind a mutual wounding of charity is found, the circumstance of induction is only an aggravating circumstance, within the same species, against charity, and therefore is not necessarily to be disclosed in confession. But he sufficiently accuses the sin of scandal who confesses the species of the sin, for example fornication, adultery, incest, etc. (II, 46; H. Ap., IV, 26; l. El. qq. ref., n. 7). Except, unless the one inducing to evil had used threats, or prayers so importunate that they could be equated with force.

6. From these things you will resolve: 1. A penitent does not satisfy in confession when he says: I gave scandal; but besides his own sin by which he gave scandal, he must express the species of mortal sin to which, by his evil example, praise, blame, etc., he gave occasion; besides, the number of persons to whom he furnished, or probably could furnish, an occasion to such sin; likewise, the quality of himself and of the person scandalized, whenever from this a new species is had; similarly, the unjust mode, if he used force or threats. But as regards those penitents who, in relation to indirect scandal, adhere to the opinion of modern authors (cf. n. 507), let the confessor act according to the principles to be established n. 1789.

7. Let the confessor and preacher gravely rebuke those giving scandal, after the example of Christ saying: Woe to that man by whom scandal cometh (Matt. 18:7). For by their work the world is filled with sins, and hell with souls (*Inst. cat.*, P. I, c. 1, n. 46).

2. On the Permission of Passive Scandal The state of the question is whether it is licit to posit a good act having the appearance of evil, or an act wholly good or indifferent, from which passive scandal is foreseen as going to arise. That this is licit when the due conditions intervene is already established from the things said about the indirect voluntary (n. 315). Therefore it remains that we show when the due conditions are found, and since, in relation to the first three, there is no difficulty, there remains to be weighed when the fourth condition is verified, namely, WHEN A SUFFICIENT REASON IS GIVEN for permitting the scandal of neighbor. Yet we forewarn that here it is chiefly a question of grave scandal; although the things which we are about to say also hold, in due proportion, concerning scandal in light matter.

511. PRINCIPLES. I. Grave inconvenience is a sufficient reason for permitting scandal given or scandal of the little ones. This is established from the fact that charity does not oblige one to undergo grave inconvenience lest neighbor suffer harm which depends upon his free will, since then he is not constituted in strict necessity (cf. n. 480 and 519). But we are bound with light inconvenience, because from charity we ought to impede the sins of neighbor when we easily can (cf. n. 493). But a greater cause is required if a graver sin is feared, if there are several to be scandalized, if it is more certainly foreseen that scandal will follow (II, 48, 49).

Moreover, in practice, we can avoid scandal either by concealing the action, or by deferring it to another time, or by omitting it altogether; and specifically, as regards scandal given, or when the work from which scandal is foreseen bears before itself the appearance of evil, the occasion of ruin is to be removed, as far as it is in the power of the agent (yet not with grave inconvenience), by admonition made to neighbor concerning the rectitude of the action, for example on account of a dispensation, an excusing cause, etc. But if, after the admonition has been given, the scandal persists, it can now be equated with pharisaical scandal (II, 52).

II. Any reasonable cause whatsoever is a sufficient reason for permitting pharisaical scandal. The reason is that this scandal arises from the malice alone of neighbor. It is clear besides from the example of Christ, who despised the scandal of the Pharisees: Let them alone; they are blind and leaders of the blind (Matt. 15:14). Wherefore if some reason of utility is present, whether one's own or another's, no further care is to be had concerning this scandal. Yet some reason is required, because charity demands that without any cause we should not offer even a remote occasion of sin to one who is about to sin from malice alone (II, 52).

512. Corollaries. 1. Precepts which here and now oblige are never to be omitted for avoiding any scandal whatsoever. The reason is that then to pass them over is sin, and consequently illicit. In that case the rule of Law is consonant: "More usefully is scandal permitted to arise than truth abandoned" (Reg. 3, l. 5, tit. 41).

Of this kind are: a) Precepts which are concerning things necessary for salvation, as the precept of receiving faith and baptism, and consequently also the precept of ministering a Sacrament necessary for salvation.

b) Precepts of natural law urging here and now, and not ceasing on account of changed circumstances. Thus on account of no scandal to be avoided is it licit to lie (II, 50).

c) Precepts of positive law, when pharisaical scandal is foreseen; because if they did not oblige and were omitted, an occasion would be given to depraved men of maliciously impeding the goods of others. But whether they oblige, and therefore are to be observed, when scandal of the little ones is foreseen, is controverted. Some probably affirm, because even positive and human precepts do not cease to oblige when scandal is not given but accepted. Others more probably deny, because there is present a conflict of laws, in which the natural precept (namely of impeding the sin of another) removes the obligation of the positive precept, which therefore is to be omitted, yet not with great inconvenience. This opinion is to be recommended only for one time or another, since frequent omission would induce grave inconvenience (II, 51, 53; cf. H. Ap., IV, 28; *Conf. dir.*, IV, 14). Whence, in practice, since each opinion is probable, a woman, in order to avoid the sin of her husband, who would take from it an occasion of blaspheming, can well omit the precept of hearing Mass, or of observing fast, once or again, but is not bound to do so. Similarly, a girl, lest she offer herself to the sight of a young man by whom she knows she is basely loved, rightly omits Mass once and again, so that thus the other can notice that he is avoided by her.

2. Works of counsel or indifferent works are sometimes to be omitted for avoiding scandal of the little ones. Thus, for example, a woman who would foresee that she would be to some determinate person the cause of ruin would be bound once or another time, provided it can be done conveniently, to flee his sight, by going, for example, to another church, walking by another road, not approaching the window, and similar things.

But she would by no means be bound to do this for a long time, since this would be very burdensome. "For, ordinarily speaking, a cause suffices to excuse her at least from mortal sin, lest she be deprived of her liberty…; since it would be a very inconvenient thing for a woman, and liable to scruples, if she always had to weigh whether she has a just cause of going out or not." Nor is she bound to abstain from public walking on account of the scandal of others; for this must be judged too grave for her. Yet a girl could not be excused from mortal sin if, led by vanity, even if she does not intend the scandal of that man, she deliberately offers herself to his sight. Likewise if she seeks some place which she would not approach unless she knew her lover was present there (II, 58).

3. Temporal goods, if they are one's own, can indeed licitly be given up for avoiding the scandal of others; but they do not necessarily have to be given up.

Hence you are not bound to pay more than is fair to some workman, although you foresee that he will blaspheme; because

that inconvenience, although light in itself, can occur often and among many; whence, in the whole complex, it becomes grave. Similarly, a parish priest, of himself, is not bound to remit the stole fees owed to him, although the parishioner, sufficiently conscious of his obligation, breaks out into various detractions, etc.; for thence grave inconvenience would come both to the parish priest himself and to his successors (II, 52; St. Thom., 2.2, q. 78, a. 4).

Note. We said if they are one's own; for if the goods are another's, they cannot even licitly be given up, unless from the consent of the owner, at least reasonably presumed.

3. On the Obligation of Repairing Scandal REPARATION OF SCANDAL generally demands two things for itself: one, sometimes under grave sin, that the further influence of scandal be removed as far as can be done; the other, which ordinarily does not seem to urge under mortal sin, that the amendment of him who suffered scandal be efficaciously consulted.

513. PRINCIPLES. I. He who from scandal has induced neighbor into sin, or into a harmful error, is bound from charity to repair this evil according to his powers. And indeed, if anyone whatsoever is bound from charity to correct one sinning or about to sin, a fortiori he who, by giving scandal, was the author why neighbor fell into sin or into danger of sinning, is bound by this obligation, even with greater inconvenience than all the rest. The same is to be said a fortiori concerning him who, through induction properly so called, persuasion, or counsel, made another sin or err.

Hence: 1. He who gave scandal to others by wicked counsels which are still efficacious must render them inefficacious through diligent revocation to be made known to the same persons, either by himself or by another. Thus an author who, through heretical or obscene writings, was to others a cause of sinning, is bound to impede the diffusion of his books, publicly retract his writings, and compose and publish new ones, if he can, for the edification of the Christian faithful.

2. He who induced neighbor into a stable perversion, for example of concubinage or irreligiosity, is bound under grave sin to labor for his conversion, so that he may lead him back, either by himself or by others, into the path of virtue. We say either by others; for sometimes it is better to use the work of others, especially when it is a question of the conversion of an accomplice in filthy matter: in which case the occasion of sinning could easily be brought back.

3. As regards ordinary scandals, which bring forth not full perversion but only passing sins, these regularly cannot be repaired except by that general reparation which is contained in the cessation itself from scandal, in good example, in prayer for the one scandalized, and similar things.

4. II. Public scandal obliges the guilty person to public reparation. Otherwise the further influence of scandal is not sufficiently removed, nor are all the scandalized admonished concerning the evil which they suffered.

Wherefore a concubinary, a usurer, or another sinner of this kind is to be constrained, if it can be done, to public reparation of scandal: suppose that, his commerce or wicked business having first been abandoned, he publicly approach the sacraments with devotion.

III. The scandal of a Superior, given to subjects, must be repaired by him from office. Thus, for example, a father of a family who scandalized domestics is ordinarily to be constrained to repair the scandal, if this is still judged efficacious, so that he may manifest to the same domestics his displeasure concerning his evil example, and paternally exhort them not to follow it in the future.

IV. Scandal unjustly inflicted must be repaired from justice. It is said: unjustly inflicted, that is, by fraud, force, deceit, unjust fear. It must be repaired by restraining the influence of the action. The reason is that each one has a right not to be injured unjustly in spiritual goods.

But after the unjust means have been removed, the one scandalizing is probably bound only from charity to repair the scandal. For when force or fraud has now ceased, and the other knows that he was deceived, he can, if he wishes, extricate himself from sin by himself, and therefore, if he does not amend himself, this is imputed to him (III, 661).

4. On More Frequent Scandals 515. Those are to be held guilty of much pernicious scandal:

1. Those retaining the custom of blaspheming, especially before younger persons, most of all if before children.

2. Reporters of grave detraction, relating the matter to others; for thence arise hatreds and quarrels.

3. Messengers of love to some woman, whether married or unmarried, apart from the end of marriage. Thus especially servants and maidservants sin who furnish help to sons of families for fostering base loves (*Inst. cat.*, P. I, c. 1, n. 45).

4. Those spreading books of harmful reading, namely who scatter them, sell them, or hand them over to be read by others. Likewise, those who make, spread, or publicly sing filthy little songs or poems.

5. Those introducing into schools a pernicious manner of teaching, or dangerous books. Without scandal anatomical and surgical books, or even books of pagan authors not sufficiently expurgated, cannot be handed into the hands of boys (cf. Const. *Officiorum ac munerum*, n. 10).

6. Those uttering lascivious speeches, whether in clear words or equivocal ones (yet sufficiently understood by the hearers). This is, says St. Alphonsus (l. c.), "ordinary scandal: men speak dishonorably before women, youths, and sometimes even before innocent children. And alas, what ruin they cause!..."

7. Those given to alluring performances. Thus the authors, actors, and actresses of comedies in which neither religion, nor virtue, nor the sanctity of marriage is spared; or of theatrical dances in which, by reason of the dress of the dancing-women, by reason of the obscene manner of the dances, or of lascivious gesticulation, filthiness appears (III, 428). Cf. n. 835. Likewise the authors of a cinematographic exhibition which infects especially the mind of youths, excites the imagination, indeed provokes the will to crimes to which a man would certainly be less prone unless he saw them remain unpunished, and their authors praised on account of their cunning and dexterity. But whether and how far the spectators of such exhibitions (who ordinarily defile themselves with many internal sins) are also guilty of grave scandal must be resolved from the principles later to be established concerning cooperation (III, 427). Cf. below n. 519, 525, 836.

8. Painters, sculptors, photographers, and others who at home or in gardens or museums, etc., exhibit to the sight of all obscene statues or images, namely those in which those parts of the body (we do not say of an infant, but of a more grown person), which modesty teaches among all peoples are to be veiled, appear naked or covered only by a thin veil. "Otherwise if, with other parts uncovered, the shameful parts are covered" (II, 56). Yet there is no one who does not know that images and statues truly can be obscene when, although all things are covered, from the gesture and manner of holding oneself a mind addicted to lust appears.

9. Persons who by a special title ought to remove others from sin; thus sin: a) Parents and masters who permit their daughters or maidservants conversations in hidden places with spouses and lovers. b) Wives who, by admitting their graceful lovers to familiar conversations, are an offense to their husbands and others, as experience teaches. And the same must be said of a husband who keeps a maidservant suspected by his wife not without reason. c) Clerics who, keeping at home a person suspect to the people, furnish an occasion to sins of detraction, calumny, and contempt of the clerical state, etc. etc. (Council of Trent, Sess. 25, c. 14, *de Ref.*).

516. You will ask. What is to be thought concerning THE ADORNMENT OF WOMEN?

517. Moderate adornment, according to the decency of state, is licit of itself, because it does not give occasion of sinning. Hence there is no sin if a woman decently adorns herself in order to please her husband, or to find a spouse. But if she acts from levity or vanity, she sins venially (II, 54).

518. Excessive adornment, namely that which exceeds the condition of one's own state, is of itself venial, because of itself it does not gravely move others to equal luxury. But it becomes mortal: a) if it is indulged in for provoking the lasciviousness of men; b) if the fall of some man in particular is foreseen. Women who use rouge and pigments, scandal being prescinded from, sin only venially; but not at all, if they intend thus only to conceal defects of the body (II, 54, 55; III, 425).

519. Immodest adornment, such as is not rarely accustomed to be displayed at solemn dinners and evening gatherings, is illicit according to the degree of immodesty.[16]

Hence: a) if the uncovering is so immoderate that the breasts are shown almost entirely or are covered with a very thin veil, it is of itself grave scandal, because such immodesty of itself incites to lust; b) but if it is not so immoderate, so that only the arms, or the breasts in part, are uncovered, those women indeed are not excused from mortal sin who introduce the use of such dress where it does not prevail; but others who follow what has already been introduced, although they are to be severely rebuked, nevertheless are not, of themselves, to be condemned for mortal sin; because custom causes concupiscence to blaze up much less. For the rest, by denudation of the breast women not rarely seek to be dishonorably desired by men, in which case direct scandal will be present. Wherefore this worst custom is to be restrained and extirpated

[16]It is helpful to transcribe the things which St. Alphonsus (II, 55, Query; ed. G., I, p. 351) puts before his opinion on this matter: "When I discharged the office of preacher, I often attempted also to reproach this pernicious use; but since here I perform the office of writer on a moral matter, it is necessary that I say what I think according to truth and what I have learned from the Doctors." Cf. Berardi, *de Occas.* (ed. 6), II, n. 149, 160; Lehmkuhl, I, 796.

by preachers and confessors as far as can be done; c) what has been said concerning denudation of the breast seems also to be said concerning garments so studiously made, tight and thin, that the whole conformation of the body appears.

§ 3. On Cooperation in the Sins of Others

We shall treat: 1. of cooperation in general; 2. of the various modes of cooperating, or of the cases which are accustomed to occur more frequently.

1. On Cooperation in General 517. DEFINITION. To cooperate, in general and by force of the word, is the same as to work with another.

But someone can work with another both by inducing him to act, and by furnishing help to him, already determined to act, by which he may be able to accomplish his work.

Concerning the first mode of cooperating, which is done by induction and which is compared to SCANDAL, we treated in the preceding disputation. Therefore it remains that we discuss also the second mode, which is done by furnished help.

Therefore, properly COOPERATION is named and can be defined: concurrence with the depraved action of another principally acting.

DIVISION. Cooperation is distinguished as manifold, according to the various modes by which the cooperator concurs with the depraved action of another:

I. By reason of the evil act, it is formal or material: 1. FORMAL cooperation is that which concurs even with the evil will of the one principally acting, or is the concurrence which someone furnishes with that intention (whether explicit or implicit) that it may be a help to the one principally acting in executing the evil work.

This can be done in two ways, namely: a) through work which, taken concretely, by its very nature, that is, from the end of the work, is ordered to the depraved action, for example, in a scenic work by which religion is derided, to act the parts of an actor; b) or through indifferent work, which indeed not from itself, but from the special intention of the cooperator, that is, from the end of the one acting, is directed to a depraved action of this kind: for example, if someone furnishes money to another, collected for spreading errors; or if someone accompanies another to a place of filthiness, so as thereby to render him more bold for sin.

2. MATERIAL cooperation is that which furnishes the material of sin; which therefore, apart from the intention and with the mere permission of the cooperator, concurs with the evil action of another. It is furnished through work which neither of itself nor from the determination of the cooperator is ordered to this evil action, and which the one principally acting can use without sin; although, on account of his malice, he abuses it for sinning. Cooperation of this kind would be, for example, the furnishing of wine to one who wishes to make himself drunk; the handing over of keys to one who enters in order to steal (II, 63; H. Ap., IV, 31; cf. III, 571; *Conf. dir.*, IV, 16).

II. Material cooperation can be subdivided:

1. By reason of the help furnished, it is immediate or mediate. - It is called immediate when the cooperator acts with the one principally acting in the evil act itself, for example by helping a thief carrying off another's thing; but mediate when the cooperator furnishes something which serves the one principally acting for executing the depraved work, for example by handing over a ladder to a thief about to invade a house.

2. By reason of connection with the depraved act, it is proximate or remote: namely, according as, from its nature or from the circumstances, it is judged to have or not to have a moral connection with the sin of the one principally acting. Thus, for example, proximate cooperation is to give a sword to one about to kill; but remote cooperation is to furnish the material from which the sword is to be made (cf. n. 313, 2).

Note. 1. Concerning cooperation which becomes formal from the intention of the cooperator, there can scarcely ever be difficulty; because one cooperating in such a way directly intends the sinful action and evidently becomes a participant in the malice of the one principally acting. But whether and when this depraved intention must be MANIFESTED to the one principally acting, in order that the cooperator may also be held to reparation of harm, is a question which will be weighed in the treatise on the seventh Precept (cf. n. 976 seqq.).

2. But concerning cooperation which is formal from its nature, and objectively can never be reputed material, dispute frequently occurs; because, in order to define whether some work is ordered of itself and from the intrinsic end of the work to the depraved action of another or not, there is often need of most attentive consideration and much sagacity.

To elucidate this matter, it helps to add the following:

a) An action ordered of itself to a depraved end is to be considered in such a way that it neither has nor can have a good end. This can be verified either concerning an action taken speculatively, or concerning an action apprehended concretely, that is, clothed with such circumstances. Thus to paint, in a temple of heretics, an image of the founder of the sect with an aureole; to discharge a gun with another against someone, are actions of themselves ordered only to an evil end.

b) An action which, for the one principally acting, is a condition without which he could not act does not by that very fact become an action ordered solely to an evil end; for example, to place one's shoulders under, says St. Alphonsus (III, 571), to furnish a ladder to a master wishing to ascend for fulfilling lust, is not cooperation of itself ordered to sin.

c) From the fact that the one principally acting becomes more bold for the attainment of the intended end, it cannot always by that very fact be said that the cooperation of another is formal; for example, in the example of one placing his shoulders under, these things are verified; and nevertheless he who places his shoulders under furnishes merely material cooperation. But if the cooperator who renders the one principally acting more bold, by his action, as it were acts his person and receives in himself a part of the evil work, he becomes guilty of formal cooperation: for example, one who for his master writes truly amorous letters containing filthy things; one who to a thief prepared for sinning indicates, at his request, the time and mode so that he can commit his crime more securely; one who, while someone indulges lust in a bedroom, acts as watchman, formally cooperate in the sin.

d) Formal cooperation is not synonymous with illicit cooperation: for every formal cooperation is illicit, but not vice versa; for example, he who, on account of a reason not proportioned to the evil, furnishes material cooperation certainly sins, but does not become guilty of formal cooperation. The number of actions which of themselves, from the end of the work, are formal cooperations is not so great.

518. PRINCIPLES. I. Formal cooperation is never licit. For formal cooperation, since it includes some consent of the will in another's sin as sin, is intrinsically evil, and cannot be without fault. Therefore it can be excused by no reason, not even fear of death (H. Ap., IV, 31).

Indeed, no otherwise than scandal, it has at least a twofold malice: one against charity, the other against the virtue which is wounded (cf. n. 507).

Hence it is never licit to furnish work which, from its nature, can be ordered only to sin as such: as would be, for example, to make instruments suited only to impeding generation, to prepare remedies destined only to procuring abortion, to seek a concubine for a master, to write amorous and filthy letters to a concubine for a concubinary, to invite a woman to commit crime with the master, etc. (II, 67). Likewise, according to St. Alphonsus (II, 64, 65, 68; l. El. qq. ref., 11), it is never licit for a servant to carry amorous letters to the concubine of his master, or to carry little gifts and dainties to a prostitute; because this service also, from its nature, as regards this act taken concretely, fosters base love, and by its nature is born to produce no other effect of itself.[17] And the same must be said of a girl if she willingly accepts gifts of a lover basely desiring her. For thus she fosters his base love, in which she at least implicitly consents (II, 76).

But if, on account of peculiar circumstances, the action of the cooperator does not involve consent of this kind, it can be without sin; for example, if a girl accepting gifts offered before others cannot refuse without stirring up suspicions and incurring danger of infamy. Then her acceptance becomes morally another action, insofar as she simply consults her reputation. Thus also postal officials who carry letters which, from certain indications, they know to be amorous, simply fulfill a public function, in the name of the State.

519. II. Material cooperation is sometimes licit. It is licit, namely, if three conditions are present, from the indirect voluntary, that is: 1. if the action of the cooperator is good of itself, or at least indifferent; 2. if his intention is right; 3. if there is present a just cause, and proportioned both to the gravity of the sin of another, and to the proximity of the concurrence which is furnished for the execution of the sin.[18]

"The reason is that when you furnish an indifferent action without a depraved intention, if the other should wish to abuse it for executing his sin, you are not bound except from charity to impede it; and because charity does not oblige with grave inconvenience, therefore, positing your cooperation with a just cause, you do not sin: for then that man's sin does

[17] Indeed the Holy Doctor adds (l. c.) with Sanchez that a servant cannot furnish such services when, certain of the base love, he doubts whether the letters contain amorous things (*Vind. Alph.*, I, p. 202).

[18] If from defect of these conditions material cooperation becomes illicit, at least a twofold sin is committed, both against charity and against the virtue wounded, as we noted for formal cooperation.

not proceed from your cooperation, but from the malice of him who abuses your action. Nor does it avail to say that your action, although indifferent, nevertheless, joined with the circumstance of the depraved intention of another, becomes evil; for in reality, your action is not conjoined of itself with his evil will, but he conjoins his evil will with your action; whence your action will not then be a cause influencing the sin of itself, but only an occasion which he abuses for sinning" (II, 63).

Moreover, for judging when the CAUSE is just and proportionate, above all let it be observed as a rule what the Doctors say; because, since this depends upon the estimation of prudent men, the more common opinion in this matter will also be the more probable. - Therefore generally it can be said that "a cause is required so much the graver: 1. the graver the sin is whose occasion is given; 2. the more probable it is that, if you do not cooperate, the other will not sin, or the more certain the effect of the sin is; 3. the more closely your cooperation touches the sin; 4. the less right you have to such a work; 5. finally, the more the sin conflicts with justice, and this on account of harm to a third party" (II, 59; H. Ap., IV, 32). Cf. above n. 314.

520. Hence the following SPECIAL RULES are drawn out:

521. It is always licit to cooperate materially with the sin of another in order to avoid a greater evil; for the axiom holds: "Of two evils the lesser is to be chosen." Thus, for example, you licitly furnish wine to one about to make himself drunk, lest he break out into blasphemies (II, 69; V, 77).

522. It is licit to cooperate materially in the lesser harm of neighbor, so that HE may be freed from a greater one, if another means is lacking; for since the owner can dispose of his own thing, he is judged reasonably to will this. Thus it is licit to help an enemy to lay waste a house, to steal, etc., lest the owner be killed (II, 74).

523. It is licit to cooperate materially, even IMMEDIATELY, with harm to a third party, for example by breaking doors, so that one's OWN harm of a superior order may be avoided. Thus it is lawful to burn a house in order to avoid death. For one constituted in such necessity can suppose the consent of the owner, who would be unwilling irrationally. But MEDIATELY it is licit to cooperate if it is a question of avoiding equal harm to oneself. Thus it is licit to give back a sword to one about to kill, so that one's own life may thereby be consulted. The reason is that, from the order of charity, we are not bound to impede the harm of another (even if this one is in extreme necessity) with equal detriment to ourselves (II, 76; III, 571; *Istr.*, X, 56).

524. The cause which suffices for excusing a private cooperator does not suffice for excusing a Superior, magistrate, or anyone else who, not only from charity, but by force of his function, is held to ward off evil or to impede others' sins; for where there is a twofold obligation, there the excusing cause must necessarily be morally twofold. Thus, for example, parents must impede the sins of children, parish priests the sins of parishioners, magistrates the delicts of citizens, etc. Thus also merchants sometimes, from a special law, are bound not to sell certain dangerous weapons, poisonous drinks, etc. (H. Ap., IV, 32).

525. The cause which would excuse you if the one principally acting would attain his end equally easily does not suffice for excusing you if, your concurrence being denied, the other would not have sinned.

2. On Various Cooperations Since an enumeration of all the cases in which cooperation intervenes is plainly impossible, it will be enough to have enumerated those which are accustomed to occur more frequently, and from which the rest can be judged.[19] But the prudent

confessor should ADVERT: 1. that good faith often excuses in this matter; 2. that for various places and times, much attention must be given to common estimation; 3. that in doubt, favor is not to be given to liberty where the reason of scandal, danger of perversion, of formal sin, etc., stands in the way; and if it is a question of a public matter, recourse to Superiors and to the more prudent is not to be omitted (cf. Konings, 312; Aertnys, l. II, n. 79).

I. On the Cooperation of Servants 521. 1. To the violation of the law of abstinence. a) If the sin of the master violating the law is established, it is not licit for a servant to prepare or serve forbidden food from the sole reason of service, because it is a question of proximate cooperation; it is licit only on account of notable detriment. b) In doubt, the master is presumed to be excused by a just cause. - But in practice, rarely will either doubt or notable detriment be lacking (II, 68).

[19] Concerning cooperations in false rites there was already discourse n. 432, where communication with non-Catholics was treated. It helps to add the things which the Holy Office, on April 26, 1894, established for the Russian Empire: Teachers of religion, not asked by pupils (concerning communication in sacred things), the most grave circumstances of affairs being attended to and scandal removed, can dissimulate, if the children are in good faith... Confessors can do the same in relation to the parents of pupils, if they are not asked and the parents are in good faith. See the whole Instruction in Lehmkuhl, I, 809.

2. To usury. a) He who helps a usurer only in counting monies, writing accounts, or carrying a pledge, can be excused by the reason of service alone. b) Otherwise, if he exacts usuries: because exaction is a more proximate cooperation with the sin of the usurer, even if he exacts amicably. c) But if he exacted by force or threats, he would not only sin, but besides would be held to restitution, the master failing.

3. To lust. Three kinds of services must here be distinguished: a) services which from their nature are determined to filthiness; b) services indifferent of themselves which concur proximately with the filthiness of the master; c) services which concur with the same only remotely. Now:

Services of the FIRST kind are excused by no reason, since they constitute true formal cooperation (cf. n. 518).

Services of the SECOND kind, because they are proximate cooperations, cannot be excused from the sole reason of service, but only from another cause, whether grave or most grave, according to the diversity of the case. Thus, for example, according to the mind of St. Alphonsus (II, 64), the sole reason of service does not suffice, but besides there is required at least fear of grave harm, in order that a servant may licitly accompany his master to a place of filthiness; or saddle the horse for him departing there (even if the master is not rendered more bold by these things); or bring the concubine in a carriage to the house of the concubinary master, if it had already been agreed between him and the concubine; to offer a shoulder to one ascending to a woman not unwilling, etc., even if in these matters the servant furnishes merely material work. But a most grave cause, indeed fear of death, would be required in order that he could licitly help the master by carrying a ladder, or placing his shoulders under, or opening a door by force, when the master wishes to ascend to deflower a virgin.

Services of the THIRD kind, since the cooperation is remote, can be excused from the sole reason of service. Hence, for example, it will be licit for a servant, in the usual manner, to open the door to a concubine or prostitute, if, if he himself does not open, there is another who will open. But if the servant were many times compelled to such services, he would have to be earnestly admonished to leave the service (II, 66).

It is asked. What concerning public carriage-drivers conveying others to a brothel?

Resp. 1. It is proximate cooperation; therefore they are not excused by reason of wages, but only on account of grave harm to be avoided; for example, if a public carriage-driver feared lest he be dismissed, not easily about to find another master (II, 75; l. El. qq. ref., n. 15). Likewise, if carriage-drivers are held by civil law to convey travelers wherever they wish.

2. They can never offer their work for leading someone more safely or more secretly, or indicate to one ignorant where the brothel is. For it is formal cooperation (II, 64, 75; Kon., n. 311).

II. On the Cooperation of Innkeepers 522. 1. To violation of the law of abstinence. a) Of themselves it is not licit for innkeepers, on a forbidden day, to serve meats of their own accord: because it would be a true and at least remote cooperation with another's sin, without a just cause (II, 80; l. El. qq. ref., n. 17). But it seems licit (at least where the usage prevails) universally to serve meats to guests asking for it, provided their request is not made in contempt of religion (III, 1030, q. 3).

b) Those innkeepers who establish a common table (*table d'hote*), at which guests sit jointly, or who await travelers arriving by public carriages or railway at a determined hour, taught by experience that many will ask for meat or broth from meat, can licitly have these things ready, so that they may then set them before those asking; or even spread the table with licit and illicit foods, offer them, mark them on a card, so that each may choose what has pleased him.

The reason is both that among so many, many are presumed to be legitimately excused or to be in good faith, whom to question individually would be grave or dangerous; and that such cooperation does not seem to be except remote, and if sometimes it were proximate, it must be said that in the present state of affairs it is impossible, at least in many places, to exercise the office of innkeeper otherwise (Kon., 310).

c) Those who have received some Catholics into board for an agreed price (*pension*) ought not so easily to furnish meats on forbidden days; because it is proximate cooperation, and in a private house the laws of the Church are more easily observed, nor does there generally occur so grave a reason for cooperating (ibid.). Yet those are more easily excused who, on fast days, in morning and evening, furnish foods not prohibited by reason of quality. For more are excused from fasting than from abstinence, on account of grave labor or not firm health. Therefore the cooperation is rather remote, and the matter is safely remitted to the conscience of individual boarders.

2. To drunkenness. It is not licit for innkeepers to give wine to those concerning whom they foresee that they will become drunk, unless on account of fear of grave evil, for example to forestall blasphemies or brawls, or also if from refusal they fear lest they be notably injured on account of diminution of guests: for it is proximate cooperation. Other evils also are to be weighed which often follow from drunkenness, as dissipation of goods, the misfortune of the wife, scandal of the children, etc. (II, 69).

3. To lust. a) Innkeepers are guilty of most grave sin and unworthy of absolution who, formally cooperating, furnish secret rooms for lust; or who conduct wholly filthy and lascivious dances at their place, unless the filthiness or lasciviousness would happen accidentally, for example in wedding dances. b) Universally, innkeepers are to be deterred as much as possible from instituting dances, because dances are generally done less honorably and furnish occasion to innumerable sins. Moreover, for judging whether absolution is to be denied to those wishing to institute them, the circumstances are to be inspected, and the mode in which the dances are accustomed to be done (Kon., n. 310). Cf. n. 829.

4. To harmful reading. a) Innkeepers cannot expose for reading those public papers which evidently and ordinarily are adverse to religion or morals, or positively prohibited by the Bishop, even if guests on that account cease to flow together to them; for in the latter case it is a question of proximate cooperation in a public evil. The same is to be said of those papers which generally and evidently are adverse to the clergy, and are the cause why the faithful detract from the veneration owed to them. A sufficient reason for exposing papers of this kind could be only a particular necessity, for guests, of knowing something from them, for example news pertaining to commerce, which would be sought elsewhere in vain. But in this case the master of the inn, in the best way which can be done, ought to signify that he exposes such papers only on account of the aforesaid reason, and does not approve their arguments. He must also watch lest they be exposed without necessity, and that they be destroyed as soon as possible. b) Commonly a sufficient reason is present for admitting those papers which treat of merely political matters. Nor do innkeepers seem to be bound to reject a newspaper which now and then contains something less right by reason of faith or morals, provided it is not generally opposed to religion or good morals (Kon., n. 310, d). Cf. n. 453.

III. On the Cooperation of Workers and Merchants 523. To abuse of the things which they hand over. 1. If the thing of itself is determined to evil, and has no good use, as, for example, an idol for pagans in a region of unbelievers; a theatrical garment manifestly filthy; a woman's adornment obscene of itself; a scenic mask which has no other end than to turn religion and its rites and ministers into mockery; the distinctive insignia of a Masonic sect or of another of the same kind; a drug destined solely to procuring abortion, etc.; it is clear that the making and sale of this thing are generally altogether illicit.[20] - Whence St. Alphonsus (II, 72): "The sale of poison," he says, "which does not serve except for the killing of a man, is simply evil." But poisons which can be useful may not be sold except to those who are thought to be going to use them well, for example for making colors, or for medicine.

2. If the thing is indifferent of itself, but from the circumstances it is established that the buyer is led by an evil intention, it will not be licit to make, rent, or sell it, except from a grave or proportionate cause, even if it would equally be bought from others. Thus it is not licit to sell ornaments to a girl about to abuse them, unless otherwise the seller would suffer notable inconvenience (II, 71; l. El. qq. ref., 14; cf. *Vind. Alph.*, P. II, q. 8). It is said: even if it would equally be bought from others; because we are bound, at least short of grave inconvenience, to admonish one sinning, and especially one giving scandal, when opportunity is given. Now, "the denial of my cooperation," says Sanchez (*Decal.*, l. 1, c. 7, n. 16), "is a certain kind of admonition, by which neighbor could have been recalled, if not from the present sin, at least from a future one, from the memory of this denial."

3. Catholics are not to be disquieted who, in order to avoid grave harm, build or restore synagogues of Jews and temples of heretics, provided scandal is not present and it is not in contempt of religion. On account of defect of this condition, they are bound to abstain from the work: a) where a work of this kind is commonly held as a protestative sign of false religion; b) or something is contained in it which of itself directly and solely expresses reprobation of Catholic worship and approbation of the condemned worship of heretics; c) or it is established that Catholic artisans are driven or called to the work by heretics in contempt of the Catholic religion (from the declaration of the Holy Office, Aug. 17, 1613; Jan. 14, 1818; July 7, 1864).[21] The Holy Office declared the same on July 27, 1892,[22] concerning

[20] We say generally; for in almost all concrete cases the making or preparation of such things is directed to an evil end, and cannot have a good one. Yet there can be some cases where material cooperation will rather be able to be present: for example, a dishonorable woman's adornment, although of itself it does not yet cover the body honorably, can nevertheless be corrected by other garments added over it: from which it happens that the danger rather arises from the malice of the buyers. See Lehmkuhl, I, 831; cf. ib., I, 814 seqq.

[21] Cf. Gallo, *Suppetiae*, I, p. 266 seqq.; likewise *Coll. Miss. Exter.* (Paris, 1880, n. 1089).

[22] *Can. Cont.*, XVIII, p. 162.

cooperation with cremation of corpses (cf. n. 1388bis). With the same cause existing, it is licit for Catholics, for the use of heretics, to make and sell organs, a pulpit, a supper-table, altars, a chalice, priestly vestments, etc. A fortiori, it is licit to build and adorn theaters, etc., provided the ornaments are not impious or dishonorable in themselves. A sufficient cause for excusing workmen is more easily given than one which would be sufficient to excuse architects, contractors, and masters of workers, since they are not placed in the same necessity as the workers.[23]

4. A graver cause is required in order that it be licit to sell land to heretics for building a temple, to rent or sell to those enrolled in a Masonic sect a house destined for their meetings, etc.[24]

5. But a most grave cause is required, suppose danger of death, of most harsh exile, or an equivalent danger, in order that it be licit to furnish work for building or restoring temples of false gods, etc. Others say that this is in no way licit, from decrees of the Holy Inquisition of the years 1629 and 1699. But the mentioned decrees seem to have been issued on account of peculiar circumstances, from which the concurrence of Catholics would have been formal cooperation and, from the concrete nature of the thing, a protestative sign of false religion (*Coll. Miss. Ext.*, n. 1070 and 1089; Gallo, l. c., p. 251).

6. If the depraved end of the one asking is not established, it is licit for workers, merchants, renters, etc., by the sole title of commerce, to hand over indifferent things to anyone asking; because in doubt no one is presumed evil. Thus, for example, strong liquors, dice, playing-cards, pigments, etc., are licitly sold, although many generally abuse them (II, 71).

IV. On the Cooperation of Printers and Booksellers 524. 1. To the printing of depraved books or papers. Cooperation is either proximate, namely in those who are masters of the printing office, publishers of books; in those who arrange the types, place the paper upon the types, turn the press, direct the printing; or remote, for example in those who prepare ink or paper, correct or arrange books already printed, apply fire to the machine in more recent printing shops, or exercise other ministries pertaining only remotely to the printing.

These things having been premised: a) In a printing shop erected solely or principally for an evil end, it is licit for no cause, not even mediately, to cooperate. Thus, for example, Catholics can in no way be occupied around Protestant printing shops which by profession oppose the Catholic religion. Cf. Lehmkuhl, I, 825. b) In a common printing shop, if rarely and as it were per accidens a depraved book comes forth, or in a newspaper certain things are sometimes published against faith or good morals, mediate cooperators can be excused from a grave cause. Indeed Kenrick notes: "Those who are occupied in turning the press, and do not set the types, are not judged to know the things which are printed, and therefore in a common printing shop, where books of every kind are published, they are not bound to make a distinction. But those who have the right of direction ought to put far away the things which are opposed to faith and good morals" (tr. XIII, n. 157).

2. To the propagation or publication of the same. a) To expose, sell, give, lend, procure for a master asking, etc., books altogether obscene or filthy is proximate cooperation, from which only very grave necessity excuses (Lehmkuhl, ib. 4). Those buying depraved newspapers for a year or for months of themselves sin gravely, because by their money they efficaciously concur in publishing them. b) It is not licit indiscriminately to sell to all, or to procure, heretical books, for example Protestant bibles; or other harmful books, for example those which defend errors fixed in the Syllabus; or books of non-Catholics which professedly treat of religion. Yet those do not seem to be condemned who procure books of this kind, or others prohibited by the law of the Index, for someone who specially seeks them, and who is not certainly known to lack the due license for reading them: concerning which the bookseller at least is not bound to inquire. See CONST. *Officiorum*, n. 3 and 46. c) Those who, in depraved newspapers or in sheets to be posted publicly, carry advertisements of those things which by their nature tend to the detriment of faith or morals, as, for example, a heretical sermon to be held, books professedly harmful, dishonorable dances, filthy spectacles, etc., if they do this knowingly, do not seem able to be excused from formal cooperation. For they indicate the opportunity of sin. But it is licit to announce harmful books in scientific papers, so that they may be known by those whose interest it is (Kon., 315, 317). d) But those who in depraved newspapers only announce things to be sold or rented; or who only write scientific articles, are to be blamed for merely remote material cooperation. The case is excepted in which the cooperation of the writer would furnish notable favor to these newspapers (Genicot, I, 240). If the Bishop, on account of the common good, entirely prohibits insertion, one must stand by his decision.

[23] Cf. Instruction of His Eminence the Cardinal Vicar for the parish priests of Rome (*A. S. S.*, vol. XI, p. 175).

[24] Cf. Scav., II, n. 1017, q. 6 (ed. 11). The Sacred Penitentiary, asked whether it is licit for Catholics to contribute money for building a heretical temple, in the year 1822 responded: "Affirmatively, but only for freeing themselves and their own temples from that inconvenient and scandalous simultaneity with Protestants." A prudent confessor will also accommodate this response to other cases.

V. On Cooperation in Alluring Matters 525. 1. To cooperate in dishonorable dances, whether by music or by rental of a place, is proximate cooperation. Yet the reason of grave harm will excuse a musician not producing sounds of that sort which pertain solely to the dishonorable manner of dancing; for in this case the dances become dishonorable from the malice alone of those dancing. Thus Suarez, Palaus, Giribaldus. Yet there are some who permit this in no way, because sound influences too much and more intimately inflames toward dishonorable dances (Scavini, II, 957). Cf. n. 829.

2. To concur in the same way with lascivious dances, for example with prostitutes, is formal cooperation where those are instituted as such. But where lasciviousness occurs only by chance, by reason of private malice, there will be merely material cooperation.

3. All are guilty of mortal sin who, without just cause, concur by applause or money in notably filthy spectacles, even if they would be performed without them: for proximate cooperation is present. Likewise, those who from office are held to impede them and can do so without grave and notable harm; or who otherwise can conveniently impede them and do not impede them; a fortiori the actors representing them (III, 427, 428). Cf. n. 834.

4. In cities in which, for the sake of avoiding a greater evil, prostitutes are permitted to dwell, it is licit from a reasonable cause to rent a house to them, because this cooperation is remote material: unless, however, the prostitutes would gravely harm honorable neighbors, or by reason of the location would give greater occasion to sins (II, 70).

5. To paint or make for a lover an image of a person basely loved by him is proximate cooperation, which only very grave necessity excuses. Indeed to paint obscene things is not always formal cooperation, provided those things can have a good end, that is, the study of anatomical art (Lehmkuhl, I, 827).

VI. On Cooperation in Political Matters 526. To this matter pertain very many responses of the Most Holy Roman Congregations, given on the occasion of the sacrilegious invasion of the Pontifical State, and also of the separation of State and Church carried out in France.

I. On the occasion of the invasion of the Pontifical State.

1. It can be tolerated that votes be given for councils and municipal representative persons, provided the municipal persons are not driven to those things which are opposed to divine and ecclesiastical laws, and abstain from an oath according to the form proposed by the invading government.

2. It is licit to compete for teaching offices, to accept those offered, scandal being removed, no adhesion nor approbation being given as regards the intruded government.

3. It can be tolerated that, under the intruded government, offices are retained and accepted, provided they do not directly and proximately influence the spoliation, the maintenance and exercise of the plunder, and danger of wounding divine and ecclesiastical laws is absent. In practice it is better that in individual cases the Ordinary be consulted.

4. Administrators of ecclesiastical goods can hand over to the government an inventory of the revenues of the Church, if it is demanded under grave penalties, yet a protest in writing having been issued, before or after the handover (S. Poenit., Dec. 10, 1860).

5. To cast votes in political elections is not expedient, that is, according to the interpretation of the Holy See, is prohibited (S. Off., July 30, 1866).

6. The sin of him who shall have taken part in political elections is to be judged in particular cases, according to conscience and prudence, all adjuncts having been weighed, so that censure is incurred or not incurred according to the adjuncts of the fact and the dispositions of the subject, according to the norms handed down by the authors (S. Poenit., 1883).

7. Place can be given to dispensation of the law in particular cases - from reason of the supreme good of society - the necessity having been acknowledged by the Bishops and the dispensation having been sought by them. Encyclical Letter to the Bishops of Italy, June 17, 1905 (*A. S. S.*, 37, p. 741).

II. On the occasion of the separation of State and Church in France and elsewhere.

1. Deputies and Senators who established the law of separation are excommunicated by the fact itself and are to be deprived of ecclesiastical burial if they die in sin (S. Poenit., May 30, 1908).

2. It is not licit for clerics, whether secular or regular, in France, in present circumstances, to present themselves as candidates in elections to assemblies of deputies, without the consent of their proper Ordinary and of the Ordinary of the place where they wish to present themselves as candidates (S. Congr. a neg. eccl. extr., Apr. 2, 1906).

Similarly, it is not licit for priests in Italy to undertake the function of counselor in administrative affairs, whether of municipalities or of civil provinces, and for this end to accept that they be proposed as candidates in elections, unless with the previous consent both of their proper Ordinary and of the Ordinary of the place in which the administrative mandate is to be exercised. S. C. Cons., June 8, 1914 (*A. A. S.*, VI, p. 313). Likewise it is not licit for them to give their name to syndicalist associations (*A. A. S.*, VI, 349).

3. Associations of Worship, to be constituted from the French law, can be established by no pact, because by them the most holy rights which pertain to the life of the Church itself are violated. Encyclical *Gravissimo*, Aug. 10, 1906 (*A. S. S.*, 39, p. 385).

4. The so-called approved mutual societies (*mutualites approuvees*), to which Mass foundations are attributed, but without the intervention of ecclesiastical authority, are to be disapproved (Letter, May 7, 1908).

5. Renters occupying ecclesiastical goods (otherwise, however, concerning the liquidator, acting in the name of the government but retaining no part of the goods for himself; otherwise also concerning a notary of the tribunal), incur excommunication and are held to restitution. - Buyers of natural fruits publicly sold are held only to almsgiving toward the despoiled Congregation and for the price by which they bought for less than the just price (S. Poenit., Aug. 5 and Sept. 7, 1907).

6. Counselors and the Mayor of a city, who acquired despoiled goods for the common uses of the city, do not incur excommunication. In a case of necessity or usefulness, faculty is to be sought from the Holy See or from the Religious Order (S. Poenit., Jan. 3, Mar. 8, May 9, 1906).

7. Those giving work to the sale of religious goods in France (secondary cooperators) do not incur excommunication; yet in a particular case they can be deprived of ecclesiastical burial. - As regards them, as also regards liquidators, the obligation of restoring is not established (S. Poenit., Sept. 17, 1906).[25]

8. St. Alphonsus notes (II, 74, from Busenbaum): "Inhabitants of a city or province which a tyrant has occupied licitly remain among the unjust possessors, and, the command compelling, help them by watches, digging, contribution; and this from the presumed consent of the legitimate prince; from which also they promise such services with an oath, in order to avoid greater evils of themselves and of the legitimate prince." - See other things in PART IV, n. 2287 and 2292. Cf. *Rev. des sciences eccl.*, t. II, p. 256; likewise *Nouv. Rev. Theol.*, 1882, p. 582, where various cooperations are treated.

Section II

On the Individual Precepts of the Decalogue

Proemium

528. The DECALOGUE comprises TEN precepts. The ORDER of these precepts is thus explained according to the mind of St. Thomas (1.2, q. 100, a. 5): Just as the precepts of human law order man to a certain human community, so the precepts of divine law order man to a certain community under God. But for someone to dwell well in some community, TWO things are required: the first of which is that he conduct himself well toward him who presides over the community; but the other is that he conduct himself well toward the other consociates and co-participants of the community. Whence the Decalogue contains precepts ordering man to God and to neighbors.

To GOD, the PRINCE of the community, three things are owed: fidelity, reverence, service. FIDELITY is owed, so that the honor of principality is not carried to another: therefore first it is said: Thou shalt not have strange gods. REVERENCE is required, so that nothing injurious is committed against him; whence the second precept: Thou shalt not take the name of the Lord thy God in vain. SERVICE is prescribed in recompense for benefits, especially the creation of the world; and to this pertains the third precept concerning sanctification of the Sabbath.

But toward NEIGHBORS someone conducts himself well both specially and generally. SPECIALLY indeed as regards those of whom he is a debtor; whence the fourth precept concerning honoring parents. - But GENERALLY as regards all, so that harm is inflicted upon no one, neither by deed, nor by mouth, nor by heart. By DEED indeed harm is inflicted upon neighbors, sometimes upon one's own person, as regards the consistency of the person, and this is prohibited by the words: Thou shalt not kill; sometimes upon a conjoined person, as regards propagation of offspring, whence it is said: Thou shalt not commit adultery; sometimes upon a thing possessed, therefore it is said: Thou shalt not steal. But harm

[25] See these several responses in *Ami du Cl.*, 1907, p. 265 seqq.; 1908, p. 631, 793; *Nouv. Rev. Theol.*, 1907, p. 215, 217 seq.; 1908, p. 473.

of the MOUTH is prohibited when it is said: Thou shalt not speak false testimony against thy neighbor. But harm of the HEART is prohibited when it is said: Thou shalt not covet.

From these things you conclude: 1. No precepts are posited which directly order man TO HIMSELF. The reason for this omission, according to St. Thomas (l. c., ad 1), is that love of oneself is included in love of God and neighbor. Cf. the things said above n. 476.

2. All precepts of the Decalogue pertain TO JUSTICE and to the virtues annexed to justice, namely, the first three precepts refer themselves to RELIGION, the fourth to PIETY, and the rest to COMMUTATIVE JUSTICE (ibid., a. 11, ad 3).

These things having been premised, let us treat in order concerning the individual precepts.

Treatise I

On the First Precept of the Decalogue

> Thou shalt not have strange gods before me…
> (Exod. 20:3).

529. The first precept, by forbidding that a false deity be worshiped, prescribes the worship which is owed to the true God. This precept is so general that it already includes the two following in itself. Yet these were proposed explicitly because, for the gravity of the matter, the sanctification of the divine Name and the appointing of a day singularly consecrated to divine worship demanded a special promulgation for themselves (*Cat. Rom.*, on the 1st and 3rd precept, n. 1).

But here there comes to be treated: 1. the virtue of religion in general; 2. the acts of religion commanded by the first precept; 3. the sins opposed to the same precept.

Chapter I

On the Virtue of Religion

St. Thomas, 2.2, q. 81; St. Alphonsus, III, tr. 1; ed. G., p. 370; Suarez, *de Virt. Relig.*; Lessius, *de Just.*, P. 2, c. 34; Aertnys, l. III, tr. 1; Lehmkuhl, I, n. 459; Noldin, II, n. 131; Piscetta, II, tr. 2; Berardi, tr. 2, n. 312; Huby, *Manuel d'Hist. des Relig.*

530. NOTION. RELIGION, as it is taken here, is defined: A moral virtue inclining man to the due worship to be exhibited to God as the first Principle of all things and the supreme Lord.

The MATERIAL object of religion is worship owed to God. - The FORMAL object is the special honesty which is apprehended in that worship, on account, namely, of the supreme excellence of God.

The virtue of religion holds the first place among the moral virtues, because, after the theological virtues, it approaches more closely to God. By the bond of religion man is united with God, but not in the same way as in the theological virtues, insofar as man, by exercising acts of religion, first proclaims himself to be distinct from God and subject to God the Creator.

The virtue of religion is specifically one. It indeed has various offices, contains eminently piety, observance, and gratitude, and also has various acts, as to vow, to pray, etc.; but it produces all these things from one formal motive of worshiping God (Lessius, *de Just.*, l. 2, c. 36, n. 14).

These things having been premised, we shall speak: 1. of the notion of worship; 2. of the species of sacred worship; 3. of the distinction of acts of religion, by which due worship is exhibited to God.

Article I

On the Notion of Worship

531. DEFINITION. Worship, in general, is honor furnished with submission. And since honor is a sign of our estimation concerning another's excellence, worship can be defined: testimony of another's excellence and of one's own submission (Polm., 2.2, n. 780 and 781). - HONOR is exhibited not only to Superiors, but also to equals, indeed to inferiors, according

to that saying of the Apostle (Rom. 12:10): With honor preventing one another. And God himself furnishes honor to his Saints. - But worship is attributed to Superiors alone, because it includes fitting submission of oneself to another's excellence. Cf. n. 554.

DIVISION. 1. By reason of the object which is worshiped, worship is civil or religious, according as it regards natural or supernatural excellence.

Civil worship is called filial, if it regards parents; political, if it regards persons constituted in dignity. Religious worship is called such simply, if it regards the supernatural excellence of a man still a wayfarer, for example of a priest, Bishop, or also of one demonstrating singular sanctity. But it is called SACRED worship (in the stricter sense), if it regards divine excellence, whether in itself or inseparably communicated, as is that of the blessed who are indivisibly joined with God.

2. By reason of the intended end, worship is: absolute, if it is attributed to someone on account of excellence inhering in him, for example to God, or to the Saints on account of their dignity; respective or relative, if it is attributed either to a person or to an inanimate thing on account of the relation which it has with some person worthy of honor, for example to a servant in view of the master; to a statue or image in view of the prototype.

3. By reason of the mode in which it is attributed, worship is internal or external, insofar as it is exhibited either by internal powers of the soul, or by external acts of the body.

But external worship is either public or private. a) PUBLIC, or liturgical, is that which is exhibited in the name and by the authority of the Church, and in the form prescribed by her. b) PRIVATE, that to which one of these conditions is lacking. Thus,

for example, a layman reciting the divine Office exhibits only private worship: because, although he observes the form prescribed by the Church, nevertheless he does not act in the name and by the authority of the Church. Nor does worship cease to be private if all the laymen of some parish, jointly in the sacred building, recite prayers approved by the Church: because they do not act in the name of the Church. On the contrary, it is public, although a subdeacon privately pays the divine Office: because here he acts in the name of the Church and in the form prescribed by her (Kon., n. 322).

Note. The form prescribed by the Church comprehends two things: 1. WORDS, which are either from God or from the Church; 2. RITE, or liturgical action, which again is either from Christ the Lord, as the essential rite of the sacrifice of the Mass and the matter of the sacraments; or from the Church, as the various gestures, inclinations of the head, etc. Each is to be sought from the liturgical books and from decrees of the Sacred Congregation of Rites, and the vulgar tongue is never to be employed. See n. 1742.[26]

Article II

On the Species of Sacred Worship

532. We distinguish a twofold species of sacred worship, namely of latria and of dulia, according to the uncreated or created excellence which it regards. Wherefore we shall treat: 1. of the worship of latria; 2. of the worship of dulia (Salmant., tr. 21, c. 10).

§ 1. On the Worship of Latria

DEFINITION. The worship of LATRIA (or adoration) is honor exhibited to God on account of his supreme excellence, superior to all things, with a protestation of our every-kind submission toward him.

533. PRINCIPLES. I. God alone is to be worshiped with the worship of latria. It is established 1. from Matt. 4:10: The Lord thy God shalt thou adore, and him only shalt thou serve; 2. by reason, because God, and he alone, has supreme and infinite excellence, communicable to no creature.

II. The most holy humanity of Christ the Lord, considered as joined to the Word, is to be worshiped with the worship of latria, absolute indeed, but simultaneous with the Word. The same is to be said concerning the species of bread and wine in the Eucharist, which, as sacramentally united to Christ the Lord, are co-adored. See the dogmatic theologians.

III. The most holy Name of Christ, drops of the most holy Blood left behind, the Cross and other instruments of the Passion are also to be adored with the worship of latria, but respective: with the worship of latria, because they represent Christ, or were in some way joined to him; respective, because they have only extrinsic excellence.

[26] Cf. Council of Trent, Sess. 22, c. 8, and can. 9; 86th proposition condemned of Quesnel; Bull *Auctorem fidei*, XXXIII.

The same holds concerning sacred vessels and ornaments, churches, and other things or places specially deputed to the worship of God. "Their worship is reduced to the worship of latria by reason of the sacrifice to which they are ordered" (III, 132).

534. Let the following be noted FOR PRACTICE:

I. The most holy Blood which is preserved in certain churches as an eminent relic is not worshiped with absolute adoration, because in fact it does not retain the hypostatic union (S. R. C., n. 2660; Collius, *de Sang. Christi*, l. V, disp. 8, c. 6).

II. The true Cross is adored by a twofold title: 1. as an eminent relic of Christ, even if divided into the smallest parts; 2. as an image representing Christ crucified. Other crosses made in likeness of the true Cross are to be adored by reason of representation only (Salmant., tr. 21, c. 10, n. 24).

As regards specifically a particle from the wood of the most holy CROSS, these things are to be adverted to: 1. If it has been exposed in the principal place over the altar, those passing before it ought to bend one knee, and Mass before it is to be celebrated as before the enclosed Sacrament. But if it is put away in a case, those passing before it should incline the head. 2. Where immemorial usage carries this, it can be carried processionally under a canopy, with two thurifers incensing and with head uncovered. 3. After the procession or exposition, before it is put away, the officiant, standing, incenses it with three swings; then, having assumed the humeral veil and made one genuflection, he blesses the people with it, saying nothing (Kon., n. 327). 4. It is not licit on Friday in Parasceve after the ceremonies to expose a relic of the Holy Cross so that it remains exposed until the function of the next day (S. R. C., n. 2740).

535. III. Sacred things, in the broad sense, are called all things pertaining to the worship of God, although they have not been blessed, but insofar as they have been withdrawn from the profane commerce of men and dedicated to the service of God. Of this kind are candlesticks, lamps, canopy, cruets, vessel for holy water, etc.

STRICTLY SACRED THINGS are those which, through a special blessing (namely constitutive), or consecration (in which an anointing intervenes), are destined for the worship of God. Of this kind are blessed churches or chapels (sacred places), altars, chalices, corporals, priestly vestments, etc. Likewise sacred bibles, missals, and similar things, which of themselves, without blessing, are sacred (III, 40). See below n. 1444.

1. Sacred things of whatever kind must be treated reverently. Therefore: a) let them serve neither superstitious nor indecent uses; b) let them be consonant with liturgical prescriptions, at least decent and clean. See n. 1630 seqq.

2. Strictly sacred things must be treated with special reverence; nor can they be applied to profane uses, even honorable ones. "What has once been dedicated to God is not thereafter to be transferred to human uses" (Rule of Law in 6). See n. 583.

This rule ceases: a) If it is a question of things not strictly sacred, for example candles, branches, water, incense, the Paschal lamb, and similar blessed things, which are licitly applied to profane use; provided that you do not always and indifferently use them thus. b) If a strictly sacred thing is totally changed, so that it returns to common matter, for example if a chalice by fire or iron is reduced to a common mass of silver (III, 40, 41; VI, 94, 371). Cf. Gennari, *Consult. mor. can.*, n. 33.

Those things which can no longer serve the use for which they have been destined are to be withdrawn from the same in a decent manner, and indeed: a) Ruined churches, no longer repairable, can be converted indeed into profane uses, but not sordid ones; yet with a cross erected there, as Trent prescribes (Sess. 21, c. 7), unless sacrilege is feared; in which case at least a commemorative inscription is to be placed. b) The sacred oils are to be burned each year (and the ashes thrown into the sacrarium); likewise vestments, after they have been worn out, unless perhaps they are applied to making or repairing others. 3. Baptismal water, on Holy Saturday and on the vigil of Pentecost, after the new water has been blessed, is to be poured into the sacrarium.

§ 2. On the Worship of Dulia

536. DEFINITION. The worship of dulia (or veneration) signifies the worship by which we attest our reverence and submission toward holy creatures, on account of the supernatural excellence of grace and glory intrinsic to them (St. Alph., on Trent, Sess. 25, *de Invoc. SS.*).

Note. To HOLY PERSONS a twofold reverence indeed belongs: 1. of respective latria, on account of their extrinsic excellence, because they represent and contain divine excellence (better than sacred things or places); 2. of absolute dulia, on account of their intrinsic excellence. Yet in practice, on account of danger of error, neither the Saints, nor the Blessed Virgin herself, are adored, at least explicitly, with the respective worship of latria (St. Thom., III, q. 25, a. 5). Nevertheless

irreverence toward them, and especially blasphemy, redounds to God himself, whose servants, friends, sons, etc., they are (cf. n. 596). Similarly, veneration exhibited to the Saints implicitly and virtually honors God; and thus it pertains, broadly speaking, to the virtue of religion.

DIVISION. By reason of the degree of participated excellence, dulia is distinguished in two ways. There is simple dulia, which regards created supernatural excellence common as it were to all Saints. There is hyperdulia, which regards excellence created indeed and finite, but singular and very eminent.

537. PRINCIPLES. I. The most blessed Virgin Mary is to be venerated with the absolute worship of hyperdulia. It is the common opinion of Catholics. For the Blessed Virgin Mary has a singular and altogether ineffable eminence of dignity and sanctity, "which, besides God, no one can reach by thinking" (Bull *Ineffabilis* of Pius IX). Whence the Church beseeches the Blessed Virgin Mary more frequently, more insistently, and with greater solemnity than the Saints and angels. Cf. Muller, l. 2, § 46.

538. II. Saints and angels are to be venerated with the worship of dulia simply so called. For it is defined of faith by the Second Council of Nicaea and by Trent that all the Saints are to be honored with some veneration.

Yet some difference is present in the worship which is attributed to them (cf. n. 531). And indeed:

1. To CANONIZED Saints sacred and public worship is owed; because, through the infallible testimony of the Church, we are now made certain that they reign with Christ in the heavens; and therefore we must honor their souls and bodies as truly and properly sacred.

2. To the BEATIFIED the same sacred and public worship is exhibited, but more limited, namely such as is determined either by custom, if their worship is immemorial, or by Pontifical Indult, if the ordinary way is proceeded by. But if someone, in other churches or places not designated by the Supreme Pontiff, were to celebrate concerning a Blessed, he would sin gravely, because change of place is a transgression of the decree in a grave matter (Bened. XIV, *de Beatif.*, l. I, c. 39, n. 12).

3. To men or women dead with an opinion of sanctity, but not yet beatified, it is licit to exhibit no public worship; yet private religious worship is licitly deferred to them. "Images of the same (authentic Decrees, n. 3835) ... can neither in any way be placed on altars nor outside altars be painted with aureoles, rays, and other signs of sanctity; yet their images or deeds and facts can be exhibited on the walls of a Church, or in colored glass, provided those images bear before themselves neither any indication of worship or sanctity, nor anything profane or alien from the custom of the Church." Besides, from the new decree of Aug. 13, 1913, only after the heroic nature of the virtues has been recognized is a Servant of God to be adorned with the title Venerable. But prayers in honor of a Servant of God always need the approval of the Ordinary (*A. A. S.*, VI, p. 192).

III. Relics, statues, etc., of the Saints are to be honored with the same veneration as the persons whose relics, etc., they are, but with respective worship. It is established from Trent, Sess. 25, where, for the rest, it is added: "Let the Bishops diligently teach ... that great fruit is perceived from all sacred images."

For practice, let the following be noted:

539. I. On Holy Relics. 1. RELICS of the Saints are: a) In the stricter sense, their bodies and parts of the body, even the smallest; likewise oil or another liquid sometimes flowing from them; b) more broadly, all things which the Saints used in life, as garments, books, instruments of punishments and mortifications; c) most broadly, all things which have touched either the body, or the sepulcher, or other relics of a Saint; and likewise oil from a lamp hung before the sepulcher, and dust from the place where they are preserved.

540. Eminent relics of Saints are, besides the whole body, the head, the anterior part or the upper part of the arm; or the heart, tongue, hand, if they are preserved intact from a miracle, the leg (not the bones of the thigh), or that part of the body in which a martyr suffered, provided it is whole and not small (S. R. C., n. 430, 555, 4041).

541. Relics of the Saints are to be venerated not only with religious but also with sacred worship; not, however, public worship unless their authenticity has been approved by the Ordinary of the place where they are to be honored, and this even if they have already been recognized at Rome or by another Bishop.[27]

542. Relics are to be preserved only in a church, yet never in the tabernacle. If it is a question of small relics enclosed in cases, the use is commonly conceded today even to private persons.

[27] Everyone knows that sometimes, as regards certain relics of Christ or of the Saints, prudent and critical recognition has been lacking. Cf. Bolland., Jan. 1; Grisar, *Christusreliquie.*

543. Relics can be exposed for the veneration of the faithful. But they are not to be placed: a) above the tabernacle in which the most holy Sacrament is preserved, so that the tabernacle serves as a base for them; b) before the little door of the same tabernacle, or in another way by which simple persons could be led to adore the relics as the most holy Sacrament; c) with the Most Holy when it is exposed on the same altar. If they are exposed, let two lights burn continually on the altar. The one exposing and replacing should be vested in surplice, and also in humeral veil, if he blesses the people with the relics. But the blessing must be made without chant, without a formula of blessing, the relics having been incensed with unblessed incense, with two swings.

544. In processions, relics of canonized Saints can be carried; but: a) not under a canopy; b) with head uncovered (a Bishop, however, with miter); c) not in a procession of the most holy Sacrament, unless by force of indult or custom.

545. Concerning a Saint of whom an eminent relic is certainly possessed, the Office can be made and Mass celebrated, provided he is found in the Roman Martyrology.

546. II. On Holy Images. 1. Among holy images, these can be specially honored: a) blessed images; b) those which are at the same time relics, as an image of the Blessed Virgin Mary which is said to have been painted by St. Luke; c) those which are renowned for miracles, and copies of them.

547. In churches it is not licit to expose images deformed from the sense and decrees of the Church (Bened. XIV, Const. *Sollicitudini*). Images furnishing to the rude an occasion of dangerous error are opposed to the sense of the Church, such as, however, generally are not images of the Most Holy Trinity; likewise images in which something profane or dishonorable appears.

548. That these laws may be observed more efficaciously, the Council of Trent (Sess. 25) established that no unusual image can be exposed unless it has been approved by the Bishop. And Leo XIII, Const. *Officiorum* (tit. 1, c. VI, n. 15), declared these things concerning any images whatsoever, even those serving only private devotion: "Images in whatever way printed of Our Lord Jesus Christ, of the Blessed Virgin Mary, of the Angels and Saints, or of other Servants of God, deformed from the sense and decrees of the Church, are altogether forbidden. But new images, whether they have prayers annexed or are published without them, are not to be published without license of ecclesiastical power." But if new images are printed without this law having been observed, the publisher indeed sins, but the faithful are not prohibited from their use.

549. Holy Images are honored in the same way as relics, except that with them a blessing is not given; nor concerning them, unless it has been specially conceded, is the Office made or Mass celebrated. In a procession with the most holy Sacrament, outside the case of indult or custom, they are not to be carried (Salmant., tr. 21, c. 10, n. 81).

Article III

On the Distinction of Acts of Religion

Religious acts are either elicited by the virtue of religion, or commanded by it.

541. I. The ELICITED or proper acts of religion are: devotion, prayer, adoration, sacrifice, offerings, first-fruits, tithes, vow, oath, adjuration, praise of God (2.2, q. 82 seqq.; q. 87, a. 1, ad 5).

For those things which belong to man (goods of body and soul, external goods) and those things which belong to God (authority, fidelity, and infinite perfection of God) are suitably assumed for the worship of God. Cf. Grassi, *de Virt. Relig.*

II. COMMANDED acts of religion are all acts which are elicited by another virtue and at the same time are performed from the motive of religion. Thus, for example, fasts undertaken in honor of God or of the Saints, or ordered by the Church in preparation for solemnities, are acts elicited by temperance, but commanded by religion.

To commanded acts of religion can also be referred acts elicited by FAITH, HOPE, and CHARITY; for religion can rightly direct to the worship of God acts which already of themselves tend to this end, according to that saying of St. Augustine (*Enchir.*, c. 3, n. 1): "God is worshiped by faith, hope, and charity."

Chapter II

On the Acts of Religion Commanded by the First Precept

St. Thomas, 2.2, q. 82; St. Alphonsus, H. Ap., App. 4; work *On the Great Means of Prayer* (ed. Walter, II, p. 633); St. Francis de Sales, *Philothea*; Polman, 2.2, n. 815; Herrmann, *Inst. dogm.*, 942, 1226; Tanquerey, I, n. 862 seqq.; Vermeersch, *Quaest.*

de Virt. Relig., n. 9 seqq.

542. To the first precept of the Decalogue pertain those acts of religion by which FIDELITY is furnished to God (n. 528), or by which we profess the supreme dominion of God over us and our every-kind dependence upon him, by subjecting to him the soul, body, and external goods. Now we subject the soul to God through DEVOTION and PRAYER, the body through ADORATION, the remaining goods through SACRIFICE, OFFERINGS, FIRST-FRUITS, and TITHES. Concerning sacrifice we shall speak elsewhere. Wherefore we shall treat: 1. of devotion; 2. of prayer; 3. of adoration and also of offerings, first-fruits, and tithes.

Article I

On Devotion

543. DEVOTION is taken in a twofold sense: 1. for the general condition of all acts of religion, and thus it is readiness of the will to draw itself to the service of God; 2. for a special act, and thus it is internal offering and handing over of oneself to the service of God. For to devote is the same as to consecrate or offer, and to make oneself over to another.

The obligation of the act of devotion sometimes urges of itself; but the frequency of the acts can be determined with great difficulty, since no time has been assigned for its obligation. - This obligation urges per accidens: 1. when there is grave danger of the opposed vice, namely sloth in spiritual things; 2. when we are bound to elicit other acts of virtues, for the eliciting of which devotion itself is necessary, as are acts of faith or adoration, hearing Mass, etc. (Salmant., tr. 21, c. 9, n. 7).

544. The source of devotion, on our part, is meditation: a) On the divine Goodness: for from this consideration love is excited, which is the proximate cause of readiness of the will. b) On our misery, which, if we consider it, we break forth into fervent and efficacious prayer, all the more because consideration of this kind excludes presumption.

545. The effect of devotion is twofold. The first is spiritual joy, from consideration of the divine Goodness and of his benefits; according to that saying (Ps. 76:4): I remembered God, and was delighted. The other effect is a certain salutary sadness according to God, from consideration of our misery (2.2, q. 82, a. 4).

Note. Substantial and intellectual joy (delight) is always present in every fervid act of devotion. But sensible and accidental joy is often lacking. "He would act badly," says St. Alphonsus (*Prat. d'amar G. C.*, c. 17, § 2), "who would reject spiritual consolations (sensible joy); as certain pseudomystics taught that this was to be done." Cf. St. Francis de Sales, *Philot.*, P. IV, c. 13.

Article II

On Prayer

546. DEFINITION. Prayer, taken broadly, insofar as it also comprehends meditation, praise, thanksgiving, etc., is the elevation of the mind to God (IV, 117; Polm., 2.2, n. 819).

Taken strictly, or PETITION, it is "a request for fitting things from God" (St. John Damascene, *de Fide orth.*, l. 3, c. 21; Billuart, *de Relig.*, d. 2, a. 2). Request, that is, the explanation of desire for obtaining something; of fitting things, that is, of things which are honorable, and which it befits God to bestow on us; from God, either immediately, or mediately, namely when our prayer is directed to the Saints. Therefore petition is commanded by hope, elicited by the virtue of religion.

DIVISION. Prayer is distinguished: 1. by reason of mode, into mental and vocal: the former is made by mind alone; the latter is performed by mind and words: for if it is made by words alone, it is not prayer; 2. by reason of the one praying, into public and private: public prayer is that which is made in the name of the Church, for the salvation of the people, by a minister deputed for this; private prayer is that which is made by each one separately, whether for himself or for another (cf. 531, 3).

547. PRINCIPLES. I. Prayer (as petition) is necessary for all adults by necessity of precept, indeed also by necessity of means. 1. BY NECESSITY OF PRECEPT. It is established from innumerable places of Sacred Scripture, for example (Mark 14:38): Watch and pray, that ye enter not into temptation; and (Luke 18:1): It is necessary always to pray and not to faint. Nature itself teaches us to pray when we are in necessity; and therefore he who never prays to God sins against natural law. 2. BY NECESSITY OF MEANS. For, without prayer, according to the ordering of divine Providence, salvation cannot be obtained. For, on the one hand, we can do nothing in the order toward salvation without the help of grace, the Lord saying (John 15:5): Without me you can do nothing; on the other hand, God

bestows his graces only when asked, according to that saying (John 16:24): Ask, and you shall receive; and (James 4:2): You have not, because you ask not (*Gran mezzo*, c. 1 and 3, § 3).

Behold therefore the law and economy OF OUR SALVATION. The first graces (as are the grace of vocation to true faith, the grace of conversion, and the grace itself of praying) are often given without previous petition; but further graces, by which the more difficult precepts of God can be observed and grave temptations overcome, and especially those efficacious helps upon which our final perseverance depends, are conceded only to those praying, and indeed assiduously, perseveringly, and trustingly.

Therefore they err who, with the favorers of Americanism, place all confidence in the virtues which they call active, and despise the passive virtues (prayer, humility, patience, meekness). Cf. *Nouv. Rev. Theol.*, 1899, p. 165.

548. II. Prayer, endowed with the due conditions, has infallible efficacy, from the promise of God. The words of the Lord are clear: Ask, and you shall receive (John 16:24). And similar things occur everywhere. Nor does it matter whether the one praying is just or a sinner: For every one that asketh, receiveth (Luke 11:10). Therefore when sinners are not heard, this happens because they pray badly, that is, with the due conditions passed over. Whence St. James (4:3): You ask, and receive not: because you ask amiss.

But the CONDITIONS required on the part of the one praying are four:[28]

1. That he ask for himself; for the Lord says: he will give to you; and the reason is that one praying for himself, by that very fact that he prays well, is already disposed to receiving grace. This cannot always be said concerning neighbor, for whom someone prays. Thus St. Thomas (2.2, q. 83, a. 7, ad 2). Yet many Doctors judge that prayer, even by force of the divine promise, is infallibly efficacious, even if made for sinners, provided they are not so obstinate that they intend to live in sin until death.

2. That he ask things conducive to salvation. For the Lord says: If you shall ask the Father anything in my name… (John 16:23). Moreover, according to St. Augustine (tr. 102 on John, beginning): "Whatever is asked contrary to the account of salvation is not asked in the name of the Savior." It is indeed licit to ask for and desire temporal goods, but conditionally, namely on the supposition that they are salutary for us.[29]

3. That he ask piously, that is, with humility and confidence. For it is written (James 4:6): God resisteth the proud, and giveth grace to the humble. And (Ecclus. 2:11): No one hath hoped in the Lord, and been confounded. Whence St. Thomas says: Prayer has the force of meriting from charity, but the efficacy of obtaining from faith and confidence (l. c., a. 15, ad 2).

4. That he ask perseveringly; according to that saying (Luke 18:1): It is necessary always to pray and not to faint. And in c. 11:9 we are taught that one must not only ask, but also seek and knock until it is opened. Whence St. Thomas says: "The effect of prayer can be impeded if someone does not persevere in asking" (ibid., ad 2). - Significantly, for obtaining FINAL PERSEVERANCE, perseverance in praying is necessary; because to the chain of graces by which God wills us to become saved, there must respond on our part a chain of petitions.

Two things are to be noted: a) Although fervent prayer is required for obtaining efficacious grace, nevertheless by tepid prayer we obtain the spirit of more fervent prayer (*Verita della fede*, P. II, c. 17, n. 19). b) A special efficacy is promised to public prayer; for it is said (Matt. 18:20): Where there are two or three gathered together in my name, there am I in the midst of them.

549. IT IS ASKED. When does the precept of praying oblige?

Resp. Prayer can be considered as an act of a virtue excellent in itself. Yet more often it is considered as an act of a virtue which, in relation to the goods of salvation, is a means constituted by God. Whence we say: 1. It obliges OF ITSELF: a) at the beginning of the use of reason; b) in the article of death; c) more often in the year, indeed frequently; whence St. Alphonsus with Suarez and Lessius estimates that it is a sin grave of itself if someone for a notable time, that is, for one month, or certainly for two months, omits to commend himself to God (*Inst. cat.*, P. I, c. 1, n. 32; *Gran mezzo*, P. I, c. 3, § 3).

2. It obliges PER ACCIDENS: a) in the state of mortal sin, for obtaining the grace of repenting as one ought; b) when grave temptation rises up, which cannot otherwise be conquered; or if some precept urges, for fulfilling which prayer is necessary; c) in a great calamity of neighbor or of the people (III, in princ.).

[28] St. Alph., *Gran mezzo*, c. I; work on Trent, Sess. 6, n. 142 seqq.; *Vera Sposa*, c. 20; *Inst. cat.*, P. I, c. 1, n. 32, etc.
[29] The Lord's Prayer perfectly expresses the order of things to be asked; cf. St. Thom., 2.2, q. 83, a. 9.

Hence it is clear that the omission of morning and evening prayers constitutes no sin of itself, although from the very beginning of the Church this most holy custom of praying has become widespread. Yet pastors of souls ought to confer great diligence upon this, that the Christian faithful be most tenacious of this custom. For unless it is holily retained, it will shortly happen that the soul, destitute of the special help of God, enters the way of perdition. Indeed it would not be free from fault if someone should determine by set purpose to pray neither morning nor evening. For when will such a man pray? Cf. Lehmkuhl, I, 484.

Let the following be noted: 1. The words of the Lord: IT IS NECESSARY ALWAYS TO PRAY, signify that one must pray frequently, at a suitable time, and never cease from dejection of soul; or also, that our actions generally are to be directed to God (cf. n. 307).

2. One voluntarily distracted in prayer sins of himself venially, unless perhaps a just cause excuses. For he conducts himself irreverently toward God (Elbel, *de Orat.*, n. 419). But "there is no sin if someone does not so much intend to pray as to occupy himself in a pious exercise by reciting the words of prayers; because he prays not formally, but only materially: for example, when someone working with his hands recites or sings psalms or other prayers, not with the soul of praying, but of avoiding vain thoughts, or of recreating himself" (V, 84). Nevertheless, since prayer thus made is also a certain exercise of religion, it is clear that it is not destitute of all merit.

3. Besides God, we can pray to the Saints, and very probably privately invoke the souls which are expiated in the flames of Purgatory; for it can piously be believed that our prayers are manifested to them. And likewise baptized infants can be invoked, who, before the use of reason, migrated to the blessed Fatherland (*Gran mezzo*, P. I, c. 1; work on Trent, Sess. 25, n. 32).

4. Invocation of the Saints is of precept with respect to the community (or the Church), since it is commanded in the public Office and in the Mass. But by no positive law is it prescribed to individual faithful. Yet it is not improbable that it is prescribed by natural or divine law: "because by natural law we are bound to observe that order which God has instituted; but God has constituted that inferiors reach salvation by imploring the help of superiors" (*Gran mezzo*, l. c.).

5. Invocation of the Blessed Virgin MARY in particular is necessary for each person, not indeed absolutely, but morally, for salvation; because such is the will of God, "who willed that we have all things through Mary" (cf. *Glorie di Maria*, c. V). St. Alphonsus teaches besides that "it is morally impossible that a soul should progress much in perfection without some particular and tender devotion toward the most holy Mother of God" (H. Ap., App. I, at the end).

6. One must pray, of itself from charity, for all who can be helped by prayer, and whom we are commanded to love (cf. n. 476). Therefore we ought to pray also for the souls which are expiated in the fire of Purgatory. - This obligation is satisfied by praying privately. - As regards public prayer, see the things to be said n. 1600 seqq.

Article III

On Adoration and also on Offerings, First-Fruits, and Tithes

550. I. ADORATION, taken generically, sounds almost the same as WORSHIP itself, and is divided as above, n. 531. In the stricter sense (as often in catechisms), it is used for the worship of latria alone. In the proper sense, it is a special act of religion, whether internal or external, by which the worship of latria is exhibited to God (2.2, q. 84, a. 2).

We offer to God a twofold adoration, namely spiritual, which consists in the interior devotion of the mind, and corporal, which consists in the exterior humiliation of the body.

External signs of adoration are not of such a kind that they necessarily signify the worship of latria; wherefore, from the intention of the one adoring, they must be determined to the worship of latria, or hyperdulia, or dulia. Moreover, such an intention together with the external act, for example genuflection, can be prescribed. Yet one thing, namely sacrifice, is a sign which is proper to the adoration of latria.

551. II. OFFERINGS, in the broad sense, are everything which is offered to the Church; in which sense first-fruits and tithes are also comprehended. - Taken strictly, they are things which the faithful, in view of religion, immediately offer to God, so that they may yield to the use of the Church or of the ministers of the Church.

a) These offerings are voluntary by their nature, according to that saying of Exodus 25:2: Of every man that offereth of his own accord, you shall receive them. b) They can become obligatory: either from promise or vow; or from the indigence of the ministers of the Church; or from legitimate custom; or from prescription, as if a parish priest for a long time (suppose ten years) in good faith demanded offerings of this kind as owed to himself, the parishioners

not protesting. c) A Bishop can under grave obligation drive parish priests to collecting, whether by themselves or by others, the offerings of the faithful, indeed punish the disobedient and remove them from the parish. S. C. Cons., Apr. 22, 1911 (*A. A. S.*, III, p. 277). Cf. *Ami du Clerge*, 1911, p. 690; 1913, p. 166; *Nouv. Rev. Theol.*, 1912, p. 36. See other things below, n. 1642, 20.

Note. In order to know to whom offerings belong, one must attend to the usage of places, and especially to the intention of those offering.

552. III. FIRST-FRUITS are the first fruits, coming from lands newly cultivated, to be offered only once to God as giver of all goods and to the ministers of his Church.

Formerly they were to be paid from the precept of ecclesiastical law, as is established from canon *Praeter*, dist. 32; but today they have grown obsolete almost everywhere.

553. IV. TITHES are the tenth or another quota part of fruits and revenues justly acquired, owed to God in testimony of his supreme dominion, and to be paid to the ministers of the Church.

554. In the new law, tithes, regarded as to substance, that is, insofar as they are the necessary stipend of the ministers of the Church, are owed by natural and divine right, according to that saying (Luke 10:7): For the laborer is worthy of his hire; but regarded as to the determination of quantity, they are only of ecclesiastical right (St. Alph., *de Privil.*, n. 87-84).

555. Payment of tithes, insofar as it is made on account of the worship of God and as a sign of his supreme dominion, is an act of religion. But insofar as it is regarded as owed to the ministers of the Church, who furnish spiritual things to us, it is an act of justice (Council of Trent, Sess. 25, c. 12, *de Ref.*). - Hence those who defraud tithes (or pensions assigned by governments in place of tithes) sin both against religion and against justice, even if they are not sacrilegious (III, 31, q. 4).

556. The obligation of tithes can cease: a) By privilege of the Pontiff exempting some persons. b) By legitimate custom; provided that otherwise a congruent portion is given, which is owed by the right of nature. c) By remission made by him to whom they are owed, provided he is able to renounce. d) By transaction, or pontifical composition, for future tithes.

557. In most regions, the obligation of paying predial tithes has in fact CEASED, either by custom or by composition, whether with private persons or with governments, for example through concordats, with the burden of suitably sustaining the clergy imposed. In Italy, the support which the government furnishes is tolerated as retribution for personal labor, but not as compensation for usurpation already carried out.

558. In place of personal tithes, which long ago became obsolete, there now prevail STOLE FEES, for example the funeral fourth (cf. n. 2279).

Note. Comparable to tithes is the tax of worship which today in France is imposed upon the faithful. Cf. *A. S. S.*, vol. 41, p. 39; *Ami du Clerge*, 1909, p. 254, 631, 1150.

In the United States of North America it is prohibited to receive money at the doors of the church from those entering, in the manner of a tax (Third Plenary Council of Baltimore, n. 397; *Nouv. Rev. Theol.*, 1912, p. 36).

Chapter III

On Sins Opposed to the First Precept

St. Thomas, 2.2, q. 92 seqq.; St. Alphonsus, III, n. 1-29; ed. G., I, p. 370; Salmanticenses, tr. 21, c. 11; Billuart, Diss. VII, VIII; Aertnys, l. 3, n. 7; Lehmkuhl, I, n. 488; Tanquerey, I, n. 894; *Ami du Cl.*, Study on Demonism, 1902, 1904; Walter, *Der Aberglaube*; *Linz. Quart. Schr.*, 1907, p. 517; Schneider, *Der neuere Geisterglaube.*

Just as through the first precept acts are prescribed by which we subject to God soul, body, and goods as to the supreme Lord, so through it, on the contrary side, there are PROHIBITED both acts by which the honor of principality is carried to another or becomes excessive, as happens through various superstitions, and those acts of irreligiosity by which such honor owed to God simply fails. - Whence let us treat: 1. of superstition; 2. of irreligiosity.

Article I

On Superstition

554. NOTIONS. Superstition is defined: Vain or false religion, exhibiting to God undue worship. - It is opposed to religion by excess, "not because it exhibits more divine worship than true religion, but because it exhibits divine worship either to whom it ought not, or in that mode in which it ought not" (2.2, q. 92, a. 1). Thus worship can exceed both on the part of the mode and on the part of the object; whence a twofold superstition is distinguished, namely: 1. superstition of undue worship; 2. superstition of the thing worshiped (III, 2).

I. Superstition of UNDUE worship is worship which is indeed exhibited to the true God, but in an incongruous mode; because, namely, the worship which is offered is either false or superfluous.

False worship is that which has a false signification, as if someone should worship God through the ceremonies of the old Law, for example circumcision, immolation of the lamb, etc., because these signify Christ as still about to come and not yet having come; or if someone, for increasing the devotion of the people, should narrate false miracles, or propose false relics. - Worship of this kind is a sin grave of itself, because it founds religion upon lies, indeed exposes true miracles, etc., to doubt.

But superfluous worship is that by which God is worshiped in a mode not approved by the Church, or plainly alien from her practice. Thus, for example, if you were unwilling to pray or hear Mass before sunrise; or if in Mass or in the canonical Office you added something not prescribed by the rubrics; or if candles had to be arranged in a certain order; or if you fasted on Sunday when you do not fast on other days, or abstained from certain indifferent works on Saturday, etc. Such superfluous worship, scandal, contempt, or vain observance being excluded, does not exceed venial fault, because the matter is light, and those actions are not evil in themselves.

555. II. Superstition of the THING WORSHIPED, or worship of a false deity, is had when worship owed to God is offered to a false god or to creatures.

This superstition, according to the diverse ends of divine worship, is subdivided into diverse species. For since, according to St. Thomas (2.2, q. 92, a. 2), divine worship looks to this, that man practically acknowledge the excellence, knowledge, and auxiliary intervention of God, that threefold end can be perverted by a threefold species of superstition, namely: 1. idolatry, when reverence of excellence owed to God alone is exhibited to a creature; 2. divination, when knowledge is investigated from the demon; 3. vain observance, when, for the sake of help, recourse is had to the same demon. And since recourse can also be had to him for inflicting harm on neighbor, hence, on account of the malice of injustice joined to it, there is had: 4. malefice.

Now discourse must be instituted concerning each.

§ 1. On Idolatry

556. DEFINITION. Idolatry is superstition by which honor is attributed to a creature as to God.

But this is done by any sign of honor by which someone intends to submit himself to a creature as to God, for example by genuflection, incense-burning, uncovering of the head before an idol. Thus the idolatry of the Gentiles was the worship of demons, as is said (Ps. 95:5): All the gods of the Gentiles are demons.

DIVISION. Idolatry, by reason of affection, is twofold: one MATERIAL or simulated, as when someone, without internal affection, from fear of death, exhibits worship to an idol; the other FORMAL and proper, and this is either perfect, as when someone adores an idol which from infidelity he thinks to be God; or imperfect, when someone, either from hatred of God, or from affection for obtaining something from a demon or another creature, offers worship to it as if to God.

Hence you will deduce: 1. Idolatry, even material and feigned, is a grave and mortal sin; because it is a pernicious lie, and against religion, and often also against the precept of externally professing the faith (cf. n. 429). 2. Imperfect idolatry, on account of malice of the will, is a graver sin than perfect idolatry (III, 12, 13).

§ 2. On Divination

557. DEFINITION. Divination is a species of superstition by which someone invokes the knowledge of the demon, so that he may know contingent and freely future things, or things otherwise hidden, accessible to God alone.

But since divination (as worship of the demon) proceeds from a certain express or tacit pact with demons, it will be worth the work to discuss: 1. the pact of man with the demon; 2. the various divinations in particular. Cf. 2.2, q. 95, a. 2 ad 2, and a. 3.

1. On the Pact of Man with the Demon A pact with the demon is a convention, or everything by which someone uses something for the worship of demons, that is, for acknowledging their excellence and his own submission.

558. PRINCIPLES. I. Man can do more with the help of the demon than by his own powers alone. For angels are more excellent than men, both in the faculty of knowing and in the power of working; and angelic nature in demons was indeed depraved through sin, but was not taken away or diminished (1, q. 64, a. 1). Yet that which is obtained with the help of the demon is only preternatural.

Hence: 1. As regards KNOWLEDGE, demons easily call past things back into the mind of man; they manifest present hidden things which have been outwardly disclosed, even things much distant; indeed, they foreknow innumerable future things, both by conjecture and also with certainty from natural causes. Yet they do not know the secret and hidden thoughts and volitions of the soul, nor the mysteries of grace (1.2, q. 57, a. 5; Muller, l. 2, § 69, 4).

2. As regards OPERATION, they can move bodies; assume bodies to themselves, either formed from air and vapors, or even true bodies, which indeed they do not formally vivify, but manage as movers. They can excite the imaginative power of man, or the sensitive appetitive power, and thus stir men to hatred or lust; indeed, they can change our senses, for example the eyes, so that something is seen otherwise than it is. In one word, they can effect innumerable things for the deception and destruction of men (1.2, q. 80, a. 2). Yet St. Augustine says: "Nor do demons do anything unless he has permitted it, whose judgments are hidden, many, unjust, none" (*de Civit. Dei*, l. 18, c. 18, n. 2).

3. II. Preternatural effects are accustomed to be obtained through a pact with the demon. A pact with the demon can be: 1. explicit, when someone invokes him by words, or by deed usurps something through which he knows or thinks that the demon cooperates; 2. implicit or tacit, when someone uses vain and naturally disproportionate means for knowing or effecting something.

"Nor is it required that the demon should at some time have made a pact that he would concur at the application of such a vain means; for by this very fact, that someone uses those vanities, the demon mixes himself in, although it is beyond the intention of the one using to invoke him" (III, 8).

560. III. Every pact with the demon is, of itself, a most grave sin. For in it there is participation or commerce with the sworn enemy of God, and divine honor is attributed to a creature, because that is expected from the creature which ought to be expected from God alone. Yet it can happen that an implicit pact does not exceed venial fault; namely if simplicity, ignorance (yet not crass or affected), defect of certain faith, absence of serious intention are present, for example when, by way of joke, public diviners are consulted on feast days and market days. In these matters generally the imperfection of the act excuses (III, 5, 7).

LET IT BE NOTED: 1. An implicit and explicit pact probably do not differ in species; yet per accidens there is often an obligation of explaining in confession whether the pact is explicit, because express invocation of the demon often has other sins joined to itself, for example heresy, idolatry, etc., and because it does not admit smallness of matter.

2. In doubt whether some effect proceeds from a natural cause or from superstition, it is presumed rather to proceed from a natural cause.[30] Thus the Doctors commonly teach with St. Thomas (2.2, q. 60, a. 4): "Where certain manifest indications concerning someone's malice do not appear, we ought to hold it as good, by interpreting what is doubtful toward the better part." Yet the Doctors rightly counsel that then a protestation be premised against the effect, if any superstition underlies it. The Holy Office also declared the same on July 26, 1899, as regards doubtful experiments of hypnotism (n. 570 bis).

3. If it is certainly or probably established that the effect does not proceed from a natural cause, in doubt whence it proceeds, it is judged rather to proceed from the demon than from God, since there is no divine promise about it (III, 20).

4. From these things you will resolve: a) "He is not excused from sin who, in using such things as are established to be naturally disproportionate to the intended effect, protests that he intends no commerce with the demon, because in reality he acts against his protestation. For since neither God nor good angels mix themselves with such things, the demon is implicitly invoked in them" (III, 8, 3).

[30] We suppose that the doubt rests on a probable reason, suppose analogy; and not on the general reason that many things in nature lie hidden from us: that would weaken the force of miracles.

b) "Nor is he excused who believes such means useful on account of experiences; because the demon procures these, so that he may gradually ensnare men and induce them to usurp similar things" (III, 8, 4).

c) "It is not illicit to use the power of a natural thing which has been known through superstition, provided its observation or operation does not depend upon the help of the demon. The reason is that although that knowledge was badly acquired, nevertheless the sin has passed, and the natural power has contracted nothing evil from it" (III, 20, 3).

2. On Various Divinations in Particular 562. PRINCIPLES. I. All divinations are reduced to one species, because all rest upon a pact, at least implicit, with demons. See above n. 560, 1.

Divinations obtain various denominations according to the character of the invocation:

1. Divination through EXPRESS invocation of the demon is called: oracle, if it is done through idols; necromancy, if through an apparent resuscitation of the dead; pythonism, if through living men seized by him; oneiromancy, if through dreams; prestidigitation, if through fictitious figures; haruspicy, if through signs in the entrails of animals; geomancy, if through a figure in earth; hydromancy, if through a figure in water; aeromancy, if through a figure in air; pyromancy, if through a figure in fire.

2. Divination through TACIT invocation is called: judicial astrology, if it is done from the situation and motion of the stars; auspice, if from the flight of birds; augury, if from their chattering; omen, if from a chance event, for example from meeting a funeral; chiromancy, if from the lines of the hand; physiognomy, if from the lines of the face; sortilege, if from vain lots, for example from the opening of a book, from throwing dice. Yet by the name of sortilege (or necromancy) all kinds of superstitions are accustomed to be designated (III, 6 and 9). As regards crystallomancy, to which many today are devoted, cf. Bessmer (*Stimmen aus Maria-Laach*, 1908, p. 165).

3. II. All divinations are of themselves gravely illicit. It is established again from the things said n. 560.

Hence: 1. "They sin who consult Egyptians (seers or sortilegists) concerning fortune: and indeed, if it is done with firm faith, or scandal, etc., of itself mortally; but if for the sake of curiosity or laughter, as is commonly done, only venially."

2. "If someone should depend so upon the stars, dreams, and similar things, that he wishes to regulate almost all his actions and life according to them, the Doctors commonly teach that he sins mortally."

3. From observation of such things, once and again to omit something to which otherwise you are not held under mortal sin seems only venial; as also lightly to fear from time to time lest it be or happen as they portend (III, 8 and 10).

564. III. Simple conjectures deduced from natural causes are not illicit. For, as St. Thomas speaks (2.2, q. 95, a. 1), "certain causes produce their effects in most cases, yet rarely fail. And through causes of this kind future effects can be foreknown, not indeed with certainty, but by a certain conjecture"; for example, if someone from a certain song and flight of birds conjectures storm, rain, or serenity.

Therefore physiognomy is licit, by which we conjecture the internal dispositions of the soul, provided rash judgment is avoided. Likewise natural astrology is licit, by which we divine certain natural effects, as storms, sterilities, etc.; and if one sometimes exceeds in its certitude, only the sin of lying or imprudence is committed, which is of itself a light sin (III, 9, 8).

565. Questions. Q. 1. Whether it is licit to believe DREAMS?

Resp. a) If dreams are certainly or more probably from God, we can, indeed we are bound to, believe them, since God has promised sometimes to speak through dreams. Conversely, it would be a grave sin to believe diabolical dreams, unless simplicity or imperfection of the act excuses, namely if someone believes them only lightly. Now, in order that those things which are from God may be discerned from the others, it must be seen whether they excite to good or to evil, whether they disturb or quiet one awakened, whether they render him eager or sluggish for good works.

b) In doubt whether they proceed from God, or from the devil, or from a natural cause, one must stand for the natural or diabolical cause, and therefore faith is not to be applied to them; for if God sends dreams, he certainly testifies concerning himself.

Q. 2. Whether the USE OF LOTS is always illicit?

Resp. a) Divisory lots, which are employed for dividing goods, settling disputes, playing honorably, etc., are licit, because they are entirely free from every superstition. Yet they are prohibited as regards ecclesiastical elections, from c. *Ecclesia*, *de sortilegiis*. They are permitted in certain codes, for example German Code, 659, 720.

b) Divinatory lots, by which the manifestation of a hidden matter is inquired, for example the detection of a thief from throwing dice, are illicit, unless they are done from divine inspiration (cf. Josue 7:14); because they contain at least tacit invocation of the demon, from the disproportion of the means to the knowledge.

c) Consultory lots (as in the election of Saul and St. Matthias), by which it is inquired what is to be done in this or that matter, "are sometimes licit, when necessity and honesty of the cause require it, and a more suitable mode of conquering the doubt does not appear: provided they are done with prayer premised, with due reverence, and indication is expected from God alone; for example if someone clinging at a fork in the road cannot otherwise determine himself as regards the way; or if they are done by divine instinct or command..." (III, 10, 11).

Q. 3. What is to be thought concerning the use OF THE DIVINING ROD?

Resp. a) If it is employed for finding lost things, transferred boundaries of fields, thieves and murderers, it seems certain that acts of this kind are superstitious divination.

b) If it is employed for finding veins of waters or metals, there are not lacking those who affirm that this is not necessarily to be held as a superstitious thing, because the motion of the rod, if it is held by persons endowed with a certain physical disposition, is a purely natural effect. Yet it is required that the rod be moved equally in every case, whether veins are being sought or not. But deliberately let a protestation be made against diabolical operation which perhaps can be present (III, 8, 4). Cf. *Vind. Alph.*, II, n. 32.

Note. Yet there are some experts who think the use of the divining rod to be prestidigitations (*Nat. u. Offenb.*, 1900, p. 600).

Scholium

On Spiritism

566. Things to be noted beforehand. Spiritism is the consultation of spirits, especially concerning matters of the other life. In spiritism two things must be distinguished: commerce itself with spirits, and the wonderful phenomena which accompany their evocation and consultation. Of the effects produced, some are common to spiritism and hypnotism (see these n. 569); others are proper to spiritism, and they are: materialization, manifestation of light, levitation, motion at a distance, rotation of tables which are touched by the fingertips of those standing around and are moved by the command of the will alone, or also, at the command of those questioning, communicate responses by knocks (or in another mode). Women, who therefore are called mediums, are generally employed for producing these things.[31]

PRINCIPLES. I. Spiritism, as an action of consulting spirits, is altogether illicit; and indeed, even if this is only external, provided it is serious. It is established 1. From AUTHORITY. Not rarely has evocation of spirits been condemned, both in Sacred Scripture (Deut. 18:9-12; Lev. 20:6, 27) and by the Church (especially in the Fifth Lateran Council). On Aug. 4, 1856, the Holy Office declared: To evoke the souls of the dead, to receive responses ... is found to be a deception altogether illicit and heretical (*A. S. S.*, I, p. 177). On Apr. 2, 1864, the same Congregation most gravely proscribed all writings favoring spiritism. In the Const. *Officiorum ac munerum* (tit. I, c. V, 12) it is read: It is forbidden to publish, read, or retain books in which sortileges, divination, magic, or evocation of spirits are taught or commended. It is established 2. FROM REASON: it is clear that evocation of spirits is mere, genuine divination. For the spirits who are judged to be consulted: a) are not good spirits, that is, angels; it would be blasphemous to assert that good spirits adapt themselves to the childish whims of men, and become heralds of execrable and impious doctrine, such as is promulgated in the little assemblies of spiritists; b) are not the souls of the dead: for to them, stripped of the body, there is no community with men without the special permission of God. Therefore it is open that these spirits are demons; and from elsewhere they themselves have often confessed this.

From these things it follows: the art itself of producing phenomena proper to spiritism, and generally the art of producing effects which certainly cannot be ascribed to the powers of nature, is altogether illicit.

The great question is whether, in sessions of spiritists (prescinding from consultation), such phenomena should not rather be ascribed to the cleverness and bad faith of the mediums.

[31] Cf. Antonelli, *Med. past.*, II, c. 1; Berardi, *Theol. mor.*, II, n. 364; Perrone, *de Virt. Relig.*, P. II, sect. 2, c. 6; Genicot, I, n. 270; Surbled, *Spiritualisme et Spiritisme*; Lapponi, *Hypnot. et Spirit.*; Schneider, *Der neuere Geistergl.* (1913); *Ami du Cl.*, 1900 and 1902, on this matter.

a) There are not lacking authors who admit that wonderful operations, by the work of spiritists, are often truly produced, and that it is not lawful to attribute all things a priori to frauds. Cf. Schneider (*Der neuere Geisterglaube*, VII, p. 334); Lapponi, *Hypnot. et Spirit.*, p. 153.

b) But other authors affirm that in very many cases (perhaps a few excepted) the leaders of spiritism (the most celebrated mediums) have been convicted of fraud and bad faith. Thus Gutberlet (*Nat. u. Offenb.*, 1897, p. 738). The same opinion is upheld by Von Cyon, professor of psychology, who himself convicted the most celebrated mediums of this age of fraud (cf. *Gott u. Wissensch.*, 1911, p. 206; *Nat. u. Kultur*, 1911, P. I, Spiritism). Thus also other experts.

II. It is licit, scandal of the medium and of those assisting being excluded, from sufficient reason, to provoke phenomena where someone certainly knows that no preternatural effect is going to arise. The sufficient reason is that the error of the rest may be corrected by experiment. We said: scandal of the medium being excluded; because the invitation would not be licit if the medium clearly pretended (even only externally) that he could consult spirits; otherwise, if from serious indications it were established that the medium boasts himself as such. For then no illicit action is given, but there is a detection of error (Sabetti, *Theol. mor.*, 209; Genicot, I, n. 271, IV; Jaugey, *de Virt. Relig.*, 440).

PRACTICAL CONCLUSIONS. 1. A protestation which someone would premise before an act of consultation or exercise of the art, namely of excluding any intervention whatsoever of the demon and of directing himself to angels, does not change the nature of the act, which objectively, or from the end of the work, is referred to the worship of the demon from a pact implicitly had. In this sense the response of the Holy Office, Apr. 1, 1898, was made (*Nouv. Rev. Theol.*, 30, p. 397). 2. They sin gravely who perform the office of medium, who seriously ask evocation from mediums, who hold sessions of spiritism, who often assist at these either actively or passively, even for the sake of curiosity; because scandal and danger to one's own salvation (that is, of perversion in faith and morals) are never wholly absent. Thus according to the response of the Sacred Penitentiary, Feb. 1, 1882 (Bucceroni, *Enchir. mor.*, n. 505).

Note. The mere rotation of tables is not evidently illicit, because it is not established concerning a cause solely preternatural; it can become illicit by reason of scandal or danger. We said: mere rotation, because if consultation accompanies it, even concerning indifferent matters, it would become altogether illicit; since responses of tables by repeated knocks (if they are truly given) would occur only with a pact with the demon going before (Noldin, II, 167).

§ 3. On Vain Observance

567. DEFINITION. Vain observance "is superstition by which, through some disproportionate means not instituted by God, some effect is procured, for example health, knowledge" (III, 14). It is called observance because it is some veneration or worship with respect to the demon; and it is called vain because those effects are either not obtained, or often are harmful rather than salutary.

But because there are not lacking those who think that hypnotism, employed for curing certain diseases, is to be numbered among vain observances, we shall speak: 1. of vain observance in general; 2. of hypnotism in particular.

1. On Vain Observance in General Vain observance does not differ specifically from divination; because in the genus of morals it does not matter whether knowledge of a hidden thing is sought from the demon, or some external effect. By reason of material object, it is threefold: 1. the notorious art, or the art of acquiring knowledge without labor; 2. the art of healings, or the art of healing by various signs or sacred things, as efficacious for this as from the work worked; 3. observance of events, by which from consideration of some chance event it is conjectured what favorable or unfavorable thing will be.

568. PRINCIPLE. Vain observance is a mortal sin from its whole genus. "It cannot be excused from mortal sin from smallness of matter: because simply and in every matter the power proper to God is usurped" (III, 15). Yet it can be excused from mortal sin from imperfection of the act (cf. n. 560, 563).

Vain observance is perceived from various signs: 1. From insufficiency of the cause employed for producing the effect; namely if it has neither natural force for the intended effect, nor is the supernatural legitimately established.

2. From addition of a false or vain circumstance, for example apocryphal words, a certain hour, a certain number, foreign characters, etc. 3. From the effect itself, if this at once vanishes. 4. From infallible expectation of the effect, the insufficient cause being posited.

This can especially be observed in certain modes of curing diseases (magical medicine). The remedies employed are commonly touchings, ointments whose elements and healing force lie hidden under mystery; sometimes prayers, ridiculous adjurations, are added; finally even that sympathy alone, or magnetic force which is said to pass from the operator into the

sick person, is employed. It cannot be said a priori that vain observance is present in all these things. For it is certain that in certain families there remains secret knowledge of certain plants, together with the composition of some remedy. It is also certain that the grace of healings can also be conferred by God upon an uneducated man: for it is one of the graces gratuitously given. But this grace of healings is personal and does not use vain means. Therefore if he who pretends that he possesses this grace says that he received the art from others, employs wonderful signs, and firmly believes that the force of curing exists in the signs themselves, he is not to be given credence. Cf. *Ami du Cl.*, 1909, p. 1146, General Table, v. Healers; Noldin, II, 159 and 162.

From these things you will resolve: 1. Those are guilty of vain observance: a) Who wear amulets or bindings marked with certain characters. b) Who invoke certain unknown names, or employ a certain number of crosses or prayers for healing wounds, for rendering themselves invulnerable, etc. c) Who spread certain chains of prayers to be written by one's own hand and sent to others, or wear certain prayers to St. Bridget, or other prayers, expecting an entirely infallible effect from them. d) Who hold certain days as favorable, but others as unfavorable, as, for example, Tuesday or Friday, and order their actions according to this credulity. e) Who refuse to sit at table in the number thirteen, as if this were a sign of death; etc. (III, 17; Croix, l. 3, P. I, n. 29).

2. But it is not vain observance: a) To observe the moon or the times more suitable for gathering herbs or cutting trees. b) Nor to wear sacred things or words of Sacred Scripture in honor of God or of the Saints. c) Nor to swallow little paper images of the Blessed Virgin Mary dissolved in water or wrapped in the manner of a pill, for obtaining health. From this use practically every appearance of vain observance is removed if the faithful are admonished that honor and love toward the Mother of God are thus expressed, and that it is in no way a question of receiving communion of the Blessed Virgin Mary, or of obtaining an effect infallibly (cf. Decree of the Holy Office, July 2, 1903, in *A. S. S.*, 37, p. 237; *Linz Quart. Schr.*, 1906, p. 361 and 1907, p. 253; *Ami du Cl.*, 1899, p. 359; 1908, p. 574).

PRACTICAL RULES. 1. Superstition is contagious; wherefore a prudent parish priest or catechist should have discourse only concerning those superstitions which are known in the region.

2. In many vain observances there is good faith, and therefore rude persons are sometimes to be left in their simplicity, since they are with difficulty drawn away from that which in good faith they received from their ancestors.

3. Let the parish priest see whether the matter can be turned to a good sense, or changed into another, almost similar, but pious and good use. Very appositely to the matter: "When you are pressed by miseries and troubles," says St. Alphonsus (*Inst. cat.*, P. I, c. 1, n. 54), "have recourse to the most holy Sacrament, to the Crucified, to the Virgin Mary, to Blessed Anthony of Padua, to Blessed Vincent Ferrer; use the oil of their lamps; use little papers with figures of Mary Immaculate or of some Saint; and in this mode, without sinning, you will be able to obtain grace. If you act otherwise, you will not obtain grace, and you will sin." Cf. *Linz. Quart. Schr.*, 1907, p. 517.

2. On Hypnotism Cf. Coconnier, *L'hypnotisme franc*; Antonelli, *Med. past.*, II, c. II; Lehmkuhl, I, n. 502; Genicot, I, n. 272; Schneider, *L'hypnotisme*; D'Annibale, Noldin, etc.

Hypnotism differs from magnetism only in name. The latter has Mesmer (d. 1815) as its inventor, from whom it is also sometimes called mesmerism, and is the art of producing certain phenomena which appear prodigious insofar as a cause proportioned to the effects cannot be assigned.

569. NOTIONS. Hypnotism, considered in general, is defined: The art of producing a sleep in which the hypnotized person, by obeying the hypnotizer, effects things plainly singular.

DIVISION. By reason of comparison instituted with the powers of nature, hypnotism is rightly accustomed to be divided into scientific, namely if a positive doubt can be present that all things proceed from a natural cause; and into prodigious, namely when such a doubt is not given.

1. Scientific hypnotism can be defined: The art of producing a sleep in which the hypnotized person obeys the hypnotizer only in those things which are suggested to him through oral suggestion; or, it is the art of obtaining a sleep by which someone becomes fit to be so affected by an image suggested to him by words that he has it as objective, and translates into practice, more or less perfectly, what is represented by it (Coconnier, l. c., p. 257). It is called scientific because, as a remedy in therapeutic science, it is employed by those physicians who are led only by "licit study of science," as the Encyclical Letter of the Holy Office, Aug. 4, 1856, has it (*A. S. S.*, I, p. 177).

Therefore two things must be distinguished: the sleep and the phenomena which accompany it. - As regards the SLEEP, a great controversy rages among experts whether it must be called simple artificial sleep or a nervous disease. Yet it is certain that in that sleep the functions of the brain are interrupted, consciousness of self ceases, and blind obedience is

easily furnished. - As regards the PHENOMENA, behold the principal things which are commonly and certainly noted, yet not all in every subject nor all in the same degree: a) the absolute relation of the hypnotized person to the hypnotizer, whom the former believes altogether and obeys, while he seems to perceive the rest standing by neither with eyes nor ears, nor in any way to be affected by them. This fact always happens; b) hallucinations, whether positive, if the hypnotized person sees by imagination things which are not, or negative, if he does not see those things which are present; c) illusions, namely the hypnotized person confounds objects, taking one for another, or considers in them qualities or properties which are lacking; by this reason all the senses can be disturbed, immobility, insensibility of members, whether partial or of the whole body, can be obtained; suggestions can also be given as regards the person of the hypnotized one, which he has as reporting the truth, for example that he is a soldier, priest, old man, young man, etc.; d) suggestions which must obtain their effect only after a fixed time, for example after several months; e) effusion of blood, or of humor, in that part of the body which the hypnotizer shall have suggested, etc.

2. Prodigious hypnotism can be defined: The art of producing a sleep in which the hypnotized person obeys the hypnotizer not only in those things which are orally suggested to him, but also furnishes other things which, suggestion being omitted, are asked of him by way of consultation and certainly go beyond the powers of nature.

To scientific hypnotism it adds portentous facts certainly pertaining to divination, as, for example, at the nod of the hypnotizer to foresee future things, disclose things unknown and far away, solve most difficult questions concerning physiology or mathematics, speak an unknown language, and other things of this kind which certainly surpass the powers of nature. We say: which certainly surpass; for facts only doubtfully preternatural, until their nature is established, are to be ascribed to scientific hypnotism and, a protestation having been premised, can licitly be produced, as we said n. 560, 2.

570. PRINCIPLES. I. Prodigious hypnotism is altogether illicit. For the phenomena which it contains are altogether preternatural and are to be attributed only to the demon. Whence the Holy Office in the Encyclical Letter, Aug. 4, 1856, against the abuses of magnetism: "Hence by the tricks of somnambulism and of clear intuition, as they call it, those little women ... babble that they see all invisible things ... presume by rash daring to disclose unknown and distant things, and to exercise other superstitious things of this kind ... In all these things, whatever art or illusion they finally use, since physical means are ordered to effects not natural, there is found a deception altogether illicit and heretical." And on July 26, 1899: Experiments of hypnotism, "if it is a question of facts which certainly go beyond the powers of nature, are not licit" (*Nouv. Rev. Theol.*, 31, p. 699).

II. Scientific hypnotism, exercised with the due conditions, is licit. Thus the more common opinion, which, besides almost all physicians, even Catholic ones, many theologians also uphold. Cf., besides those alleged, Tanquerey, II, n. 133, 906; *Ami du Cl.*, years 1899, 1900; Willems, *Inst. phil.*, II, n. 322.

IT IS PROVED: For scientific hypnotism involves neither superstition nor anything else intrinsically evil; and from elsewhere, the inconveniences which can be feared are wholly removed through the conditions applied. Therefore there is nothing by which it becomes illicit.

1. It involves no superstition. This would have to be proved certainly. But this has not been done up to now.

The adversaries contend that the note of superstition is demonstrated from the defect of the nexus of causality between the means and the effects.[32] Hypnosis, they say, arises and ends by means altogether inept, produces most diverse and portentous phenomena which seem to transcend the efficacy of the cause. It is answered: a) Although the intrinsic reason of hypnotic sleep is not yet perfectly known, various indications nevertheless suggest that it does not proceed by preternatural force. For it is sometimes produced without the intervention of a hypnotizer and is more easily induced in some than in others, indications which bear before themselves nothing certainly preternatural.[33] b) The Doctors assign as a likely cause of the phenomena the imagination most vehemently excited by the words of the hypnotizer.[34] See many more things in Antonelli (*Med. past.*, II, n. 22). - Nor from the fact that in the phenomena of hypnotism preternatural facts sometimes are mixed in can it be deduced that the cause of all the phenomena is preternatural.

2. Nor does it admit anything else intrinsically evil. For of the various elements which are distinguished in hypnotism, none can be called evil: neither suggestibility, nor suggestion, nor exaltation of the imagination, nor likewise the momentary suspension of the use of reason and liberty; otherwise chloroformization, which is reproved by no one, would be illicit.

The absolute dependence of the hypnotized person upon the will of the hypnotizer, which seems to be repugnant to right reason, could raise a difficulty. But it is answered: a) This dependence, according to some, is not so absolute: "Most of the

[32]Franco, *L'ipnotismo tornato di moda*; Touroude, *L'hypnotisme, ses phenomenes, ses dangers*; Moreau, *L'hypnotisme*, etc.
[33]Cf. Berardi, *Exam. Conf.*, n. 2668.
[34]On the wondrous force of imagination, see Benedict XIV, *de Serv. Dei beatificatione*, l. IV, P. 1, c. ult.

hypnotized resist suggestions displeasing to them. Natural or acquired inclination is as it were a primordial suggestion, which impedes subsequent suggestions" (Schneider, l. c., p. 376). b) The sole dependence which is had in hypnosis is dependence of the imagination, but not of liberty. But man is not bound always to exercise dominion over his own imagination; otherwise it would not be licit to be occupied with natural sleep, since in it the imagination frequently forms several images which induce various motions of the soul and actions even altogether unusual, as in sleepwalkers.

3. All dangers are removed. Dangers of dishonesty are removed by the conditions indicated below; dangers of health are not those which are exaggerated by some. Cf. Antonelli (l. c., 44, 51).[35]

The REQUIRED conditions and cautions to be employed are several: 1. On the part of the cause, it is required that this be relatively grave, because in hypnosis there is privation of the use of reason and a certain abdication of one's own will, and for this to be licit a grave cause is demanded. Of this kind will be: a) a disease which cannot be cured in another way, or is of such a nature that by this remedy solace can be obtained, as is, according to Willems, hysteria, rheumatism; b) an evil propensity which impels a man to crimes more or less necessarily (for example alcoholism, masturbation), and which can be removed or diminished by hypnotism; c) the progress of sciences, for example of medicine or psychology, to be promoted by these experiments. It will not be licit, of itself, for the sake of joke or gain to make experiments of hypnotism or assist at them. 2. On the part of the hypnotized person, full consent is required; for it is not licit to deprive anyone unwilling of the use of reason and liberty. 3. On the part of the hypnotizer, let the physician be skilled in this matter, for forestalling inconveniences which otherwise could come to the health of the hypnotized person; let him be conspicuous in probity for removing the dangers threatening morals; and besides, if it is a question of facts which doubtfully go beyond the powers of nature, let him premise a protestation that he wishes to have no part in preternatural facts, as the Holy Office decreed, July 26, 1899. 4. On the part of the hypnotization, it is required that hypnosis be obtained by licit and honorable means; that suggestions be honorable and adapted to the end licitly intended; and that hypnotization and suggestions be made before a third person honorable and trustworthy, for example before a parent, by which caution all dangers of dishonesty will be wholly driven away. Yet sometimes this assistance can be superfluous, namely if the physician's probity is certainly established.

THE WHOLE THESIS IS CONFIRMED: 1. From the Encyclical Letter of the Holy Office, Aug. 4, 1856. For the Sacred Congregation well distinguishes between licitness and illicitness, use and abuse of magnetism; it condemns those who, the licit study of science having been neglected, pursuing curious things, boast that they have acquired a certain principle of divining; it renews the rule already handed down on July 28, 1847: "Every error, sortilege, explicit or implicit invocation of the demon being removed, the use of magnetism, namely the mere act of applying physical means otherwise licit, is not morally forbidden." But scientific hypnotism is such.

2. From the Response of the same Congregation given on July 26, 1899, where it is said: experiments of hypnotism, if it is a question of facts about which it is doubted whether they go beyond the powers of nature, a protestation having been premised, are to be tolerated. Therefore the Holy Office implicitly acknowledges that there are given in hypnotism certain phenomena which do not certainly transcend the powers of nature.

§ 4. On Magic and Malefice

571. Magic is a generic name and designates the art of effecting wonderful and unusual things.

One kind is natural or white magic, which works wonderful things through natural causes, for example chemical ones. There is no reason why we should long remain over this, since of itself it is licit. But another is diabolical or black magic, and is, as we said, superstition either of divination (divining magic), or of vain observance (working magic), and, where it is done for harming, it is called malefice.

NOTION. Malefice is the force of harming others, from pact and cooperation of the demon. Those who use malefices are commonly called sortilegists.

DIVISION. One malefice is called amatory, or philtre, whose end is to excite carnal love or hatred, with the demon moving the imagination and humors of man. Another is called poisonous, by which harm is inflicted upon some person or his goods (III, 23).

Note. One infected by malefice does not lose liberty; but, strengthened by divine grace, he can resist the temptation. Therefore if he consents, for example to lust, he sins mortally, although, by reason of vehement passion, he is more easily worthy of pardon.

[35] Public experiments chiefly harm the health either of those operating or of those assisting. Whence wisely in certain States they are prohibited. Cf. the law passed in Belgium, May 30, 1892.

572. PRINCIPLE. Malefice contains a twofold malice, and sometimes is subject to ecclesiastical penalties. For in malefice there is grave sin against religion, insofar as it is superstition, and against justice, on account of the injury which is inflicted upon neighbor. - It is punished with excommunication latae sententiae if formal heresy is joined to it. Confer n. 1314. See the Holy Doctor (III, 27).

573. MODE OF REMOVING MALEFICE; PRACTICAL RULES.

I. Mode of removing. 1. Malefice cannot be removed through another malefice to be inflicted by another man or by a magician. 2. But it can be removed by using: natural means, for example medicine, destruction of the sign by which the demon harms, use of a contrary sign, provided it is honorable; or supernatural means, prayer, exorcism, sacraments of the Church (III, 24, 25). Cf. n. 622.

II. Practical rules. 1. As regards malefices and magic, let the priest beware lest he exceed in this matter either by excessive credulity or excessive incredulity, and let him first take care lest someone lose his reputation from false suspicion of sortilege; and then let him prudently reconcile persons oppressed by sortilege with God, through a good confession, prayers to be recited daily, etc.

2. Shepherds, blacksmiths, rustics who heal draught animals or cattle are to be questioned; likewise certain old women rightly suspected. "Besides various superstitions, they are to be examined: a) for what end they attached themselves to such superstition, for example whether by reason of vehement passion, sadness, vengeance, avarice, or of procuring the name of sanctity; which would be sacrilegious hypocrisy; b) concerning apostasy, idolatry, and heresy: for they deny Christ and God and renounce the sacraments; they hold the demon as God or a Saint, and do not think him damned or wretched, and consequently that his followers are not to be damned; c) concerning blasphemies against God and the Saints, and concerning sacrileges: for they abuse sacred things, as holy water, Eucharist, etc.; d) concerning lust and commingling with the demon; e) concerning harms inflicted upon neighbor (III, 28, resp. 1).

3. "They are to be admonished that they ARE BOUND: a) To abjure and dissolve an express pact, if they have one with the demon, or commerce with him. b) To burn their books, papers, bindings, and other instruments of the art. c) To burn the handwriting, if they have it; but if the demon alone has it, he is not necessarily to be compelled to return it, because the pact is sufficiently dissolved through repentance. d) To repair harms inflicted" (III, 28, resp. 2).

4. Especially, although prudently, the faithful are to be turned away from superstitions of whatever kind; for they are AS IT WERE SACRAMENTS OF THE DEVIL. Moreover, the Doctors note that to enter into society with the devil is a probable sign of eternal reprobation; because, just as conversation in this life with God and the angels through prayers, etc., belongs to the beginning of eternal happiness, so society and conversation with demons belongs to the beginning of damnation (Laymann, l. 4, tr. 10, c. 3, n. 4).

Cf. Janssen, *Gesch. des deutsch. Volkes*, B. VIII, *Hexenwesen*; Surbled, *Le secret des sorciers* (*Science cath.*), 1902; Paulus, *Rom u. die Blutezeit der Hexenprozesse* (*Hist. pol. Bl.*, B. 141, p. 241); Spee, *Cautio criminalis*.

Article II

On Irreligiosity

574. Irreligiosity, or impiety, is a special irreverence which is inflicted upon God, either immediately in himself, or mediately in sacred persons or things. - It is inflicted upon God immediately through tempting God, through blasphemy, through perjury and perfidy in promises; but mediately through sacrilege and simony.

Moreover, of these various species of irreligiosity three pertain to the second precept of the Decalogue, insofar as it is negative: namely blasphemy, perjury, and perfidy in promises; but the other three, by which due subjection to God, or fidelity, is denied, pertain to this first precept.

Therefore there must be treated: 1. of tempting God; 2. of sacrilege; 3. of simony.

§ 1. On Tempting God

575. DEFINITION. Tempting God is a word or deed directed to taking experiment concerning God through an extraordinary effect rashly expected from him.

We say: 1. Through an effect expected, because temptation requires that, by desire and intention, divine help be at least tacitly implored. 2. Rashly, that is, without just cause; for if a grave cause is added, namely necessity, or pious utility, or

divine inspiration, humbly to ask such an effect will not be to tempt God, but rather to honor him by an act of confidence (III, 29 and 31).

DIVISION. Tempting God, by reason of the perfection of the act, but not by reason of species, is twofold: 1. Formal (or explicit), when someone, expressly doubting concerning some perfection of God, wishes to try it: for example if someone from

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from a tower casts himself down headlong, that he may test whether God is merciful and powerful, by preserving him immune from injury. 2. Interpretative (or implicit), when someone, even if he does not expressly intend to tempt God, nevertheless asks or does that which of its own nature seems to be referred to this: as if someone commits himself to a danger from which either in no way, or scarcely, he can be rescued unless miraculously; or if he omits natural means, hoping for the effect from God alone (III, 29, 32; cf. *H. Ap.*, IV, 38).

576. PRINCIPLES. I. Formal tempting of God is a mortal sin from its whole genus. For it includes doubt concerning the divine perfections, which redounds to grave contempt of God; indeed it has the malice of heresy, if the doubt is positive; or at least it deals with God too curiously, as with a juggler: which is a great irreverence toward God (III, 29, 1).

II. Interpretative tempting of God is a mortal sin from its genus. The reason is that he who thus tempts God also denies him, of itself, reverence and due subjection. Yet it can happen that the disorder in one expecting the help of God without a just cause is not grave. This is established from those words (Ecclus., 18, 23): Before prayer prepare thy soul: and be not as a man that tempteth God. For thus one praying is considered to wish to test whether God also can and will assist one praying badly: which nevertheless the Doctors commonly judge to be only venial, on account of lightness of matter.

Many authors also teach this, that if someone, in a light matter and without danger of grave harm, should tempt God from mere curiosity of seeing some supernatural work, he likewise would sin only venially (cf. III, 30; ed. G., I, p. 389).

577. From these things you will resolve: 1. He sins gravely who absolutely asks from God, or offers, a miracle for the conversion of heretics, since the testimonies of our faith suffice. But otherwise, if he asks under the condition if it shall please God, on account of grave utility, for his own or others' salvation, or for fulfilling the divine will.

578. Likewise he sins who without just cause offers himself to martyrdom, to danger of death or mutilation. Otherwise, in a case of necessity, for example if otherwise the faith or the salvation of many would be endangered, or for avoiding blasphemies; and in a case of utility, for exalting the faith or promoting the glory of God.

579. He sins only lightly who, in a light illness, the remedies having been rejected, hopes for health from God; because there is not grave disorder there. Indeed, he is excused from every fault, if he hopes that he will be freed from a light illness of this sort without remedies, naturally, with God assisting (*H. Ap.*, IV, n. 38).

580. A priest sins venially who, outside a case of necessity, wishes to preach without preparation, trusting in the help of God (III, 32); but he does not sin who, trusting in good fortune, subjects himself to an examination; because he expects nothing from God.

§ 2. On Sacrilege

578. DEFINITION. Sacrilege (a violation of the sacred), taken broadly, is called any sin against religion; taken strictly, it is the violation of a sacred thing.

Violation, that is, violence brought upon, or unworthy treatment, which can be committed not only by action, but also by omission of the reverence due to sacred things; of a thing, in the broad sense, under which also person and place come; sacred, that is, dedicated to God, and considered as such (III, 33 and 48).

Therefore, to discern whether some action is sacrilegious or not, there must be weighed: 1. from what head the thing is sacred and specially worthy of reverence, whether from divine institution or from ecclesiastical law; 2. whether the action specially wounds this sanctity of the thing; for otherwise it will not be sacrilege. Thus, for example, a religious is consecrated to God by the vow of chastity as to cleanness of the flesh, and therefore if he fornicates, he is sacrilegious; but otherwise, if he becomes drunk, if he is proud, if he lies, etc., because he is not considered consecrated for avoiding these things.

DIVISION. Sacrilege, by reason of the thing violated, is threefold: personal, by which a sacred person is violated; local, by which a sacred place is violated; real, by which a sacred thing, distinct from persons and places, is violated. By reason

of manner, it is direct or indirect according as the violation of the sacred thing either is intended or is only advertently committed.

579. PRINCIPLES. I. Sacrilege is a sin, now from its genus, now from its whole genus mortal. For irreverence toward sacred persons, sacred places, or sacred things redounds upon God. If sacrilege is direct, smallness of matter is never given in it. If it is only indirect, it is grave or light according to the measure of the irreverence which is committed (III, 33). Cf. *Vind. Alph.*, P. III, q. 3, a. 1, end.

580. II. Sacrilege differs in species according as it is personal, local, or real. The reason is that formally diverse is the sanctity which is wounded in the person, in the place, and in the sacred thing. For sanctity is in sacred persons formally, as in a subject; in a sacred place it is as in what contains holy persons, and in which worship is to be exhibited to God; but in sacred things, insofar as they cause or signify sanctity, or are ordered to holy things in another way (Salmant., tr. 21, c. 12, n. 16).

Let it be noted. 1. The three aforesaid species of sacrilege, more probably, are not subaltern species, as some say, but lowest species; therefore other circumstances are only aggravating, as St. Alphonsus more probably judges with St. Thomas, against Suarez, Busenbaum, and others. Hence, for example, "if someone violates a nun by beating her, or by lying with her, he commits one sacrilege formally" (III, 34). Wherefore it suffices, in either case, to say in confession: I committed sacrilege against a sacred person; and then to confess separately the sin against justice, or against chastity (III, 224).

2. In sacrilege, the guilt of violation is graver in the measure that the consecration is more intimate; and therefore personal sacrilege is graver than real and local sacrilege, just as, among real sacrileges, unworthy communion is the graver sin.

3. TIME is not the object of sacrilege: for example, he is not sacrilegious who sins on a feast day, as is commonly taught. Except, unless notable irreverence is brought upon divine worship, as if someone on Good Friday should exhibit comedies, public games, etc. (III, 46 and 273).

1. On Personal Sacrilege 581. Personal sacrilege is an act by which a sacred person is violated. Moreover, persons are called sacred who are dedicated to God, whether through sacred ordination or through religious profession.

Personal sacrilege is committed in four ways: 1. by striking a cleric or religious, or by any violence which is brought upon them, against the privilege of the canon (cf. n. 1329); 2. by dragging a cleric, or a religious person, before a secular tribunal, against the privilege of the forum (n. 1321); 3. by imposing a servile burden, for example military service or a tax, upon a cleric, against the current privilege of personal immunity (n. 201); 4. by the lustful violation of a person consecrated to God by the vow of chastity (cf. n. 787). Consequently, it is not sacrilege to detract from a priest, because only his person is sacred, but not his reputation. But otherwise, if sacred persons are put in mockery, as often happens in carnival revels (*de Privil.*, 18-24; Kon., n. 347).

Questions. - QUES. 1. Whether the violation of any vow whatsoever is sacrilege?

Resp. It is disputed. The Salmanticenses affirm, because through any vow whatsoever a person is dedicated to God in order to fulfill the vow. But Suarez and others deny, saying that it is only a sin of perfidy, or against fidelity due to God (III, 47; *Vind. Alph.*, P. III, q. 2).

Note. Many authors call the violation of vows, in general, sacrilege. This is said less rightly if we take the notion of sacrilege strictly.

QUES. 2. Whether the violation of the vow of chastity is sacrilege?

Resp. 1. In the affirmative, if it is a question of a vow emitted conjointly with sacred order or with religious profession in some Congregation; for through such a vow, which the Church recognizes, the person certainly and publicly becomes sacred to God. This holds also for vows which are emitted for a time before definitive profession.

2. If it is a question of a vow emitted privately, some deny, because no one becomes sacred to God unless the Church intervenes; others, perhaps more probably, affirm, because through such a vow also the body is dedicated to God and contracts a peculiar sanctity. Cf. *Ami du Cl.*, 1910, p. 378.

Note. 1. According to the opinion of all, the violation of a vow is a circumstance to be declared in confession, because there is in it a peculiar sin of infidelity (III, 47).

2. If someone is at once a priest and a religious and violates the vow of chastity, he commits only one sacrilege, because the twofold obligation is imposed upon him from the same formal motive. Cf. n. 627, 787, 2160, 2199, where useful things which pertain to this matter are added.

3. He who sacrilegiously violates the vow of chastity does not commit a twofold sin against religion: one of sacrilege, the other of perfidy; because the malice of perfidy, or infidelity, is absorbed by sacrilege (*Vind. Alph.*, I, p. 228).

2. On Local Sacrilege 582. NOTIONS. Local sacrilege is the violation of a sacred place.

Sacred places, in the strict sense, are those which, by the authority of the Bishop through consecration or solemn blessing, have been deputed for public divine worship. Such places practically are: 1. a church and public oratory, from the interior roof even to the pavement; 2. a public cemetery (III, 38, 460).

As regards semi-public oratories, there is a question whether they are sacred places in the strict sense (Noldin, II, 178).

Sacred places, in the broader sense, insofar as the right of asylum belongs to them, are those which are deputed to divine worship by ecclesiastical authority, as cemeteries, even if polluted, churches not yet consecrated or blessed, the sacristy, the tower, the atrium, the contiguous enclosure of the church; likewise religious places, that is, monasteries, the Bishop's palace, the parochial house, hospices erected by authority of the Church. But otherwise concerning private oratories (III, 460).

Local sacrilege is committed in four ways: 1. By all sins by which a church or cemetery is polluted by canon law, even if they remain hidden and the church does not need reconciliation; namely voluntary homicide, injurious and copious shedding of human blood, voluntary and illicit emission of human seed, and the burial of an excommunicate to be avoided, or of an infidel[36] (cf. n. 1629).

2. By all sins which are done against the sanctity of a sacred place strictly so called, such as: external acts gravely base (III, 459, 461), spoliation, theft, brawls, stabling of horses, and things similar to these, already prohibited by natural law itself.

3. By profane acts which are prohibited by the law of immunity, such as walks in a sacred place strictly so called, markets, meals, shouting, the noise of secular judgments; unless a just cause excuses, as, for example, if another suitable place is lacking. But some moderate walking in a church, or private eating, even without necessity, does not seem to be a grave sin, if scandal, shouting, and contempt are absent. Likewise the sale of candles or images in a cemetery or at the doors of the temple.[37]

4. By violation of the right of asylum, that is, if persons fleeing to that place and enjoying legitimate refuge are drawn out violently or fraudulently, for example by preventing others from bringing food, from a sacred place, even taken broadly, or interdicted or polluted (III, 36, 38; *de Privil.*, n. 25, 28). Cf. n. 201.

From these things it seems that a place less strictly sacred is violated only in the manner indicated under 4.

"Through merely internal acts the sanctity of a place is not violated; and therefore he does not commit sacrilege who in a church has the will of killing a man outside it. Otherwise, if someone outside the church proposes to kill in the church" (III, 43). Nor is theft committed in the sacristy, in cloisters, in an oratory of a private house, local sacrilege.

It is asked. Whether the theft of a profane thing in a CHURCH is sacrilege?

Resp. It is disputed. Lugo and others probably deny, unless the thing has been loaned to the church or received into custody. Many others more probably affirm, because it is said absolutely in canon law (Can. *Quisquis*, caus. 17, q. 4): "Sacrilege is committed by taking away a sacred thing from a sacred place, or a non-sacred thing from a sacred place, or a sacred thing from a non-sacred place" (III, 39). Cf. n. 903. - In practice, because the thing is doubtful, accusation of that circumstance is not to be urged.

3. On Real Sacrilege 583. NOTION. Real sacrilege is an act by which a sacred thing is violated: which here is understood as distinct from sacred persons and sacred places (III, 40).

[36]The word infidel must be understood of pagans, Jews, and other infidels whose burial in a sacred place causes it to be polluted. As regards the infants of the faithful who die without baptism, probably their burial does not induce pollution of the sacred place (Noldin, *de Praec.*, n. 178, 2; Schmalzgrueber in l. 3, tr. 40, n. 47).

[37]Literary exercises, the production of musical works, oratorio, indeed theatrical exhibition, if they conduce to fostering piety, can be tolerated even in churches in which the sacred rites are performed, the Most Blessed Sacrament always having been removed (Tanquerey, I, 933). But cinematographic exhibitions, as also projections, are altogether prohibited there. S. C. Consist., Dec. 10, 1912.

Real sacrilege can also be done by mere omission, and indeed gravely, for example if those things which pertain to sacrifice, such as corporals and similar things, are very unclean. Yet rarely will there be grave sin through this negligence (III, 48).

There are, however, four kinds of sacred things, and hence four degrees of real sacrilege within the same species (2.2, q. 99, a. 3).

The first and highest place is held by the SACRAMENTS.

To the first degree of sacrilege therefore pertains every injury and every abuse of the sacraments, when namely they are knowingly made invalidly, administered unworthily, received, or otherwise treated unworthily, as if sacred oil were employed as profane. And since among all the sacraments the Eucharist is the chief, therefore among real sacrileges the gravest of all is that by which this sacrament is violated, for example if the sacred host is trampled underfoot. We say among real sacrileges, because it is not to be counted among personal ones. For although Christ the Lord is really present, nevertheless he does not exhibit himself after the manner of a person, or in the form of an animate thing, but after the manner of food and drink (Sylv., 2.2, q. 99, a. 3; Lessius, c. 45, *de Irrelig.*, d. 3, n. 16).

The second place is held by SACRED VESSELS, for the ministry and use of the sacraments, under which corporals also are comprehended.

Consequently, it is sacrilege to use a consecrated chalice for drinking, as Belshazzar did with the vessels of Solomon's temple. Sacred vessels include crosses, sacred images, relics of Christ and of the Saints, sacred buildings and altars; for according to the use of the Church, they are esteemed as instruments of divine worship. To this also pertains blessed water, blessed oil. Likewise the sacred names of Christ and of the saints, the Most Holy Gospels, and all Sacred Scripture, hymns, ecclesiastical ceremonies, etc.; so that their unworthy treatments are sacrilegious, more or less, according as the things are more or less sacred, and according as the treatment is more or less unworthy. Thus, for example, it would be grave to abuse Sacred Scripture for dishonorable jokes, lies, heresies, or other sins; but venial to use the same sometimes for a joke, even an honorable one, if some irreverence is contained there (Salmant., tr. 21, c. 12, n. 32; Lehmk., I, 524).

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The third place is held by all things which pertain to the adornment of altars and ministers, and are accustomed to be consecrated, or at least blessed with a constitutive blessing. Cf. n. 535.

If they are violated unworthily, for example if you use priestly vestments for profane uses, or for playful displays, violation of this sort is sacrilegious. Likewise, to touch with the bare hand, which nevertheless is permitted to all tonsured persons from the Decree of the S. R. C., Nov. 23, 1906, chalices, patens, altar stones anointed with chrism, unless a reasonable cause is present, as for regulars and nuns who are sacristans (Jaugey, *de Relig.*, n. 476; Gen., I, 282, 3).

Finally the fourth place is held by ECCLESIASTICAL RIGHTS and GOODS, that is, goods, whether movable or immovable, which are deputed for the sustenance of the ministers of the Church, for the fabric of churches, and for the sustenance of the poor.

To this belong deposits in a church, pious legacies already possessed by the Church, etc. He who unjustly usurps these, suppresses, detains, occupies, defrauds, or destroys them, commits a qualified injustice which everywhere in canon law is called sacrilege (III, 40 and 42).

It is asked. Whether the wounding of any goods whatsoever belonging to clerics is sacrilege?

Resp. Negatively; but only the wounding of goods which clerics possess not in their own name, but in the name of the Church, and of which they cannot dispose; because these alone are sacred, as is commonly taught (III, 42).

Note. The penalties enacted against sacrilegious persons are recounted in the treatise on Censures; see n. 1319, 1320, 1321, 1324, 1325, 1326, 1329, 1332, 1342, 1347, 1348, etc.

§ 3. On Simony

Simony pertains to real sacrilege, as Suarez proves (*de Relig.*, l. 3, c. 1). This matter is treated extensively in canon law. Here we shall treat briefly: 1. of the nature and gravity of simony; 2. of the causes on account of which it ceases; 3. of the more frequent cases of simony; 4. of the penalties established against simoniacs and of the obligation of restoring what has been received.

1. On the Nature and Gravity of Simony 584. DEFINITION. Simony is the studied will of buying or selling, for a temporal price, something spiritual or annexed to the spiritual. Thus St. Thomas (2.2, q. 100, a. 1).

It is said: studied, that is, a deliberate will by which at least a pact is begun; of buying or selling, by which the nature of the contract in force is signified, but it is enough if it is virtually such; for a temporal price, that is, for any temporal good; something spiritual - this indicates the matter about which the pact turns.

DIVISION. Simony, by reason of matter, is divided into two parts: 1. One is of divine law, which is prohibited by natural law, on account of its intrinsic malice; and it is the very sale or purchase of a spiritual thing as such. 2. Another is only of ecclesiastical law, which is therefore evil because it is forbidden by canon law; and it is any bargaining, giving, and accepting prohibited by the Church, insofar as it smells of a simoniacal stain or has danger of simony.

Each simony is threefold: a) mental, if it is done merely internally, or if something is offered externally with a simoniacal intention, but without a pact externally manifested; as can happen if a servant serves a Bishop; b) conventional, if an external pact, at least implicit, has intervened, but has been put into execution by neither part; c) real, if the pact has been completed in effect, at least inchoatively, by both parts. But if the pact has been put into execution by one part only, simony is still called conventional, but mixed, insofar as it participates in real simony (III, 49, 67, 106 end).

In the matter of benefices, d) confidential simony is given, namely when someone procures or resigns a benefice to another, under a certain confidence, that is, with a pact at least implicit, that he yield it in the future to himself or to another, or pay from it a pension or part of the fruits without legitimate authority. This simony, as is evident, is a particular case of conventional or real simony (III, 85, 90).

585. PRINCIPLES. I. To constitute simony three things are necessarily required: unsaleable matter, a temporal price, a will of exchanging one for the other.

586. The MATTER about which this sacrilegious contract turns is a spiritual thing or a temporal thing annexed to a spiritual thing.

a) A spiritual thing, by which name is understood a supernatural thing ordered to salvation; whether it is formally such, as grace and the gifts of the Holy Spirit; or causally, producing grace, as are the sacraments, preaching, prayers, and sacramentals; or effectively spiritual, that is, an effect and use of supernatural power, as consecration, absolution, dispensation, blessing, excommunication, election, presentation, confirmation, collation of a benefice, and other acts of ecclesiastical jurisdiction. b) A temporal thing annexed to a spiritual thing, and ordered to it by its nature or by the institution of the Church: whether antecedently, as churches, sacred vessels, which preexist consecration, or the right of patronage with respect to a benefice; or concomitantly, as time and labor, which are intrinsically and inseparably annexed to sacred functions; or consequently, as the right of perceiving the revenues of a church, which presupposes a spiritual office as its cause and root (III, 49).

Note. Ecclesiastical patrimonies, pious legacies, lay patrimonies, lay chaplaincies, and pensions are not matter of simony. Nevertheless ecclesiastical pensions and ecclesiastical prestimonies, vicariates and coadjutorships, likewise manual benefices, or removable benefices introduced by the Church, even if they do not assume the nature of a benefice, are matter of simony: because they are annexed to a clerical office and demand a spiritual ministry. But he who sells or buys such things does not incur the penalties of simony; because the penalties are enacted for true benefices (III, 112). Cf. n. 1325, 1335 ff.

2. The PRICE, or that which has the character of a price, in buying something spiritual, is named in canon law a gift from the hand, a gift from service, a gift from the tongue:

a) A gift from the hand, by which is understood money and whatever temporal thing is estimable by price, for example remission of a debt, concession of a right, a loan, or its promise, even a pension to be paid to some third person. b) A gift from service, that is, everything which pertains to servitude, such as serving as a servant, teaching, etc., for the end of obtaining something spiritual. c) A gift from the tongue, or patronage, under which name come praises, favors, intercession even mediate, prayers, and similar things estimable by price (III, 56-66).

3. The WILL of exchanging one for the other truly constitutes simony, whether this will is externally manifested or not; whether it is manifested by one's own and the other part, or by one's own only (III, 51, 53).

From these things conclude: 1. It is simony to give or accept a temporal thing, whether formally or virtually, whether by explicit or implicit pact, for the spiritual thing itself, and in exchange for it, namely from the primary motive of having one for the other, or for a price or just compensation. "In this matter, ANY PACT WHATEVER, anything onerous whatever, is simoniacal, even if it does not bind rigorously from justice."

2. He cannot be excused from mental simony who serves a Bishop gratis, with the intention of obliging him, even if only from gratitude and not from justice, to repay him with a benefice (III, 51, 53).

3. A fortiori, he would be simoniacal who should draw into a pact an antidoral obligation, or an obligation of donation from gratitude; for such a pact introduces at least an obligation of fidelity, which, since it is estimable by some price, certainly renders the pact simoniacal (III, 53 and 764; l. El. qq. ref., n. 18).

But it is not simony: 1. If something spiritual is given for something spiritual, for example a relic for a relic, a Mass for a rosary, or if someone serves a Bishop in spiritual things, as in hearing confessions, for obtaining a benefice. 2. If some honorable motive intervenes, for example alms, stipend, by force of which the temporal and, in turn, the spiritual are bestowed; since the one would no longer be the motive of the other, but only its impelling cause (III, 55). Thus, for example, "those who give money to the poor, so that they may pray for them, do not buy prayer, but entice the souls of the poor to praying" (4. D. 25, q. 3, a. 2, ad 2). 3. If someone sells sacred vessels for the value of the material.

586. II. Simony is a most grave sin among the sins opposed to religion. It is evident: 1. From the words of St. Peter to Simon Magus (Acts Ap., 8, 20): Thy money be with thee unto perdition: because thou hast thought that the gift of God may be possessed with money. 2. From the sacred canons, where simony is called an execrable vice, a piacular crime, a pest, etc. 3. From reason: the malice of this sin chiefly consists in the irreverence which is committed when a sacred or spiritual thing is despised as profane. Often also injustice is added, on account of defect of title in receiving the temporal thing; and innumerable other evils are added from the election of unworthy ministers, etc. (III, 49).

587. III. Simony of divine law does not admit smallness of matter; but simony of ecclesiastical law admits it. The reason for the first is that however small the spiritual thing may be which is sold or bought, a grave injury is brought upon God from the exchange. But as regards the second, there is nothing except the prohibition of the Church, in which indeed smallness of matter can exist (III, 50).

Note. Simony of divine law and of ecclesiastical law are sins of the same species. For the Church commands and prohibits these pacts concerning spiritual things from the motive of the virtue of religion.

2. On the Causes on Account of Which Simony Ceases 588. Although it is never licit to give or accept something temporal as a price for something spiritual, nevertheless it can happen that, on the occasion of a spiritual thing which is furnished, something temporal is licitly received from an extrinsic title, namely one which removes every simony. TITLES or CAUSES of this sort can be numbered as six, namely:

1. PURE LIBERALITY, or GRATITUDE. For if someone, after something spiritual has been conceded, from a grateful soul furnishes something temporal, without any preceding pact, expecting nothing in the future, he does not give the temporal thing for acquiring the spiritual.

Hence gifts furnished by the faithful on the occasion of baptism, first communion, and marriage are without simoniacal stain; likewise, a gift for a benefice already obtained, etc. Nor is it simony to confer a benefice on someone on account of carnal affection, provided no temporal gain is intended (III, 52).

2. HONORABLE SUSTENANCE OF THE WORKER, or stipend. For ministers of the Church are not held to serve as soldiers at their own expense; and therefore they have a right of receiving from the faithful that from which they may live suitably, even if they are rich.

From this title, a beneficiary receives the revenues of his benefice; a parish priest receives stole fees on the occasion of marriage and funerals; a priest receives stipends for celebrating Masses and for the sacred sermons which he has to the people. Indeed, from simony he is more probably to be excused who fulfills a spiritual office principally on account of temporal emoluments: provided he has these not as a price and the sole end of the sacred action, but as a stipend for his own sustenance; although he is not easily to be excused from venial fault, since it is a certain disorder to direct spiritual things to temporal things (III, 55, q. 6; *H. Ap.*, IV, 45).

3. REMUNERATION OF UNDUE LABOR. This corresponds to the sayings of the virtue of justice.

Indeed, nothing can be accepted for labor intrinsic to a sacred function, even if it is great: for example, for the burden of carrying the last sacraments to the sick who are far distant; for this inheres in the pastoral office. See below n. 589, 4. But for extrinsic labor which is not owed, it is licit to accept or stipulate a price: for example, for a Mass to be celebrated at such an hour, for a longer Office, for a sung Mass of bination, where an excess of the diocesan stipend is given and labor of this sort is added (S. C. C., June 17, 1905, and Mar. 24, 1906). Likewise he who has suffered harm in obtaining a benefice for someone, by making journeys, neglecting his own affairs, can demand compensation (*H. Ap.*, IV, 45).

4. REDEMPTION OF UNJUST VEXATION. This also is consonant with the principles of justice. Yet one must proceed circumspectly.

St. Alphonsus, with the Angelic Doctor, puts two rules here: a) If you have a right in the thing, or an acquired and certain right, you can well redeem vexation by giving something temporal, but not something spiritual. Thus a parish priest canonically instituted and vexed by the civil magistrate can free himself with money. Thus also a member of the faithful can, for a grave cause, give money to a priest unwilling without it to administer the sacraments (*Exam. ord.*, n. 21). b) If you have a right to the thing, for example to acquiring a benefice, you can always redeem vexation from those able to harm, but not to benefit, namely that they abstain from harming you, whether by threats or calumnies against justice, or even by gifts and prayers against charity. But, regularly speaking, you cannot redeem vexation, even unjust, which proceeds from those able at once to harm and to benefit, for example from an elector who can deny or give a vote; the reason is that money in fact would always incline the mind of the elector toward you. Except, if the elector by frauds and violence were laboring to corrupt the other electors so that they also deny their vote to you; for then, as is sufficiently probable, you could give money with an express protestation that nothing is asked from him except that he desist from vexation. Likewise, with money you can impede the election of an unworthy person: for the Church has a right that an inept minister not be given to her; but you cannot buy votes, nor impede another from competing who can compete by right (III, 98-104; *H. Ap.*, IV, 49).

5. DISPOSITION OF THE SOVEREIGN PONTIFF. For the Pontiff can directly remove simony of ecclesiastical law, by mitigating or even abrogating the law.

But he can remove simony of divine law indirectly, by assigning an extrinsic title: for example, the title of sustenance for the burdens of the Supreme Pontificate, as in dispensations from matrimonial impediments; or the title of compensation, as in vows which are commuted into alms; or the title of penalty, as is done in dispensations both from irregularities and from impediments of matrimony contracted because of crime (III, 95, 96; *H. Ap.*, IV, 46).

6. CUSTOM NOT REPROBATED; for this also abrogates or mitigates the law of the Church.

Thus, for example, in certain cathedral churches, a use has prevailed against the common law, that something is received in the distribution of sacred chrism, for compensating expenses made for procuring the matter. Likewise, for completed acts of ordinations, something is granted to notaries from use (III, 110, end; *A. S. S.*, 13, p. 180).

3. On the More Frequent Cases of Simony 589. I. Against DIVINE LAW: 1. It is simony to give or accept something temporal as price or compensation, for any sacred offices, for example for sacraments or sacramentals, for sacred relics, for preaching or catechism, for applying an indulgence, for dispensation of a vow, oath, matrimonial impediment; likewise for collation, election, presentation, confirmation to an ecclesiastical benefice, for collation of orders, ecclesiastical burial, dispensation ... For thus a temporal thing is exchanged with a spiritual thing (III, 55, 93-96). For teaching Theology or Sacred Scripture it is licit to receive money, because doctrine is ordered primarily to the temporal good of the students (III, 94).

2. It is simony to give or accept the temporal thing principally, even if not solely, for obtaining or procuring something spiritual. For the motive which is added, however honorable it may be, does not destroy the malice and impiety of the prior motive on account of which the temporal thing is chiefly given (III, 51). - It is licit, speaking of itself, to give something temporal primarily for capturing benevolence, secondarily for obtaining something spiritual from benevolence. But in practice, whenever the temporal thing is given with the sole view of the spiritual thing, an intention at least virtually simoniacal is easily to be presumed. Except, unless the contrary is established, or something else is gathered from cir-

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cumstances, for example from the smallness of the gift, or from the piety or wealth of the giver (III, 51, 62; *H. Ap.*, IV, 44). Likewise, to give something to a mediator, not as a price that he intercede, but on account of labor or harm to be undergone, is not illicit of itself; nevertheless it is dangerous (III, 64, 65).

3. It is simony to sell more dearly a temporal thing antecedently annexed to a spiritual thing: for example, a consecrated chalice, a blessed rosary, a farm to which the right of patronage inheres, etc. It is said more dearly, because these can licitly be bought or sold by reason of intrinsic value, unless this is prohibited by the Church (III, 71; *H. Ap.*, IV, 47; *Ami du Cl.*, 1910, p. 207).

4. It is simony to sell a thing concomitantly and intrinsically annexed to a spiritual thing: for example, the labor

intrinsically necessary for celebrating Mass.[38]

5. It is simony, according to the more common and more probable opinion, to sell a thing consequently annexed to a spiritual thing, for example the right of perceiving ecclesiastical revenues. The reason is that this thing cannot be acquired except by reason of a spiritual office; therefore neither can it be sold unless the spiritual thing necessarily presupposed to it is sold (III, 70).

Hence it is unlawful at entrance into Religion to buy or sell the right of living from the goods of a sufficiently wealthy monastery; for this right is necessarily joined with religious profession, which is spiritual (l. El. qq. Ref., 58). Cf. n. 591, 2.

Yet it is licit, on the occasion of entrance into Religion, to give or accept on account of other titles, for example of gratuitous gift or alms. Likewise for food during the time of novitiate, even if the monastery is rich; for the sustenance of a religious, if the monastery is poor, or if one to be received is sick, old, dull of mind (III, 91, 92). But it has been granted to monasteries of nuns that they can always accept a dowry, by reason of the dangers to which they are generally liable. Indeed, if it is a question of choir nuns in a regular Order, there exist several decisions of the S. C. of Bishops and Regulars, by force of which it is not licit to admit them without pontifical dispensation, unless they bring a sufficient and legitimate dowry (*Anal. jur. pont.*, ser. 4, col. 1525).

6. It is simony to give something so that another omits a spiritual thing, "if the omission is of a thing directed by spiritual power, and there is an obligation of placing it, as would be the omission of absolving, dispensing, electing, etc. Thus from c. *Nemo presbyterorum*, on simony"; but not "if the omission were of some spiritual act depending on liberty, as would be the omission of praying, celebrating, giving alms, provided the one omitting is not bound from justice to furnish it" (*H. Ap.*, IV, 48).

7. II. Against ECCLESIASTICAL LAW simony is committed:

8. By exchanging ecclesiastical benefices, resigning them in favor of another, transacting concerning them, reserving a pension, or bargaining in any way, even for imposing a spiritual burden, without legitimate permission (III, 60, 69-90, where there are many things).

9. By selling or buying temporal offices canonically instituted for sacred things, as the offices of procurator, steward, sacristan, treasurer, etc. (*H. Ap.*, IV, 42).

10. By selling part of a sacred cemetery; and this is simony of divine law, if it is sold as a sacred place. Yet the right of a grave can be bought by reason of the burden of not burying others there (III, 71).

11. By selling blessed oil or sacred chrism, even according to its physical species; but cf. n. 588, 6. Likewise, by selling or exposing as venal blessed rosaries, medals, and other things of this sort blessed with application of indulgences; in which case even the indulgences themselves, from the decree of the Sacred Congregation of Indulgences, are lost (S. C. Ind. et Reliq., July 12, 1847).[39] Yet the seller can take the care upon himself that the thing be blessed, and afterward accept the price (S. C. Ind., 1896).

12. By accepting something, even spontaneously offered, indeed by title of gratitude, on the occasion of collation of an order, or even of first tonsure, from the Tridentine Council, Sess. 21, c. 1, on Reform. But the S. C. of the Council, Oct. 9, 1678, permitted that Bishops receive a candle from those to be ordained, and also a cloth from those to be ordained priests. Indeed, the same Congregation deputed by Innocent XI fixed the emoluments which can be exacted for dimissorial and testimonial letters, etc.

13. By giving or accepting something, even trifling, for example some flowers, a few fruits, modest foods, on the occasion of an examination for a parish priest to be elected by competition, whether before or after the examination; for this is wholly forbidden by the Tridentine Council, Sess. 24, c. 18, on Reform, under penalties to be incurred after sentence, to remove every danger of human affection in the examiners. Indeed, if someone should give for the examination itself, namely that it proceed prosperously, he would commit simony of divine law, as is evident.

14. By accepting something for the erection, institution, communication, or aggregation of confraternities, against the Bull *Quaecumque* of Clement VIII, in which there are decreed both invalidity of the act and privation of offices and

[38]Thus the Holy Doctor (*H. Ap.*, IV, 45). - Noldin (II, 198) goes into another opinion when he says that labor inhering in a sacred function can be considered as estimable by price, and therefore, short of the fault of simony, can become the object of a contract. Yet these things, as he himself admits, are said against the common opinion. But on the other hand, simony is not established if someone exacts for a sacred function, which ought to be compensated, a compensation greater than the just one (Lehmkuhl, I, 534).

[39]Not only are indulgences then lost if someone asks a price after the blessing, but also if someone accepts something, even by title of gratitude or alms, for blessed things which he himself has spontaneously given. *A. S. S.*, 20, p. 63; Beringer, P. II, n. 32.

inability to obtain those and others in the future. This penalty can be remitted by the Roman Pontiff alone, but it seems not to be incurred except by means of a declaratory sentence of the crime.

15. By committing to others the celebration of a Mass owed from a stipend, part being retained from mutual pact (Noldin, II, n. 185, 7).

4. On the Penalties Enacted Against Simoniacs, and Also on the Obligation of Restoring What Has Been Accepted 591. PRINCIPLES. I. Penalties are not incurred, by the fact itself, except through either real or confidential simony. But this happens only in cases which regard the matter of benefices, entrance into Religion, Mass stipends and indulgences, and the simoniacal election of a Pope.

These must be explained in order: 1. IN THE MATTER OF BENEFICES. Real simony is punished: a) by excommunication simply reserved to the Pope, which extends also to accomplices, that is, those by whose cooperation the contract is perfected (cf. n. 1335); b) by nullity of election, presentation, and canonical institution; so that one thus promoted and instituted cannot make the fruits of the benefice his own; c) by perpetual inability for the same benefice; and after at least declaratory sentence, by inability also for obtaining other benefices. Confidential simony, even incomplete, besides the same penalties, which prelates of whatever dignity incur, even Cardinals and Bishops, but not accomplices, n. 1336, is punished for this by privation of pensions and benefices previously obtained; but not except after a declaratory sentence of the crime (III, 111, 112; *H. Ap.*, IV, 53).

Moreover, although the Pontiff confirms, for example, the election of a Bishop, not knowing the vice of simony, and although in the Bull he says that he supplies all defects, nevertheless the confirmation is not valid; because that is understood concerning other defects, but not concerning simony (III, l. c. and 120).

2. IN ENTRANCE INTO RELIGION strictly so called, through profession. Real simony is punished with excommunication simply reserved to the Supreme Pontiff, in those presuming to give or accept. - Those accepting were formerly suspended from capitular offices and every act of jurisdiction. But this penalty seems abrogated from the Constitution *Apostolicae Sedis* (cf. n. 1337). But the professed one, whose profession indeed is valid, must after sentence be transferred into a stricter monastery (III, 108; *H. Ap.*, IV, 50).

3. IN MASS STIPENDS AND INDULGENCES. They are struck with the same reserved excommunication: a) Those collecting alms of greater price for Masses and capturing profit from them, by causing them to be celebrated by reason of a lesser stipend. b) All who, whether by conceding, publishing, or ordering publication, make profit from indulgences and other spiritual graces (cf. n. 1338, 1339). To these add the things which we said n. 590, 7, concerning the erection of confraternities.

4. IN THE SIMONIACAL ELECTION OF A POPE; see n. 1312, 3.

Note. Today there is no censure in the simoniacal collation and reception of orders. Except the suspension which a Bishop incurs for three years when he ordains someone without title of benefice or patrimony, with a pact that the one ordained not ask support from him (see n. 1362). Except also privation of hope of ascending to other orders. This penalty is a species of irregularity reserved to the Pope in a special manner, from the Constitution *Sanctam* of Pius V.

For the rest, against any notorious simony whatsoever, whether from the declaration of a judge or from the spreading abroad of the fact, infamy of law is established, and therefore irregularity (cf. n. 1938).

592. II. The spiritual thing accepted simoniacally, if it is an ecclesiastical benefice, must always be restored; but the temporal price simoniacally accepted must be restored when justice was wounded in the convention. The reason for the first is that the collation of a benefice of this sort is declared void by the law itself and before the sentence of a judge. The reason for the second: because if wounding of justice is absent, restitution is provided for by no other law. Otherwise after the sentence of a judge (III, 114).

Hence: 1. A benefice is to be dismissed by the fact itself, with the fruits unjustly perceived, only those things being retained which correspond to labor. Let restitution be made to the Church; but it is probable that the fruits can also be restored to the poor, or to the successor in the benefice. A composition can also be obtained from the Pope, if a cause underlies it (III, 113, 114).

But if the spiritual thing simoniacally accepted is some other thing than a benefice, nothing is to be restored. The reason is that the other things either cannot be restored, as are the sacraments, or are not to be restored before the sentence of a judge, as sacred relics, since the canons have not established it.

2. If, a temporal price having been accepted, the spiritual thing has not been handed over or furnished, the price must be restored to the one who gave, since he gave from a false title.

3. If delivery has followed on both sides, in this case, according to some, the price must still be returned to the giver, on account of the nullity of the contract; according to others, to the church where the benefice is, as a penalty of both exchanging parties; finally, according to others, it can also be given to the poor. These three opinions are probable, but the second and third are more probable (*H. Ap.*, IV, 53; *Conf. dir.*, IV, 28).

TREATISE II

On the Second Precept of the Decalogue

Thou shalt not take the name of the Lord thy God in vain.
(Exod., 20, 7).

593. As through the first precept fidelity toward God is chiefly prescribed, or proper submission to him, so through the second precept reverence is chiefly prescribed, or that other part of worship by which we are commanded to commit nothing injurious against God, and to honor the name, that is, the excellent power, of God (St. Thomas, *Op. de praec. Decal.*, c. 13).

Now the divine name is honored: 1. by confession and praise; the contrary of which is vain assumption, and much more blasphemy; 2. by oath, for by swearing we profess God to be the first truth, likewise by adjuration, for by this we profess the power of the divine name; the opposite of these is a false, unjust, and indiscreet oath, as also indiscreet adjuration; 3. by vow, for by vowing we profess God to be most worthy of every service; to this is opposed an indiscreet vow and violation of a vow.

Hence there must be treated of three things, namely: 1. of the praise of God, and of irreverence toward his holy name; 2. of oath and adjuration; 3. of vow.

CHAPTER I

On the Praise of God and on Irreverence Against His Most Holy Name

St. Thomas, 2.2, q. 13, and 97-100; St. Alphonsus, III, 121 ff.; ed. G., I, p. 439; Suarez, *de Virt. Relig.*, tr. III, l. I, III; Lehmkuhl, I, n. 506; Genicot, I, n. 291 ff.; Gury-Ferreres, I, n. 299 ff.; Vermeersch, *Quaest. de Virt. Relig.*, n. 159.

Preliminary note. "Of God," says the Angelic Doctor, "we can speak in two ways. In one way, as regards his essence; and thus, since he is incomprehensible and ineffable, 'he is greater than every praise'; and under this respect reverence and the honor of latria are due to him. In another way, according to his effects which are ordered to our utility; and under this respect praise is due to him; whence it is said (Isai., 63, 7): I will remember the mercies of the Lord, the praise of the Lord for all the things which the Lord hath rendered to us" (2.2, q. 91, a. 1 ad 1).

594. PRINCIPLES. I. For honoring God praise of the heart is not sufficient, but praise of the mouth is also required. Praise of the heart is honor furnished to God by the internal senses, or by reason and will. But this praise does not suffice, on account of the one praising himself, whose affection toward God ought to be excited from the praise itself, according to that (Ps. 49, 23): The sacrifice of praise shall glorify me; there is the way by which I will show him the salvation of God. Praise of the mouth also profits for this, that the affection of others toward God may be stirred.

Moreover, to the praise of God it pertains confidently to confess God in the sight of all, and to proclaim Christ the author of our salvation. For the Lord says (Luke, 9, 26): He that shall be ashamed of me, and of my words: of him the Son of man shall be ashamed when he shall come in his majesty. Likewise, it pertains to acknowledge and celebrate divine Providence in all events, both prosperous and adverse, saying with Job (1, 21): Blessed be the name of the Lord.

II. Praise of the mouth is imposed upon all negatively, but upon certain persons positively. It is said negatively, insofar as all must abstain from those things which inflict irreverence upon God. - The office of positively praising God is imposed upon religious and clerics, as will be seen n. 2203 ff.

Since irreverence against the MOST HOLY NAME OF GOD is committed: 1. through vain usurpation of it; 2. through blasphemy, therefore concerning these we shall now treat in a twofold article.

ARTICLE I

On the Vain Usurpation of the Divine Name

595. DEFINITION. Vain usurpation of the divine name is every appellation of the name either of God or of Our Lord Jesus Christ, made without just cause, or without due reverence.

But this is accustomed to happen from a threefold cause: from impatience, from admiration, from a superfluous manner or custom of speaking. But if with due reverence, and by way of invocation, the name of God is usurped, it is a good and meritorious act.

PRINCIPLES. I. Vain usurpation of the name of God is a sin against religion. For in it the holy and terrible name of God is held like a profane thing. Whence (Exod., 20, 7) it is commanded: Thou shalt not take the name of the Lord thy God in vain.

II. Nevertheless, appellation of this sort, of itself, does not exceed venial fault. For in it grave offense of the divine majesty does not appear. But often it is free of fault, on account of inadvertence.

Hence: 1. The vain usurpation of the names of the Saints, or of the words of Sacred Scripture, is a sin of the same species against religion, because the irreverence brought upon the Saints redounds upon God.

2. In anger to usurp the demon without imprecation is not of itself a sin against religion, because no reverence is due to him. Yet assiduous naming of him does not befit a Christian, and by reason of scandal can be grave, if namely clerics or religious do this (III, 131, 11).

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ARTICLE II

On Blasphemy

596. DEFINITION. Blasphemy is contumelious speech against God.

It is said: 1. speech, because ordinarily it is done by words, although it can also be done by thought alone, or by writings, or even by deeds, for example by spitting toward heaven. It is also called speech because, as for infidelity, assent of the mind is not required for blasphemy; but it suffices that something be said of God after the manner of reproach. 2. Contumelious, namely by which something is detracted from the excellence of the divine majesty: whether this is done by attributing false things to him, or by denying true things; or by attributing to creatures things which are due to God; or even by saying true things, but things which tend to his dishonoring, as happens after the manner of one indignant against him, despising him, etc. 3. Against God; because reproach against the Saints, sacred things, etc., insofar as they have a special relation to God, is ultimately referred to God himself (III, 121; *H. Ap.*, V, 1). Cf. n. 546.[40]

DIVISION. 1. By reason of object, one blasphemy is immediate, which dishonors God in himself; another mediate, which dishonors God in the Saints, or in other nobler creatures, which connote a peculiar relation to him.

Immediate blasphemy probably does not differ in species from mediate blasphemy; for "those who blaspheme the Saints, more truly, commonly speaking, intend to affect them with injury, not on account of their precise and proper excellence, but insofar as they are referred mediately to God; therefore ... they sin not against dulia but against latria; and on that account they are not held to explain in confession whether they blasphemed God or the Saints" (III, 132; cf. Viva, *Decal.*, q. 6, a. 2, n. 6).

2. By reason of intention, one is direct, namely that which directly and formally attacks God, from the intention of dishonoring him; this is also called diabolical. Another is indirect, which indeed is uttered advertently, for example in a movement of anger, but without a direct intention of dishonoring God.

Direct blasphemy very often proceeds from hatred of God: which circumstance, as is evident, is to be expressed in confession (III, 126; *Vind. Alph.*, VI, c. 1, § 1, n. 1). - Indirect blasphemy, although specifically it is the same sin against latria as direct blasphemy, nevertheless is lower in degree.

3. By reason of words, blasphemy is either heretical, or imprecative, or dishonoring. This distinction is specific, because besides religion, the first mode of blaspheming also wounds faith, and the second charity.

[40] If the sin of blasphemy is reserved, this reservation is not incurred unless contumelious speech, external, is present.

HERETICAL blasphemy is that which contains heresy or falsity against faith. Blasphemy of this sort is to say, for example: God does not exist; God does not will or cannot help us; he does not have care of men; he is a tyrant; he does not dispose human affairs well; the Blessed Virgin is a woman like the rest, if namely it is understood that she is not a virgin or the Mother of God; likewise to attribute to a creature what belongs to God alone, for example to call the devil "holy, omnipotent" (III, 122; cf. Togni, *Instr.*, II, c. 1, § 5). - But if one uttering these things by mouth or in writing also believes them pertinaciously in heart, there is the malice of heresy externalized, on account of which a specially reserved excommunication is incurred (cf. n. 1314).

IMPRECATIVE blasphemy is that by which someone wishes evil to God, for example if someone says: May God perish! Would that God did not exist! Cursed be God! etc. - If such imprecation proceeds from hatred of God, then it is properly called imprecative blasphemy; otherwise it is reduced to dishonoring blasphemy (*Inst. cat.*, P. I, c. 2, n. 1).

DISHONORING blasphemy, or simple blasphemy, is that by which someone pronounces something about God after the manner of contumely and mockery. Such was that saying of Julian the Apostate: Thou hast conquered, Galilean, and that of those mocking Christ: Hail, King of the Jews. Likewise, if the death, head, blood, entrails of Christ are named contumeliously from anger or jest. Likewise, to wish to do something against God's will, to spit toward heaven, to trample sacred images, rosaries, etc. (III, 124, 125).

597. PRINCIPLES. I. Blasphemy is a mortal sin from its whole genus, and indeed most grave. It is proved: 1. from the word of God (Levit., 24, 16): He that blasphemeth the name of the Lord, dying let him die; 2. from reason: for the blasphemer, as if by open war, attacks God himself. Whence St. Jerome says (in Isai., l. VIII, 18): "Nothing is more horrible than blasphemy, which sets its mouth on high." And St. Chrysostom (Hom. to the people of Antioch, n. 12) exhorted the faithful that they should restrain blasphemers even with blows, lest the city perish. Cf. St. Thom., 2.2, q. 13, a. 2 and 5.

We said from its whole genus; and thus those blasphemies against the Saints which redound upon God do not admit smallness of matter. But if the Saints, as men, are affected with contumely, for example if someone jokingly calls Saints Crispin and Crispinian cobblers, John and Paul eunuchs, etc., this indeed would be venial, against dulia; "but it will be grave if you say these things contemptuously, or from hatred or indignation against the Saints" (III, 125).

Blasphemy can also become VENIAL from imperfection of the act. Thus, for example, he who says: "God is forgetful of me; ... why did God create me?" sins only venially, if he speaks thus from an impulse of grief. Indeed, he does not blaspheme formally, if in uttering such things he only intends to say: I am wretched, as if God had forgotten me.

II. For blasphemy a virtual and implicit intention of dishonoring God suffices. Such an intention is had in him who from jest "or anger against creatures" advertently, in the act or in the cause, utters truly blasphemous expressions (III, 124; cf. Reuter, n. 442). For thus grave irreverence against God is committed. - Except, unless the jest takes away altogether the notion or signification of contumely against God, for example by swearing, for the sake of mockery, by false gods. Cf. *Ami du Cl.* (1913, p. 729), where it treats of him who teaches blasphemies to a parrot.

598. The following RULES can be given for discerning among various expressions which ones have the character of true blasphemy:

599. If any expression, either from its proper signification, or from common estimation, or from the manner of uttering, has a CONTUMELIOUS SENSE against God, it will always be blasphemy.

Hence he blasphemes who says: may the blood, wounds, death, head, passion, sacraments, chrism of God, and similar sacred things, destroy you. For the rest, in these things men commonly apprehend that a great contempt of God and of those things is contained (III, 126).

Whether this French expression, too much usurped: *Sacre nom de Dieu*, is blasphemy has very recently been much disputed.[41] For, according to some, in an acceptance of this sort the word *sacre*, according to common apprehension, sounds the same as execrable, to be despised, worthy of contempt.[42] Wherefore, if this word is usurped in the same acceptance for expressing contempt against sacred things or persons as such, it will also be blasphemy (Jaugey, *de Relig.*, n. 456). Yet there are others, such as Gousset, Scavini, Valentini, Frassinetti (translation of Fourez), Gridel, Tanquerey, and others (apud L. Manise), who excuse the word *sacre* joined with the Most Holy Name of God from blasphemy, being led by this reason, that that word does not signify the same as accursed, inasmuch as it is derived from ancient oaths in which it signifies the Holy Name of God. - We think, therefore, since the expression of itself and from erroneous acceptance is ambiguous, that

[41] Cf. Manise, *Etude de quelques locutions francaises censees blasphematoires.*

[42] Cf. Lexicons of the Academy, Bescherelle, etc. The Latin word *sacer* also sometimes has the same signification. See *Totius latinitatis Lexicon*, by Egidio Forcellini, v. *Sacer*, where many examples are brought forward.

there is place for the principle enunciated by St. Alphonsus, where he treats of malediction of the dead (*Theol. mor.*, III, tr. II; ed. G., I, p. 456), and that with Bucceroni it must be said: "In practice, all those who utter words of this sort are not easily to be accused of mortal sin, unless it is done with anger against God" (*Inst. mor.*, I, n. 456). - In the same way one must reason concerning the Flemish formula: G. V. D., God damn me, which of itself seems to be nothing except a dire imprecation.[43] Likewise, but from defect of signification, concerning the German formula: *Tausend Sakrament, Tausend Herr Gott* (Noldin, II, n. 206, b).

2. If the expression does not have a COMPLETE sense, it is not blasphemy, unless the indignation is directed against God (III, 124).

Whence these expressions are free from grave fault: *Nom de Dieu! Sacre nom!* without addition, etc. Yet they are not free from light fault, both because of impatience and because of vain usurpation of the divine Name; indeed, because of the danger of falling into blasphemy the fault could become grave (III, 128). Similarly, it is only vain usurpation of the divine Name nakedly to utter sacred words, for example death of God, wounds, sacrament, etc., if the anger tends only against a man or beast; which indeed must be gathered from the adjuncts. Nor is it blasphemy to utter half-spoken or corrupted words, as for example *jourdedie, mordie, ventredie, morbleu; nego Di ... Santo Di ...* (Diana); or to say against men: *Sangue di Dio, Corpo di Dio*, unless the indignation is directed against God (III, 124, 128). - The German word *Auchen* often sounds the same as uttering holy names in anger, for example *Himmel, Herrgott*, without imprecation or contumely.

3. To curse CREATURES is not blasphemy, except insofar as they have a special relation to God.

Hence: a) it is blasphemy to curse the Saints, the sacraments, sacred days or things, the Catholic faith, the Church of God, or even priests, insofar as they are ministers of God; b) but to curse creatures, insofar as they are creatures, is not blasphemy, unless the word of God is added, for example cursed rain of God; or unless the divine power shines forth in a peculiar way in them, as they are soul, heaven, the whole world, etc.; in which case God would be indirectly despised in them; c) to curse a man, living or dead, without uttering the word soul, is not blasphemy, unless the intention of the speaker refers the malediction to souls; wherefore to say: may God damn me, may God damn you, is not of itself blasphemy, but a dire imprecation; d) to curse the demon, as author of evils, is not blasphemy; e) in anger to imprecate upon oneself or others the demon, lightning, etc., is likewise a dire IMPRECATION, which very often, because of defect of a serious will, is only venial fault. Yet it is grave irreverence if subjects thus curse superiors, or children parents, even if only materially, especially to the face (III, 129, 131).

4. IN DOUBT whether some expression is blasphemous, it is not, of itself, to be held as such; but attention must be given to the conscience of the one uttering it.

Note. Expressions of swearing, even if vain, are generally not numbered among blasphemies; for example by God, by Christ, by the Saints, by the sacraments, etc. Nor is it blasphemy to swear by the honorable members of Christ. Otherwise, if one swears mockingly, or by his dishonorable members. Similarly, it is not blasphemy to say: I deny God, if I shall not strike you; "nor to say: this is true as God; because then only a certain similarity is indicated, mixed with some hyperbole."[44]

599. PRACTICAL RULES. I. Penitents are diligently to be questioned: 1. What sort of words they uttered, at least in general; and besides, it must be clear to the confessor whether the blasphemy proceeded from infidelity, despair, or anger against God or the Saints. 2. How often, and on what occasion, they blasphemed, whether in gaming, in a tavern, etc., and how long they have been engaged in this vice. 3. Whether they blasphemed in the presence of children, servants, or others; for then scandal is present (*Praxis*, n. 27-31).

II. Faith is not easily to be given to HABITUAL blasphemers who, while they have not retracted the habit, say that they burst forth into blasphemies inadvertently; because these evil habituated persons, although they have cognition less vivid than others who have not contracted the practice of blaspheming, nevertheless always have that actual cognition sufficient for the act to be deliberate (V, 4; *Praxis*, l. c.). Cf. n. 319, 3. Otherwise one must speak of those who have already retracted the habit and fall back because of a natural impulse, for example of anger (*Inst. cat.*, P. I, c. 2, n. 7-14).

III. Let the confessor prescribe REMEDIES, both by showing the enormity of blasphemy and its horrible effects, and by persuading the penitent to impose penance upon himself for individual acts of blasphemy perhaps to come. Finally, ejaculatory prayers are to be urged, or certain other harmless words, by whose use blasphemies may be excluded.

[43] Brahm, *Diss. de formula G. V. D., Deus damnet me.* Instr. Episc. Belgii, 1906.

[44] III, 124; see, for different places, Sarnelli, *Op. contro la bestemmia*, l. I, addition; Salmant., tr. 21, c. 3, n. 121; Sporer, *de 1 Praec.*, c. 10, sect. 1, n. 19; Gobat, Voit, Elbel, etc.

IV. Let the PREACHER beware lest he condemn as a certain sin what in itself is doubtful. Let him take care that those who are placed in a state of erroneous conscience are not left in their error. It is better to permit innumerable venial sins than one mortal sin.[45]

CHAPTER II

On Oath and Adjuration

St. Thomas, 2.2, q. 89; St. Alphonsus, III, 133; ed. G., I, p. 460; *H. Ap.*, V, 12; Billuart, *de Relig.*, Diss. V; Suarez, *de Relig.*, Diss. V; Aertnys, l. III, n. 68; Gopfert, *der Eid*; Schindler, II, p. 158; Genicot, I, n. 298; Koch, *Moraltheol.*, § 109; Waffelaert, *Etude sur le serment* (1884).

ARTICLE I

On Oath

600. DEFINITION. An oath comes from right, because attestation under oath founds right, and it is defined: the invocation of God as witness of truth.

It is said: INVOCATION, that is, a calling to aid, that it may be distinguished from a vow, which is a promise; OF GOD: God, the first Truth, is invoked as a witness greater than every exception, and he is asked that by his infallible testimony he manifest the assertion as known by him and true, when and how it shall please him, whether in this life or in the other; AS WITNESS, so that oath may thus be distinguished from other acts by which God is invoked for help, for example from adjuration (n. 618); OF TRUTH, under which name also comes a promise, for which God is employed as a sort of surety (III, 133; St. Thom., 2.2, q. 89, a. 1).

DIVISION. Oath is distinguished in many ways:

1. By reason of manner, one is implicit, when through creatures in which the attributes of God shine forth in a special way God is invoked, for example by heaven, by the Gospels. Another is explicit, when God is directly invoked.

2. By reason of form, one is CONTESTATORY, or invocatory, by which God is simply invoked as witness; another EXECRATORY, or imprecatory, by which God is invoked not only as witness, but also as avenger.

Thus there is an execratory oath when the one swearing subjects himself, or something of his or of his own, to God to be punished, if he speaks falsely, for example: If I do not speak the truth, may God punish me; may I behold neither spouse nor children alive today, etc. To this also pertains the invocation of God as giver of goods, for example: So may God help me and his holy Gospels. For in these formulas the contrary

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execration is understood, as if the one swearing said: for the truth of the assertion and fidelity in promises, may God help me, and may he deprive me of his help if I lie or am unfaithful (III, 140, 143).

3. By reason of matter, it is divided into ASSERTORY, by which past or present things are affirmed or denied, and PROMISSORY, by which something future is promised.

This again is twofold: one simple and standing of itself, by which someone swears that he will do or omit something, without a promise toward another, for example: I swear that I will fast; the other confirmatory of a promise, by which namely a promise made to God or to man is confirmed (III, 141; Bill., *de Relig.*, Diss. 5, a. 2).

4. By reason of circumstances, one is JUDICIAL, another EXTRAJUDICIAL; another is SOLEMN, which is made with a certain solemnity, as before a notary, witnesses, the Gospels; another SIMPLE, which lacks ceremonies of this sort.

Note. All these oaths are of the same species, because in all God is brought forward as witness of truth.

601. PRINCIPLE. Oath of itself is licit and laudable. For it is an act of religion by which we profess God to be the more powerful witness and confirmer of things. The proposition is established besides both from the definition of the Council of Constance, Sess. 8, against Wycliffe, and from the Bull *Auctorem fidei*, n. 75; and from the universal practice of the Church and of peoples, as well as from various places of Sacred Scripture, for example (Deut., 6, 13): Thou shalt fear the Lord thy God ... and shalt swear by his name (III, 114).

[45] III, 130, v. end; Ep. *de maled. mort.* (a. 1746); cf. Sarnelli, op. cit., l. 2 and 3.

602. Yet the PRIMARY END of an oath does not regard the worship of God, but the making of faith and correcting the vice of incredulity and infidelity among men. And therefore St. Thomas says (2.2, q. 89, a. 5): "An oath is to be held not among those things which are to be sought of themselves, but among those things which are necessary for this life," just as medicine, which is to be used not habitually, but rarely and cautiously. Thus we can say: Whatsoever is more than this, namely than simple affirmation or denial, is of evil (Matt., 5, 33).

These things having been set down, there now comes to be discussed: 1. the validity of an oath; 2. the licitness of an oath; 3. the promissory oath.

§ 1. On the Validity of an Oath

603. PRINCIPLE. For a valid oath there are required: the intention of swearing and a swear-formula. These two are essential; nevertheless the first parts are held by intention, so that, although God is invoked as witness only internally, an oath is present.

I. The INTENTION OF SWEARING is required, at least virtual; because without such an intention an oath, as an invocation of God, is not a human act (III, 134).

Hence: 1. If the mind of swearing is lacking, whether from inadvertence, as in him who does not know or does not notice that the words which he uses are sworn words, or who does not intend to usurp them as sworn words but only wishes to affirm more expressly the things which he says; or from malice, as in him who swears fictitiously, by positively excluding the intention of invoking God as witness, there is no oath. 2. The same must more probably be said concerning a promissory oath, if the mind of obliging oneself from oath, or from religion, is lacking; because it is contradictory to will to promise by swearing and to be unwilling to contract an obligation of religion. 3. If only the mind of fulfilling the promise is lacking, the oath is valid, since the intention of truly swearing is present; but perjury is committed, on account of defect of truth, as will be said n. 606. Cf. St. Alph., III, 172.

II. A SWEAR-FORMULA is required, by which it is expressly or tacitly manifested that God is invoked as witness. Otherwise how could God be employed in a sensible way as witness before others? (III, 134).

Moreover: 1. The invocation is EXPRESS whenever God or his attributes are brought into the midst for making faith. Of this sort are the following formulas: I attest God, I call God to witness; let God be witness to me; I swear by God, by Christ, by the truth of God, by the faith of God, by his mercy, justice; may God destroy me, if, etc. (III, 140-143).

2. The invocation of God is TACIT when it is done through nobler creatures, insofar as divine perfections shine forth in them, for example: I swear by the Blessed Virgin, by the Saints, by heaven, etc.; likewise when signs alone are employed, for example hands are raised, the Gospel is touched, if from a preceding determination those signs are held as a swear-formula (III, 135-138). Indeed, this determination being presupposed, the contact of hands alone suffices, which officials of the State, priests, or even those who are enrolled in the sect of Mennonites, use in some regions, so that they assert the truth of the matter before a judge.

3. Hence it is inferred: a) If the divine persons or perfections, or the aforesaid creatures, are simply remembered for the sake of affirming and merely by way of narration or similitude, formulas of this sort are not reputed sworn formulas, unless something else is established or argued from the circumstances. Thus he is not considered to swear who says: "I speak before God, the angels, the blessed; God knows; God knows all things; God sees my conscience; hold me as innocent of this evil as the angels of God; it is as true as God exists; God lives before whom I stand, etc." (III, 134-138).

b) Execratory formulas, as for example, "may I be killed if this is not so," are commonly not considered a true oath, unless God is expressly named, for example: May God destroy me, if I lie. Otherwise they contain only a certain sponsoring or obligation of penalty (III, 143; l. El. qq. ref., n. 19).

c) Of itself, the invocation of one's own conscience, faith, life, body, one's own affairs, or a common creature does not suffice for an oath: for example, "I swear from conscience, by conscience, by my faith, probity, by priestly honor, military honor, by my head, by honor, by house, by children, etc." But otherwise, if one swears by the faith of Christ or the Catholic faith (III, 134-135). Nevertheless a promise made by invoking priestly honor is altogether serious and obliges.

d) Similarly, he does not swear who says: "I swear that it is so; I swear that I am going to do this"; unless from the previous declaration of the one swearing or of the one asking, the intention of furnishing a true oath is manifest (III, 136).

e) A lay oath, as they call it, is not an oath, since invocation of God is lacking (*Ami du Cl.*, 1908, p. 870).

PRACTICAL RULES. 1. In the INTERNAL forum, the matter is to be judged from intention. He who has the mind of swearing truly swears, whatever words or signs he uses. Indeed he truly swears, even if he uses words which do not import an oath, if he believes it to be an oath. In doubt concerning the intention of the one swearing, one is accustomed to judge according to the common acceptance of the words which he used (III, 134; Lehmkuhl, I, 554).

2. In the EXTERNAL forum, one must stand by the formula which the one swearing usurped. For, although perhaps the oath is null before God because of defect of intention, nevertheless, in the external forum he is judged to have sworn who usurped such a word or such a sign which either of itself or because of circumstances attests a true oath.

Note. Concerning the oath in the declaration of revenues, see n. 967.

§ 2. On the Licitness of an Oath

For a licit oath three things are required: truth, justice, and judgment.

First Condition: TRUTH 605. TRUTH in an oath is conformity of the words with the cognition and intention of the one swearing. A TWO-FOLD truth is required: one, by which a lie in asserting or promising is excluded; another, by which fiction in swearing is excluded. If the first truth is lacking, the oath is false, or perjury strictly so called; if the second is lacking, there is a fictitious oath.

606. PRINCIPLES. I. Perjury is a mortal sin from its whole genus. The reason: grave irreverence against God is committed, since he is brought forward as witness of falsity, as if either he did not know the truth, or wished or could deceive. Nor is lightness of matter given here, because it is always equally repugnant to God to testify to what is false (III, 147). - Hence this 24th proposition was condemned by Innocent XI: "To call God as witness of a light lie is not such great irreverence on account of which he would will or be able to damn a man."

607. II. A fictitious oath is a grave sin from its genus. This is established from the 25th proposition condemned by Innocent XI, which sounds thus: "With cause, it is licit to swear without the mind of swearing, whether the matter is light or grave." The reason for the condemnation is that one swearing thus mocks divine testimony and utters a lie, since he says that he invokes God as witness, and nevertheless does not invoke him. Cf. Viva, on this proposition, against Tamburini.

Hence: 1. To swear fictitiously, in confirmation of what is false, in matter whether grave or light, is a mortal sin. For thus externally it is said that God either does not know the truth, or wishes to testify to falsity; in either of which there is grave injury to God, even if someone acts fictitiously. And hence also is why he sins gravely who swears fictitiously without the mind of fulfilling a promise (Billuart, *de Relig.*, Diss. 5, a. 6, § 2).

2. To swear fictitiously in confirmation of the truth, for example with the mind of fulfilling what is promised, is only a venial sin. "But the Doctors rightly except if the oath is made in contracts or before a judge: because then, although it is not perjury, nevertheless it is a grave deception against justice," since the other has a right that the one swearing be held by the bond of religion. The same must be said concerning him who swears without the mind of obliging himself, yet with the mind of fulfilling, that is, who conceives a mere purpose of fulfilling the matter; because this man in reality does not swear, as was said n. 603 (cf. III, 172).

Note. If there is established a just cause of the fiction, it can also happen that every sin is absent (Lehmkuhl, I, 556).

608. Questions. QUES. 1. Whether it is licit to swear with PROBABILITY of truth?

Resp. For swearing licitly, in common human commerce some moral certitude suffices, or probability, which, at least because of the absence of contrary reason, reaches a certain moral certitude; while in a judicial matter, as regards things personally known, full certitude is required, for warding off the danger of harming. Yet if someone knows a thing with probability, from the testimony of an honest man, he will be able to swear that this is held only as probable (III, 148; Lehmkuhl, I, n. 558; Genicot, I, n. 302).

QUES. 2. Whether it is licit to swear with a MENTAL RESTRICTION?

Preliminary note. Mental restriction is an act of the mind by which someone, by checking or determining the signification of words, turns his speech aside to another sense than to the natural and obvious one. One is purely mental, which can in no way be perceived by others; another is not purely mental, which can become known from the adjunct circumstances (*H. Ap.*, V, 15).

Resp. 1. It is never licit to swear with a PURELY MENTAL restriction. Such a restriction cannot be excused from a lie; whence, if it is confirmed by oath, it is true perjury. This is established from the 26th, 27th, and 28th propositions condemned by Innocent XI.

2. It is not licit to swear with a NON-PURELY MENTAL restriction before a judge legitimately interrogating, or in onerous contracts, where reticence would be harmful to the public good or to the contracting party; and it is a mortal sin.

3. But it is licit in common speech, whenever a just cause of hiding the truth is had, namely utility or necessity of swearing thus, for preserving goods of soul or body, or of freeing oneself from importunate interrogations.

Nevertheless, on account of reverence for the oath, a graver cause is needed for sworn equivocation than for common equivocation, and the less obvious the equivocation is, the graver the cause must be. But to swear with a restriction not purely mental without just cause, more probably, is only venial: because in an oath of this sort only judgment or discretion is lacking, the defect of which is only venial (III, 151). See the other things at n. 1181. Cf. Junglas, *Der rechtsgeschichtliche Hintergrund fur Liguori's Lehre vom Gerichtseid* (*Festschrift zum 75 Geburtst. Freih. v. Hertling*, 1913). There the opinion of the Holy Doctor is vigorously defended.

Second Condition: JUSTICE Justice must be understood differently in an assertory oath and in a promissory oath. In an assertory oath justice requires that the one swearing have a right of asserting that which he says; but in a promissory oath, that the thing promised be just and honorable.

609. PRINCIPLES. I. In an assertory oath defect of justice, insofar as it is against religion, regularly is a venial sin. Thus Suarez (tr. V, l. 1, c. 2, a. 6) with the common opinion. "For this defect does not directly evacuate the end of the oath, nor make God witness of a lie; but at most it makes him witness of a depraved and unbecoming thing, which of itself is not a grave injury." If someone therefore should boast with an oath about some sin, even grave, he sins only venially by reason of the oath or religion; for the oath is pronounced for this end alone, that he may render others more certain about his sin; in which there is nothing except a certain venial lightness of mind (III, 146, 4).

It was said: regularly; for "there seems to be an exception," says the same Suarez (l. c.), "unless the oath itself is assumed as an instrument of sinning, that is, unless the malice of the depraved narration is increased through the oath: as if someone, for example, should defame his neighbor against justice by narrating a hidden truth, and, that the infamy may become more probable, should add an oath." For thus the one swearing makes God in some way a cooperator of iniquity: which is a grave sin (cf. l. El. qq. ref., n. 20; *Vind. Alph.*, P. III, q. 9).

610. II. In a promissory oath, if the promise is about a thing gravely evil, defect of justice is a mortal sin. For it is a grave irreverence by divine authority to quasi-oblige oneself to mortal sin, so that here two malices concur: one, that the one swearing wills evil; the other, that for this he abuses the authority of God, who has hatred for every evil (III, 146). - Therefore oaths customarily furnished by those to be received into secret societies involve the greatest guilt of fault; because, at least implicitly, they oblige themselves to all crimes.

If the thing promised is venially evil, many hold that there is only light irreverence there. But "the opposite opinion pleases me more," says St. Alphonsus (ibid., 5), "because it seems not a light but a grave irreverence to invoke God as witness and surety of sin, although light"; in other words, it is grave to assume such an obligation by oath, as if wishing thus to honor God. But he sins venially who swears something against the evangelical counsels, as, for example, that he will not enter Religion, that he will not give alms. The reason is that here he rather affirms that he is so disposed.

611. From these things conclude: 1. "He sins gravely who exacts an oath from another, knowing that he is going to perjure himself. Except, unless a just cause and necessity demand it; because then the perjury follows from the malice alone of the one perjuring himself" (III, 149).

612. Rustics who do not understand the malice of perjury, and have the custom of perjuring themselves, are not immediately to be admonished concerning the gravity of the sin, lest they pass from material

sins to formal sins; but they themselves are to be strongly admonished, so that they may be called away from the bad custom (III, 150).

3. It is not licit to furnish an oath of fidelity proposed by a government hostile to the Roman Church, in words by which unlimited obedience is promised; but an oath of merely passive obedience can be tolerated, in all those things which are not opposed to divine and ecclesiastical laws, according to the form approved by the Supreme Pontiff Pius VII. Therefore if any laws of the government are opposed to the rights of God or of the Church, let a restrictive

clause be added, and, that scandal may be avoided, let it be declared that the Holy See permits such an oath. Cf. S. Poenit., Dec. 10, 1860 and Dec. 14, 1866 (*A. S. S.*, I, p. 562; II, p. 676).[46]

Indeed, neither then will it be necessary to add clauses, if, whether from the character of the one swearing or from the public declaration of the prince, it is known that the oath implicitly contains the clauses. Noldin, II, 252.

Note. To this second condition of an oath can be referred the question: Whether it is licit to swear upon Protestant Bibles? It is certain that this is not licit if the government does not absolutely require such an oath. If it is imposed, a Catholic will be able, a protestation having been premised, to swear upon a heretical Bible. Let him at least premise the clause: insofar as it contains the word of God. Let confessors, as regards admonition, observe the approved rules. Those are not excusable who, a faculty having been given of asking for or bringing with themselves a Catholic version, use corrupted Bibles (Lehmkuhl, I, 552, note).

Third Condition: JUDGMENT Preliminary note. Judgment demands that an oath be emitted with discretion, that is, with prudence and reverence, and not without a grave or reasonable cause (III, 144).

Therefore the one swearing must weigh: 1. whether the oath is required either by reason of his office, or for this, that faith may be given to his words; 2. whether a notable hope shines forth that he will make faith; 3. whether at its time he can furnish the thing promised by oath.

612. PRINCIPLES. I. To swear without sufficient cause of itself is a venial sin. One swearing thus, by affirming a true thing or promising that which he has the intention of fulfilling, does not seem to invoke the name of God with grave disorder.

We said of itself; because per accidens it can be mortal, if scandal or danger of perjury is present. This danger is commonly incurred by those who are accustomed to swear, without attention whether the things which they are accustomed to swear are true or false (III, 145).

613. II. For swearing licitly notable utility suffices. This is evident from the nature of an oath (cf. n. 602).

Hence, by excellent right, an oath is exacted from those who are received into some community, for example a college, that they diligently devote themselves to observing the statutes; and likewise from those who are placed over some public office or ministry, such as Bishops, canons, beneficiaries, witnesses, etc. - Wherefore, the 101st proposition of Quesnel, by which oaths customarily made in the Church are said to be contrary to the spirit of God and the doctrine of Christ, was condemned by Clement XI in the Bull *Unigenitus*.

Note. As Schindler rightly observes (II, p. 164), great prudence is required in officials of the State, judges, etc., when they ask that the sanctity of an oath be added to assertions. Let oath remain, for investigating truth, an extraordinary means, which they should not use too often. From atheists or perjurers who are known as such, let sworn assertion rarely be sought.

§ 3. On the Promissory Oath

Preliminary note. The promissory oath must be treated specially, because it differs from the assertory in this, that it not only asserts something concerning the present, but besides affirms something concerning the future, namely accurate execution of the thing promised.

614. PRINCIPLES. I. A promissory oath concerning a licit and useful thing induces an obligation of religion. For through an oath God is invoked not only as witness of truth in promising, but also as surety for faithful execution of the thing promised. Therefore oath truly induces an obligation of executing what was promised, on account of reverence for the divine name, or an obligation of religion (cf. Lehmkuhl, I, 562, note; Schindler, II, p. 165).

It was said: 1. An oath concerning a licit thing, etc.; because if it is concerning an illicit thing, or a thing of no utility, it induces no obligation. For an oath, as being an act of religion, cannot be a bond of iniquity, or of an idle thing which does not fall to the honor of God. Indeed, he sins gravely who promises illicit things by swearing. But neither does an oath become valid, even if such an illicit and vain thing, the circumstances afterward being changed, becomes honorable; since that is not strengthened by lapse of time which did not subsist in the beginning (III, 176).

But if the thing promised is less good and against the evangelical counsels, one must distinguish: either the promise was made to God alone, or for the utility of a man. In the first case there is no obligation, because the thing promised to God

[46]The formula approved by the Supreme Pontiff in the year 1809 is of the following tenor: "I promise and swear that I shall never give my work to any conspiracy of whatever kind, whether assembly or sedition, against the actual government; and likewise, that I shall be subject and obedient to the same in all those things which are opposed neither to the laws of God nor of the Church."

ought not to be impeditive of a greater good: thus, for example, he who had sworn that he would never fast outside the days established by the Church can nevertheless fast. - In the second case, if the promise was accepted and can be kept without sin, the oath must be stood by. The reason is that any promise concerning a licit and possible thing, and useful to a third party, must be fulfilled at least from fidelity (cf. n. 1062). Thus, for example, he who swore to a girl that he would enter matrimony with her is held to accept her as wife, unless he wishes to enter Religion: which is conceded to him from a special disposition of law (III, 173; *H. Ap.*, V, 13). Thus also a priest who swore that he would not leave the diocese cannot, without dispensation, enter Religion (III, 177).[47]

2. It induces an obligation of religion. Here it must be noted: a) He who violates this obligation by not fulfilling what he swore does not indeed commit perjury strictly so called, but sins by irreverence toward God, by despising his authority, which had been brought forward for strengthening the promise. b) The obligation which arises from an oath, since it is an obligation of religion, is altogether personal and does not pass to heirs. Wherefore these persons, indeed by force of the oath and from religion, are not held to fulfill it, even if perhaps they are held by another title, for example from pact and justice. c) A fictitious oath does not induce an obligation of religion, since it is null; nevertheless it can well oblige so that scandal or harm to another may be avoided (III, 172, 177).

II. A promissory oath obliges under grave or under light matter, according to the gravity of the thing promised. The obligation of an oath is ordinarily less than the obligation of a vow; but a vow, in light matter, obliges only under light matter. St. Thomas, 2.2, q. 89, a. 8; Lehmkuhl, I, 562. See St. Alph., III, 173; *Vind. Alph.*, I, p. 227.

III. A promissory oath has the same condition and the same mode of interpreting as the promise or purpose to which it is annexed. The accessory follows the principal; and therefore when the promise does not oblige, neither does the oath attached to it oblige (III, 180).

615. Since therefore an oath claims for itself the same conditions and mode of interpreting as the promise to which it is added, this TWO-FOLD RULE can be established:

RULE 1. The obligation of an oath is of strict interpretation, namely so that the one swearing is considered to have wished to oblige himself as little as he could. For thus promises and contracts must be interpreted.

Therefore, if some act or contract does not subsist from the beginning, whether because it is invalid by its nature, for example because of equivocation employed in promising or in contracting, or because it is void from positive law on account of the common good, it follows that no obligation comes from the oath either. Thus an oath extorted by fear does not oblige concerning profession, matrimony, espousals, renunciation of the ecclesiastical forum, donation made by a cleric to a concubine (III, 177).

RULE 2. Every oath must be interpreted according to the CONDITIONS which, by fiction of law, are tacitly understood.

But they are the following: a) If I shall be able, that is, if the promise can be fulfilled without grave harm. b) Saving the right of the Superior, that is, if the Superior does not prohibit execution. c) If the state of things has not been notably changed. d) If the other part also has kept faith in a mutual obligation. e) If the promisee does not yield his right. f) If the final cause, on account of which the promise was made, does not cease (III, 180, 187; *H. Ap.*, V, 18).

616. From these things you will deduce: 1. An oath of observing the statutes of some congregation, college, etc., is to be interpreted thus: a) that it is understood concerning statutes published, not to be published; b) that it is understood to oblige under grave or light matter, or only to penalty, or only under counsel, just as the statute itself obliges; c) that it does not oblige to statutes which have lost the force of obliging, on account of impossibility, or desuetude, or because they have thus been received in use; d) that it also does not oblige if some statute is not observed by the greater part of the community (III, 181). - Religious profession also, if it is invalid, is not strengthened through an annexed oath.

617. "He who swore that he would preserve a secret does not sin against the oath by revealing it when he cannot conceal it without grave harm to himself or another; because the very promise of secrecy does not seem to oblige except with this condition: if it does no harm. Similarly, the obligation of the oath ceases if the matter has become known from elsewhere" (III, 183).

618. He who swore to a judge that he would say the things which he knows is not held to reveal hidden things, because at least half-full proof of the crime must precede. Yet except cases which commonly do not admit except single witnesses, as, for example, the case of solicitation to shameful things (ibid., 5).

[47] Priests who are ordained under title of Mission promise under oath that they will give their name to no religious Order without prior permission of the S. C. de Prop. Fide. Thus from Instr. Apr. 27, 1871. Cf. *Linz. Quart. Schr.*, 1914, p. 44.

619. He who promised with an oath that he would return to prison, much more probably is held to return with probable fear of death or of most grave unjust harm; because, the promise having been posited, to return is a work of virtue. Yet others deny, because it would be an evil action voluntarily to offer oneself to death (cf. III, 186).

620. "Parents or masters swearing that they will punish children or servants rarely sin if they do not fulfill the oath; either because the delinquents have already been corrected, or because the oath was concerning a useless thing, or rather concerning disordered vengeance; or because such oaths are very often made without an intention of swearing, but only of frightening" (ibid.).

621. Generally, the oath not to sell for less or not to buy for more does not bind merchants; either because oaths of this sort are for the most part concerning a useless thing; or because these men do not have the intention of swearing; or certainly because there is in the oath a tacit condition, unless things seem to go better otherwise.

622. An oath of fidelity and obedience regards only those things which are comprehended in the office of the one swearing. Whence, by force of such an oath, an inferior cannot be held either to illicit things, or to impossible things, or to things too grave, or to things extrinsic to his office. See Lehmkuhl, I, 568. Cf. what was said n. 611, 4.

623. Questions. QUES. 1. Whether an oath ever obliges by which a promise void by law or to be voided at the discretion of the one promising is confirmed?

Resp. 1. It obliges if the promise is made void in favor of the one promising, and he, conscious of the matter, nevertheless swears. For one acting thus renounces his right and binds himself with the bond of religion, which, although it confers no right upon the promisee, ought to be kept on account of reverence for God. 2. It does not oblige if the promise is made void on account of the public good, because the thing promised then becomes illicit; nor does it oblige if the one swearing intends only to bind himself, by the bond of religion, to the proper and connatural obligation of the promise (III, 172, 3; 177). Cf. below n. 1059.

QUES. 2. Whether an oath emitted from deceit or ERROR obliges in conscience?

Resp. 1. It does not oblige, if the error or deceit turns upon the substance of the thing, or essential circumstances, or other circumstances sufficiently notable, which, if they had been foreknown, would have impeded the promissory oath; because then the thing promised is not considered sufficiently known for consent to be free. 2. But it obliges if the error or deceit turns upon circumstances altogether accidental (III, 175). - See n. 1061 ff.

QUES. 3. Whether an oath extorted by GRAVE and UNJUST FEAR obliges?

Resp. 1. In the EXTERNAL forum, where the mind of swearing is presumed to have been lacking, it certainly does not oblige. - 2. As regards the INTERNAL forum, it is disputed; but the more common and far more probable opinion, which also D. Thomas embraces with Suarez and Lugo, says that it obliges. Thus, for example, the oath of giving money or usury to a robber or usurer obliges. And the reason is that from religion we are held to effect that what we swear be true, lest we make God witness of falsity. The rule of law is consonant, according to which any oath whatsoever must be kept which can be kept without sin.[48]

Nevertheless: a) One suffering fear can swear with mental restriction, so that he contracts no obligation (n. 608, q. 2 and 615, Rule 1). b) If he truly promised, he can seek relaxation of the oath from the Bishop, or from another having faculty, so that he may be excused from the obligation of paying. c) If he has already paid, he can seek again in judgment what he gave, or compensate himself secretly (cf. n. 1059, q. 2). See St. Alph., III, 174; ed. G., I, 480.

The adversaries indeed say that a payment which can be sought again or secretly taken back is something ridiculous. But St. Alphonsus responds that the payment is not illusory, because there is always danger lest the thing handed over to the thief from fear cannot afterwards be sought again.

Note. 1. The obligation of an oath ceases intrinsically by cessation of the motive cause, that is, when the matter of the oath becomes either impossible, or useless, or harmful, or when a notable change or circumstance supervenes, which, if foreseen, the oath would not have been made (cf. n. 615, Rule 2; 625, 4).

2. It ceases extrinsically by irritation, dispensation, and commutation, just as a vow, because the same reason runs. It also ceases by remission of the obligation made by him in whose favor the sworn promise was emitted, because each one can yield his own right (III, 187-193).

[48] C. *Cum contingat, de jurejur.* in VI. - There are not lacking other authors of great name who hold the same, such as the Salmanticenses, Lessius, Sanchez, Elbel. - Yet some except those contracts which law reprobates or makes void on account of the common good; see Gaude, in n. 174, I, p. 480.

ARTICLE II

On Adjuration

618. DEFINITION. Adjuration is an entreaty under invocation of God, or of sacred things, or of the Saints, for inducing someone, by asking or by commanding, to do or omit something (III, 193, App., n. 1).

It differs a) from prayer, which is petition to God, while here something is asked from another through God; b) from oath, because God is invoked not as witness, but because he is to be revered and feared.

DIVISION. Adjuration is distinguished: 1. By reason of authority, it is solemn or private, according as it is done either by the ministers and modes instituted by the Church, or

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without solemnities of this sort. 2. By reason of manner, it is deprecative or imperative, according as it is done by prayers or by command. Sometimes it is deprecative and imperative at the same time.

619. PRINCIPLES. I. For licit adjuration three things are required: truth, justice, and judgment. 1. TRUTH, that is, that the one adjuring truly intend to attain what he asks, and that the cause on account of which he asks be true. But the lack of this truth will rarely be more than venial fault, as if a feigned poor man asks alms by God. 2. JUSTICE, from the lack of which he certainly sins gravely who asks a gravely evil thing; indeed, according to the more probable opinion, he sins gravely who asks a thing only lightly evil, because it seems a sufficiently grave irreverence to induce another to an evil thing by the help of divine authority. 3. JUDGMENT, that is, due discretion, the lack of which certainly is only venial (III, 193, 2).

620. II. The direct object of adjuration is every intellectual being; the indirect object is also an irrational creature. 1. God is adjured only deprecatively, either by himself, by his goodness, mercy, etc.; or by the merits of Christ; or by the intercession of the Blessed Virgin Mary and the Saints, whose merits we exhibit to him. 2. The Blessed Virgin Mary, the angels, and the Saints of God are also adjured deprecatively when we beseech them to help us on account of God. 3. Men who are wayfarers are adjured, whether deprecatively, for instance if a subject adjures a Superior, a friend adjures a friend, that by the love of God, or of the Blessed Virgin Mary, or of some Saint, they furnish something, thus St. Paul, II Cor., 10, 1; or imperatively, when the one adjuring has some power over the one adjured.

We can likewise adjure demons, but only imperatively, namely by repelling and restraining them through the power of the divine name, lest they harm us spiritually or corporally. This adjuration comes under the name of EXORCISM (Muller, l. II, § 62).

We adjure irrational creatures indirectly, by adjuring either God, that their use may help us, or demons, that through them they cease to harm. In these ways water, salt, a new house, locusts, clouds, tempest, etc., are commonly exorcised (III, 193, 3).

621. III. Adjuration does not induce an obligation of furnishing what is asked. The reason is that it has not been instituted except for exciting in the one adjured fear or love of the divine name, by which he may be moved to furnish what is asked (Noldin, n. 239).

On the Rules of Exorcism

622. I. SOLEMN adjuration against a demon can be done by the ministers of the Church alone, and not without the permission of the Bishop. The Bishop can permit it even in doubt concerning diabolical possession, provided a grave cause is present, all scandal is guarded against, and the matter does not redound to contempt of the Church. Concerning the mode of proceeding, see the Roman Ritual, and St. Alph., l. III, 193, App. See also the formula issued by command of the Supreme Pontiff Leo XIII on Jan. 17, 1902 (App. Rit. Rom.).

We note only two things here: 1. Exorcism is to be employed only for removing harms and the vexation of the possessed person. The demon can be questioned only about those things which conduce to his expulsion, for example about the time and cause of possession. Hence he would sin gravely who should have many useless conversations with the possessing demon; but venially, if he should ask one or another curious question in an imperative mode. 2. Exorcisms obtain an infallible effect, and as if from the work worked. But if they do not always obtain the perfect effect, they obtain at least an imperfect effect, namely by weakening the powers of demons (III, 193, end).

II. PRIVATE adjuration of a demon is licit to all, and especially to ministers of the Church; nor is the special permission of the Bishop required for it. - As regards the FORMULA of exorcism, behold what kind St. Alphonsus advises to be recited (*Prax. Conf.*, n. 113) over those whom the demon harasses with extraordinary temptations: I, as a minister of God, command thee, or you, unclean spirits, that ye depart from this creature of God. - The venerable Servant of God Vincent Pallotti used even private exorcism when he noticed that penitents were not sorry for sins, or were concealing some sin; and he also commended its use to confessors, adding that exorcism is to be employed with great confidence and humility (Muller, § 62, n. 5).

As regards the SIGNS of true possession, cf. Rit. Rom., tit. X. They are: to speak an unknown tongue in many words, or to understand one speaking; to disclose distant and hidden things; to show strength above the nature of age or condition; and other things of that kind, which, when very many concur, are greater indications.

CHAPTER III

On Vow

St. Thomas, 2.2, q. 88; St. Alphonsus, III, 194; ed. G., I, p. 495; *H. Ap.*, V, 21; Suarez, *de Relig.*, tr. VI; Lessius, *de Just.*, l. 2, c. 40; Billuart, Diss. IV; Aertnys, l. III, n. 83; Lehmkuhl, I, 575; Berardi, *Theol. mor.* (ed. 1905), I, n. 489; Vermeersch, *Quaestiones de Virt. Relig. et Piet.* (1912), q. 1, c. 4, n. 119 ff.

623. DEFINITION. Vow, accepted in a broad sense, designates both desire, in which sense baptism is said to be received in desire; and suffrage, which is cast in deliberations; and purpose, which indeed is a simple will of doing something.

VOW, as an act of religion, is a deliberate promise made to God concerning a possible and better good. It is a private law which the one vowing establishes for himself.

It is said: 1. Promise, that is, the will of obliging oneself, an act by which true obligation is undertaken; and by this reason it is distinguished from simple purpose, which indeed denotes a present disposition of the will to do something, but of itself induces no obligation, not even under light matter; 2. deliberate, namely proceeding from free election, with due cognition both of the thing promised and of the obligation undertaken; 3. made to God; for a vow is an act of latria owed to God alone. Wherefore, when we vow certain things to the Saints, the sense is that they are vowed to God in honor of the Saints, just as in their honor we build temples and altars to God; 4. concerning a better and possible good; for the matter of a vow must be pleasing and acceptable to God, as will be explained below.

Note. a) The common people often confuse purposes with vows. "To distinguish these things it will help little to ask him, as some are accustomed, whether he ever had the intention of binding himself by vow under grave sin; for rude persons when questioned thus easily deny it. It will be better to ask whether then, when he emitted the vow, he thought that he would have sinned gravely, or not, if afterward he had not satisfied it" (*Prax.*, n. 25).

b) The heroic vow, as they call it, is not a vow in the true sense; it is always revocable at will. Cf. Beringer, P. II, n. 328.

c) Nor are those promises vows which children publicly make after solemn communion has been completed, although the words are employed: I promise, I vow, and the holy Gospel is touched. For the intention of the faithful of imposing a new and special obligation on themselves is lacking.

DIVISION. Vow is distinguished: 1. By reason of object, into personal, real, and mixed vow. It is personal when some action of man, or cessation from action, is promised, as a vow of pilgrimage, fasting. - It is real when an external thing estimable by price is promised, as a chalice, alms. - Mixed, when both are promised, for example a pilgrimage for offering a chalice in such a church.

2. By reason of mode, into absolute and conditioned vow, according as it is done either simply, for example I vow alms; or with a condition attached, for example I vow alms if I am restored to health, etc.

A conditioned vow is called penal when a penalty to be undergone is promised in vengeance and hatred of sin, so that the one vowing may thus be drawn back from sinning by fear of the penalty, for example I vow alms if I commit this or that sin again.

3. By reason of manifestation, into express and tacit vow, according as it is sufficiently declared by word or writing; or is made by the very fact that someone voluntarily does something to which he knows a vow to be connected, as happens in the reception of subdiaconate, to which by the law of the Church a vow of chastity is annexed.

4. By reason of duration, into temporary and perpetual vow, according as it is promised to be kept for a certain space of time, or through one's whole life.

5. By reason of authority, into solemn and simple vow, according as it is accepted by the Church as solemn, or is emitted with such acceptance of the Church excluded. Each has the same firmness before God; yet they differ as regards effects (n. 2129). Cf. *A. S. S.*, III, p. 37; *Ami du Cl.*, 1911, p. 14.

6. EXCELLENCE OF A VOW AND RULES TO BE OBSERVED. How acceptable vows are to God is gathered from several places of Sacred Scripture, chiefly from these words (Isai., 19, 21): They shall worship him in victims and in gifts; and they shall vow vows to the Lord, and shall pay them. A threefold reason for this excellence is assigned: 1. Because works promised by vow, as being commanded by the virtue of religion, now pertain to divine worship, as certain sacrifices of God. Whence the execution of a vow, besides the goodness which shines in the work itself, also obtains the goodness which emanates from the vow. 2. Because he who has vowed something and does it subjects himself more to God than he who only does it; for he subjects himself to God not only as regards the act, but also as regards the power, since he cannot do otherwise. 3. Because through a vow the will is immovably fixed in good; but to do something from a will fixed in good pertains to the perfection of virtue (2.2, q. 88, a. 6).

Therefore the faithful are not indiscriminately to be turned away from pronouncing vows; but they are to be moderated in such a way that they never vow anything imprudently, for example fasts, chastisements of the body, alms not accommodated to their means. Generally, this RULE must be held: let temporary vows be permitted more easily than perpetual ones, for example a vow of fasting on one day in a month, of chastity for a year, or better from one feast to another, or even with the condition added: until it seems good to the confessor for the time (Scavini, l. II, n. 214; cf. *H. Ap.*, tr. ult., n. 40).

The confessor will act prudently especially if he does not show himself easy in permitting lay persons the vow of poverty or obedience toward the confessor. See what is to be said n. 626 at the end.

These things having been set down, there must be treated: 1. of the requisites for a vow; 2. of obligation; 3. of the cessation of a vow.

ARTICLE I

On the Requisites for a Vow

The conditions required for a vow can be referred either to the one vowing himself, or to the matter of the vow.

625. PRINCIPLES. I. For the validity of a vow there are required, on the part of the one vowing, the capacity of vowing and a free or deliberate will of obliging oneself. For a vow is after the likeness of a law which man imposes on himself. But no one can impose a burden on himself who is not his own master; besides, no law is imposed without the mind of obliging, nor is any man considered to assume some obligation without free and full deliberation. But free will and deliberation, whether actual or virtual, are required, namely such as is necessary for the perfect and direct voluntary; because for a good act the thing willed is required in itself, as we said n. 309. See St. Alph., III, 196.

Hence: 1. By defect of CAPACITY, the insane, the half-sleeping, the half-drunk, even if previously they had foreseen that they would emit a vow, and children not yet seven years old, cannot vow validly, unless perhaps they already possess that discretion of good and evil which suffices for sinning mortally. For he who can oblige himself to the demon through sin can also oblige himself to God through vow. - But in doubt whether a child emitted a vow before or after the seventh year, the vow is valid: for every act is presumed to have been done duly (*H. Ap.*, V, 22). As regards a vow of entering Religion, it is not valid unless the various conditions placed by the Church (cf. n. 2137) are fulfilled. - Nor likewise are vows of the impubes valid when emitted against the will of parents, nor vows of religious emitted against the express will of their prelates.

2. By defect of INTENTION, a fictitious vow is not valid, that is, one emitted either without the mind of promising, or without the mind of obliging oneself. Indeed, such a vow regularly is a venial sin, on account of a certain irreverence. But in religious profession and reception of sacred order it would be mortal, because it would be deception in a most grave thing. But if someone had the mind of vowing and obliging himself, but not of fulfilling, the vow would be valid; but he would commit a sin of fraud, grave or light according to the quantity of the matter (III, 201). Recall what was said n. 603.

3. By defect of COGNITION, a vow made with complete ignorance of the obligation which it induces is not valid. - But it is valid if the one vowing is conscious of the obligation of the vow, although he does not reflectively advert

to it, or if he adverts to it confusedly, for example if he wished to vow in the ordinary way in which others vow; for then he implicitly wills to contract the obligation (*H. Ap.*, V, 21).

Nor is a vow valid which is emitted FROM ERROR in such a way that the thing is morally diverse from that which someone intended to vow. But this happens when error turns either upon the substance of the thing, for example if you vowed to give your chalice, which you thought was silver, although it is gold; or upon a substantial condition, for example if you vowed a pilgrimage to some sanctuary, thinking that it is distant only a hundred miles, although it is distant three hundred; or upon the final cause, for example you vowed something in thanksgiving for health restored to a parent who in reality was not sick, or is already dead. But the vow is valid if the error turns upon accidental circumstances of lesser moment, so that, these things being known, the vow would still have been emitted (III, 198). Cf. n. 617. But vows of Religion are not void except on account of error concerning the substance alone; and the reason is that, if it were otherwise, the firmness which is essential to the religious state would not be sufficiently provided for. See other things n. 635, 4.

4. By defect of DELIBERATION and LIBERTY, a vow emitted in such a heat of passion or devotion that it impeded the use of reason required for mortal sin is not valid (Billuart, *de Relig.*, Diss. 4, a. 1, n. 3).[49] - Similarly, a vow made from fear is null: a) if the one vowing was not in possession of himself, whatever the cause of the fear may have been (cf. n. 286); b) if the vow was emitted from grave fear unjustly struck into him by another for extorting the vow; because God is not considered to accept a promise extorted by injury from someone by force. And this is certain from canon law if it is a question of a solemn vow, but more probable if of a simple vow. - But otherwise one must speak if the fear was either light, or justly struck, or not struck for extorting the vow (III, 197; *H. Ap.*, V, 23).

5. II. On the part of the matter, it is required that a vow be concerning an honorable, just, possible thing and concerning a better good. That honorable, just, and possible matter is required is evident of itself; for this is required in the matter of any obligation whatsoever. But that matter concerning a better thing is required is proper and peculiar to a vow. Therefore the matter must be:

6. HONORABLE; because the intrinsic end of a vow is to worship God. But God is not worshiped by an indifferent or evil action; for an unfaithful and foolish promise displeases him (Eccl., 5, 3).

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Hence a vow concerning an indifferent thing is void, unless the thing becomes good from the end or circumstances; indeed, he who vows an indifferent or vain thing sins venially. A fortiori, a vow concerning an evil thing is void; and one thus vowing sins gravely of itself, although that thing is only venially evil, since of itself it is blasphemy to wish that evil fall to the honor of God. Yet commonly, on account of ignorance, this is only venial (III, 204).

When the thing accidentally becomes evil from a depraved end, the vow is void if the malice of the end holds itself on the part of the thing vowed, namely if the thing promised is directly ordered to the depraved end, for example if someone vows something in thanksgiving for the happy outcome of theft: for this would be virtually blasphemy, as if God promoted sins. But if the malice of the end holds itself rather on the part of the act alone of the one vowing, for instance if the evil end is only connected with or added to the vow, the vow is valid, for example if someone vows a fast and at the same time hopes that he will be praised for this. The vow remains good in itself; only let the evil circumstance which infects the act be put away (III, 206).

2. JUST; that is, something which can be furnished without wounding the rights of anyone.

Thus spouses, without mutual consent, cannot vow perfect chastity, because neither has power over his own body. He who vows separately cannot ask for the debt, but is held to render it (cf. n. 2096).

3. POSSIBLE; for no obligation can be given to the impossible.

Hence a vow of avoiding all venial sins through one's whole life is held as nothing, since this cannot be done without a special privilege. But a vow of avoiding all perfectly deliberate venial sins would be valid; for this is not impossible, and those who love perfection avoid them sufficiently. Likewise, generally a vow of abstaining from venial sins in some determined matter would be valid (III, 203).

When a vow concerns a thing partly possible, partly impossible, let the rules to be established below (n. 634) be observed.

4. CONCERNING A BETTER GOOD; namely concerning a thing not impeditive of a greater good, because a promise which would impede a greater good would detract something from divine worship, and therefore could not be

[49] We said: in a heat of passion which impeded the use of reason required for mortal sin. For if it is a question of ordinary fervor, the vow is valid, nor does it matter that the one vowing afterward repents of his vow; for following repentance is rather a sign of a changed will (Billuart, ibid.). Nevertheless, in vows of this sort there can be a sin of rashness (Berardi, *Prax.*, n. 106).

pleasing to God. But a vow can concern a better good in a thing otherwise prescribed; because the new bond of a vow can contribute to greater fidelity and devotion in fulfilling the law (III, 207-209).

Corollaries. CONCERNING CERTAIN VOWS IN PARTICULAR.

1. A vow of marrying, of itself, is not valid, because celibacy is better than marriage. - But it would be valid per accidens, if marriage were necessary for removing scandal or repairing the honor of a girl; likewise, if someone, having experienced his frailty, were unwilling to employ other remedies so that he might become continent: for then marriage is concerning a better good.

2. A vow of not vowing, of itself, is invalid, because it is concerning inept matter; nevertheless per accidens it can concern a better good, if someone, for example, is accustomed to be imprudent in vowing. If therefore a faithful person of this sort vows that he will not emit vows except by permission of the confessor, the vow is valid. If afterward, without consulting the confessor, he emits some vow, he sins; but the vow thus emitted, provided it concerns a possible and honorable object, is valid. - Except, if in eliciting the vow of not vowing without permission of the confessor, he had the intention of making subsequent vows void, and, while he was emitting a new vow, he was forgetful of this clause (III, 210; *H. Ap.*, V, 28).

3. A vow of not asking dispensation from a vow is invalid, if it is emitted in an unlimited sense; for circumstances can be given where asking dispensation will be concerning a better good (III, 208).

4. A vow of always doing what is more perfect, wonderful in certain Saints, does not concern a better good for those whose life has not been proved by special vigor of virtues.

5. A vow of obedience toward a confessor does not concern a better good if through it the penitent promises that he will make confession with no other confessor. But it can concern a better good in determined and rare cases, for example when a secular person, under obedience, wishes to serve God after the manner of religious. Yet a vow of this sort should never be perpetual, always prudently determined (*Ami du Cl.*, 1906, p. 1026). See what is to be said n. 1790.

6. A vow of poverty to be observed in the world, if it is surrounded with certain limits, for example of not making expenses of greater moment without permission of the confessor, etc., can sometimes be permitted. *Ami du Cl.*, 1913, p. 730.

7. A vow of not adhering to created things, of itself, concerns a good and possible thing, after the example of the Apostle (Phil., IV, 12). Cf. St. Alph., *Prat. d'amar G. C.*, c. XI. Nevertheless, since merely internal acts are the matter promised there, that vow will have to be permitted only to few persons (*Ami du Cl.*, ibid.).

ARTICLE II

On the Obligation of a Vow

627. PRINCIPLES. I. A valid vow obliges from the virtue of religion. It is proved: 1. by Scripture (Deut., 23, 21): That which has once gone forth from thy lips thou shalt observe and do, as thou hast promised to the Lord thy God; likewise Eccl., 5, 3. 2. By reason: every valid promise made to a man obliges by natural law; therefore a fortiori a promise made to God and accepted by him.

Violations of vows are certainly more probably all of the same species. Whence, if someone having a vow of chastity fornicates, he can confess the fornication separately and the violation of the vow separately (III, 34 and 224). Recall what was said n. 581.

628. II. A vow obliges under grave or under light matter, according to the quantity of the matter and according to the intention of the one vowing. For the obligation of a vow is related as the obligation of a law; and therefore it is to be weighed both from the nature of the thing and from the will of the one vowing (III, 211). If therefore the matter is in itself light, the one vowing cannot, even if he intended this, oblige himself under grave matter to it; for the matter is not capable of so great an obligation. Thus a vow under grave matter of not drinking a little drop of unmixed wine cannot be admitted (*Ami du Cl.*, 1905, p. 646).

But if the matter is in itself indeed grave, yet the one vowing intends to oblige himself to it only under venial sin, the vow obliges him only under venial sin.

But if the intention of the one vowing is not established, attention must be given either to the words which he used, or to usual acceptance, or to the matter of the vow. For the one vowing in grave matter is to be considered to have wished to

oblige himself under grave matter, unless the contrary is established from elsewhere (III, 211-213).

But matter is judged GRAVE which either of itself or from the adjuncts notably contributes to the glory of God and the utility of the one vowing or of neighbor, and which in the precepts of God or of the Church is held as grave. Hence a vow of fasting, confessing sins, hearing Mass, communicating even once, expending notable money for pious uses, obliges under grave matter. - Otherwise, a vow of expending a modest amount of money, of visiting one's own church once or again, and of reciting brief prayers. Cf. n. 1716, 1.

Note. It was said: a grave thing can be vowed UNDER LIGHT matter. Yet this does not hold as regards the vows of Religion, which from the intention of the Church are absolute, and therefore do not depend upon the intention alone of the one vowing; but the one vowing is held to conform his intention to the intention of the Church; otherwise the vow would be void, as not accepted by the Church (n. 2147).

Corollaries. 1. He who vowed something under light matter, but without the intention of fulfilling it, sins only lightly. - The matter is otherwise in a promissory oath; cf. n. 606. Lehmkuhl, I, n. 593.

2. Light matters owed from the same vow coalesce if they were promised after the manner of one thing, namely if a day is attached for urging the obligation, lest execution be deferred beyond that day. But this, according to the common opinion of the Doctors, is presumed in REAL vows. Wherefore, if you vowed to give a small alms daily as part of a notable sum which you intend to expend, and you omit it more often, the matters coalesce and can arrive at mortal sin. But it is difficult to determine how great a part is required for grave omission, since the thing depends upon the circumstances.

3. But the same things do not coalesce if they were promised after the manner of singular things, so that the fulfillment of the work attached to such a day, for example a light mortification on Friday in honor of the Passion, is a substantial condition; in which case the day is said to be attached for ending the obligation: and this is commonly presumed in PERSONAL vows. Whence, he who had vowed to recite the Angelic Salutation on all the days of his life would sin only lightly by omitting it on individual days (III, 212; *H. Ap.*, V, 29).

4. III. The obligation of a vow binds only the one vowing. For this obligation arises from one's own will and intention, and because no one has the right of promising another's thing or action. Whence if someone vows the deed of another, the sense is that he will take care in every licit way that that deed obtain execution, for example that a son enter Religion, to which the father devoted him. Yet it can happen that someone is held to execute another's vow; but an obligation of this sort arises from another title, for example from justice.

As regards practice, the following RULES must be established:

1. Personal vows are not fulfilled except by the one vowing. - Whence he who vowed, for example, a pilgrimage does not satisfy if he hires another; nor is he held to do this if he himself cannot make the journey.

2. Real vows must be paid from one's own. - Whence he who cannot from his own is not held to beg from another. But if he can from his own, and yet another wishes to pay for him, this is valid; because then what the other gives becomes his own. Indeed, he probably satisfies a vow of alms who afterward ratifies that alms when he knows that it was furnished by another for that end; because then the vow is already fulfilled with the consent of the one vowing (III, 217).

3. Real vows, since they inhere in the thing, pass along with it to heirs; because they are held to pay them, not indeed directly by force of the vow, but from the title of the inheritance accepted, just as other debts; and therefore they must be paid before legacies, but after debts of justice (III, 214).

4. If a community has vowed something, it matters little whether the matter promised regards private acts, as would be the recitation of the rosary, or public acts, as would be a procession to be made; successors are not held from the motive of religion, but they are held from the motive of obedience, pact, or legitimate custom (III, 216). But it must be noted, from the decree of the S. R. C. (n. 834, 932), that new feasts introduced by a Superior from a vow do not oblige successors. For successors to be held, the consent of the Holy See is required. Thus from the Constitution of Urban VIII, Sept. 13, 1642. Cf. Lehmkuhl, I, 590.

5. IV. A vow must be fulfilled at the time prefixed; or, if determination of time is lacking, as soon as it can conveniently be done. For it is said (Deut., 23, 21): When thou hast vowed a vow to the Lord thy God, thou shalt not delay to pay it: because the Lord thy God will require it; and if thou delay, it shall be imputed to thee for a sin.

But time is attached either for ending or for urging the obligation. If the first, the vow comprehends both the matter promised and the circumstance of time after the manner of one thing; and therefore, once this time has elapsed, the vow

can no longer be fulfilled, and the obligation ceases. If the second, the circumstance of time is an accessory part; wherefore, once the prefixed time has elapsed, the vow always obliges, and must be fulfilled as soon as it can conveniently be done. Doubt standing, in real vows the day is presumed attached for urging the obligation; in personal vows it is presumed attached for ending the obligation (III, 220).

Hence: 1. He who vowed a fast in honor of the Blessed Virgin Mary to be kept on Saturday, if on this day, whether inculpably or culpably, he did not fast, is thenceforth held to nothing; nor is he held to anticipate, if he foresees an impediment that will supervene at that time. 2. But he who vowed a pilgrimage without determination of time is held to perform it as soon as it can conveniently be done; and the obligation, a long delay having intervened, does not cease on that account (III, 220; *H. Ap.*, V, 32).

631. IT IS ASKED. What DELAY, in fulfilling a vow, is to be held grave?

Resp. 1. If a time was attached for ending the obligation, for example in a vow of fasting on this day, any delay of a vow gravely obliging beyond the determined time is grave; because once this has elapsed, the vow can no longer be fulfilled, since it was affixed to the time.

2. But if the time was not determined, or not except for urging the execution of the vow, notable delay in a grave thing is a grave sin. Moreover, delay seems notable to St. Alphonsus if the fulfillment of a vow emitted for temporary service of God, for example of adorning a church, is deferred without just cause for two or three years; and if the fulfillment of a vow made for perpetual service of God, for example of entering a religious Order, is deferred without reasonable cause beyond six months (III, 221). Cf. n. 2140. Much attention must also be given to the age of the one vowing.

It must be noted. "If someone has published some vow, and afterward fulfills the work promised while forgetful of the vow, he is not held to fulfill it again, provided he can always and certainly presume that, if he had been mindful of the vow, he would have applied the fulfilled work for it. And the Doctors commonly teach this, because then the vow is fulfilled through that first will had in the beginning, when the vow was emitted" (*H. Ap.*, X, 120, end). See what was said n. 212.

632. V. A conditioned vow does not oblige unless the condition is fulfilled. For the one vowing did not wish to bind himself otherwise. And this holds even if he himself was the cause why the condition was not fulfilled; indeed, according to the more probable opinion, even if maliciously through fraud, deceit, etc., he had brought an impediment; for even in this case the condition attached is not fulfilled. "But if you impede deceitfully, you sin: for example, you vowed Religion, if your father approves: if you by prayers or reasons impede the consent of your father, you do not sin; otherwise, if you impede by force or fraud. Likewise, you vowed chastity, if God frees you for a year from mortal sin: if from frailty you fall, you do not sin with respect to the vow. Otherwise, if you sin studiously so that you may be released from the vow. And so concerning the rest" (III, 218).

But as regards the CONDITIONS of vows, it must be noted: 1. All shameful or impossible conditions render vows null.[50] 2. For the obligation of a vow, it is not sufficient that the condition be fulfilled equivalently, but it must be fulfilled specifically: for example, you vowed Religion if your sister marries; it does not suffice if she dies (III, 219).

IT IS ASKED. What is to be judged concerning the obligation of a disjunctive or penal vow?

Resp. 1. The essential condition of a DISJUNCTIVE vow, for example of fasting on Saturday or giving alms, is election between apt matters. Hence: a) If either part is not apt matter, the vow is null. b) If before election one part becomes impossible, the vow does not oblige, because election is not possible. But if this happened by fault of the one vowing, he is bound to the other part, as that to which he tacitly consented by his fault. c) If, election having been made, the part elected becomes impossible, the one vowing is held to nothing; but if the other part becomes impossible, he is held to the elected part. d) After election, while each part is still whole, it is probable that the one vowing can always choose that part which he prefers. The reason is that, notwithstanding the election made, the vow still remains disjunctive; nor did the one vowing by his election deprive himself of liberty of choosing the other part (III, 224).

2. A penal vow is either simple, concerning the payment of a penalty, for example if I play cards; in which case it suffices to pay the penalty for the first time; or it is twofold,

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[50] A shameful condition, as the Salmanticenses say (tr. XVII, c. 1, n. 165), invalidates a vow only when it becomes, as it were, the end to which the thing promised is ordered; cf. what was said n. 626, 1. But if the condition is rather a circumstance in whose presence the thing promised is to be done, the vow is valid. Whence the Holy Doctor notes (III, 206; ed. G., I, p. 504): Once the condition posited has been fulfilled, it is honorable in itself to fulfill the vow. Thus also Laymann, Cajetan, Bonacina.

concerning not playing and concerning the payment of the penalty: and in this case, as often as the vow is violated, so often the penalty is to be paid, unless this is very grave, as a pilgrimage, the bestowal of a great alms, which is not commonly accustomed to be repeated. Except also if such a one, while playing, was altogether forgetful of the vow (III, 223; *H. Ap.*, V, 30).

633. VI. The interpretation of vows is the same as the interpretation of laws. For a vow is a certain particular and private law.

Hence: 1. A vow indeterminate as regards time, for example concerning the daily rosary, concerning fasting to be kept on individual Saturdays, obliges perpetually, unless something else is gathered from the circumstances. In doubt whether a vow is temporary or perpetual, or for a month or a year, you are held only to the lesser thing.

2. He who vowed something without determination of place, for example entrance into some Order, satisfies by entering any monastery of the same Order in which the substantial things of the rule are observed; nor is he held to seek admission in places situated outside the province if he has not been admitted in a monastery of the province. Cf. n. 2140.

3. He who vowed something without a certain quality, for example a chalice, a church to be built, must fulfill the vow according to common use.

4. He who vowed something without a certain quantity, for example alms, money, wheat, etc., satisfies by giving as much as he wishes, provided he does not give so little that he seems rather to mock God than to fulfill the vow.

5. He who vowed the recitation of the rosary satisfies by reciting the third part, because it is commonly understood thus; and he satisfies by reciting alternately, and similarly by dividing the decades, because such a vow obliges after the likeness of the Divine Office.

6. He who vowed daily hearing of the sacred rite for a month or year probably is not held on feast days to hear two sacred rites. Nor is he held to fast on Sunday who vowed fasting for a month, a year, or the whole life; because the custom of the Church has it thus. Except, if he expressly bound himself to this.

7. He who vowed a fast for the vigil of some Saint, if this falls on a Sunday, can fulfill his vow on Saturday according to the custom of the Church (III, 221-224).

8. A vow of doing that which is more perfect does not of itself extend to sins to be omitted. Cf. *Ami du Cl.*, 1906, p. 59.

For resolving DOUBTS concerning the existence, extension, and cessation of vows, one must stand by the rules established where doubtful and probable conscience is treated (n. 46, 55 and 89).

634. IT IS ASKED. What must be said concerning a vow of a thing partly possible, partly impossible?

Resp. 1. A vow whose matter cannot or is not accustomed to be divided is null. Thus, for example, you vowed to build a temple: if you cannot build the whole, you are not held to a part, unless nevertheless another should wish to complete it.

2. In divisible matter, the one vowing is held to the possible part, even if lesser, provided this is not considered merely accessory in the vow.

Thus, he who vowed to fast for the whole week, if he can only on some days, is held to this. But on the contrary, he who vowed to perform a pilgrimage with bare feet, but is incapable of the pilgrimage, is not held, as is evident, to baring of the feet. Yet he is held to the pilgrimage itself if he is only impeded from walking with bare feet (III, 225).

Finally, this remains to be noted: He who emitted several incompossible vows must keep that one which excels the others in dignity; otherwise the prior is preferred to the later (III, 210, end).

ARTICLE III

On the Cessation of a Vow

Just as the obligation of a law, so also the obligation of a vow can cease in a twofold way: 1. intrinsically, on account of a change of matter; 2. extrinsically, on account of the intervention of human authority (III, 225).

635. PRINCIPLES. I. The obligation of a vow ceases intrinsically where a notable change of matter supervenes. This holds in every promise. A sign of a change of this sort is given if the one vowing can say: I did not intend to vow this, but another thing morally diverse. But this happens:

1. If by reason of a new circumstance or prohibition the matter becomes illicit, or impeditive of a greater good; for in these cases the vow is no longer concerning the better good: for example, a vow of promoting a work which at the beginning is believed very good, but then is not approved by the Church, as would be a vow of crowning a statue of the Most Sacred Heart of Jesus (*Ami du Cl.*, 1908, p. 811).

2. If it becomes impossible, absolutely or morally, even by fault of the one vowing, for instance if the state of the one vowing in relation to the matter of the vow becomes morally diverse: for example, if someone had vowed the building of a church, but then suffered such a loss in fortune that he could no longer satisfy the vow without notable detriment to his state.

3. If it becomes useless in relation to the intended end: whether through total cessation of the final cause, as if you had vowed that you would give alms to such a poor man and this man suddenly became rich; or through remission of the debt made by one having a right. But both he in whose favor the vow was emitted and he under whose power are both the person in whose favor the vow was made and the promised matter itself have the right: for example, the Supreme Pontiff, if it is a question of a vow in favor of a religious Order or ecclesiastical goods. For such a condonation is equivalent to payment of a debt, so that this becomes altogether useless (III, 192 and 255). Cf. n. 1026.

4. If some notable circumstance supervenes which, if foreseen, the vow would not have been emitted; "because when a circumstance not foreseen supervenes by which the vow is rendered more onerous, the matter of the vow becomes diverse from what was promised" (III, 126). Thus also D. Thomas (4, D. 38, q. 1, a. 3, ad 1).

Except: a) If the supervening inconvenience could reasonably have been foreseen from the very nature of the thing. Hence a vow of chastity in no way ceases through vehement temptations which supervene, since few are found who are always immune from temptations of that sort; therefore other remedies must be employed against them, or, if danger of breaking the vow threatens, dispensation is to be obtained. Likewise, you vowed to serve in a hospital: you are not freed from the vow, even if through a supervening pestilence danger of death threatens you; because since such danger is accustomed of itself to accompany a duty of this sort, you at least foresaw it confusedly and implicitly wished to undergo it.

b) If the public good demands firmness of the vow for itself. Hence, by no changes of matter or circumstances do solemn vows emitted in religious profession or in the reception of Orders cease by the fact itself; nor simple vows which are emitted in religious congregations, especially if the oath of perseverance is added: for then an onerous contract intervenes. Whence, just as the congregation cannot dismiss the alumnus on account of supervening changes, except in a case in which the congregated one would no longer be for edification; see n. 2173; so neither can the alumnus leave the congregation (IV, 50).

636. II. The obligation of a vow ceases extrinsically in three ways: through irritation, through dispensation, through commutation. The reason is that human authority, God consenting, can touch either the act of the one vowing himself or the matter dedicated by the vow.

To this cessation can be referred the extinction of all vows which had been emitted before religious profession and which are totally removed by it (cf. n. 2150, question 2). Through non-solemn religious profession, antecedent vows indeed are not extinguished, but in many things they remain suspended.

§ 1. On Irritation of Vows

637. DEFINITION. Irritation of a vow is its annulment or suspension, made by him who has dominative power over the will of the one vowing, or over the matter of the vow.

DIVISION. One irritation is direct, or properly so called: this touches the very will of the one vowing, and rescinds his vow in such a way that the obligation of the vow never revives. Another is indirect, and this does not fall precisely upon the act of the one vowing, but upon the thing promised by him; and it impedes execution of the vow, yet in such a way that, once the impediment has been removed, the obligation revives: whence it is rather suspension of a vow than irritation.

638. PRINCIPLES. I. Direct irritation can be made by any Superior in whose possession there is dominative power over the will of another. The reason is sought from natural law itself; for an inferior whose will, by force of a positive act, is fully subjected to the will of a Superior cannot, with the Superior's right preserved, dispose concerning himself.[51] Whence his vows, whatever they are, always imply this condition: unless the Superior shall have contradicted.

[51] Nevertheless, neither natural law nor a positive act of the will sufficiently demonstrates the amplitude and firmness of irritation, as regards the forum of conscience, unless we have recourse to the tacit consent of the Church. For no one is so subject by natural law, no one so subjects himself positively, that all acts, even merely internal, receive firmness from another's will (Lehmkuhl, I, 607).

Therefore, as long as he has not contradicted, emitted vows are indeed valid, but weak, so that when the Superior contradicts, they are destroyed, and the obligation undertaken is altogether extinguished. And thus indeed all vows in general, even reserved or onerous vows, even future vows, even with the inferior refusing, can be validly irritated (III, 227, 228, 231).

Yet vows about which it is doubted whether they were emitted before or after the time of begun subjection cannot be directly irritated; but they can be irritated indirectly, if namely their matter is subject to the Superior (III, 237).

Hence: 1. The superiors of regulars and nuns can directly irritate all vows, even internal and unknown to the Superior, which were emitted after profession; because a religious has transferred his whole will and refusal to the prelate (III, 233). Therefore this power is possessed: a) by the Supreme Pontiff, as the supreme prelate of all religious; b) by the Superior General of the Order, provincial and local Superiors; indeed, these primary Superiors being absent, by secondary Superiors, and finally, according to a probable opinion, by Abbesses;[52] c) by the Bishop, if the house or congregation is not exempt from his jurisdiction. Yet vows approved by a prelate of a higher grade must be excepted, as also the vow of passing into a stricter Religion. For no Superior has power from God of impeding a greater good. But see n. 642, 3, and n. 2178.

But a prelate cannot irritate the vows of a religious if he is no longer subject to him (III, 238).

2. The father, and in defect of the father the paternal grandfather or tutor, can directly irritate the vows of the impubes, both personal vows, even of chastity and Religion, and real vows, even concerning military or quasi-military peculium; indeed also the mother, in the presence of the father or tutor, provided the father or tutor does not contradict, as is evident from can. *Puella* (Can. 2, caus. 20, q. 2). The reason is that in such an age perfect deliberation for so great an obligation is lacking. Wherefore natural law has provided for this defect by giving parents the faculty of irritating such vows. Moreover, the father or another having paternal authority can, as long as he possesses dominative authority (cf. n. 698), irritate a vow emitted by a son in the time of impuberty, even if the son has already become pubescent, provided he has not confirmed the vow in puberty, knowing that it was weak (III, 229, 230; *H. Ap.*, V, 36). - But what the father can do toward the pubescent, see below (n. 639, 3).

3. More probably, according to D. Thomas (2.2, q. 88, a. 8 ad 3) and many others, a husband can directly irritate the vows of his wife emitted during the time of marriage, although they do not prejudice the use of matrimony, or the education of offspring, or domestic governance, even vows emitted now but to be executed after the death of the husband, for example of Religion, chastity. The reason is "because it is very expedient for the peace of the family, for fostering mutual love, that the wife have her will totally dependent on the husband, and thus the impulses of women be checked" (III, 234; *H. Ap.*, V, 36; *Conf. dir.*, V, 10). - But the wife cannot irritate the vows of the husband, unless they prejudice her, as a vow of a long pilgrimage, or of not asking the debt (III, 235).

Yet the man cannot irritate the vows of the wife once formal divorce has been made.

639. II. Indirect irritation can be made by every Superior who has power over the matter of the vow. It is a question of vows by which the power of the Superior would be wounded. But by force of natural law it is licit for no one to promise any thing which tends to the harm of a third person who possesses a right in it.

The power of indirectly irritating vows often arises from dominative power, sometimes also from power of jurisdiction.

Hence vows can be indirectly irritated: 1. by the Pope, the vows of all the faithful, and by Bishops, the vows of subjects, insofar as they prejudice them (cf. *A. A. S.*, III, p. 391); 2. by Superiors of religious Orders, the vows of novices, in those things which impede regular observance; 3. by the father, the real vows of the pubescent, insofar as they do not have administration of their goods, and the same must be said of the mother, of the tutor, of the curator, etc.; but he cannot irritate personal vows, for example a vow of keeping chastity, of receiving the sacraments, unless perhaps they prejudice domestic governance, as would be a vow of a long-distance pilgrimage, a vow of keeping such a manner in fasting which would differ too much from the manner of living observed in the family; 4. by masters, the vows of servants which are opposed to owed services; 5. by the husband, vows emitted by the wife before matrimony, insofar as they stand in the way of his rights with respect to governance. And by like reason the wife can indirectly irritate vows of the husband opposed to her rights (III, 242; *H. Ap.*, V, 36).

From what has been said it is evident that INDIRECT irritation is not valid unless a just cause is present. Except, if it is a question of indirect irritation which arises from dominative power.

640. IT IS ASKED. Whether DIRECT irritation can be made without just cause?

[52]Card. Gennari (*Quest. de Droit can.*, II, n. 469) does not admit that the right of directly irritating vows of their subjects belongs to Superiors of religious congregations. Thus also Ojetti, *Synopsis rer. mor.*, n. 2533, near the end.

Resp. 1. It is certain that, for the value of the irritation, no cause is required, since the vow of the inferior was made under the condition: if the Superior shall have consented. Indeed, this seems certain even if the Superior previously held the vows as ratified; because he cannot take away from himself the dominative power which he has over subjects.

Yet if he who wishes to obtain irritation from a Superior does not proceed sincerely, conceals the circumstance of the vow, and asks only permission to perform such a thing, the irritation ordinarily will not be valid; because the Superior, by mere denial of permission, is not supposed to will to irritate a vow whose existence he altogether does not know.

2. It is truer that such irritation, of itself, is no sin, unless the Superior has positively approved the vow. - We say: a) Of itself, or by reason of the power; for with difficulty from another side can he be excused from venial sin, both because one irritating thus does an idle act, and because he irrationally impedes the progress of the inferior. But any reasonable cause suffices for excusing from venial sin. We say: b) Unless the Superior has positively approved the vow; for in that case, if he irritates without just cause, he certainly sins; but, according to the more probable opinion, only venially, scandal or contempt being excluded. Whence it is evident that a graver cause is required for the irritation of vows if the Superior has held them as ratified than if he has not approved them (III, 239).

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From this doctrine, some Doctors deduce that the husband can irritate the vow of the wife, even if by mutual consent they have vowed chastity; because he is able to irritate vows approved by himself. Nor does a certain reason appear why this opinion should be condemned. Nevertheless, since it was against the common opinion, St. Alphonsus left the matter to be decided by the wiser (ibid.; cf. VI, 944, 948). Now several authors today expressly approve this opinion. Thus Lehmkuhl, I, 612; Ballerini-Palmieri, II, 689; and others. See what is to be said n. 2096.

§ 2. On Dispensation of Vows

641. DEFINITION. Dispensation is the absolute condonation of the obligation of a vow, made in the name of God by him who has the power of ecclesiastical jurisdiction (III, 250). - It differs from irritation, which is made in the proper name of the one irritating, and for its validity does not require another cause than the will of the one irritating.

642. PRINCIPLES. I. For valid dispensation of a vow, legitimate power is required. For since the obligation of a vow has been accepted by God and consecrated by his law, it can be relaxed only by divine authority. But this authority was conceded to those to whom Christ said (Matt., 16, 19 and 18, 18): Whatsoever thou shalt loose ... whatsoever you shall loose ... etc.; namely to those to whom spiritual and ordinary jurisdiction in the external forum was conceded (cf. n. 229). Such a power is necessary in the Church, on account of the mutability of the human will and the great number of doubts which must be resolved.

Hence by ORDINARY RIGHT they can dispense:

1. The Supreme Pontiff, with respect to all the faithful, in all vows whatsoever. Nor are solemn vows to be excepted, whether of clerics in sacred orders or of religious; for this is rightly judged to have been conceded to the Pontiff, to whom God conceded the government of the whole Church; and it is established from the practice of the Roman Pontiffs, especially of Julius III in the time of the Anglican schism, and of Pius VII in the time of the French disturbance[53] (cf. n. 2176).

2. Bishops, capitular Vicars, Abbots having episcopal jurisdiction, with their subjects, and the Apostolic Nuncio in his province, in vows not reserved to the Supreme Pontiff. But both the Vicar of the Bishop and the parish priest and other priests need special delegation. What the Bishop can do concerning vows of pilgrims, see n. 235, q. 1.

3. Regular prelates, not Abbesses, with their subjects, even novices, although the vows were emitted in the world, or the vow was one of passing into a stricter Order, provided it is known to be more useful for the religious to remain in his own. But vows of novices can also be dispensed by their own Bishop. Cf. III, 256, 257.

4. Let it be noted: 1. All Superiors who enjoy ordinary power can DELEGATE it to anyone initiated at least by first tonsure. 2. Those who can dispense with others can also do this with themselves. 3. Regular confessors, from privilege, have the right of dispensing in all non-reserved vows of any faithful whatsoever, whether within or outside confession. 4. With spouses joined in valid matrimony, both Bishops and Mendicants can dispense from the simple vow of chastity, whether emitted after or before matrimony. But concerning these things see n. 1992, 2096, 2191.

[53] Cf. *H. Ap.*, V, 42, 50; Suarez, *de Relig.*, tr. 6, l. 6, c. 10; Scavini, l. 2, n. 227. - Yet a wholly full dispensation is never conceded. Thus, for example, even if a priest is reduced to the lay state, dispensation from celibacy is not conceded (Lehmkuhl, I, 621).

5. II. For valid and licit dispensation of a vow, a just cause is required.[54] For vows are made to God alone; therefore man cannot dispense in them except as a secondary Superior; but a secondary one cannot validly dispense without sufficient cause (n. 239). Yet in doubt whether the cause was sufficient, possession stands for the validity of the dispensation already conceded (cf. n. 241, q. 2).

JUST CAUSES of dispensing are: 1. The good of the community, or of the church, or of the family, or of the subject himself; for example, if dispensation is judged to be for his greater progress, if grave danger of violating the vow threatens him, if he is harassed by scruples. 2. Notable difficulty of fulfilling the vow. 3. Imperfect deliberation and liberty in the emission of the vow; for example, if the vow proceeded from sadness, anger, intrinsic fear, for instance of fire or shipwreck, or from extrinsic but light fear; likewise, if the vow was emitted in the time of impuberty. 4. If the impulsive cause of the vow ceases: in which case some commutation is to be mixed with the dispensation, as St. Alphonsus notes. 5. If such circumstances occur that it is doubtful whether the vow still subsists or obliges; for in such a doubt possession stands for the vow, and dispensation is needed (III, 251-252). Cf. above n. 248.

645. Questions. QUES. 1. Whether a Superior can dispense in vows which redound to the utility of a third person?

Resp. 1. In the affirmative, if it is a question of a gratuitous promise, or one not yet accepted by the promisee, or indeed accepted, but made principally in honor of God. The reason is that, according to a probable opinion, the promisee in such a case either does not acquire a true right, or if he acquires one, he acquires it dependently on God, to whom the promise was chiefly made.

2. Negatively, if the promise is onerous or mutual, as in the vow of perseverance which is emitted in certain congregations; or if it is indeed gratuitous, but made principally in favor of a third person, for example in favor of such a determined poor person, and duly accepted by him or by another in his name. For in these cases the vow follows the nature of the contract to which it is annexed, so that it cannot be dissolved without the consent of both parties (III, 225; *H. Ap.*, V, 44). Cf. n. 615.

Note. The Supreme Pontiff can certainly dispose concerning the right which a religious congregation has acquired by reason of a vow of perseverance.

QUES. 2. Whether certain vows are RESERVED to the Supreme Pontiff, and what kind?

Resp. Besides vows emitted in a religious community, even temporary ones which precede perpetual vows, five are reserved: a) The vow of perfect and perpetual chastity. b) The vow of entering Religion in which solemn vows are emitted. c) The vow of making pilgrimage to Jerusalem, to the sepulcher of Christ. d) The vow of making pilgrimage to Rome, to the thresholds of the Apostles. e) The vow of making pilgrimage to Compostela, to St. James.

These five vows, that they may be reserved, must be PERFECT: a) By reason of liberty; wherefore they are not reserved if they were emitted from fear, even light fear, struck in by another. b) By reason of matter; on which account, a vow of making pilgrimage to Rome to the thresholds, etc., is not reserved unless it is from devotion and precisely of those places. Whence if someone vows to go to Rome to visit the image of St. Mary Major, or other sanctuaries, the vow is not reserved; nor is a vow of chastity reserved unless it is perpetual and excludes every venereal act, even internal. Thus, for example, vows of not marrying, of not fornicating, of not asking the debt, or of keeping the prerogative of virginity are not reserved, if the one vowing does not intend to promise abstinence from every venereal act; nor is the vow of entering Religion reserved if the one vowing intends an institute where simple vows are emitted.[55] c) By reason of form; that is, they must have been made principally in honor of God, absolute and determined. Whence penal or disjunctive vows are not reserved, for example of Religion or of fasting, and this according to the more probable opinion, even if the reserved part has already been chosen, unless each part is among the reserved things; nor conditioned vows, that is, under a condition concerning a future contingent, for example I vow chastity if I come out unharmed. It is said: concerning a future contingent; because a vow under a condition concerning the past or present, or concerning a necessary future, is equivalent to an absolute vow; likewise a vow emitted from mere affection for virtue, if a condition was added only because of an impediment which, while it stands, makes execution of the vow impossible: for example if someone were to vow Religion with the condition: if my mother shall have died, that is, when she shall have died. d) By reason of obligation: for they would not be reserved vows if the one vowing had intended to oblige himself only under light matter (III, 258, 261; *H. Ap.*, V, 45-46). - In doubt whether vows are reserved, they can be dispensed by the Bishop and by regular confessors (cf. n. 242, 1).

[54]We do not speak of acceptance of the dispensation, because from what was said in the treatise on dispensation in general it is too evident that this is necessary. For the rest, he who rejects an offered dispensation is considered to impose the vow anew on himself (Genicot, I, 327).

[55]The vow of embracing the religious life is not of itself reserved; for the one vowing can enter either an Order strictly so called or a religious Congregation. Similarly, the vow of a woman whose intention regarded monasteries as they exist in France is not reserved. S. Poenit., Dec. 11, 1835 (ap. Ojetti, *Synopsis*, v. Dispensation, n. 1828).

Let it be noted: 1. Vows are reserved as regards substance, not as regards circumstances. Hence, if someone, for example, had vowed entrance into a stricter Religion, the Bishop or regular prelate can dispense in such a way that it is licit for him to enter into a milder one. Likewise, if he had emitted a vow of entering without delay, the Bishop, with cause, can dispense so that the entrance be deferred (III, 258, note 3).

2. The faculty of dispensing over one reserved vow is valid for other reserved vows if these are less noble; otherwise not. Thus, for example, he who can dispense over reserved vows, even of chastity, possesses the same faculty as regards other reserved vows of inferior dignity, but not as regards the vow of religion. Nevertheless, on account of a special reason, he who has the right of dispensing over reserved vows, even of religion, cannot dispense over the vow of chastity, because its observance is more difficult; for he who vows religion is held only to make an attempt. In the formula: of dispensing from vows, even of chastity, other reserved vows are not included.

3. In reserved vows, Bishops and those having similar jurisdiction can also dispense or commute when and insofar as necessity urges.

We said: a) when necessity urges, that is, if there is not easy access to the Pope, and in delay there is danger of grave harm, whether spiritual or temporal, one's own or another's; b) insofar as necessity urges, because if it suffices that the vow be suspended, it cannot be dispensed. Likewise, if dispensation is given in a vow of chastity so that someone may marry with a certain woman for repairing her honor, he cannot marry another. There are also other faculties, even for the vow of chastity, which are accustomed to be conceded to Bishops when they ask (ibid., note 2).

QUES. 3. Whether an OATH of chastity, or of Religion, is reserved equally with a vow?

Resp. The more probable opinion denies that such an oath is reserved, if namely someone wished to oblige himself by the bond of oath alone; for an oath induces a lesser obligation than a vow, as St. Thomas teaches (2.2, q. 89, a. 8). But if he wished to bind himself by two bonds, namely by vow and oath, the vow indeed is reserved, but not the oath. But in doubt whether a vow was added to an oath, the common rule now holds: a vow doubtfully emitted does not oblige (III, 259).

From what has been said you will resolve: To one conceding dispensation it must be established: 1. that the vow, in the case, is not certainly reserved to a Superior; 2. that by dispensation a right acquired by a third person is not wounded; 3. that a just cause is given; in doubt concerning the sufficiency of the cause, it must be supplied by some commutation. For the rest, some commutation is laudably joined to any dispensation. - Recall what was said concerning dispensation from law (n. 237).

QUES. 4. Whether one having a delegated faculty of dispensing in vows can also dispense in oaths?

Preliminary note. It is not a question of vows to which an oath has acceded in the same matter, sworn vows; it is a question of oaths which were emitted independently from a vow in the same matter.

Resp. It is disputed. The first probable opinion denies, because the bond of a vow and of an oath is diverse. The second opinion, no less probable, to which many moderns assent, affirms, because in order to dispensation a vow and oath are equated.

The former opinion, which St. Alphonsus (III, 190) says must altogether be held, by force of the principle of possession, is favored by the declaration of the S. C. de P. F., May 19, 1845: "The faculty of dispensing from vows does not of itself include the faculty of dispensing from an oath." Cf. also the response of the same Congregation, May 3, 1828 (*Coll. Prop. Fide*, n. 2085 and 2087). This opinion is also favored by a vehement conjecture, arising from this, that from the style of the Curia the faculty as regards oaths is specially conceded. Cf. *Vind. Alph.*, I, p. 307.

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§ 3. On Commutation of Vows

646. Definition. Commutation is the substitution of another honorable work in place of that which had been promised by vow, under the same obligation.

DIVISION. Commutation can be done in three ways: into a better work, into an equal work, into a less good work. But that is called BETTER which is such in relation to the spiritual utility of the one vowing and more pleasing to God (III, 243; Lehmkuhl, I, 625).

It is useful to add some examples of commutations into an equal work from Reuter, II, n. 374. One can commute: the fast of one day into one confession; daily recitation of the Rosary into weekly confession; a vow of avoiding external sins of lust, or a vow of not marrying, into monthly confession for life; a pilgrimage to be made into fasting, etc. See Lehmkuhl, I, 632.

647. PRINCIPLES. I. Commutation of a vow into an evidently better work can be made by the one vowing himself, even without a special cause. For the lesser is contained in the better. It is established from Canon Law (c. *de Jurej.*): "For he does not break his purpose or promise who commutes it into something better."

Hence he who, for example, vowed to offer a candle in a church will be able by his own authority to change this vow into the offering of a chalice. Yet vows in favor of a third person and accepted by him are excepted; likewise reserved vows, unless the change is made into the religious state (III, 243).

648. II. Commutation of a vow into an equal or less good work must be made by ecclesiastical authority. The reason for the first is that, a vow having been posited, it is more pleasing to God that the promised thing be furnished than another thing, even if equal, but not promised. Besides, in commutation, as D. Thomas says (in 4, D. 38, q. 1, a. 4, sol. 4), there is a certain contract which cannot be perfected without the consent of him who acts in place of God on earth, namely the prelate. - The reason for the second is that commutation into a less good work is a species of dispensation (III, 244; *H. Ap.*, V, 38; 2. El. qq. ref., n. 8).

In either case, a reasonable cause is required. If this is lacking, only commutation into a less good work would become invalid. Yet commutation into an equal work made without cause would not exceed venial sin. - But if commutation into an equal work has already been made by one's own authority, and the commuted matter has already been furnished, it suffices that the one vowing supply something.

649. Let it be noted: 1. He who can dispense, even from delegation, can likewise commute vows: for "he to whom what is greater is licit, to him indeed what is less is licit"; but not vice versa, because the greater power is not included in the lesser (Reg. 53 in VI).

650. He who can dispense or commute the vows of others can likewise do so for himself (III, 249).

651. He who enjoys the faculty of commuting, but not dispensing, must commute the vow into an equal work; because if he changed it into a lesser one, he would already dispense in part. Nevertheless, equality is to be estimated not mathematically but morally; for otherwise the matter would become liable to innumerable difficulties and scruples (III, 247).

652. Just as a lesser cause is required for commuting than for dispensing, so a lesser cause suffices for commuting a vow into an equal work than for commuting it into a less good work. Concerning this matter St. Alphonsus says thus: "Any reasonable motive can be held as a cause. It is sufficient that from the commutation of the vow there be less danger of transgression ... Let the confessor ask the penitent what works he is accustomed to exercise besides those owed from precept, or toward which he has greater inclination; and into those let him commute the vows" (*Praxis*, n. 26). But in doubt whether the cause of commutation was sufficient, D. Thomas teaches that the one vowing can acquiesce in the judgment of the one commuting (III, 245, end).

653. A personal vow can be commuted into a real one, and vice versa; likewise a perpetual one into a temporary one. But the safer commutation, in every kind of vows, will be the frequency of the sacraments (III, 247 and 248).

654. When a reserved vow has been commuted by a Superior or his delegate, the substituted matter more probably is not reserved, although it has the same bond of vow. Thus commonly (III, 249).

655. Sometimes the faculty of commuting by dispensing is granted, sometimes of dispensing by commuting. In the first case, commutation into a less onerous thing is rather regarded; in the second, dispensation, not indeed total, but with some burden.

656. Questions. QUES. 1. Whether, commutation having been made, it is licit to return to the first work?

Resp. In the affirmative, because the commutation of a vow conceded by a Superior is a favor; but no one is held to use a favor. Nevertheless, although the one vowing has returned to the first work, he can go back to the second substituted one. - But if he has vowed the first or second work again, in this case he would be held to either one by a new bond of vow (III, 248).

QUES. 2. Whether the one vowing ought to return to the first work if the second becomes impossible?

Resp. 1. In the affirmative, if the one vowing by his own authority commuted into something better; because, in this case, the obligation of the vow has not been extinguished.

2. Negatively, if the commutation was made by a legitimate Superior; for then the bond of obligation has been transferred into the substituted thing, and therefore the first obligation is extinguished. This holds even if the substituted

thing, by fault of the one vowing, has been made impossible. He indeed sinned by rendering it impossible, but he is not held to return to the first vow, truly extinguished (III, 249).

TREATISE III

On the Third Precept of the Decalogue

Remember that thou sanctify the day of the Sabbath.
(Exod., 20, 8).

651. The impediments of true religion having been removed through the first and second precept, and various services of reverence and fidelity which are owed to God having been assigned, there now comes the third precept, directly affirmative, which prescribes external worship as a corollary of the preceding precepts.

No one does not see that this divine worship is the foundation of morality, and therefore of Christian society. Therefore the noble and chief office of princes and rulers of societies will always be, in ordering and imposing worship, to assist the presidents of the Church by their authority, and to command the people to obey the precepts of priests (Catech. Rom., *de 3 Praec.*, n. 2).

We shall treat: 1. of feasts to be sanctified in general; 2. of the obligation of abstaining from servile works; 3. of the obligation of hearing Mass.

CHAPTER I

On Feasts to Be Sanctified in General

St. Thomas, 2.2, q. 122; St. Alphonsus, III, 263; ed. G., I, p. 545; Suarez, *de Relig.*, t. II, l. 2; Salmant., tr. 23; Aertnys, l. III, n. 113; Lehmkuhl, I, n. 701; Tanquerey, I, n. 1006; *Zeitschr. fur kath. Theol.*, 1913, p. 563; Koch, *Moraltheol.*, § 117; Vermeersch, *Quaest. de Virt. Relig. et Piet.* (1912), q. 1, c. 3, n. 108; Villien, *Hist. des command. de l'Eglise*, ch. 4.

Four things must be investigated: 1. By what law the sanctification of feasts is prescribed. 2. Whom this law obliges. 3. On what days the law urges. 4. To what this law obliges.

652. PRINCIPLES. I. The precept of sanctifying certain days, insofar as it wills that some time be spent on divine worship, is natural; but insofar as it determines the time and manner of worshiping God, it is ecclesiastical. Thus commonly with the Roman Catechism (l. c., n. 4) and St. Thomas (l. c., a. 4 ad 1).

It is said, 1. It is natural, or moral, as St. Thomas explains: "It is moral indeed," he says, "as regards this, that man deputes some time of his life for being free for divine things. For there is in man a natural inclination to this, that some time be deputed to each necessary thing: as to bodily refreshment, sleep, and other things of this sort. Whence also to spiritual refreshment, by which the mind of man is refreshed in God, according to the dictate of natural reason, man deputes some time. And thus to have some time deputed for being free for divine things falls under the moral precept": by which reason it is placed among the precepts of the Decalogue.

2. It is ecclesiastical, etc. Concerning this there seems no need to doubt, and we follow D. Thomas (2.2, q. 122, a. 4 ad 4), St. Antoninus (P. 2, tit. 9, c. 7, v. *Succedit*), St. Bonaventure (in 3, D. 37), and others whose names can be seen apud St. Alphonsus (III, n. 265; ed. G., I, p. 547). The reason: sanctification of the Lord's day succeeded to the ceremonial law of the Sabbath, which, although instituted by divine law, nevertheless, insofar as it was positive, was abrogated. Therefore the Roman Catechism rightly attributes the institution of the Lord's day to ecclesiastical right (*de 3 Praec.*, n. 18). See Lehmkuhl, I, n. 702. Cf. what Preseren holds concerning this matter (*Zeitschr. fur kath. Theol.*, 1913, p. 563 ff.); Vermeersch, l. c., n. 112.

Some moderns defend another opinion, which sounds thus: It is a natural precept that some time be deputed to divine worship; it is of divine law that one day out of seven be sanctified; it is of ecclesiastical law that God be worshiped on such a day and in such a manner. Thus Schmid, *Linz. Quart. Schr.*, 1900, p. 12; Noldin, II, n. 260; *Ami du Cl.*, General Table, 1899-1908, p. 266. - It cannot be denied that the text Gen., II, 2 ff.; Exod., XVI, 23; XX, 8-11 supports this opinion. Cf. Cornelius a Lapide in Exod., XII, 16; Mgr. Pie, *Oeuvres*, III, p. 352. Yet these arguments cannot weaken the reasons proposed above; for the question is whether the rest of the seventh day is more than an exemplar of order in the week. Practically we do not adhere to this opinion, because in a straight path it will oblige all those who could not sanctify the

Lord's day by reason of necessary labor, to sanctify a ferial day, and thus satisfy divine law. But no one will admit this as certain. See St. Alphonsus, VI, n. 297; ed. G., III, p. 274.

From these things it is inferred: a) They sin against the law of nature who spend no time through the year on divine things.

b) The Pope cannot dispense that there be no festive day deputed to divine worship: for thus the fulfillment of the natural precept among private persons would be exposed to danger, and especially the public worship necessarily to be exhibited to God by any society whatsoever would cease.

c) Speaking absolutely, the Pope could decree that observance of the Lord's day should endure only for some hours, and that servile works should be licit. But sufficient reason that such a general dispensation become licit is scarcely given. - For the rest, history teaches that the rest of one day after six days of labor is necessary both for mind and body, and that from the origin of the world all things were ordered thus. The Legislator must attend to these things (Tanquerey, II, p. 583).

Note. Although the precept of sanctifying feasts is ecclesiastical, it does not follow from this that Bishops can institute feasts at will. Urban VIII commends to them (Const. *Universa*, Sept. 13, 1642, § 3), on account of many inconveniences which are perhaps accustomed to arise, that they abstain from introducing new feasts. If they wish to introduce any, let them be of Saints, not of Blessed; if any must be perpetual, let the consent of the clergy and people accede (III, 266; ed. G., I, p. 547).

653. II. The precept of sanctifying feasts obliges, under grave matter, all the faithful possessed of reason, at least after the seventh year. This is evident both from the nature of the thing and from the 52nd proposition condemned by Innocent XI: "The precept of observing feasts does not oblige under mortal sin, scandal being set aside, if contempt is absent."

From this you will conclude: 1. It is not licit to impose labors on heretics on a feast day; for they are faithful, and here it is a question of an ecclesiastical law which protects the exercise of social religion. Heretics, of themselves, would be held to assist at Mass. Yet recall what we said above n. 198.

2. The non-baptized, the perpetually insane, do not sin if they do not observe ecclesiastical law. Therefore it is licit to burden non-baptized persons with servile works, whatever some say. Cf. St. Alphonsus, III, n. 271; ed. G., I, p. 551; *Ami du Cl.*, vol. 18, p. 1026. Yet the master would sin who imposed so great labors on them that no time would be available for worshiping God (Lehmkuhl, I, n. 702).

3. III. The precept of sanctifying certain days extends to the Lord's day and all feast days. It is most certain from many documents and the perpetual tradition of the Church. For it pleased the Church of God that the worship and celebration of the Sabbath day be transferred to the Lord's day: a) because on that day Christ the Lord, our light and life, rose from the dead; whence the Apostles wished it to be called the Lord's day; b) because on the same day the creation of the world had its beginning, and the Holy Spirit was given to the disciples; c) lest Christians communicate with Jews in the time of feasts (Catech. Rom., l. c., n. 18).

As regards feast days now to be observed, hold the following:

1. All feasts which in some kingdom were established by special convention with the Holy See still remain obligatory in those regions. Benedict XIII promulgated particular indults for Spain, Benedict XIV for Sicily and Austria, Clement XIV for Bavaria, Pius VI for the dioceses of Prussia and Poland, Pius VII for France and Belgium, Leo XIII for North America.

2. Urban VIII, besides Lord's days, had instituted thirty-six feast days, to which Clement XI added one in honor of the Immaculate Conception of the Blessed Virgin Mary. - But now, for the whole Christian world, after the Constitution of Pius X, *Supremae Disciplinae* (*A. A. S.*, III, p. 306), only the following days are to be considered as festive days: the Nativity of Our Lord Jesus Christ, Circumcision, Epiphany, and Ascension; the Immaculate Conception and Assumption; the feast of the Apostles Peter and Paul and of All Saints. Therefore on these days the third precept is in force, just as on Lord's days. Other feasts which have been suppressed are to be celebrated without cessation from work[56] (*A. A. S.*, III, p. 351; IV, p. 340).

[56]From this it does not follow that parish priests are no longer held, on those days whose festivity is suppressed by the Pian Constitution, to apply for the people. The ancient obligation remains, unless the suppressed feast is transferred to Sunday, or is impeded by a feast of higher rite. Thus the S. C. Conc. (*A. A. S.*, III, p. 391; VI, p. 9). Cf. *Ami du Cl.*, 1911, p. 862, 863. Cf. what is to be said n. 1606, q. 2.

3. By force of the newest law, feasts sanctioned from vow or from an established ordinance confirmed even by ecclesiastical authority have been struck from the number of feasts with obligation of hearing Mass. S. C. Conc., Aug. 8, 1911 (*A. A. S.*, III, p. 391).

4. If in some region, at the petition of the Bishops of the place, the Holy See has conceded that ancient feasts be preserved, so that they oblige in each forum, one must stand by this law.[57] Likewise, if in some region, for example in Holland, there are feasts of one precept only, by which only assistance at Mass obliges. Cf. Sweens, *Theol. mor. fund.*, p. 276, note.

5. If the feasts mentioned above fall on a day on which fasting or abstinence would have to be observed, the obligation of fasting or abstinence is removed. The same is extended to feasts of patrons which would be celebrated solemnly with the concourse of the people, although the ecclesiastical precept as regards them has been abolished by the new law (*A. A. S.*, ibid.). Indeed, the faculty is conceded to Bishops of dispensing from fasting and abstinence occurring on a suppressed feast, but solemnly celebrated (*A. A. S.*, IV, p. 341). Dispensation conceded by Apostolic indult is extended to Religious, but not as regards the obligations of their own rule (*A. A. S.*, IV, p. 627). Cf. n. 1243, q. 1.

6. Feasts suppressed from the former catalogue are the following: The two ferias after the Resurrection and Pentecost, the Solemnity of the Body of Christ, the Finding of the Holy Cross, the Purification, Annunciation, Nativity of the Blessed Virgin Mary, the feasts of St. John the Baptist and St. Joseph, March 19, the Dedication of St. Michael, the feasts of the twelve Apostles, of St. Stephen, the Holy Innocents, St. Lawrence Martyr, St. Sylvester, and St. Anne, finally the feasts of the Holy Patrons in regions and city. Of these, certain ones were until now to be transferred to the following Lord's day, but by a recent decree, Oct. 23, 1913, it is established: no feast, not even of the Lord, can be celebrated on the Lord's day, except the feast of the Holy Name of Jesus, from the first day to the fifth day of January. Feasts of the Dedication of one's own church are to be celebrated on the day assigned by the Ordinary (*A. A. S.*, V, p. 450 and 458). Religious institutes enjoying their own Calendar are held only to local offices of the Dedication and Title of the cathedral church, and also to the more solemn feasts of the principal Patrons (*A. A. S.*, VI, p. 118 and 382).

7. IV. The precept of sanctifying feast days obliges under grave matter to two things: to abstaining from servile works, and to hearing Mass.[58] It is established both from c. 1, *Licet de Feriis*, and can. 64, *Missas*, dist. 1, *de Consecr.*, and especially from the use and practice of the faithful; because the canons do not promulgate a new law, but rather suppose a law already in force. The reason for these things is that, on the one hand, man abstaining from labor furnishes an oblation from earthly goods, and by his rest fosters recollection of mind; but on the other, the Christian hearing Mass fulfills in a perfect manner the obligation of adoration and of his own sanctification.

Whence it is evident that all these things were rightly imposed under grave matter, and that this law is to be fulfilled by all.

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Note. Priests satisfy by celebration in a due place. If they do not celebrate, they must hear Mass. - Nevertheless, on the day of the Nativity of the Lord, only one Mass must be heard. The time of fulfilling the obligation extends, according to ancient custom, from midnight to midnight.

657. Corollary. By force of the precept of the Church, the faithful, on feast days, are held to nothing else; and thus both the opinion of the Doctors and the persuasion of the timorous hold. Nevertheless, they will try to celebrate the Sabbath day, which Isaiah, 58, 13, calls delightful, in a perfect manner (Catech. Rom., *de 3 Praec.*, n. 10).

Hence: 1. The faithful are not held to be present at a sermon. - Bishops and parish priests indeed must feed the people with salutary words (Conc. Trid., Sess. 24, c. 4, *de Reform.*); but from this it does not follow that all and individual faithful are held to hear a sermon. Yet the faithful often sin by not hearing a sermon or catechesis, whether by reason of scandal or contempt, or especially by reason of ignorance, with which many labor to their great spiritual detriment (III, 269).

2. There is, of itself, no obligation of assisting at vespers or evening benediction.[59] Nevertheless, the faithful are greatly to be exhorted that they assist; because otherwise that time is spent in offense of God, and the spiritual fervor of

[57] Yet pilgrims are not of themselves burdened by these particular laws. Let what we said above (n. 204 ff.) be recalled.

[58] The Council of Laodicea (a. 343-382) inculcates abstinence from servile works as introduced by the elders. Tertullian (*de Cor.*, c. 4) speaks of the twofold obligation. In l. *de Fuga*, c. 14, he says that not even in the time of persecution can assistance at the oblation be omitted. Cf. Schindler, *Lehrb. d. Moraltheol.*, ed. 2, p. 145. - The 52nd proposition condemned by Innocent XI (cf. n. 654), which is opposed to our opinion, proceeded from certain assertions of Cajetan and others. Whence Caramuel was able to rely on these authors (Viva, on this proposition).

[59] Formerly some affirmed that the faithful were obliged under venial sin to assist at vespers; but, as *Ami du Cl.*, 1903, p. 422, well admonishes, this can no longer be sustained. Cf. Pastoral Instruction of the Most Reverend D. Freppel, Bishop of Angers (*Oeuvres past.*, III, p. 281).

the people is diminished.

3. There is likewise, of itself, no obligation of internally worshiping God by acts of faith, hope, charity, etc.; for the end of the law, that is, sanctification of the soul, does not fall under precept, nor are we compelled to internal worship, but we are moved by the Holy Spirit. Thus the Angelic Doctor (2.2, q. 122, a. 4).

CHAPTER II

On the Obligation of Abstaining from Servile Works

St. Alphonsus, III, n. 272; ed. G., I, p. 551; *H. Ap.*, VI, 7; Genicot, I, n. 333; Berard, *Prax. conf.*, I, s. III; Gopfert, I, § 57; Benger, *Pastor. Theol.*, III, 149; *Ami du Cl.*, General Table, v. Servile works; Villien, op. cit., c. 3.

In this chapter there must be treated: 1. of works which, on Lord's days and feasts, are forbidden; 2. of the causes on account of which servile works are permitted.

ARTICLE I

On Works Which Are Forbidden on Feast Days

658. Preliminary notes. 1. A threefold genus of works is usually distinguished, namely: a) Servile works, which are exercised by the body and immediately ordered to the utility of the body, as to dig, to sew, etc.; they are called servile because they are accustomed to be done by slaves. Among these certain ones are less servile, as is explained n. 659, 3. b) Liberal works, which proceed chiefly from the soul and look to cultivating the mind, as to read, to teach, to sing, to play organs; they are called liberal because they are exercised by free men. c) Common or middle works, which are accustomed to be done indiscriminately by free men and slaves, as to make a journey, to hunt, etc.

To these are added d) Forensic works, which look to the market, or to the forum concerning decisions of cases, such as citation of parties, compilation of the process, examination of witnesses, etc., which are prohibited by special law.

2. To judge the servile character of the work of which there is question, attention must be given primarily to the nature of the work, and this is the positive, primary mark of works prohibited on the Lord's day. Do not attend to the negative mark, namely whether the work is done for the sake of gain or recreation, with fatigue or not, for a brief or long time. Thus, for example, to knit stockings by hand, which of itself is servile, is not so grave to the body as to play organs, which is liberal. Attention must also be given to the common estimation which brings decisive weight for many works of doubtful nature; or to other adjuncts, for example to the vile apparatus of the work.

Therefore a fourfold genus of principles must be brought forward: concerning servile, forensic, liberal, and common works.

659. PRINCIPLES. I. Of themselves, all servile works are forbidden on Lord's days and feast days. This is established from what was said n. 656. - Read what St. Alphonsus wisely admonishes (l. c.) that you may know what works are reputed as servile. Let each person also consult the particular responses which are given in the periodicals of each region. For there much attention is given to local customs.

Hence there are forbidden: 1. Rural works, as to plow, to sow, to gather the harvest, etc. Likewise works of mechanical arts, as of the tailor's, shoemaker's, carpenter's, mason's, blacksmith's, typographical art, etc. Several authors admit that typographical characters can licitly be arranged, led by this reason, that such occupation is similar to writing. Nevertheless, if it is exercised in a public workshop by many, by reason of the servile apparatus and common estimation, it is held as servile.

2. Likewise the work of grinding is forbidden, if the mill is worked with beasts and requires much cooperation of man for itself; but not if the mill is turned by water or wind or electrical force. To skin larger beasts; to exercise the work of a butcher; to hunt, to cast a net with many accompanying; to bake bread, in a case in which the baker can provide for himself on the preceding day: these are numbered among servile works.[60] Measurement of fields, distillation, are judged servile if they are done with great apparatus, after the manner of fulfilling a duty (*Ami du Cl.*, 1903, p. 637).

[60]To drive loaded wagons, according to St. Alphonsus, III, n. 276; ed. G., I, p. 552, is not servile; and he applies this to muleteers and sailors. Yet see whether in such or such a region this may be interpreted equally benignly.

3. By the nature of the work there is forbidden the making of rosaries, wax images, artificial flowers, but not artistically arranged ones; cf. *Ami du Cl.*, 1902, p. 40; multiplication of copies, polycopy, if it lasts long; labor with a hook, crocheting, *travail au crochet*, *hakeln*. But such occupations are less servile, and participate somewhat in the nature of liberal works. Therefore, that there be grave matter, a greater space of time is required. Indeed, with some cause, they will be able to be permitted without any fault, if they are continued for a short time, or at least not beyond two hours, says St. Alphonsus (l. c.). Indeed, custom acceding, such things, since they require very little apparatus, can become licit even without cause. Say the same of plucking roses, peeling fruits, drawing musical lines, threading gems onto a string for making a necklace, and similar lighter labors, at least if they are not done for as long a time as on a weekday.

4. II. Forensic works are forbidden, that is, judicial actions and markets. This is established from the last c. *de Feriis*.

Therefore there are forbidden: 1. Judicial actions, namely those which regard any litigious cases whatsoever, where judicial process, judicial apparatus, and noise are required. Hence it is not licit to cite the accused, examine witnesses, receive a judicial oath, pronounce or execute a sentence, unless necessity or piety demands otherwise. But the exercise of voluntary jurisdiction is not forbidden; whence it is licit: to excommunicate, to dispense, to confer benefices; to make testaments, to consult an advocate, to inform a judge privately, and to complete other similar acts before a notary which lack judicial noise (III, 284, 287).

2. Markets, namely those which are held with noise, or in public shops, because they greatly distract the soul and turn it away from the sanctification of feasts. Yet annual fairs affixed to a certain day are permitted when they fall on a feast day. As regards weekly markets, these of themselves are prohibited; except in those places where a legitimate custom is in force, as Benedict XIV declared (Const. *Ab eo tempore*, of the year 1745; III, 285). Also permitted are sales and purchases of houses, horses, merchandise, etc., among private persons. Indeed, in certain places, after the divine offices have been completed, public sales under the spear, auctions, are tolerated, because on other days fewer buyers would come together. Also tolerated in most places are sales in shops which are opened very early in the morning so that things necessary for daily use can be bought.

3. III. Liberal works are not forbidden. This is established from the absence of a prohibitive law and from the practice of the timorous.

Hence: 1. It is licit on feast days to devote oneself to the study of letters, to teach, to sing, to play musical instruments, to draw, to write, indeed to transcribe, or to use a typewriter (III, 278; *Ami du Cl.*, 1908, p. 399).

2. It does not seem illicit to PAINT; for painting, provided there is not notable labor in preparing colors and panels, seems rather a liberal than a servile work, since the mind of the painter works more than the hand (III, 280; *H. Ap.*, VI, 10).

Nor similarly does the photographic art seem illicit, unless it requires many preparations. Thus Berardi (*Prax. conf.*, 372); D'Annibale (III, n. 121).

3. According to several, it is licit for women to paint images with a needle: for this, they say, is referred more to exercising ingenuity than to working. But others excuse girls painting with a needle, that they may learn, or that they may avoid idleness.

4. On the contrary, it is not licit to sculpt; for the sculptural art, at least in the estimation of men, is numbered among the mechanical arts. Except, if it is a question of the final perfection of the work (III, 281).

5. IV. Common works are not forbidden, provided they are not done with great labor, noise, or apparatus. This is established from universal practice.

Hence: 1. It is licit to make a journey on foot, by horse, carriage, or ship; whence even the things necessary for these are licit, although perhaps they are servile, for example to row. 2. It is likewise licit to hunt, fish, catch birds, unless this is done with great labor, noise, etc. (III, 274, 283).

663. Questions. QUES. 1. What matter is judged GRAVE in prohibited works?

Resp. 1. If it is a question of servile works, some say grave matter is three hours: which opinion is too lax. Others say one hour, which from the other side is too rigid. Others judge two hours, whether continuous or interrupted, and this especially if the labor is very servile, as to dig earth, cut stones, etc. Yet there are many others who require something more for mortal sin, namely two and a half hours: which opinion, as more common and more probable, as Croix has it,

has now been received.[61] 2. If it is a question of forensic and judicial works, the gravity of matter is to be taken not so much from quantity of time as from the quality of the work; for here the solemnity of the act is rather attended to (III, 307).

QUES. 2. Whether he sins gravely who on a feast day commands six servants to labor for an hour?

Resp. Negatively, more probably, whether they labor at the same time or successively; because, since the individual servants sin only venially, the master also inducing them to labor sins only venially. "Otherwise it would certainly be if the master should command one servant to labor several times on a feast day up to grave matter." Likewise, by reason of scandal, labor protracted for half an hour can be grave matter (III, 306; ed. G., I, p. 568).

If it is a question of non-baptized servants, recall what was said n. 653.

QUES. 3. What in doubt whether a work is servile?

Resp. It is a doubt concerning the extension, and therefore concerning the existence of the law, whence liberty possesses.

ARTICLE II

On the Causes on Account of Which Servile Works Are Permitted

664. There are numbered chiefly six, namely: 1. dispensation; 2. legitimate custom; 3. piety toward God; 4. charity toward neighbor; 5. necessity; 6. utility.

I. Servile works are permitted ON ACCOUNT OF DISPENSATION of the Superior, namely of the Supreme Pontiff in the whole Church; of the Bishop, or, the see being vacant, of the capitular Vicar, in his own diocese, not only for diocesan feasts, but also for those which are common to the universal Church; with this distinction, however, that on feasts established by common law the Ordinary cannot dispense without just cause, nor give a general and permanent dispensation; but on local feasts he dispenses without cause validly, although illicitly. The dispensation of a regular prelate is also valid toward his own subjects; likewise of a parish priest toward parishioners, by force of custom: yet under this law, that each dispenses only for a time, in a particular case, therefore more sparingly, and only for individuals or for a restricted group, and from a just cause (cf. n. 234, 3). Thus St. Alphonsus, III, 288; D'Annibale, III, n. 128.

But here it is useful to note: 1. If the cause of laboring, or of omitting Mass, is manifestly sufficient, dispensation is not required. Yet let the faithful see that they are not led by avarice rather than by reason. 2. A confessor, although he cannot dispense, can nevertheless interpret the law through epikeia, and thus concede permission for forming the conscience of those doubting (III, 288).

665. II. They are permitted ON ACCOUNT OF legitimate CUSTOM. For, as Gerson rightly observes (*de Praec. Decal.*, c. 7), concerning servile works not to be exercised, the custom of the place and of persons tolerated by prelates determines more and more frequently than another written law.

Therefore it is licit, where custom is in force: 1. to use a carrying chair borne by men; 2. to lead vehicles or animals loaded with merchandise; 3. to irrigate vegetables, to turn or separate crops on the threshing floor; 4. to cook and prepare foods, even superfluous ones, or seasoned for pleasure; 5. to kill and skin smaller animals, if on the preceding day this could not be done; 6. to sell and buy, even in public shops, drinks and foods; likewise shoes, candles, and similar things whose price is determined. Yet merchants are held to close their shops, so that thus they show that they distinguish feast days from other days (III, 275 ff.; *H. Ap.*, VI, 15).

Likewise it is permitted to barbers on a feast day to shave the beard, both from general custom and from necessity, because rustics especially and workers are for the most part impeded on the other days. Hence, if barbers did not furnish their office to those coming on a feast day, they would be deserted with grave harm (III, 290). For the rest, to shave one's own beard is not a servile work; whence it is not illicit to furnish that office to others.

666. III. They are permitted ON ACCOUNT OF PIETY toward God. And by this title works are permitted which proximately look to worship, for example to ring bells, to carry statues in processions, to erect platforms necessary for festivity, or the Lord's sepulcher, etc. It is also licit, at least from custom, to bake hosts, sweep the temple, spread carpets, adorn altars and churches, etc. (III, 291; *H. Ap.*, VI, 16).

[61] As regards the less servile works, we have already said (n. 659, 3) that a longer space of time is required for grave matter to be had.

Nor does it seem to be disapproved if someone on the Lord's day, after divine offices, should make rosaries to be distributed gratis among the poor; or if pious women should labor at making ornaments necessary for some poor church; or if someone should make pious images for promoting devotion among his own or among others (III, 293).

But, more probably, it is not licit to cultivate the fields of the church, whitewash the walls of the church, carry stones or wood for building a church, etc., unless necessity is present,

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or great utility approved by the Bishop; for these things concur only remotely toward divine worship. Likewise, it is not licit to erect platforms for seeing a procession, unless when no other time would be available (*H. Ap.*, VI, 17).

667. IV. They are permitted ON ACCOUNT OF CHARITY toward neighbor. - By this title it is licit to serve the sick; to conduct the cases of the poor, of orphans, or of widows; to dig a grave; to sell to country people, who on other days are impeded from buying; to labor for some determined poor person, for whom by reason of necessity it would be licit to labor; or even for the poor in general, if a grave and certain necessity is in force in some place (III, 293 seqq.).

668. V. They are permitted ON ACCOUNT OF NECESSITY, one's own or another's, of soul or of body, namely if some work cannot be omitted without grave inconvenience or loss (III, 295 seq.).

By this title there are excused:

1. Those who perform those works to which, because of necessity, daily attention must be given, and which conveniently neither can nor usually are anticipated or postponed, as to cook foods, make beds, wash, sweep the house, and the like (*H. Ap.*, VI, 21).

2. The poor, if otherwise they cannot nourish themselves and their family, scandal being excluded; likewise, if they mend their own clothes and those of their own people, which they are not able to repair on other days.

3. Likewise servants, wives, and children compelled to labor, whether by force or by fear of grave harm or loss; and extend this to workers who print newspapers or notices to be made public. But they would by no means be excused if the compulsion were made in contempt of the feast day itself. But the more frequently any servant is held to undergo coercion of this kind, the more strictly he is obliged to seek another master for himself, and the graver the cause required so that he can be excused from this obligation (III, 295, 296).

4. Similarly, public bakers and butchers, at least in large towns, both on account of custom and on account of the necessity of the people. But to make bread or pastries is scarcely licit except from necessity, as, for example, if several feasts concur, and bread baked beforehand would become less fit for food (III, 298, 299). Similarly those are excused who train themselves so that they may furnish help in extinguishing fires.

5. Likewise all those are excused whose works once begun cannot be interrupted without great harm, as those smelting iron and glass, burning lime or bricks, etc. And these can sometimes even be begun on a feast day, to avoid grave harm (III, 300).

6. Likewise blacksmiths, if they shoe the horses of travelers, or of those who on the following day at very early morning are about to make a journey, or to go out into the field for laboring; likewise, if they repair the plowshares of those who otherwise on the following day would not be able to labor. Likewise those are excused who in a case of necessity repair bridges, fountains, public roads, machines in workshops (*H. Ap.*, VI, 19).

7. Shoemakers and tailors are excused who make shoes and clothing necessary for imminent weddings, funerals, and similar solemnities, or who mend clothing for a pilgrim; or even if the promised garments are so expected that, unless they finish them, they are about to suffer great harm (III, 303). But they are not to be excused, indeed they are to be severely rebuked, if under pretext of necessity they more frequently prolong labor already begun after midnight into the feast day; because for the most part that necessity is voluntary for them, since very often they cast themselves into it, either by taking on more works than they can complete, or by wasting time during the week on useless things (Gury, n. 360).

8. Likewise farmers who, because of past or imminent rain, turn, gather, or carry hay or crops. So likewise, so that harm may be avoided, and by custom in many regions, it is permitted to gather fruits, although not necessary for the use of that day, so that they may be better preserved; especially if there is danger of imminent rain (III, 298; *H. Ap.*, VI, 21). In certain regions, with a shortage of workers standing, this necessity can be greater (*Ami du Cl.*, 1910, p. 115). As regards artisans who, besides daily labor in a workshop, have undertaken the cultivation of a garden

or field, it seems that it can be tolerated that on Sunday they complete those things which reasonably they cannot perform on another day: always with assistance at the sacrifice of Mass saved, and scandal excluded.

9. Finally those are excused who by office make a journey, or carry merchandise. To these today are to be numbered those who are detained by necessary occupation on railroads or in public electrical workshops, as directors, conductors, stokers, etc.; but not, unless some other reason accedes, those who are occupied in distributing or receiving merchandise.

Note. Sometimes for directors of a Catholic daily paper there is present a moral necessity, even on Sundays and feast days, of printing their sheets, both so that they may at once blunt the attack of the enemies of the Church, and so that they may impede the diffusion of depraved newspapers.

669. VI. They are permitted ON ACCOUNT OF extraordinary UTILITY; for this is equated with necessity.

Hence: 1. Those are excused who labor on account of a cause of public joy or splendor, for example if it is a question of celebrating a victory, of preparing a feast on account of the birth, arrival, etc., of a prince. For such signs of joy are morally necessary for the peace of the people; whence by custom labors are permitted which could not have been anticipated (III, 304; *H. Ap.*, VI, 24).

2. Likewise probably those are excused who labor on account of great and extraordinary gain; for great profit ceasing is equated with grave harm; but the third precept, insofar as it is human, does not oblige with grave inconvenience or harm. This is confirmed from c. *Licet, de feriis*, in which Alexander III is reported to have dispensed so that herrings could be caught on Sundays and feasts, lest otherwise the occasion of catching them should be passed over (III, 301).

It is asked. Whether the reason of avoiding idleness excuses?

Resp. Generally it does not excuse; because idleness can easily be avoided by other remedies, and indeed better ones, for example by going to church, reciting the rosary, visiting the sick, reading some spiritual book. In particular, the reason of avoiding idleness excuses if by the labor there must be avoided a truly probable danger of falling into sin, namely if thus the danger is avoided of playing, drinking with companions, speaking shameful things, etc. (III, 302). Certainly it will also help to hear the opinion of Suarez (l. 2, c. 26, n. 4 and 5): "(A less servile work) can be excused from a certain colored title of moral necessity; because a man, especially a secular and one not accustomed to it, cannot devote a whole entire day to reading or prayer: and therefore, lest he be idle ..., he morally needs some operation, and therefore that moderate operation ... can reasonably be permitted."

CHAPTER III

On the Obligation of Hearing Mass

St. Alphonsus, III, n. 308; ed. G., I, p. 569; *H. Ap.*, VI, n. 27 and 38 (where private oratories are treated); Lehmkuhl, I, n. 713; Van Gameren, *de Oratoriis*; Heiner, *Kirchenrecht* (1905), p. 342; Weiss, *Apol. d. Christ.*, IV, p. 901; Villien, op. cit., c. 2.

670. The precept of hearing Mass on each Sunday and feast day obliges all the faithful having the use of reason; therefore also priests not celebrating, and all others not legitimately excused. This is established from what was said n. 653 and 656.

It remains here to be treated: 1. of the requisites for hearing Mass; 2. of the causes excusing from hearing it.

ARTICLE I

On the Requisites for Hearing Mass

Those who assist at the sacred rite are judged to sacrifice together with the celebrant; whence there are required: presence of body, religious assistance, and due place; in other words: material and formal assistance in a due place is required.

The hearing of Mass is imposed primarily; the due place only secondarily. Therefore he who could not hear Mass except in a private oratory would certainly be held to this, as is established from the doctrine set forth in n. 224 and 634. Whence the S. C. de Prop. Fid., on 17 Aug. 1914, for the Greek-Ruthenians in America, established these things: "The Ruthenian faithful are held to frequent their own churches ...; nevertheless in regions where churches and priests of their own rite are lacking, and where because of the distance of their church they cannot go to it without grave inconvenience, it is necessary for them to hear Mass in a Catholic church of another rite" (*A. A. S.*, VI, p. 461).

1. Presence of Body

671. Principles. I. Presence or assistance must be human and moral. This is considered to be had if someone: a) is in such a place where the sacred rite is performed that he can be said to be joined to those who are in sight of the altar; b) or from external signs can gather what is being done by the priest, even if by accident he sees or hears nothing.

Hence: 1. Deaf-mutes, if they are also blind, are not obliged to hear Mass, unless, which happens very rarely, they are sufficiently instructed and admonished (III, 271).

2. He satisfies the precept who stands in the choir, behind the altar, behind a column or wall of the church, or at a window which opens into the church, even if he does not see the priest: provided that from the signs of those assisting, the sound of the little bell, etc., he can advert to what is being done by the celebrant. Likewise, he who is in the sacristy with the door open,[62] or outside the church, provided he is united with the people who are within it, although a greater distance is present.

3. Nor improbably does he satisfy who is in a neighboring house, from which through a window or door he sees the altar, although a road intervenes, provided the distance is small. Lugo (disp. 22, n. 21) with others judges a distance of 30 paces to be small. Yet this opinion does not please St. Alphonsus (III, 312).

Note. Attend to this, that for absolution St. Alphonsus requires (VI, n. 429; ed. G., III, p. 423) a distance at most of about 20 paces. There he adds: a lesser distance is required in confession than for a sermon and Mass.

672. II. Presence must be continuous, that is, through the entire Mass; so that he sins gravely who omits a part of it notable either by duration or by dignity. For the Church commands assistance not only at those parts in which the essence of the sacrifice consists, but at the whole sacred ceremony (III, 310, q. 2).

Hence: 1. It is grave to omit everything from the beginning up to the offertory inclusively. Likewise, to omit the canon from the consecration up to the *Pater noster* exclusively; because it is a notable part by duration and dignity. Likewise, to omit the consecration and communion, indeed even the consecration alone; because it is an altogether essential part. And the same is more probably to be said of communion alone; because either it itself more probably pertains to the essence of the sacrifice (cf. n. 1589), or at least it is a part notable by dignity and inseparable from the sacrifice. He also sins gravely who at the same time omits both the things which precede the Gospel and the things which follow communion; for he omits a part notable by duration (*H. Ap.*, VI, 33).

2. But it would be a light sin to omit the offertory alone, or the Creed alone, or the preface alone, or a small part of the canon, or everything before the epistle, or everything after communion, or even, more probably, these last two together. Nor is it improbable that one coming before the offertory sins only lightly; because formerly, as St. Isidore testifies, only then did Mass begin. But the Gospel of St. John at the end probably is not a part of the Mass; because before it the people are already dismissed by the blessing (cf. *H. Ap.*, l. c.; *Inst. Cat.*, P. I, c. 3).

3. Note. Since assistance must last through the entire Mass, authors resolve particular cases thus:

4. He who hears two halved Masses simultaneously does not satisfy the precept. This is established from the 53rd proposition condemned by Innocent XI.

5. He who hears two halved Masses successively, so that he hears the Mass of one priest up to the consecration exclusively, but the rest in the Mass of another, although he sins venially if he does this without cause, nevertheless probably satisfies. The reason: all things essentially required for the sacrifice were heard in one Mass. But he would not satisfy if he behaved otherwise, namely by assisting in one Mass up to the consecration inclusively, but at the other parts in another.

6. He who arrives when the consecration has already been made is held to assist at the other parts of the Mass, because, whatever authors hold concerning the essence of the sacrifice of Mass, a notable part of the public worship prescribed by the Church must be heard. - For the rest, it is by no means improbable that communion pertains to the essence of the Mass, with consecration. Therefore he who comes after the consecration is held to assist up to the end: for the precept here possesses (*H. Ap.*, VI, 33).

7. He who omits a small part of the Mass, more probably, according to some, is held under light obligation to supply it; except if some reason excuses (cf. Salmant., tr. 5, c. 6, n. 15). - Others think that he is held to nothing, because the precept was fulfilled in the greater and substantial part. Nevertheless he is altogether held to supply who omits

[62] Indeed with the door closed, many say, provided he is so near that he can hear the voice of the celebrant. Reuter, II, n. 280, extends that to him who outside the church stands at the wall so near the altar that he hears the priest.

a part notable by dignity, for example the consecration, although this does not happen from his fault (III, 310, q. 3). The contrary opinion, namely that of Suarez (*de Euch.*, q. 88, s. 2, n. 6), would be reasonable if someone from sudden necessity were forced to withdraw; for then union with those standing by would still morally endure.

2. Religious Assistance

This is placed in the intention of hearing Mass, and at the same time in attention of mind.

674. Principles. I. There is required an intention, at least implicit, of worshiping God. For the Church commands a human act of religion, by participating in the sacrifice, which cannot even be conceived without the will of worshiping God.

Hence, he who should be present at Mass for this sole end, that he might observe the beauty of the church, or that he might wait for a friend, or because he was violently detained there, would not satisfy the precept. Nevertheless he would satisfy if he were present because of fear alone of father, mother, or master; although from another head he would sin, namely from the depraved will of omitting the sacred rite, if he could. But the intention of satisfying the precept is not required, as is already established from what was said (n. 212, 213). Cf. St. Alph., I, 163; *H. Ap.*, VI, 27.

675. II. Attention of mind is required. Attention in general is defined: Application of the mind to that which is being done. It is a) EXTERNAL, when no action is posited which is incompatible with the intention of worshiping God, as to chat, to write, to cast one's eyes here and there, etc.; b) INTERNAL, when attention is given either to the words and actions of the celebrant, or to the mysteries signified by the words and actions of the celebrant, especially to the mysteries of the Passion and death of Christ, or, generally, to God Himself, to be praised and prayed to through prayers, meditations, and pious affections (III, 313; IV, 177).

These things having been premised: 1. It is certain that external attention is required for hearing Mass, according to the precept of the Church; because the defect of it would be a mockery of God and of the Church.

Hence, he does not satisfy who during the time of Mass writes, paints, reads profane books, or sacred ones indeed, but for the sole cause of erudition, curiosity, or study. Nor does he satisfy who for a notable time converses, attentively considers images, reads inscriptions, etc. (*H. Ap.*, VI, 28).

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2. It is certain, from the virtue of religion, that some internal attention is required, at least under venial sin. For the reverence which we owe to God and to the sacred mysteries requires attention of this kind.

But whether this internal attention is required under grave obligation for fulfilling the precept of the Church is disputed. Some deny it, led chiefly by this reason, that an act of religion, as regards its substance, can subsist without internal attention; nor is it established from another source that anything else is prescribed by the Church. - But others, more commonly, affirm it, and although they do not require actual or intense attention, nevertheless they require internal attention which is remiss, and which extends to the principal parts of the Mass. The reason of these is that the Church commands an act by which God is worshiped; but God is not worshiped if someone is only physically present at the sacred rite, internal attention having been omitted. "I think," says St. Alphonsus, "this second opinion to be more probable and indeed to be advised. But I do not judge the contrary improbable; at least, with the authority standing of so many doctors who defend it, the matter is rendered very doubtful, whether there is present this law of the Church obliging the faithful to assistance at Mass with internal attention" (*H. Ap.*, l. c.).

Therefore after the fact resolve thus: It suffices that someone had the general intention of worshiping God, and so conducted himself that he could have been a witness of those things which were done at the altar. Cf. Vermeersch, o. c., n. 113.

676. From these things conclude with St. Alphonsus (III, n. 315 seq.; ed. G., p. 579):

677. Those satisfy the precept who, within Mass, recite the breviary or rosary; musicians, organists, those collecting alms;[63] those meditating, reading some spiritual book, examining their conscience; provided that from the beginning they had the due intention and did not revoke it, and in some way advert to the rite of the Mass.

678. More probably also he satisfies who suffers ecstasy; for ecstasy does not take away free choice; indeed, during ecstasy attention to God is present in a more perfect way than in others.

[63] For these are occupied in those actions which within Mass are directed to divine worship. Cf. *Ami du Cl.* (1906, p. 392), where there is discussion of him who, during the consecration, must ring the bells.

679. Similarly he satisfies, or at least does not sin gravely, who sometimes dozes during the time of the sacred rite, provided he in some way adverts to the words and action of the priest.

680. All those satisfy who have distractions which do not impede them from following the action of the priest with the mind of worshiping God.

Otherwise, those who are so distracted that they in no way attend to Mass. Otherwise also the drunk, or those given over to sleep through the whole Mass.

5. Finally, those satisfy who confess their sins, provided the confession is easy and brief, and is not made during the time of consecration. For in a long and difficult confession, on the part of the penitent, the required external attention to the oblation would be lacking (III, 314). Croix with Lessius wishes servants who are in need of confessing at this time to be held excused (III, l. c.). Cf. *Vind. Alph.*, P. III, q. 11. The reason is the presumed connivance of the Church.

Indeed the holy Doctor (III, 332) concedes with Lessius (*in Auct.*, v. Mass, cas. 2) and others that those are excused who omit Mass so that they may confess, lest they remain for some time in the state of mortal sin. The reason is an immense gain of the soul, which otherwise would be lost. Cf. *Ami du Cl.*, 1913, p. 689.

3. Due Place

677. Principle. By common law, Mass can be heard in any public church or in any public or semi-public oratory, for fulfilling the ecclesiastical law. The precept formerly in force of assisting at parochial Mass has been abrogated by contrary custom. But recently Leo XIII, in the Decree of the S. R. C., 23 Jan. 1899 (n. 4007), discussing semi-public oratories, declared: "In these, as by authority of the Ordinary the most holy sacrifice of Mass can be offered, so all who are present at the same can satisfy the precept of hearing the sacred rite." From which declaration it is sufficiently and more than sufficiently manifest that the Bishop cannot command his subjects to present themselves at parochial Mass.[64] Nevertheless the faithful are to be induced that on Sundays and feasts they be present at this Mass, because, besides the fact that such assistance is of good example, Mass is applied for the parishioners, and therefore a richer fruit is perceived from it (III, 322; VI, 424).

We have said: by common law; for, by privilege, all the faithful satisfy the precept who assist at the Mass which Cardinals of the Holy Roman Church or Bishops, whether diocesan or titular, celebrate in any place, or cause to be celebrated for their convenience (S. R. C., 8 Jun. 1896, n. 3906). Likewise those who enjoy the Indult of a private oratory, as we shall see below. As regards Regulars, if it is a question of the principal oratory, the question must be solved from common law; if of other secondary oratories, cf. n. 680, q. 1.

But what public, semi-public, and private oratories are, the Decree of 23 Jan. 1899 authentically defines.

I. On Public and Semi-Public Oratories 678. 1. PUBLIC oratories are those "which, by authority of the Ordinary, dedicated perpetually to the public worship of God, blessed, or even solemnly consecrated, have a door on the road, or from the public road open free entrance to the faithful universally." Therefore it matters nothing whether the oratory has been built in the houses of private persons or in the midst of fields, provided that from the public road an altogether free access lies open to it, through the court of the house or through an area.

2. SEMI-PUBLIC oratories are those "which, although in some manner in a private place, or in one not absolutely public, have been erected by authority of the Ordinary; nevertheless they serve the convenience not of all the faithful nor of only a private person or family, but of some community or group of persons. In these, as by authority of the Ordinary the most holy sacrifice of Mass can be offered, so all who are present at the same can satisfy the precept of hearing the sacred rite. Of this kind are the oratories which pertain to Seminaries and Ecclesiastical Colleges; to pious Institutes and Societies of simple vows, and other Communities under a rule or statutes at least approved by the Ordinary; to Houses devoted to spiritual exercises; to boarding-houses and hospices destined for youth to be instructed in letters, sciences, or arts; to Hospitals, Orphanages, and also to Fortresses and Prisons; and similar oratories, in which by institution some group of the Christian faithful is accustomed to convene for hearing Mass. To these must be joined Chapels duly erected in a Cemetery, provided that in the celebration of Mass access lies open not only to those to whom they pertain, but also to other faithful." A semi-public oratory therefore serves primarily for the uses of the Community, secondarily for the convenience of outsiders.

Noldin (III, n. 198) notes the following: An oratory does not become public precisely from this, that it has a door on the road, but because the faithful possess a strict right that free access not be impeded. That right imposes on the owner the

[64]The Bishop could indeed forbid outsiders to be introduced into a semi-public oratory on feast days (cf. *A. S. S.*, vol. 12, p. 249); but, by reason of the cited decree of the S. R. C. and of custom, those violating a prohibition of this kind truly satisfy the precept of Mass (*Ami du Cl.*, 1914, p. 282; Van Gameren, *de Orat. priv.*, p. 291 seqq.).

burden of preserving free access. If the owner is not pressed by that burden, the oratory, whatever may be the case about the door, will remain semi-public. Thus also clearly Many, *de Locis sacr.*, tit. 2, n. 65 seqq., where there are old responses of the Sacred Congregations; and Wernz, *Jus Decr.*, III, n. 449, indicates the same.

II. On Private Oratories 679. PRIVATE oratories in the strict sense are called those "which in private buildings have been erected for the convenience of some person, or family, from an Indult of the Holy See," for sacrificing there.[65] The Ordinary, beforehand, can and must visit it, so that he may inspect whether all things have been duly ordered; not likewise afterward, unless something against the reverence of the place should occur. His license is needed so that baptism, penance, and matrimony can be administered in it. But the reception of the Holy Eucharist, from the declaration of the S. R. C., 8 May 1907 (*A. S. S.*, vol. 40, p. 589), is always included in the concession of a private oratory, saving parochial rights. Therefore Easter communion, as also viaticum, are excepted. For the rest, the privilege of a private oratory is regularly personal, and therefore to be interpreted strictly, as derogating from common law; and when the one to whom it was granted has died, it vanishes by the law itself. For some religious families there is given a privilege of a private oratory which is rather local; whence also secular priests can there celebrate duly, and the faithful can satisfy the precept of Mass (Angelus a SS. Corde Jesu, *Man. Reg.*, II, n. 919).

1. The PRIVILEGE of hearing Mass of precept in private oratories, from the customary tenor of the pontifical Indult, is granted "to the lord, his children and domestics, or blood-relatives and relatives by affinity living with him, servants actually devoted to his service, and noble guests, that is, in whatever way noble and more worthy." - But those who are not of the household, and domestics not actually necessary, are excluded by force of the customary clause: "But we will that domestics of your service who at the said time, namely of Mass, are not actually necessary, being present there at Mass of this kind, are by no means to be judged free from the obligation of hearing Mass in a church on feast days of precept." Nor does the minister satisfy who assists the celebrant, unless he himself is necessary, that is, unless another is lacking who can and wishes to serve (Ferraris, v. Oratory, n. 64).

2. The CONDITIONS and EXCEPTIONS of the Indult must be observed, for example: a) that on individual days only one Mass be celebrated; b) that it not be celebrated except in the presence of the principally privileged person, namely to whom the Brief was directed; c) that the days of Easter, Pentecost, the Nativity of the Lord, and other more solemn feasts be excepted, namely Epiphany, Thursday in the Supper of the Lord, the feasts of the Ascension, Assumption, SS. Peter and Paul, All Saints. See other things below, n. 1627.

Nevertheless the privileged person is not bound by these exceptions if the Indult was granted by reason of infirmity (III, n. 319, claus. 8; ed. G., I, p. 584; VI, n. 359; ed. G., III, p. 349). Cf. Decree of 2 Apr. 1913, S. C. de Sacr. (*A. A. S.*, V, p. 183), in which it is said that on the feasts of St. Joseph (solemn Commemoration), the Annunciation, Corpus Christi, the Most Holy Trinity, St. John the Baptist, and the Patron of the place, Mass can be celebrated in private oratories.

He who has received an ordinary Indult, in which namely the mentioned exceptions are indicated, in the case where difficulties arise, should approach the Bishop so that the private oratory may be erected as semi-public. For the right of erecting semi-public oratories, so that, at least on days of obligation, they may be open to all, has not been diminished for the Ordinary. *Ami du Cl.*, 1910, p. 111.

680. Questions. QUES. 1. Whether secondary oratories, sometimes erected in houses of Regulars, are to be held as private or semi-public?

Resp. 1. We call secondary oratories those which, from an Indult or privilege of the Holy See, are erected besides the principal oratory, whether on account of the number of priests so that Mass can be said by all, or in favor of the sick, who cannot go to the chapel or principal oratory. S. R. C., 8 Mar. 1879, n. 3484, ad 2.

2. It can be disputed; for, strictly speaking, the definition of an oratory strictly private, nor the definition of a semi-public one, agrees with those oratories (Genicot, I, 342). Private letters of a certain Most Reverend Consultor of the S. R. C., sent to us long ago, affirm the mind of the Sacred Congregation to be that they are equated with private ones, and therefore that only Members, but not other faithful, satisfy the precept of Mass in these oratories. The matter needs an authentic declaration. Cf. *Ami du Cl.*, 1914, p. 590, and the things we noted above n. 679.

QUES. 2. Whether an Indultary is held to use the privilege, if he cannot go to a church?

Resp. Affirmatively, more probably, according to St. Alphonsus, III, 324, if he can have a priest gratis or with a light stipend. And both the lord himself and his household are held to this, not indeed by force of the privilege, because no one is held

[65] The Ordinary can, from a new concession of the Holy See, permit by way of act that Mass be celebrated in a private house, though not in a bedroom, provided the place is decent (*A. A. S.*, IV, p. 725). - By this Decree there becomes of firm law what was already approved by St. Alphonsus (VI, n. 359; ed. G., III, p. 346), with Suarez and Bonacina. See what is to be said n. 1627.

to a privilege as such; but by force of the precept, which obliges all those to hearing Mass who are able to fulfill it without grave inconvenience (cf. also III, 319, dub. 3).

Lehmkuhl, Noldin, and others contradict. But let it be weighed whether the axiom praised by all has more weight: he who is held to the law is held to the easy means by which he can observe the law. Cf. what was said n. 670, fin.

ARTICLE II

On Causes Excusing From Mass

St. Alphonsus (III, 324; ed. G., I, p. 591) states the general principle thus: Any moderately grave cause excuses from hearing Mass, namely one which involves some notable inconvenience or harm in the goods of soul or body, one's own or another's.

Four CAUSES, besides dispensation (concerning which n. 664), are usually brought forward, which exempt from the obligation of hearing Mass: namely impotence, charity, office, custom.

681. I. IMPOTENCE excuses, whether physical, or spiritual, or even moral.

By reason of physical, or absolute, impotence there are excused: the gravely sick, captives, those for a just cause sailing on the sea (cf. *Ami du Cl.*, 1908, p. 982), or pilgrims in regions where Mass is not celebrated.

By reason of spiritual impotence there are excused: the excommunicated and interdicted. For the hearing of Mass is interdicted to them. If, however, they could obtain absolution easily, and neglected it, they would sin against the precept (III, 325; *H. Ap.*, VI, 39).

By reason of moral impotence, that is, of some notable inconvenience, there are excused:

1. Those who, because of weakness of body, roughness of the road, inclemency of the weather, or distance of places, prudently fear for themselves no light inconvenience or danger to health.[66] But the distance of places which excuses from the sacred rite varies according to the variety of persons, place, and time. Commonly as sufficient there is held a distance of three miles, or a pedestrian journey of one hour and a quarter, which nevertheless would not excuse for absence that is too long, for example through a year; indeed less, if it were raining, snowing, or another cause already partly excusing were present (III, 329). - But those who can be carried by horse or carriage are not excused unless the distance is twice, indeed three times, longer. In doubt, see n. 248. He who with only light inconvenience can use a railway carriage is not excused. Cf. Kenrick, tr. 4, p. 2, n. 19.

2. Travelers who cannot depart from companions continuing the journey without notable expense, or without danger of grave inconvenience. Likewise, coachmen, millers, or other workers who would be deprived of a suitable opportunity of making notable gain, or servants who, more or less, are compelled by the master to furnish work in hunting (III, 332; *H. Ap.*, VI, 43).

3. Those laboring in foundries and similar workshops, where they cannot desert work already begun, nor have others who may succeed them; or workers returning at very early morning from nocturnal labor.

4. Women lacking garments suitable to their condition, or pregnant from crime, as long as their shame is hidden. And yet they are not excused if, without loss of reputation, they can hear Mass in a remote place, or at an earlier hour, which can easily be done in cities (III, 330).

5. All who are not of their own right: such are servants whom either necessary ministry or the very bad will of the master keeps away from hearing the sacred rite. But they would not be excused if they easily found another service, or if without great trouble, for example without notable deprivation of sleep, they could intervene at Mass. - Likewise wives and children of the family are excused, for whom grave indignation of husband or parents would have to be feared; soldiers who, from hearing Mass, would be liable to the vexation of their leaders, or to the very troublesome mockeries of fellow-soldiers (*H. Ap.*, VI, 40).

Nevertheless all these must diligently strive that, as much as they can, they remove the impediments (cf. n. 225, 226).

6. Drivers, carriers of merchandise, workers, and generally all who, by assisting at Mass, would lose notable gain (III, 332). Gobat, whom the holy Doctor does not contradict, excuses a poor man on account of the gain of one ducat; and another of slender fortune, of two.

[66] Many physicians are of the opinion that the corrupt air of a church can bring more or less inconvenience to nervous persons, especially if they are weak or pregnant. Cf. Capellmann, *Med. past.*, n. 90; Antonelli, *Med. past.*, II, n. 889; *Linz. Quart. Schr.*, vol. 55 (1902), p. 371.

682. II. CHARITY excuses those who have care of the sick, from whom they cannot depart without undue anxiety on the part of the sick, and they are excused even if another assistant were present; - likewise those who bring help to neighbors suffering grave harm from fire, storm, flood, or other calamities; - likewise those who have hope that by their presence quarrels, lawsuits, grave brawls, thefts, duels, or shameful acts will be impeded (cf. n. 512).

But it is not licit to omit Mass in order to accomplish a work not commanded, although of higher merit (III, 326, 332, vers. fin.).

Note. Charity can persuade a girl who knows that she is shamefully desired by someone to omit Mass; nevertheless she is not always held to remain at home (III, 331). See what was said n. 512. He also will preserve charity toward himself who omits Mass, at least sometimes, lest he expose himself to a probable danger of becoming drunk, from the fact that ordinarily he cannot conveniently return at once, and friends invite him to drink (*Ami du Cl.*, 1906, p. 1048).

683. III. OFFICE excuses soldiers acting as guards, guardians of a house or of a flock; who nevertheless, if they are several, and only one Mass is said, are held by alternate turns to assist at the sacred rite. Likewise nurses and mothers who have no one to whom, without danger, they may leave little children, whom they cannot bring with them into the church without notable disturbance of those standing by.

Concerning this matter St. Alphonsus speaks thus (III, 326): "If it is necessary for husband or wife to remain at home for guarding, the husband cannot compel her to remain always at home, since she is a companion, not a maidservant, who conversely could be compelled: but also the master could sometimes remain at home, so that the maidservant might hear Mass; for the utility of that woman would excuse the master." Certainly in our times the husband will rather be exhorted that he sometimes leave to his wife or to a faithful maidservant the office of guard to be fulfilled.

684. IV. CUSTOM received in many places excuses from Mass widows within the first month of widowhood; women after childbirth, for a month or six weeks, provided nevertheless that they do not go out in public for other causes. Likewise, in some places it excuses brides when their wedding banns are proclaimed; yet if another Mass is celebrated, they are held to assist. "But by no reason can that custom be reputed licit, or, to speak better, that abuse, by which girls, lest they go out in public, abstain from hearing the sacred rite." Thus St. Alphonsus (*H. Ap.*, VI, 42).

685. Practical rules. It is useful in this place, by way of conclusion, to add the questions which the holy Doctor suggests should be asked of the unlearned by a confessor (*Prax. conf.*, n. 32 seqq.):

686. As regards the obligation of HEARING THE SACRED RITE on feast days, he should ask the penitent whether sometimes he omitted the sacred rite, or rather should ask: whether he adverted to the omission? whether he doubted at the time at which he could hear the sacred rite? For often, when the penitent delays hearing the sacred rite to a late hour, although by chance he found the sacred rite and was present at it, nevertheless without just cause he cast himself into the danger of omitting it; and concerning this the unlearned do not accuse themselves. Likewise, if the penitent accuses himself of having omitted the sacred rite, let him ask about the cause, whether on account of necessity, etc.

687. As regards SERVILE WORKS let him ask: whether he labored on a feast? and if the penitent affirms, let him be asked: a) How much time did he labor, and what genus of labor did he exercise ... But if the penitent confesses that he labored, sometimes more, sometimes less, let him be asked how often he labored while judging that he was laboring in grave matter? But there is need that he teach him that to labor for a long time, even secretly, and for consolation of mind, and gratis, is also a sin. - b) Let him be asked why he labored, whether by the custom of the region? whether on account of necessity, or compelled by a master, by parents, etc.?

Note. Let the pastor of souls use all the authority by which he has power, so that he may exhort to assistance at Mass the men whom he has known to be negligent or indifferent, especially to hearing that Mass in which a sermon is had, that thus little by little he may confirm in faith those whom the divine will has committed to him. Cf. *Ami du Cl.*, 1907, p. 305. If he has found that some exercises of piety have been introduced, for example evening prayers made in common, let him not suppress them unless grave reasons are present (*Ami du Cl.*, 1910, p. 1087).

TREATISE IV

On the Fourth Precept of the Decalogue

Honor thy father and thy mother.

(*Exod.*, 20, 12).

686. The three prior precepts order man to God. Among the other precepts, which regard neighbor, the first, that is, the fourth precept, has itself specially and directly toward those who on earth hold the place of God. Such are before all parents, and then extensively, by reason of similitude as regards power and office, all those who in some way possess authority. But parents preside under a twofold respect: namely insofar as they are the principle of life, and insofar as they are strong with eminent authority: to them therefore piety is owed, and observance; the latter, however, eminent and complete, insofar as it also includes obedience.

Indirectly from this precept are prescribed the duties both of parents toward children and among themselves, and of other Superiors toward subjects (St. Thom., 2.2, q. 122, a. 5). For there is not given a right without an office, nor an office without a right.

Therefore let there be four heads of inquiry: 1. concerning piety, observance, and obedience in general; 2. concerning the mutual obligations of children and parents; 3. concerning the duties of spouses; 4. concerning the mutual duties of inferiors and Superiors.

CHAPTER I

On Piety, Observance, and Obedience

I. On Piety

St. Thomas, 2.2, q. 101-105; St. Alphonsus, III, 333 seq.; ed. G., I, p. 600; *H. Ap.*, tr. VII; *Catech. Rom.*, *de 4 Praec.*; Aertnys, I, n. 147; Lehmkuhl, I, n. 922-952; Noldin, II, n. 278; Gury-Ferreres, I, n. 363; Genicot-Salsmans, I, n. 345; and others, as Gopfert, Schindler, in the respective places; Vermeersch, *Quaest. de Virt. Relig. et Piet.*, q. 2, c. 1, n. 178.

687. I. Piety, in the BROAD sense, is taken for an affection of devotion, or even for mercy and kindness, especially toward those needing help.

But in the STRICT sense, piety is defined: The virtue by which due worship is rendered to parents, country, and those joined by blood. - To PARENTS are reduced blood relatives, especially ascendants, grandfather, great-grandfather, etc.; likewise spiritual parents, namely those who, after God, are the authors of spiritual life for us. But to COUNTRY are referred fellow citizens and friends of the country, because of their conjunction with it.

Brothers or sisters are not directly referred to parents, because they are not the principle of being. Nevertheless the virtue of piety redounds to them, because blood is common to the whole family. Besides, brothers are often the principle of education. Whence Lugo concludes (*de Poen.*, disp. 16, n. 299 and 307): Sins against remote blood relatives are not sins against piety; but such are sins against brothers or sisters, at least if a most grave evil is brought upon them.

II. The MATERIAL object of piety is WORSHIP, as it is defined n. 531. Piety recognizes in another the excellence of principle, and subjects itself from love, full of reverence and manifested by obedience. Its FORMAL object is the special honesty which shines forth in such worship, from this namely, that parents and country are, after God, the principle of our being and of our education, and therefore are, after God, especially to be worshiped (Billuart, *de cet. Virt. Just. annexis*, Diss. 1, a. 1).

688.
- From what has been said you will gather: 1. PIETY is a special virtue, different both from charity toward neighbor, which wishes well and does good to men insofar as they are ordered to God; and from legal justice, which indeed regards the good of the country, but insofar as it is the common good to be procured through the observance of laws; and therefore must also be exercised by those who have departed from the country.

689. The debt of piety, especially toward parents, is so great that it can never be satisfied to equality: understand, in the same order of things and through ordinary services; for, through supernatural services, or even extraordinary ones, the benefit received from parents and country can well be compensated, indeed surpassed, as if a son should convert his parents to the true faith, or expose his life for their liberation. Nevertheless, extraordinary services of

this kind by no means free the son from the natural obligation by which he is bound to parents, because the son always perseveres in being a son (Lessius, *de Just. et Jure*, l. 2, c. 46, n. 4).

690. As religion is eminently piety, so piety is eminently observance; and therefore, by a stronger title, it prescribes the same duties as observance, and especially obedience (St. Thom., 2.2, q. 101, a. 1, ad 1).

II. On Observance

689. - I. OBSERVANCE is defined: the virtue by which worship is exhibited to persons constituted in dignity or excellence.

II. Observance is twofold: 1. civil, which offers worship to persons increased with civil dignity, for example kings, magistrates, masters, teachers; - 2. religious, which offers worship to those adorned with supernatural excellence.

This is subdivided into simple and sacred, according as it regards either wayfarers, as the Pope, Bishops, priests, etc., or comprehensors, as the Blessed who triumph in the heavens (cf. n. 531).

III. The MATERIAL object of observance is worship. Here it bespeaks excellence of personal dignity in another and proportionate submission on our part. But the FORMAL object of observance is the special aspect of honesty, from the fact that those who are constituted in this dignity have divine authority, and are, or can be, after God, the principle of our governance.

There are two offices or parts of observance: 1. To exhibit due honor to Superiors, by reason of the more sublime grade in which they are placed. By strict debt, honor is owed only to Superiors; but by moral debt, from a certain honesty, it is owed to all those who are constituted in dignity, even if we are not subject to their authority (St. Thom., 2.2, q. 102, a. 2, ad 2). - 2. To furnish obedience, that is, to submit oneself to the command of Superiors, and faithfully to grant to them the service which is owed to them by reason of the office of governance.

Concerning obedience, since it obtains the principal parts in the ordering of inferiors to Superiors, more things must be added.

III. On Obedience

690. Definition. Obedience is a virtue inclining one to comply with the will of a Superior, that is, of him who participates in the supreme dominion of the divine Governor over a rational creature.

Division. 1. By reason of the order of superiority, there is given civil, ecclesiastical, domestic, or finally monastic obedience. - 2. By reason of the nature of superiority, there is given material or general obedience, and formal or special obedience.

a) Material or general obedience inclines one to observe whatever precept, from whatever honest motive; and thus it is a complex of all the virtues.

For every virtue inclines one to observe a precept in its own matter; and since these can be posited from the special motive of obedience, hence every honest act is called material obedience. Conversely, any violation whatever of law or virtue is disobedience broadly, taken generally. Therefore general disobedience is not a special sin.

b) Formal obedience, if taken strictly, as here, is a virtue inclining one to observe precepts because they are precepts, on account of the special honesty which subjection toward God commanding brings and includes.

But if it is taken a little more broadly, it is a virtue inclining one to comply with the will of a Superior, whether that will is preceptive or of mere good pleasure, because this is honest: for since the will of a superior is a certain rule of the subject, obedience will be the more perfect, according to St. Thomas (2.2, q. 104, a. 2), if it anticipates the precept, after the example of Christ, for whom the will and complacency of the Father was the highest precept, as Albertus Magnus says, c. 3, *de Virtutibus*.

From these things conclude: 1. Whatever may be the source of authority, obedience or disobedience on the part of subjects will be of the same species (St. Thom., l. c., ad 4).

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For it always tends toward divine authority, whether as existing in God, or as participated by man.

2. Disobedience, taken strictly, will formally be present as a special sin only when a true precept issued by a Superior is transgressed, as Lessius says (l. c., n. 22). In this case a special sin against the fourth precept would be committed. Thus clearly Genicot, I, n. 348, 4. Cf. what was said n. 325.

3. If contempt of the Superior, as Superior, accedes, there will always be present a mortal sin, whatever disobedience you have committed. Cf. n. 179.

4. Principles. I. Formal obedience is a special virtue, among the moral virtues most excellent after religion. 1. It is a special virtue, because it has a special aspect of honesty, namely to fulfill the precept of the Superior, tacit or express, precisely because it is the precept of the Superior, that is, of one holding the place of God governing. - 2. Among the moral virtues, for its object is not God, but the thing willed by the Superior. - 3. Most excellent, because it contemns the greatest good, namely one's own will (Lessius, l. c., n. 36). Whence St. Gregory (*Moral.*, l. 35, c. 42, n. 28): "Obedience is rightly preferred to victims: because through victims another's flesh is slain, but through obedience one's own will is slain." Cf. St. Thom., l. c., a. 2 and 3.

It must be noted with Reuter (*Theol. mor.*, P. II, n. 230): "That the precept of obedience may be satisfied, it is not necessary to operate from its special motive, but it is enough that the commanded work be posited, even from the motive of another virtue." See what was said n. 212.

692. II. A subject is held to obey a Superior in all things in which he is subject to him, and in which a Superior of higher grade does not stand opposed. This is established from the necessity of preserving order, and from Sacred Scripture (Hebr., 22): Obey your prelates, etc.; and (Acts Ap., 5, 29): It is necessary to obey God rather than men. God alone must be obeyed in all things simply; but man determinately according to the nature of superiority.

693. Note. a) If there is doubt concerning the legitimacy of the Superior, or concerning the imposition of the precept, the subject is not held of himself to obey, as was said n. 55. b) But if there is doubt whether the thing commanded is licit, whether it exceeds the power of the Superior, the obligation of obedience possesses (cf. n. 52 and 223). See St. Alph., I, 100, Quaer. 3; IV, 47.

CHAPTER II

On the Mutual Duties of Children and Parents

Consult, besides the cited authors, Berardi, *Theol. mor.* (1905), I, n. 621; Koch, 166; special works and opuscula, for example Guilmont, *La culture de l'ame dans l'enfance*; Meschler, *Principes d'educ. cathol.*; Toublan, *Directeur des Meres chretiennes*, *La Jeune Fille chret.*; Diessel, *Ratschlage*; Berthier, *La jeune Fille*, *la Mere*, *le jeune Homme*, *l'Homme*; Becker, *Christl. Erziehung*, etc.

ARTICLE I

On the Duties of Children Toward Parents

By reason of the threefold respect which parents have toward children, children are held to exhibit to parents duties of a threefold genus, which are declared in the following principles.

One and the same piety imposes filial love, reverence, and obedience. Nevertheless he who offends against these three commits a sin diverse in species. Thus, for example, he who in the presence of his parents, from hatred, curses them, has two sins diverse in species, one against love, the other against due reverence.

694. Principles. I. By reason of origin, children are held to exhibit love to parents, even from piety. This is established from natural right, by which gratitude is especially commanded, on account of the greatest benefit of existence and education received from parents. Moreover gratitude necessarily wishes good to parents, which is the same as to love. That love toward parents must be both internal, by which children from the soul wish them well and desire goods for them, and external, by which, according to their powers, they avert evils from them, attest their benevolence to them, and kindly come to their aid when they are constituted in necessity.

Piety through itself urges more strictly; because it imposes obligation not from a common title, but from a special and personal title; and thus a fault which is light if it is committed toward strangers can be grave if directed against parents, because perhaps it will be the occasion of greater sorrow.

Hence: 1. Children sin gravely, both against charity and against the love of piety, who, deliberately and in notable matter, are borne toward parents with ill will, indignation, hatred; - who exhibit signs of hatred toward them, treat them harshly; who look at them with grim eyes, and address them so bitterly as if they hated them; who provoke them to grave indignation, and gravely sadden them; - who wish evil to them, for example death, so that thus they may more quickly

obtain possession of their inheritance; who in a notable matter speak evil of them, or calumniate them; who by evil arts impede them from making a testament, or, having already entered into their inheritance, do not execute their last will.

2. Similarly they sin gravely, at least against the love of piety, who do not furnish food to them when reduced to want; - who do not visit them when worn out by disease, old age, or sorrow, and leave them without consolation; - who do not succor them when they are in spiritual necessity, for example by not taking care that, when dangerously sick, they receive the sacraments of the dying; - who dissemble, as if they did not know them; - who, when they have already departed this life, neglect that the funeral rites and suffrages of the Church be paid, in a manner congruous to their condition (III, 333; *Instr. catech.*, P. I, c. 4, n. 1).

Note. In most regions, civil laws agreeing with natural right drive children to this, that they supply FOOD to father and mother, and to other ascendants who are in necessity, that is, food, clothing, and habitation. And indeed this obligation binds children *in solidum*. In a similar way, son-in-law and daughter-in-law are held to feed father-in-law and mother-in-law. Nevertheless the obligation ceases when the mother-in-law enters a new marriage; likewise it ceases when there die both the spouse who had induced the affinity and the children of this spouse, procreated from the marriage which had been the cause of the affinity.[67]

As regards children who would wish to enter Religion, see n. 2137.

695. II. By reason of the personal dignity of parents, children are held to exhibit to them reverence and honor: reverence, so that they acknowledge their dignity, and thence conceive, as they say, reverential fear; honor, so that externally by words, signs, and deeds they profess their preeminence. This is established from Sacred Scripture saying (Deuter., 27, 16): Cursed is he who does not honor his father and mother; and elsewhere (Eccli., 3, 9): In deed and speech, and all patience, honor thy father. Reason supports it: for where there is a special dignity of a person, there special observance is owed.

Hence, children sin gravely, of themselves, against reverence:

1. By an internal act, if they contemn parents in the heart.

2. By word, if in the presence of parents they cast curses or insults against them, calling them, for example, mad, drunk, beasts, thieves, poisoners, wicked. But if they call them "old, ignorant, stupid, etc.," they are not absolutely to be condemned of mortal sin, unless they gravely sadden them thereby. Likewise, "if a son should mock a parent, or utter evil prayers against him, without a depraved mind and secretly, I would not know," says St. Alphonsus, "how to condemn him of mortal sin" (*H. Ap.*, VII, 2).

3. By sign, if they contemn them by laughter, derision, gesture. Likewise, if when advanced to dignities or made rich, from pride they either despise or neglect them, or refuse to know them, or even, which not rarely happens, blush because of them. Nevertheless a son is excused from mortal sin who, on account of a just cause and without internal contempt, pretends that he does not know them, or refuses to have them at his house, for example because they are marked by an infamous crime, or because he himself would suffer grave harm therefrom; provided he furnishes necessary things to them. And the reason is that in such a case the parents themselves are not judged to be gravely or reasonably unwilling (III, 334).

4. By deed, if deliberately and with sufficient advertence they strike them, even lightly; indeed if they only raise a hand, or seize an instrument for striking. Likewise, if in court they accuse them of a crime, though true; for nature itself shrinks from this. - Except the case of heresy, treason, or conspiracy against the prince, if there is no other mode of correcting: for the common good must be preferred to private good (cf. n. 2308). It is also licit for children in court to seek goods owed to them by strict right, which parents unjustly deny to restore.

5. III. By reason of authority, children are held to furnish obedience to parents in all licit things, and in things pertaining to their care, as long as they remain under their power. For children, being born in domestic society, are by this very fact members of the same society, for directing which toward the common good paternal power presides. Sacred Scripture agrees, saying (Ephes., 6, 1): Children, obey your parents in the Lord: for this is just.

We have said 1. In all licit things; for as parents cannot command the things which are forbidden by God, so neither can children obey them when they command forbidden things, according to what was said n. 692.

2. In things pertaining to the care of parents, namely to the governance of the house, to good morals, to the salvation of the soul. For in these things parents have not only the right, but also the office of commanding.

[67] French Code, a. 205-211; cf. Austrian Code, 154; Italian, 139, 140; German, 1601-1615. Otherwise, Spanish Code, 139-145.

Otherwise, if it is a question of choosing a state of life, of preserving virginity, and similar things, in which pubescent children are of their own judgment, as will be said in its own place (n. 1951, 1; n. 2137, 2). Meanwhile it should be noted that children are held to seek the counsel of parents if there is question of entering marriage; nevertheless there is not given to them a necessity under grave obligation of following the counsels given. If it is a question of a priestly or religious vocation, the whole business must be brought to its end before God, with the confessor and competent authority helping. But what must be done if parents compel one to enter marriage, see n. 700.

3. As long as they remain under their power; for the power of the father is not perpetual, as perpetual is his right to the love and reverence of offspring. This power ceases when the office of education of the offspring or of domestic governance ceases, for example when children begin to have a hearth separate from the father (cf. n. 698).

4. • From what has been said you will gather: Children sin gravely against obedience, namely by a special sin, and therefore one to be declared in confession, if they refuse to obey parents seriously commanding: 1. In a grave and just matter which regards good morals, for example if children frequent taverns, theaters, and other dangerous places, if they play harmful games; if daughters go out of the house at night, if with suitors, or even with other youths, witnesses being removed, they converse (III, 335; *H. Ap.*, VII, 3).

5. In a grave and just matter which regards the salvation of the soul, for example if against the formal precept of parents they neglect to satisfy the duties which religion imposes; if they neglect to assist at Mass and other pious functions; if for a notable time they abstain from the reception of the sacraments, etc.

6. In a grave and just matter which regards the governance of the house, for example if they refuse to furnish work formally imposed, of great moment certainly; if, because of sloth, they neglect to devote themselves to the study of letters, or to learn an art which befits their condition; if without grave cause they flee from the paternal house. But otherwise, if flight happens on account of a grave cause, for example because in the paternal house there is for them a proximate occasion of sinning which they would not find elsewhere, or because they are treated too harshly, and there is no hope that a change of things will soon follow. - In practice, nevertheless, not rarely the disobedience of children, even in a grave matter, is excused from mortal sin, both because of levity of mind and inadvertence, and more often because of defect of a rigorous precept (cf. n. 325, q. 2 and n. 692).

Note. a) What matter is to be judged grave must be defined by prudent judgment: generally it will be that by whose omission parents, domestic order, or the temporal or spiritual good of children would suffer grave detriment. In these also observe that one act of rebellion less easily constitutes a mortal sin.

b) Let the confessor take care that, in questioning children concerning their threefold obligation toward parents, he not proceed inconsiderately. For often, only incidentally and obscurely, they accuse themselves concerning their manner of acting, although it is very bad; and hence it happens that easily, and without fruit of amendment, they obtain the benefit of absolution. Therefore, their character and their education having been known, they must be asked whether they have gravely harmed father or mother by words, what they did, and with what plan; for there must be attended to the effect of exasperation, sadness, etc., caused in the parent without just motive, and at least confusedly foreseen by the child.

SCHOLIUM

On Paternal Power

698. - PATERNAL POWER is the right which by force of laws belongs to the father, and subordinately to the mother, over their offspring and over the goods of the offspring. 1. As regards the persons of children, the law everywhere in force imposes on parents the obligation of furnishing food and education according to the condition of fortune and status. It confers the right of custody, whether in the paternal home or in a house of education, and the right of moderate correction. - 2. As regards goods, there will be discussion in the treatise on justice (n. 858). This power indeed arises from the very right of nature; but it belongs to civil law to determine how far this power extends itself, as regards public effects, and when and how it is extinguished. - When parents are lacking, paternal power is conferred on a guardian, beside whom stands a family council under the vigilance of a judge.

Children are distinguished as legitimate or illegitimate. Illegitimate children, that is, those born outside legitimate marriage, are either spurious, that is, incestuous, adulterine, sacrilegious, that is, procreated from parents between whom, at the time when they were conceived and born, by reason of consanguinity, or bond, or solemn vow, marriage could not be contracted; or natural, that is, born from parents who at the time of conception were indeed not joined in marriage, but capable of contracting it.

Natural children can be recognized, in which case they enjoy the rights determined by law; or they can even be legitimated by subsequent marriage, and then they are equated with legitimate children, and the Church herself admits legitimation of this kind (cf. Ferraris, v. Son). Let each person see under what conditions the law grants such legitimation (French Code, 331; German, 1732; Austrian, 160-162). Spurious offspring ordinarily cannot be legitimated before civil law. But the supreme power in the Church can grant such legitimation. See n. 1962.

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In FRANCE (art. 371-515) paternal power, which belongs to the father, and, he being dead, absent, or interdicted, to the mother, lasts until the majority or emancipation of the child. Moreover, a son, likewise a daughter, obtains majority as soon as he has completed the 21st year. Emancipation happens by the law itself through marriage; it can also be granted by the father, or, the father being lacking, by the mother after the 15th year has been completed; or, both parents having died, by the family council, but after the 18th year has been completed. The emancipated person has the right of directing his own person and administering all his goods, a curator nevertheless assisting. But as regards marriage, a son before the 25th year completed, and a daughter before the 21st year completed, cannot contract it without the consent of parents; if the parents disagree among themselves, the consent of the father suffices.

In SPAIN, paternal power ceases: 1. by privation: a) if a widowed mother enters a second marriage, unless the husband, by testament, established the contrary as regards those not emancipated; but the mother, if she again becomes a widow, recovers it; b) if father or mother by sentence of a judge are declared incapable because of crime or divorce; but the lost power is restored when the effect of the sentence ceases; c) or if the child, the parents consenting, is adopted by another (Spanish Code, 168-177);

2. by emancipation; and this is a) absolute, by majority, which son and daughter obtain after the 23rd year has been completed. Nevertheless a daughter, even if of majority age, cannot desert the paternal house before the 25th year has been completed, unless for contracting marriage, or father or mother have entered second marriages; - b) relative, alpha) by the marriage of a minor, within the limits of the law (315), beta) by concession of the father, or, he being lacking, of the mother, but not before the 18th year has been completed, gamma) by concession of the family council to orphans of father and mother, but not before the 18th year has been completed, and with the judge of first instance approving. Emancipated persons can direct their own person and administer their goods. But as regards marriage they do not obtain independence in every way. Minors cannot contract without the consent of father or guardian; the father being lacking, without the consent of the mother, in whose default grandfather and family council successively furnish permission. Likewise those of majority age cannot marry without counsel sought from father or mother; but if these disagree, they can contract after three months.

Both request and consent must be established from an authentic document of a notary or judge. A marriage contracted without the counsel or consent of the father is valid; but the goods of the contracting parties will remain separate, nor can the spouses make donations to one another or receive them mutually, nor can a minor administer goods, and he has a right only to food. Spanish Code, 45, 47, 50. Widowers and widows, even minors, do not need the aforesaid license or counsel (ibid.).

In ITALY, the laws are nearly the same as in France. Yet a son can never be emancipated before the completed 18th year (art. 220 seq. and 311).

In AUSTRIA, sons and daughters are ordinarily of majority age and of their own right after the completed 24th year, but extraordinarily even before then, if the father, with the judge approving, expressly emancipates the children, or when the 20th year has been completed permits separate industry (a. 172 seqq.). Indeed, at the insistence of the father, paternal power can, from just causes, be prolonged beyond the 24th year. Besides, a minor daughter delivered in marriage, if the husband dies, returns under paternal power (art. 172-178).

In ENGLAND, the mother has the right of custody over children not yet seven years old; then the father, until they have completed the 21st year: at which age sons and daughters become of majority age and of their own right (Crolly, *de Just.*, n. 466, 469).

In GERMANY, sons and daughters are of majority age after the completed 21st year. When the 18th year has been completed they can be emancipated by sentence of the guardianship tribunal, provided the minor himself and his parents, unless care of the children has been taken away from them, furnish consent. It is not licit for a minor, whether son or daughter, even after emancipation, to enter marriage without the consent either of the father, if he is legitimate, or of the mother, if he is illegitimate, or of the adopter, if he has been adopted (Civil Code, § 2 seq., § 1305 seq.). - As regards religious education, especially of those who arise from a mixed marriage, the whole matter is committed to the law of the particular States. Holy Mother Church is deservedly saddened by these things, because in many respects her rights

are harmed. Let these be consulted: Dr. Geiger, *Die religiose Erziehung der Kinder*; Karl Schmidt, *Konfession der Kinder*; Lehmkuhl, *Das burgerliche Gesetzbuch*, where there are many very useful things.

ARTICLE II

On the Duties of Parents Toward Children

Preliminary note. Just as children are held to honor their parents, so likewise parents are bound to this, that they bear diligent care for children. For the right of procreating and governing offspring was granted to them for this reason, that they may bring the offspring received to its end.

The following things also have force in relation to illegitimate offspring. For although their progenitors do not possess paternal power, nevertheless both are obliged, from natural right, to have care for those to whom they gave life. Many civil laws order the matter otherwise, so that the obligation of feeding the offspring regards the mother alone (cf. French Law, 340); but one cannot stand by this ordinance, not even after the sentence of a judge. See below n. 958. Better is the German Code, § 1705-1718.

In all these things there lies hidden a question of the greatest moment: Whether children possess rights against parents?

Resp. with St. Thomas: Insofar as each is a man, there is justice in some way toward them; but insofar as each belongs to the other, according to this the perfect notion of justice or right is lacking (2.2, q. 57, a. 2, ad 2). - Thus therefore children, as they are men, have a strict right to life, integrity of members, reputation, and honor. This assertion is confirmed by civil law. But children, as they are children, that is, something of the father, have a right to education and food, but of themselves only from charity, for they are destitute of help. But if parents are lacking, relatives or the community are held to supply. See what was said n. 398.

699. Principles. I. Parents, from a special precept, are held to love their children with internal and external love, and this rightly ordered. Nature itself promulgates this obligation, as is established from brute animals themselves, which love and nourish their offspring.

Hence, parents sin not only against charity, but specially against PIETY, more or less according to the gravity of the matter, who have hatred toward their own children, who utter evil prayers against them, who treat them too harshly, who do not succor them when constituted in necessity, who from defect of ordered love indulge them too much, etc., etc.

700. II. Parents are held to procure corporal education for children. He who gives being must also give the things consequent upon being; namely to have care of life, sustenance, and status (*Inst. cat.*, P. I, c. 4, n. 12).

701. In relation to care of LIFE, parents are held, from the very conception of the offspring up to the time when the offspring is truly able to suffice for itself, to confer diligent care toward its preservation, and according to their powers to avert all things which could harm it.

Hence, of themselves they sin gravely: a) Women who bring the existence of the fetus into risk, for example by carrying burdens that are too heavy, sustaining labors that are too toilsome, indulging too much in anger, sadness, lust, and other passions. Cf. Capellmann, *Med. past.* b) Husbands who treat pregnant wives inhumanely, gravely strike them, exhaust them with excessive labors. c) Spouses who keep little infants with them in the same small bed, with danger of suffocation (cf. *Rit. Rom.*, *de Bapt. parv.*, 32); as also those who use no precautions lest some evil befall their little children through water, fire, animals, iron instruments, etc.

2. In relation to care of SUSTENANCE, parents are held to supply to children whatever things, according to their condition, are necessary for food, clothing, and habitation. They are obliged even if the children have dissipated their part; and therefore parents are held to pay debts which the children contracted for sustenance, but not for other things (*H. Ap.*, VII, 4). See German Code, 1705; Spanish, 155.

Hence: a) The mother is held, under venial obligation, to nourish the infant with her own milk, unless perhaps she has a just excuse, for example that she is weak, noble, or very rich; but then she is held, under grave obligation, to provide for herself a faithful nurse, that is, one healthy and well-mannered.[68] b) Parents sin mortally by exposing offspring in a hospital or public places without just cause, such as can be very great want, or illegitimacy of offspring from a hidden crime;[69] likewise by casting children out of the house, or not furnishing necessary things, until they can suffice for themselves by their own industry.

[68] Modern physicians treat and settle this question more severely. Cf. Capellmann, Olfers, Antonelli, and others.

[69] Parents, even rich ones, who expose offspring in a hospital erected and endowed for the reception of the exposed, do not sin of themselves against justice, since institutions of this kind have also been founded in favor of the rich (III, 658). - Except if the civil community would have to contribute to the endowment of the hospital through special taxes (Marres, *de Just.*, l. 2, n. 310).

3. In relation to care of STATUS, parents are held to procure for children such a condition of life that afterward they can live in a manner which befits their birth; for children ought not to store up treasure for parents, but parents for children (2 Cor., 12, 14). See St. Alph., III, n. 336; *H. Ap.*, tr. VII.

Hence they sin: a) If they do not use at least moderate diligence to acquire goods by which children may be fed and may obtain an inheritance according to their status. b) If by squandering goods they render themselves unable to educate and endow them honorably according to their condition. c) If they do not take care that they go to school, provided the required cautions are present, that they learn an art, or embrace some genus of life by which they may be honorably sustained.[70] d) If they unjustly disinherit them, or harm them in the legitimate portion; if they refuse to establish a patrimony for a son wishing to be promoted to sacred Orders; if they deny dowry or the legitimate part of inheritance to a daughter who, after the years of majority, celebrated marriage against their will. Nevertheless to this daughter, if before the years of majority she married an unworthy man, dowry is not owed, according to the more probable opinion; but food is owed to one in need. In a similar way, if a son, against the father's will, took a wife, the father is held to feed him in need and his wife. e) Finally parents sin gravely if they drive unwilling children to embrace a state, whether conjugal, religious, or especially priestly, or earnestly turn them away from such a state. They can be excused, at least for a brief time, by reason of ignorance or inadvertence, which can easily be admitted because of their excessive love (IV, n. 77).

701. III. Parents are held to procure spiritual education for children. Man, created to the image and likeness of God, has been elevated to a supernatural end. Therefore he must be directed to this end by parents. Whence St. Charles Borromeo (Hom. 31, to the people of Canobbio, 1583): "To educate," he says, "is to lead children to Christ."

But spiritual education requires four things for itself, namely instruction, vigilance, correction, and good example (*Inst. cat.*, P. I, c. 4, n. 15-20).

1. It requires INSTRUCTION, according to that admonition of Scripture (Eccli., 7, 25): Hast thou children? instruct them ... from their childhood.

By force of this precept parents must take care: a) that either through themselves or through others fit for it, they instruct children in faith, in good morals, in the observance of the commandments of God and of the Church, and in all things necessary for salvation (cf. n. 718);[71] - b) that they instill into them the highest esteem and love of holy prayer, and render this very familiar to them; - c) that they imbue them with an affection of true devotion toward the Virgin Mother of God; for, as St. Alphonsus testifies, devotion toward the divine Mother is morally necessary for salvation.

2. It requires VIGILANCE. For more precious things are entrusted to parents than to a depositary with whom an earthly thing has been deposited.

Hence, parents sin gravely if they do not remove children from the dangerous amusements of the world, depraved companions, games, conversations, readings, etc.; if, for the sake of learning an art or serving, they place them far from themselves in such families where their faith or modesty is endangered; if they do not keep them away from conversations with persons of the different sex; if they permit boys and girls to sleep in the same small bed, etc.

3. It requires CORRECTION; and indeed serious correction, for Scripture says: He who spares the rod hates his son (Prov., 13, 24); discreet correction, for Scripture adds (Coloss., 3, 21): Fathers, do not provoke your children to indignation, lest they become of little spirit. Therefore first let them admonish, afterward threaten, finally chastise, without imprecation and harmful words.

4. It requires EXAMPLE. For words move, examples draw, especially children.

Therefore let parents conduct themselves cautiously in all things, and, especially in those things which pertain to the worship of God, furnish themselves as an example of good works. Parents sin most gravely when in the presence of children they blaspheme, mock religion, utter or do shameful things, detract from neighbor, or drive them to sin in any way whatsoever (*H. Ap.*, VII, 5).

702. On the obligations of blood relatives and guardians.

703. Blood relatives are held, from piety, to mutual love, assistance, and reverence; more, however, or less, according as they approach parents more or less (cf. n. 484). - Whence he who affects a grandfather, great-grandfather, paternal uncle, paternal aunt, brother, sister, and probably collaterals in the second degree, with hatred or injury, or does

[70] In our times Civil Codes oblige parents to procure for illegitimate children an education convenient to the status of the mother. Of itself it would suffice that they take care for the education ordinarily necessary to man (cf. German Code, 1705-1718; Austrian, 165-171).

[71] There will be discussion of instructing children in sexual matters in the treatise on the sixth precept, n. 763.

not assist them in necessity, must, if otherwise the fault is grave, declare the circumstance of kinship in confession. Otherwise, if the degree is more remote (III, 340).[72] Cf. what we said n. 687, I.

704. Guardians are held, by force of quasi-contract: a) to bear care of the ward, protect his person, correct him, and educate him in a Christian manner; - b) duly to administer the same person's temporal goods: and this according to the prescriptions of law, so that, the guardianship having ended, an account of all acts may be rendered before the family council, or the guardianship council for illegitimates, according to the rules of justice (see the treatise on Justice, n. 1039 seqq.).

Note. Piety alone can oblige to the same things, namely if someone is a proximate blood relative of the ward, and no other fit guardian or assistant guardian is found. Yet advert that it is not a light thing for Catholics to undertake the guardianship of non-Catholic wards, lest namely they seem to favor heresy by educating them in it; or, by not educating them, to violate the faith furnished to the testator and the court (III, 918; Kon., n. 434).

CHAPTER III

On the Mutual Duties of Spouses

Noldin, II, n. 281; Rosler, C.SS.R., *Die Frauenfrage*; Vermeersch, *Quaest. de Just.*, n. 512; Godts, C.SS.R., *Le feminisme condamne*; Cathrein, *Frauenfrage*; *Stimmen aus Maria-Laach*, where there are many things (cf. Gen. Index, v. *Frauene-manzipation*, etc.); *Ami du Cl.*, 1903, p. 36, 745; Schindler, *Moraltheol.*, II, 747.

703. Principles. I. Spouses mutually owe to themselves society, love, and faith. Thus namely from the nature of marriage, and from positive law, both divine and human[73] (cf. treatise on Matrimony, c. VII).

1. Society; for they are held to live together, as to table and bed, unless a legitimate cause excuses, as is established from the words of the Lord: A man shall leave father and mother, and shall cling to his wife, and the two shall be in one flesh (Matth., 19, 5). But the choice of domicile pertains to the husband (cf. n. 2120 seq.).

2. Special love, namely conjugal love; for since they are one flesh, they ought also to be, through a more intimate love, one heart. Thus Ephes., 5, 15: Husbands, love your wives, as Christ also loved the Church; and (Tit., 2, 4) it is commanded to wives that they love their husbands.

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Whence a spouse sins against charity and conjugal love if he or she has hatred for the other, or wishes a grave evil; if by injurious words or signs he or she saddens the other, etc. Likewise, because they are held, from love, to furnish food mutually to one another, either husband or wife sins gravely if, either by harshness, idleness, or sumptuousness, he or she deprives the other part of those things which are necessary to life or condition (III, 356).

3. Faith, that is, conjugal fidelity, according to that (1 Cor., 7, 4): The woman does not have power over her own body, but the man. And similarly also the man does not have power over his own body, but the woman, namely in order to generation.

Hence: a) They are held to render to each other the conjugal debt, when it is sought seriously, and there is not a legitimate cause of denying. b) Every venereal act, whether internal or external, with or concerning an alien person, in married persons has the malice of adultery (cf. n. 781).

704. - II. Certain duties are proper to each spouse. This follows from the proper condition of each. For although there is some equality between spouses, nevertheless the ends of marriage and the native character itself of the spouses require that the man be the head of the woman (1 Cor., 11, 3), and that the woman be subject to the man.

1. The HUSBAND must care for his wife's soul, by directing her rightly, watching over her morals, and correcting her where there is need; - body, namely by retaining his wife with him, and feeding her according to his status; - goods, by diligently conducting the family affair.

Hence, the husband sins, and at times gravely: a) If he affects his wife with blows or insults, without just cause. "Nevertheless he can sometimes chastise her moderately by words, or even from a grave cause by moderate blows, having regard to condition" (III, l. c.; *H. Ap.*, VII, 12). See n. 732. b) If he impedes her from fulfilling the precepts of God or of the Church. But if he impedes her, without cause, concerning those things which are of counsel, such as confession, communion, etc., he sins only venially, unless it is established that she perceives great utility from the sacraments. c) If he denies or neglects

[72] Concerning religious whose brothers or sisters are in grave or extreme necessity, there will be discussion below n. 2137 seqq.
[73] French Code, 212; Italian, 130; Austrian, 90; Spanish, 58; German, 1353; Dutch, 158.

to procure food for her. Yet he could justly deny these things if the wife had committed adultery, or had departed from him without cause. d) If he treats her in a tyrannical manner, like a vile slave. e) If he neglects the governance of the family, etc.

2. The WIFE is held to exhibit reverence and obedience to the husband in all licit things: Women, be subject to your husbands, as is fitting, in the Lord (Coloss., 3, 18).

Whence she sins gravely if by quarrels or harsh words she provokes the husband to grave anger, or blasphemy; if, the husband being spurned, she claims authority for herself; if without sufficient indication she judges badly concerning his continence; if she spends something notable from common goods, against his will and the custom of women of her condition; if she arrogates to herself the administration of the house without just cause; if she is unwilling to follow the man changing domicile, provided she can follow without danger of life and salvation, and he, after the nuptials, has not become wandering. It also belongs to the wife to devote work to the offspring to be educated, and in domestic business to bear care of the family, applying effort to cleanliness, not to luxury or talkativeness. If nevertheless she is of conspicuous condition, she can fulfill the lower offices through male servants or maids, provided she watches over them and takes care that the domestic affair is well conducted. Consult St. Alphonsus, III, n. 351-356; *H. Ap.*, tr. VII, n. 12-13. See the rest in the treatise on Charity (n. 484 seqq.) and in the treatise on Justice (n. 863 seqq.).

SCHOLIUM

On the Emancipation of Women

The doctrine just set forth does not please many moderns, especially those who are opposed to positive religion. They demand equality in every way between man and woman, and they say that it is a crime that woman must be subject to man. This modern theory can be considered under a threefold respect: for it touches the domestic order, the economic or social order, and finally the political order.

1. As regards the domestic order. Whatever those say who vindicate complete emancipation, this can in no way be conceded; for nature has so prepared and ordered the whole matter that the man preside, be the head of the family, the mind which directs all things, the will which by labor and endeavor conquers all things. But let the woman become and remain the heart of the family, and let her work by loving, praying, and bearing, and always lead morals to better things. Head and heart, the mind directing and the heart loving, fortitude and loveliness, the strength of the body and the tender constitution of the members, must be one; yet so that what by nature has been made weaker subjects itself to the stronger.

2. As regards the economic and political order, nothing prevents women also from being admitted almost equally as men to many businesses and to many arts, provided, and let this be well noted, that all things are proportioned to their powers, and never harm the office which they must pursue as wives and mothers. Therefore a moderate and tempered emancipation is not to be rejected *a priori*; but let there be rejected whatever could destroy the family as it was founded by the Creator: in the middle you will go most safely. Cf. the authors cited at the beginning of this chapter.

CHAPTER IV

On the Mutual Obligations of Inferiors and Superiors

Encyclical *Rerum novarum* (ed. Herder), p. 28; authors cited at the beginning; Biederlack, *Die soz. Fr.*, p. 154; Willems, III, p. 415 seqq.; Cathrein, *Moralphil.*, II, p. 436 seqq.; Burg, *Vie sociale des nat. mod.*, p. 437; Koch, *Moraltheol.*, 2160, 167; Schindler, *Moraltheol.*, II, 714, 761 seqq.; Forster, *Schule u. Character.*

The duties which are proper either to inferiors or to Superiors, some arise from justice, from the contract of hiring work, and are positive; others from observance which is to be given to personal dignity, and are rather completive and negative, insofar as it is licit to attempt nothing against this superiority. Concerning the former there will be treatment below (n. 1153); concerning the latter there was discussion when we were speaking of the virtue of observance (cf. n. 689). It remains that we here add a few things: 1. concerning the mutual obligations of servants and masters; 2. concerning the obligations of disciples and teachers toward each other.

As regards the duties of parish priests and of those who bear a public office, see n. 2250, 2265, 2282 seqq.

ARTICLE I

On the Obligations of Servants and Masters

§ 1. On the Obligations of Servants

By the generic name of servants there is designated by authors a threefold genus of men, of whom some are obliged more strictly than others; and thus someone is also called master in a threefold way. a) There are slaves, who depend on the master perpetually and for all works. b) There are domestics, who freely hire their works for a time to a richer person, and are as though enrolled into the family. c) There are artisans and workers, who freely hire their works for a certain time, but are not admitted among the household.

705. Principle. Servants are held to furnish reverence, obedience, and fidelity to their masters. Thus from natural right, from the natural condition of servants, and from a pact freely entered (III, 343 seqq.; *H. Ap.*, VII, 8-11).

1. Reverence: for the master is the head of the family or workshop. The Apostle says (1 Tim., 6, 1): Let servants judge their masters worthy of all honor. This, proportion being had, must be applied to servants.

2. Obedience: for the master shines with authority, so that in those things which regard service and good morals the word of the Apostle has force: Servants, obey carnal masters with fear and trembling, … as Christ: serving not to the eyes, … but as servants of Christ, doing the will of God from the soul (Ephes., 6, 5, 6).

Hence they sin if they resist just and express commands of masters; if by contumacy, indocility, neglect of their offices, they provoke them to anger; likewise, if they obey in illicit things (cf. n. 521).

3. Fidelity, and indeed from the contract entered according to civil laws and customs of the place, whence from strict justice: to this end they were hired and receive a stipend, that they may faithfully serve, labor strenuously, care for the master's things, steal nothing, or allow nothing to be stolen by others. Whence the Apostle: Servants ought to be subject to their masters, pleasing in all things, not contradicting, not defrauding, but showing good faith in all things (Tit., 2, 9, 10).

Therefore servants sin, more or less by reason of matter, and are held to compensation of damage: a) If they spend a notable part of the time owed to service in idleness, or divert it to their own utility or that of others. - b) If, without just cause, they depart from their masters before the agreed time.[74] Concerning cessation from labor by agreement, strikes, see n. 1154, q. 1. - c) If because of culpable carelessness they bring detriment to domestic things. d) If they betray the secrets of the family. e) If they steal more delicate foods. f) If without the consent of the master, at least presumed, they bestow alms from his goods. g) According to the more common and more probable opinion, if they do not protect the master's things from the theft of outsiders.[75] We say outsiders, because it is more probable that a servant is not held from justice to impede the thefts of other domestics, unless he is deputed to this, or unless it is a question of things specially committed to him. h) If, not content with the stipend legitimately agreed, under pretext of compensation, they steal something (III, 344 seq.; ed. G., I, p. 610). Cf. n. 918.

706. • Practical rules. 1. Care must be taken that servants be content with their lot. For the state of subjection helps much toward obtaining eternal salvation. - 2. Girls are to be turned away lest, on account of a greater stipend, they migrate into cities for the sake of serving; for in cities great dangers for the most part threaten them, especially where they have no one whom they can consult. - 3. It must be strictly forbidden to servants that they hire their work to masters in whose houses they would be exposed to proximate danger of sinning, or to grave harm concerning faith and morals. But if there is question of heretical masters, conditions concerning the laws of the Church to be observed must be expressly added (cf. n. 447, 450, 2). - 4. Servants must be admonished that a right is conferred on them also by law (cf. German Code, § 618, 626) to depart, if the master does not make provision for satisfying the prescriptions of religion or similar things. If they depart from a just cause, they can exact the whole stipend corresponding to the time of service exhibited, and then they are not held to supply the works from which they ceased (*H. Ap.*, VII, 8).

[74] Understand the assertion thus: Of themselves, although servants depart without cause, they have a right to wages according to the quantity of labor completed. Nevertheless the master can, on account of harm brought upon him, by reason of compensation, diminish this wage; indeed, harm very grave having been posited, totally suppress it. Let the servant see whether anything else remains to be recompensed by him.

[75] Many judge that the obligation of servants to protect the master's things from the theft of outsiders is not from strict justice. Except if something has been specially committed to the care of this or that servant.

§ 2. On the Obligations of Masters

707. Principle. Masters, both from charity and from a certain natural equity, or even from justice, are held by special obligations toward their servants. And indeed they must:

1. Treat them kindly: namely on account of human dignity, by addressing them decently, furnishing them good and sufficient food, not burdening them too much, caring conveniently for the sick, according to that (Eccli., 23, 31): If thou hast a faithful servant, let him be to thee as thy soul: treat him as a brother.

Hence, they sin if they burden them with immoderate labor, or affect them with insults, say if they call them devils, dogs, etc. Yet such names are commonly not held as grave injuries (III, 342).

2. Instruct and correct them: for they are their head, and they bear the place of parents toward them. Whence the Apostle: If anyone does not have care for his own and especially for those of his household, he has denied the faith, and is worse than an unbeliever (1 Tim., 5, 8).

Hence masters sin, of themselves gravely: a) If they are the cause that servants do not satisfy the precept of feasts, of prescribed abstinence, of the reception of the sacraments, etc. b) If they do not correct them when they blaspheme, speak shameful things, or furnish scandal (cf. n. 496). c) If they do not dismiss the incorrigible, when they can find others fit. d) They are especially guilty if they induce a male servant or maidservant to evil, by depraved examples, words, solicitations, or if they permit an occasion of sinning, while they can impede it (cf. n. 515, 9).

3. Pay them a just price:[76] for defrauding the owed wage is counted among the sins crying to heaven, and must be repaired by restitution.

Hence, they sin against justice, gravely or lightly according to the matter subjected: a) Who do not pay the promised or customary stipend, or defer it for a long time, with certain harm to the servant. b) Who dismiss a servant before the prefixed time, without just cause and without congruous indemnity. In this case, in punishment of his injustice, the master is held in conscience, says St. Alphonsus (III, 342), to pay the servant at least the greater part than half of his salary; indeed, according to Lessius (l. 2, c. 24, n. 8), he is held to grant the whole wage, at least after sentence. But others oblige the master only to compensation of damages, Noldin (II, 295).

708. Note. Masters are not held, unless perhaps custom or pact bears otherwise, or charity because of grave necessity demands help, to pay a stipend for some notable time, say several months, which servants spend outside service on account of sickness or their own convenience; nor to furnish great expenses owed to physicians or pharmacists. These things indeed hold from natural right; but positive laws often establish otherwise, and since this confers on servants a true right, it must be observed in conscience.[77]

ARTICLE II

On the Obligations of Disciples and Teachers

§ 1. On the Obligations of Disciples

709. Principle. Disciples, both from piety toward parents and by reason of the pact entered by parents, owe to their teachers love, reverence, and obedience in those things which pertain to studies and good morals. The reason is that parents, by this very fact that they have committed children to teachers to be educated, have delegated their own authority to them for obtaining this end. - In Religion, a similar office toward professors is founded in piety toward the Order.

Therefore disciples sin: 1. "Who mock their teachers, deride them, detract from them, affect them with curses, calumnies, troubles, provoke them to anger, and then they sin by a double sin. In these things, however, Sporer adverts, for the most part children are excused from mortal sin, because of levity, imprudence, or passion." - 2. "Who do not comply with teachers seriously commanding in a matter regarding good morals, studies, or the discipline of the school. But the sin is light

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or grave, according to the reason of the matter," although inadvertence more often excuses them from mortal sin. - 3. Those who spend time in idleness, in play, or in other follies; "who during the time of lessons attend to nothing or little, the mind distracted elsewhere and preoccupied with various useless cares. In these and similar things, disciples sin gravely if by this manner of acting the acquisition of sciences necessary to status or condition is notably impeded. For estimating

[76] Concerning just wage cf. n. 1153.

[77] French Code, 1780; Austrian, 1172; Spanish, 1583; German, 616 seqq.

this, two things must be attended to: namely the quantity of time uselessly consumed, and the quality of the things which the teacher then hands on" (cf. Jaugey, n. 620).

Note. Disciples who are of their own right, and enter Institutes or Colleges in which they live under the authority of a Superior, are altogether held to observe the statutes of the Institute and to furnish obedience to the Superior, from the renunciation of their liberty freely furnished.

§ 2. On the Obligations of Teachers

710. Principle. Teachers, both by reason of office and by reason of the stipend received, are held suitably to instruct and educate pupils. The reason: the contract entered with parents so wills.

Hence they must: 1. Hand on sound doctrine and one fit for the intended scope. If in the books which one is compelled to use there are found certain things less right or adverse to religion, the teacher must amend the ambiguous and suspect things by opportune explanations (Kenrick, tr. 13, n. 38). But if the books are by profession contrary to faith or good morals, it will by no means be licit to introduce them and use them. - 2. Teach by a convenient method and one accommodated to the capacity of the disciples, so that their minds are not overwhelmed, nor affected with weariness. Cf. St. Thom., opusc. *de Virt.*, c. 2. - 3. Insert into the souls of the disciples the seeds of Christian virtues, be to them of good example, and watch attentively over their morals. For they are in the place of parents for spiritual education.

711. • Therefore they sin: 1. If they dissemble the sins of disciples, and do not correct them. - 2. If they do not promote their progress in letters. - 3. If they do not teach good morals. - 4. If deliberately they teach false things as true, or superstitious things and things harmful to salvation. - 5. If they themselves do not study so that they may satisfy the office. - 6. If they exact a stipend greater than just, or than the laws or custom of the gymnasium permit. - 7. If they deny the insignia of doctorate to the worthy, or confer them on the unworthy. - 8. If they are of evil example to disciples. - 9. If they admit to schools those imbued with evil morals and pernicious to others, or do not dismiss them from those schools (III, 362).

SCHOLIUM

On Depraved Schools

Cf. the Pontifical documents cited below; Jansen, *de Facult. doc.*; Zitelli, *App. Jur. eccl.*, p. 499; Pierret, *L'esprit moderne*; Goyau, *L'ecole d'aujourd'hui*; Hammerstein, *Die Schulfrage*; Willems, *Phil. mor.*, III, p. 487; Aertnys, *Fasc. theol. mor.*, I, n. 38; *Ami du Cl.* (cf. Gen. Index, v. *Enseignement*); *Stimmen aus Maria-Laach*; *Questions actuelles*, where there are many things; Wernz, *Jus Decr.*, III, 66.

712. - Notions. 1. A school is called depraved if it is not conformable to the principles of the Catholic religion concerning educating youth. - 2. Schools of this kind a) sometimes are ruled by a depraved spirit or according to the tenets of a heterodox sect, and are impious; b) sometimes prescind from every positive religion, and are called neutral; - c) sometimes admit children pertaining to any sect whatsoever, and are named mixed.

There will not be discussion here of impious schools, since in relation to these the principles are too plain. The question is only agitated concerning schools which they call neutral; and the principles which we shall establish concerning neutral schools it will also be licit to apply to mixed schools, since regularly in them positive religion is not taught.

713. Principles. I. That manner of instructing youth which excludes every religious education is of itself most adverse to the Catholic cause. The reason is because 1. it induces, of itself, into contempt of religion, as if namely religion were to be esteemed nothing; 2. it is separated from the authority of the Church; whence it can happen that teachers are placed over schools and books are used which pour errors and seeds of vices into tender minds; 3. it is impossible to hand on precepts of morals without religion, and to teach certain sciences, for example history, without the teacher saying something incidentally concerning revelation and the Church, and either patronizing or opposing them; - 4. the authors themselves of this instruction have confessed that one of its ends is the overthrow of religion. Thus from the Instruction of the S. C. de Prop. F. to the Bishops of North America, 24 Nov. 1875 (*A. S. S.*, XI, p. 44).

And Leo XIII, in the Encyclical Letter *Nobilissima* directed to the Bishops of France on 8 Feb. 1884, confirmed these things: "The Church ... has always openly condemned the schools which they call mixed or neutral, again and again admonishing fathers of families that in a matter of so great moment they should attend their mind to taking care."

714. II. Of schools which they call neutral, some are positively, others negatively harmful. Therefore not all bring equal danger. This is gathered from the cited Instruction.

Now: 1. Those are negatively harmful in which nothing adverse to faith or morals is taught. 2. But those are positively harmful in which the integrity of faith or the honesty of morals, or both together, are exposed to proximate danger.[78]

Moreover, the causes on account of which they become POSITIVELY harmful are three of themselves and regularly: a) books, which little by little destroy religion or modesty, or both, in the souls of children; - b) teachers, who instill the poison of error into the souls of children, if not openly, at least craftily and gradually; - c) fellow-disciples who cultivate either a false religion or none, and are furnished with such morals and accustomed to such license of speaking and acting, that from this the faith of youths, although excellently instructed at home, is shaken, or certainly modesty and piety are consumed. It is plain that, besides these sources of dangers, which are given as regards schools in general, others can be present in this or that school, if namely boys with girls are ordered to sit on the same bench. It is plain also that in higher schools, because the mind is more imbued with religion, the influence of evil is often less than in others, especially elementary ones.

715. III. Schools called neutral cannot be frequented with a safe conscience unless a sufficient cause is present and opportune cautions are used.[79] This the natural law itself and divine law proclaim.

We have said: 1. A sufficient cause is present. This is plain from the fact that great danger of perversion is feared. But from the magnitude of the danger, weigh what cause can be called truly sufficient: a) If the neutral school is negatively harmful, the danger ordinarily will be remote, and therefore ordinary grave causes will be sufficient, for example if a neighboring school is found little fit for educating children conveniently to their condition, and the means are lacking of educating offspring Catholicly in another region. b) If the school is positively harmful, the danger ordinarily will be proximate, therefore urgent reasons are required, for example if no other school were at hand, if continual vexations from the Government were feared, etc. In each case, mentioned under a) and b), cautions are required more or less rigorous according to the gravity of the danger. c) If the school is so positively harmful that necessarily, even with cautions used, perversion infects souls, no cause can be called sufficient, and such a danger must altogether be avoided, with any temporal harm whatsoever, even of life, as is from the cited Instruction.

2. Opportune cautions are used. For by these means the danger must be made remote, insofar as it can be (cf. cited Instruction).

3. - To use cautions pertains to the parish priest, to parents, to the scholars themselves. And indeed: a) Let the parish priest devote himself much more diligently to catecheses, attending especially to those things which are more frequently attacked by the enemies of our faith. Let him teach not only publicly and through houses, but admonish each one; let him help in resistance against perverters one whom he knows to be placed in such straits (cf. Acts Ap., c. 20). b) Let parents watch solicitously over their children, through themselves or through others carefully question them concerning the lessons heard, recognize the books handed to them, and if they detect anything harmful there, furnish antidotes. But if books handed on by the teacher have been condemned by the Bishop, let them altogether forbid the children to use such books, and from competent authority strongly and persistently demand their removal. If any societies established by fathers of families, *associations des peres de famille*, exist in the region, let them give their name to these, so that thus, with a juridic person intervening, complaints may become more effective. c) The scholars themselves, on whom harmful books are imposed, or whose teachers or fellow-soldiers labor to infect them, should know that they themselves personally, independently of parents, are held to cautions (*Ami du Cl.*, 1912), yet in ways convenient to their age. They cannot retain with themselves harmful books prohibited by the Bishop, and, in the case in which such things are imposed on them, they are held to resist internally, indeed also externally; internally, by not approving, strengthening their will in good; externally, by not accepting the books without protest, by using them only for the time necessary, and by similar acts by which they make manifest horror of evil and aversion from dangers.

Note. He who desires to know more very useful things should read the Decrees of the Third Council of Baltimore, n. 194 seqq., confirmed by Leo XIII, 31 May 1893; the Responses from the Secretariat of State, 5 May 1911, in relation to books prohibited by the Bishops of France (in *Ami du Cl.*, 1911, p. 598); he should also weigh the very many practical solutions which are to be found in the above-mentioned commentary, years 1908-1913, v. *Manuels condamnes*, *peche scolaire*. Cf. also *Nouv. Rev. Theol.*, vol. 45, p. 47.

[78] It belongs to the Bishops of each region to prohibit schools which perhaps would be harmful, to condemn such or such books as positively harmful. Their mandates, as being founded in presumption of law, must be strictly obeyed. All know with how great severity the Bishops of Belgium turned the faithful away from neutral schools, not without advantage for the Catholic cause. - In the year 1909, on 15 Sept., the Bishops of France, by common decree, prohibited 14 books introduced or to be introduced in public schools (cf. *Quest. actuelles*, 1909, p. 263).

[79] In France a dispensation of the Bishop is also required, so that the use of prohibited books in schools may become licit.

717. Consequences. 1. TEACHERS, teaching in a neutral public school, cannot of themselves introduce and explain harmful books. But if such books are imposed by office, and at the same time they foresee that resistance would be useless, they must necessarily read them in such a way that they provide an effective antidote to disciples, or, better, read those things alone which would be harmless. Cf. *Ami du Cl.*, 1908, p. 846; 1911, p. 598; *Linz. Quart. Schr.*, 1907, p. 375, diverse cases.

718. INSPECTORS should undertake their office with this mind, that they are prepared according to their powers to impede evil in positively harmful schools. The hope of good which they have must be founded; otherwise they would cooperate with evil (Konings, n. 440).

719. YOUTHS cannot go to schools called normal schools if they are positively harmful and they themselves remain exposed to depraved influences; if they are negatively harmful, access is not forbidden to youths, provided they form a firm purpose, in carrying out the office of teacher, of avoiding those things from which a Catholic teacher must abstain. But if they seem not about to be tenacious of this purpose, they are earnestly to be exhorted that they dedicate themselves to another office or art (Konings, l. c.).

As regards Colleges, Gymnasia, Universities, the rules handed on above can and must be applied, nevertheless with regard to the danger preserved. It is known that the Holy See has forbidden that clerics go to Government Universities without license of the Bishop, and Regulars who must teach without license of the Superior. Let especially the Encyclical *Pascendi* be read, by which those things are extended to the universal Church which in the year 1896 the S. C. Ep. et Reg. had sanctioned. Cf. *Nouv. Rev. Theol.*, vol. 40, p. 750; *A. S. S.*, vol. 29, p. 360; *Ami du Cl.*, 1907, p. 1135.

If the University is non-Catholic, the Bishop must prescribe greater cautions as regards removing the danger. Only in recent times did the Holy See concede that Catholic youths go to the Universities of Oxford and Cambridge (S. Off., 26 Mar. 1891; S. C. de Prop. Fide, 17 Apr. 1895).

4. PRIESTS can hand on the teachings of the Christian faith in the mixed schools of heretics, or carry out the office of chaplain. The mind of the Holy See is that, not only over schools of handing on the faith, but also over schools of other disciplines, as much as can be done, priests or honest laymen be placed. S. Off. to the Bishops of Switzerland, 17 Jan. 1866 (in Bucceroni, *Enchir. morale*, p. 79).

5. • PRACTICAL RULES. 1. To parents who, the cautions mentioned above being spurned, without sufficient cause send children into harmful schools, absolution must firmly be denied. A fortiori this must be done if severe decrees promulgated by the Bishop command that the threatening evil be plucked up by the roots. It will always be better to seek a uniform norm from the Ordinary.

6. To children, since they are not of their own right and are usually made conscious of the gravity of the danger only little by little, let the benefit of absolution not be denied at the beginning. With great prudence let them be taught concerning those things which natural and episcopal law demand of them, and then only let them be dismissed unabsolved when sufficient knowledge of the obligation and evil disposition of the will are present.

7. Parish priests, so that they may more easily avert evils from children, have the office of often admonishing parishioners concerning the gravity of sin committed in this matter, so that thus the public conscience, as they say, may be formed according to the norm of right. But if certain persons from their parish, parents, children, or teachers, confess to an outside priest, and cautions as regards prohibited books, or sufficient causes as regards access to a harmful school, are in no way present, and this is publicly established, of himself the parish priest will be able to deprive the resistant, admonished once and again, of communion. But since public denial of communion is full of difficulties, let him do nothing without the Bishop being consulted. Cf. *Ami du Cl.*, 1909, p. 1178; 1911, p. 198, 201, 503, 666.

TREATISE V

On the Fifth Precept of the Decalogue

Thou shalt not kill.

(*Exod.*, 20, 13).

St. Thomas, 2.2, q. 64 and 65; St. Alphonsus, III, 363; ed. G., I, p. 621; *H. Ap.*, tr. VIII, n. 1-32; Lugo, disp. X, n. 1-55; Lessius, *de Just.*, l. 2; Billuart, Diss. X, a. 3; Salmant., tr. 25 throughout; Laymann, sect. V, tr. III, P. III; *Catech. Rom., de 5 Praec.*; De

Baets, *Les bases de la Morale et du Droit*; *Nouv. Rev. Theol.*, vol. 37 (1905), p. 501; Van Gestel, *de Just. et Lege civ.*; Vermeersch, *Quaest. de Just.*, n. 132-150.

719. In the fourth precept we saw how man must have himself specially toward neighbor who is superior to him. In the six last precepts of the Decalogue we shall set forth the duties which must be observed toward EQUAL neighbors. There almost all things are ruled by strict or commutative justice. Among these duties the greatest is this, that neighbor not be harmed in his own person, as to the consistency of the person and the conservation of life. Therefore the precept concerning not killing comes here very fittingly.

This precept is formally negative, virtually affirmative.

1. Insofar as it is negative, it PROHIBITS directly and primarily homicide, or the unjust killing of a man; but indirectly and consequently every unjust harming of neighbor in the goods of the body through mutilation, incarceration, beating, duel, war, etc. - It also prohibits all those things which proximately dispose to harm of this kind, such as hatred, anger, vengeance, and imprecations, which deservedly are called homicides of the heart and mouth (cf. n. 498).

It prohibits besides suicide, and unjust mutilation of oneself; and finally drunkenness, by which the use of reason, and therefore the proper life of man, is harmed.

2. But insofar as this precept is virtually affirmative, it COMMANDS that we conserve our own and another's life in all licit ways, have peace with all, and patiently bear all inconveniences (cf. n. 476 seqq.).

Therefore there must be discussed: 1. justice and injury in general; - 2. homicide and its species; - 3. duel and war; - 4. suicide and drunkenness.[80]

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CHAPTER I

On Justice and Injury

Here there is treatment of commutative justice alone, to which injury and injustice are properly opposed. As regards other things, see n. 398.

ARTICLE I

On Commutative Justice

Since justice is concerned solely with right, the notion of right must necessarily be premised; then the notion of strict justice.

1. The Notion of Right

720. Definition. Right is taken in a threefold way: 1. For law, which is the rule of what is just in general: in which sense we say natural right, divine positive right, canonical right, etc. Thus it is the foundation of right in the second sense. - 2. For a legitimate faculty which belongs to someone for doing something freely, or having something for his own convenience. It is active right, in which sense we are said to have a right to something. This is the foundation of right in the third sense. - 3. For that which is just, or owed to another, which therefore has a moral relation with another thing or person. It is passive right, which is the object of justice (Willems, *Phil. mor.*, III, p. 207).

From these things you will gather: 1. Right in one supposes obligation in another, and conversely. Wherefore, in society, all rights depend on one another, to constitute order, nor are they ever really opposed to themselves. Right against right is not given.

2. The ultimate reason of every right is rooted in the obligation of attaining the ULTIMATE END. For by this very fact that some end is to be pursued and obtained, man has a right to those means without which this end cannot be obtained. But all ends are contained under the ultimate end as means to it.

3. Since this obligation of attaining the end is personal, it necessarily involves the faculty of using earthly things independently of another. For whatever is touched, apprehended, or changed by man receives as it were the seal of

[80]The actions concerning which there is discussion in the fifth precept are not all among those which have deformity always and everywhere inseparably attached, as, for example, adultery has. Several actions, weighed here, absolutely indeed import a certain deformity, but, with certain circumstances acceding, can become good (St. Thom., *Quodl.* IX, art. 15). Cf. what was said n. 295.

his person: from this comes the distinction between mine and thine. It will always belong to justice, the tendency toward the end being presupposed, to preserve those things by which mine and thine are distinguished from each other; but it belongs rather to charity, which considers itself in another, to join and unite.

Division. We can distinguish:

1. Right CONCERNING PERSONS, that is, the right which belongs to one person over another; and it is defined: A legitimate power of governing subjects for THEIR convenience.

Of this kind is: a) dominative right of private authority, for example of father over children, husband over wife; - b) right of jurisdiction of public power, which is ordered especially to the common good. Concerning these there has already been discussion.

2. Right CONCERNING GOODS, which is defined: A legitimate faculty of having or doing something for ONE'S OWN convenience. It is imperfect or perfect.

IMPERFECT right, not strict, right improperly such, is that which is not determined, whether in itself, or as regards persons, nor can be demanded by way of coercion. Such is, for example, the right of individuals to alms left by a testator to the poor in general; the right which the worthy have to obtaining functions or offices of the community, etc. (Carriere, *de Just.*, n. 10).

PERFECT right, strict, coercible, right properly such, is that which is determined, both in itself and as regards persons, and can be demanded by way of coercion.[81] Such is the right of defending one's life or reputation, of recovering one's own thing, etc. It is subdivided into right to a thing and right in a thing, as will be explained below (cf. n. 839). - Perfect right is the object of strict justice.

See other distinctions in Lessius, l. c., c. 2.

2. The Notion of Strict Justice

721. - STRICT or COMMUTATIVE justice is a moral virtue constantly inclining the will to render to each one his own strict right, according to equality of thing to thing.

It is said 1. To render to each one; that is, either positively, when between two persons some contract or quasi-contract has intervened, or some action by which the right of either one has at least materially been violated; or negatively, by harming no one: for as he who renders to another the thing owed, so he who does not take it away is judged to render to him his own right.

2. To each one, private or moral person, his own strict right, that is, right objectively and passively taken, and indeed rigorous, in the sense which will be declared below (n. 723, 724).

3. According to equality of thing to thing, that is, through commensuration of the thing which must be rendered with the right of another (cf. n. 383).

This virtue differs: a) from natural love of neighbor. For love wills the good of another as the good of the beloved, and from complacence in him; but justice wills that good as owed and from simple rectitude of the will; - b) from charity toward neighbor: both because the material object of charity is the person of neighbor, but of justice the right which belongs to neighbor; and especially because the formal object of charity is God Himself, but of justice that special honesty which shines forth in rendering to each one his own right, to equality. Cf. n. 478; - c) from legal and distributive justice, which do not regard strict right, as is plain from what was said n. 400.

ARTICLE II

On Injury and Injustice

722. Definition. Injury is the violation of another's right. - Strictly taken, as in this article, it is the violation of another's perfect right. But injury contains offense and damage. Offense is repaired by satisfaction; damage by restitution.

INJUSTICE has itself toward injury as a habit toward an act, and is an inclination to not rendering to each one his own right.

[81] Note: it can be demanded by way of coercion, and indeed the whole can be demanded, not only what remains to be furnished, but what in the past has been retained; for in this consists the notion of strict justice. But debts of piety, for example toward children, are of such a nature that they oblige only to the thing being ordered better in the future; as regards the past, they impose no restitution. See Lugo, disp. I, n. 5-6.

Division. Injury is: 1. By reason of the act itself, merely internal, or external. Merely internal, intentional, if by thought or purpose the right of neighbor is harmed, for example if someone judges rashly concerning neighbor, or adds to an act which can be good, for example taking away a book in jest, an evil intention, the mind of stealing. It is external, if by an external harmful action the strict right of neighbor is violated, for example by burning a house, and similar things. See n. 726 and 727.

2. By reason of the mode of acting, positive or negative, according as someone inflicts it either by commission, by acting against another's right, or by omission, by omitting to do what is owed to another by strict right.

3. By reason of imputability, material or formal. MATERIAL injury is an involuntary harming of another's right. FORMAL injury is an unjust action or omission, with the mind of harming directly or indirectly: directly, if the harm is intended; indirectly, if it is foreseen when the cause is posited, and permitted.

4. Principles. I. For the notion of injury, whether material or formal, it is required that it be involuntary on the part of the one suffering, that is, against his right will. Rule 27 of law in the Sixth agrees: "To one knowing and consenting no injury is done." The reason is that he who can and wishes to yield his right does not retain it, and therefore no injury is inflicted on him. Besides, no one receives injury from himself; therefore if someone assents that another harm him, it is just as if he himself inflicted harm on himself (St. Thomas, 2.2, q. 59, a. 3).

Hence: 1. Injury is done to him who consents to his own damage not freely, but from force, fraud, or fear unjustly struck in; as also to him who cannot validly renounce his right, because some law or the right of another stands in the way; for in this case at least the higher right is truly violated.

2. Notwithstanding the consent of the one suffering, injury is done: to the traveler who from fear of death hands money to a robber; to the buyer paying for merchandise beyond the highest price; to the worker who in necessity accepts a lesser salary; to the one giving money to him who fraudulently asserts that he is his blood relative, etc.; for none of these is judged to give freely. See however n. 1051.

3. Likewise, injury is done to the cleric who is struck, even if he consents; to the ward who consents that he be deprived of his right; to the husband of a woman committing adultery, even if he approves her adulteries; to martyrs, even if they gladly bear slaughter; indeed also to men themselves who ask to be killed, as unhappy Saul asked; because in all these the right is inalienable, nor can it ever be yielded without injury to others.

4. • II. For the notion of formal injury, it is required besides that it be voluntary on the part of the agent. For the primary reason of formal injury is the mind of harming, since injury without such a mind is only material (Lugo, disp. 8, n. 58; St. Alph., III, n. 551, 556).

Hence, formal injury does not extend more widely than the mind of harming. This again does not extend more widely than knowledge of the damage, because the will cannot choose what is thoroughly and invincibly unknown.

Therefore formal injury is not to be estimated from the damage which followed, but from knowledge of the damage, at least foreseen confusedly; and thus it can happen that it exists as less than the damage: for example, he who destroys a gem of the price of ten gold coins, which he thinks to be worth only five, inflicts an injury of five gold coins only, and the other five are to be referred only to material injury (cf. n. 950).

725. III. Injury is a grave sin from its genus. For it is gravely opposed to right reason and divine law.

We have said: from its genus; whence smallness of matter is admitted in this matter. Moreover, that matter is judged grave which from its nature, or from the common estimation of men, is apt to cause another sadness difficult to quiet, or great damage, or to dissolve mutual charity (Reuter, *de Just.*, P. III, n. 294).

726. IV. Formal injury, the effect having followed, induces the obligation of restitution. Commutative justice regards equality of thing to thing. Whence it must demand the reparation of the harming of rights, if any has been made, and indeed by restitution; because otherwise equality is not had. In other words: as long as inequality remains, so long remains the obligation of reducing equality. Hence, he who does not restore, when he can, sins by preserving inequality, as he sinned by inducing it (cf. n. 924).

It is said: the effect having followed; for injurious acts merely internal do not oblige to external reparation.

727. A fuller explanation of certain things. I. THE SENSE OF THE AXIOMS: To one knowing and consenting no injury is done; to one unwilling unreasonably no injury is done.

Note. The axiom He who is silent seems to consent was explained above (n. 272).

a) The sense of the first is: To him who is not deceived, provided he freely, force and madness being excluded, positively, validly, perseveringly grants the harmful action, as remitting something from his own right, injury is not done, that is, a harmful action containing the formal notion of violated right is not committed against him. From this it does not follow that the action becomes licit, and that the other acquires certain rights; it follows only that the action lacks the guilt of formal injustice. Thus St. Thomas, Lessius, and others. Cf. Vermeersch, *de Just.*, n. 142-155.

b) The sense of the second is: No formal injustice is present if neighbor, from strict justice, is held to yield his right, and does not wish to. But formal injustice is given if neighbor, from motives only of charity, gratitude, and the like, is held to yield, and refuses to do this. - In doubt, consent is presumed, since someone is always supposed to wish to act according to right reason.

Thus indeed the authors commonly. Nevertheless, as Vermeersch says, l. c., they also commonly admit certain exceptions, for example in the case in which someone defers restitution because of fear of danger for himself or his own, see below n. 1018. Therefore there are circumstances in which, from charity only or from epikeia, the owner ought to be willing and consenting; and yet no injury is present if one does not comply with him refusing (cf. n. 987).

II. CONCERNING AN ACTION WITH HARMFUL INTENTION. There is not one mind of authors concerning the question: Whether intention added to an external act makes this act become unjust.

What things are commonly admitted we shall indicate here.

a) If the action does not of itself harm the undoubted right of another, it does not become unjust from the intention of harming. If the intention is conceived from hatred, or from vengeance, anger, etc., it indeed adds sin, but not formal injury. Hence, they do not act unjustly: the lustful master who dismisses a modest maidservant, we suppose the conditions of the pact to have been observed; a judge condemning a homicide from hatred; a fellow citizen who from hatred refuses to succor another, except if by office he were held to this. Cf. Lugo, disp. 19, n. 110. See what is to be said n. 949.

b) If the action is indifferent, it can become unjust through intention, namely insofar as precisely the intention gives the species and nature of injury to the action. Thus to take a thing from the hands of a thief, with the intention of restoring it, is something good; but with the intention of retaining it, is something unjust.

c) If the action includes force or fraud in itself, a special intention directed against someone can effect that also with respect to this person it become unjust. Thus he who kills a man precisely so that creditors may be deprived of the obtaining of a just good acts unjustly also toward the creditors. Thus St. Alphonsus, III, n. 633, 634; ed. G., II, p. 111, with Lugo, Salmant.

As regards the last, there is disagreement of authors; see in Lehmkuhl, I, n. 1180, note. They rely on this reason, that intention cannot render unjust what from its nature does not harm strict right.

GENERAL DIVISION. There are as many species of injuries as there are goods or rights in which neighbor can be harmed. But four goods of man are numbered: 1. goods of one's own life, namely of body and soul, concerning which now; - 2. goods of modesty and of the life of the species, concerning which in the sixth precept; - 3. goods of fortune, concerning which in the seventh precept; - 4. finally goods of reputation and honor, concerning which discussion must be instituted in the eighth precept (cf. n. 324, 528).

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CHAPTER II

On Homicide and Its Species

St. Alphonsus, l. c.; Cathrein, *Moralphil.*, II, p. 634; Tanquerey, II, n. 316, where there are many useful things; Willems, III, p. 462; works of Ces. Lombroso and of his disciples; Krauss, *Kampf gegen die Verbrecherursachen*; Berardi, *Theol. mor.*, II, n. 639; Beccaria, *Dei delitti e delle pene.*

728. Definition. Homicide is the violent killing of a man done by a man.

Division. Homicide, by reason of imputability, is one thing if casual, another if voluntary; - by reason of quality, it is called qualified or simple.

1. Casual homicide happens apart from the intention of the one killing. - Voluntary homicide is committed from the intention itself of the one killing: either directly, when someone with deliberate effort kills another, for example with dagger, fire, suffocation, poison, etc.; or indirectly, when someone posits those things from which he foresees

the death of another will follow. - 2. Qualified homicide is that to which special circumstances accede: of this kind is treacherous homicide, which is perpetrated under the appearance of friendship; lying-in-wait, which is from ambushes; assassination, which is by others hired for pay; robbery-slaying, which is for the sake of spoil. - Among qualified homicides the first place is held by the slaying of a parent, offspring, spouse, brother, prince, and sacred person: for crimes of this kind involve special malice in themselves. But other killings are reckoned among simple homicides (cf. Salmant., tr. 25, c. 1).

Note. a) The principles which will be established concerning killing, whether licit or illicit, have force, due proportion being observed, for mutilation, beating, and any harming of the body: for it is always a question of preserving the consistency of one's own person.

b) Vexation, beating, or killing of animals is not prohibited by the fifth precept. For animals do not have rights, since they do not possess personality. Nevertheless, vexation of animals, especially that mode of vexing which they name VIVISECTION, is not always free from every fault. For he who without cause vexes animals acts against right reason, which commands moderation and prohibits that those things which have been created for our utility serve solely for our games. Besides, a man indulging in these things is always more inclined to fierceness and cruelty. Cf. Lessius, *de Just.*, l. 4, c. 4, n. 43; *Stimmen aus Maria-Laach*, 1881 and 1908; Schindler, II, p. 790; *Linz. Quart. Schr.*, 1911, p. 130.

These things having been premised, we shall treat: 1. of the killing of a malefactor; - 2. of an aggressor; - 3. of an innocent person. - Concerning the shortening of the life of the dying we shall speak n. 761.

ARTICLE I

On the Killing of a Malefactor

A malefactor is called one who commits a crime very harmful to society. That it is not licit for princes to punish malefactors with death is affirmed, besides the Waldenses, by Anabaptists and not a few pseudo-politicians, who under the pretext of philanthropy loudly declare that the death penalty is by no means necessary to the good of society, indeed very iniquitous and therefore to be abrogated. Materialists, under the leadership of Lombroso, consider malefactors as sick persons, to whom remedies and mercy are owed.

729. Principles. I. It is licit to kill or mutilate malefactors. This is proved: 1. From divine right (Exod., 22, 18): Thou shalt not suffer malefactors to live; cf. Rom., 13, 4. - 2. From the right of nature: for every part which is harmful to the whole is licitly cut off. Therefore, if a man, who is a part of the community, is found harmful or dangerous to it, he will be able salutarily to be killed, so that the whole may be preserved. Add that criminals are turned away from crimes by no thing more efficaciously than by fear of death (St. Thomas, 2.2, q. 64, a. 2).

730. II. To public authority alone belongs the power of killing malefactors. For it is not licit to kill a malefactor except insofar as the killing is ordered to the safety of the whole community. But care of the community does not pertain to a private person. - Note that by the name public authority that only is understood which presides over a perfect society, such as that of a king in a kingdom; for the supreme right belongs only to supreme authority.

Hence: 1. It is not licit for a father to wound or mutilate his own children, nor for a master his own servants, for the cause of correction. This is drawn from the 19th proposition condemned by Alexander VII: "A husband does not sin who kills by his own authority his wife detected in adultery." A fortiori, it is not licit for the people, by themselves, to exercise vengeance upon malefactors, *lyncher*, *Lynchjustiz*.

2. But sometimes it is permitted to private persons to kill those enemies of the republic whom they call proscribed or banished: for these are killed not by private authority, but by public, that is, by the authority of the prince, who can concede it from a most grave cause, and only in his own territory.

3. It is not licit for guards to kill a guilty person fleeing or resisting, although he has already been condemned to death, unless they have a special mandate concerning this (III, 376, 380; *H. Ap.*, VIII, 9).

4. For soldiers placed on station, for guards of borders in relation to defrauders of merchandise, let the following norms have force: a) they must warn those who advance farther or flee concerning the danger which threatens them, and concerning the penalty which public authority has established, namely the discharge of a gun; b) as much as can be done, if the warning is given in vain, let them only wound those resisting.

5. III. Public authority regularly cannot kill malefactors unless the order of law has been observed. The reason is both because it is a question of a most grave matter committed by God to the prince because of necessity alone; and because the nature of the act demands that it be done from public power and public knowledge; and finally because occasion of abuse of power must be closed off. See n. 2295, where the order of law is treated.

We have said regularly; for sometimes an exception is given, if the crime is notorious, or there would be danger of sedition, or disgrace of the prince, if one proceeded juridically (III, 377; IV, 193).

732. Questions. QUES. 1. Whether it is licit to kill a tyrant?

Resp. Negatively, whether there is question of a tyrant of regime, that is, of a legitimate prince who governs tyrannically; or of a tyrant of usurpation, that is, of an illegitimate prince who has already come into peaceful possession of the kingdom; or finally of a tyrant invader, who has not yet come into such possession; unless, in this last case, from the authority of the legitimate prince, or from just defense to protect one's own life, or in the act of war of the republic against him (cf. n. 150, q. 2). Read St. Thomas, 2.2, q. 64, a. 7; *de Regim. princ.*, l. 1, c. 6.

QUES. 2. Whether it is ever licit to beat one's neighbor?

Resp. Beating is punishment; but this supposes coercive power. Therefore, the case of legitimate defense excepted, it is licit for no one to beat someone not subject to his power, unless there accedes at least the tacit consent of him who has the power.

Therefore they can beat: a father, his children; a teacher, his disciples. But they cannot beat: a husband, his wife, otherwise, if in a special case charity demands it, since she is a companion, not a slave; nor an elder brother, younger brothers, unless this has been commanded by the father; or unless, the father being dead or absent, he himself rules the family; because primogeniture alone does not confer such power (Reuter, P. 3, n. 369).

ARTICLE II

On the Killing of an Aggressor

733. Things to be noted beforehand. An aggressor can be just or unjust. - There is no treatment of a just aggressor; since it is not licit to kill, mutilate, or strike him, because it is repugnant that rights opposed to rights be given. Whence one justly condemned to punishment cannot defend himself against the ministers of justice, such as lictors, witnesses, judges, executioners, by striking, mutilating, etc. (cf. n. 2311; see German Code, 226-231). An unjust aggressor is called one who, right resisting, actually invades life, fortune, modesty, or honor.

734. Principles. I. For protecting one's own life, or members of the body, it is licit to kill an unjust aggressor, with the moderation of blameless defense nevertheless observed.[82] That such defense of oneself is licit by both human and divine law, all doctors with St. Thomas and the Roman Catechism affirm, and the same is expressly declared in c. *Si vero* 3, *de sent. excom.*, where it is said: "All laws and all rights permit force to be repelled by force" (III, 380; *H. Ap.*, VIII, 11).

Indeed, if someone were morally certain concerning an aggression prepared for him, and could not otherwise avoid the ambushes laid and the dangers of death, it would be licit for him to anticipate the aggressor, lest later his own defense be rendered impossible or ineffective. Yet St. Alphonsus admonishes (III, n. 387) that this opinion, although more probable, can scarcely be held in practice because of the danger of hallucination.[83]

We have said: 1. It is licit to kill, but no one is held to this; because it is an extraordinary means of conserving one's own life.

Indeed, it is an act of perfection to permit one's own killing, lest the aggressor be deprived of temporal life together with eternal life; provided that: a) the life of the one invaded is not necessary or very useful to the common good, or to the family; b) the one invaded is not in the state of mortal sin: because then he is altogether held to defend himself (III, 380; *H. Ap.*, VIII, 12, where there are more things). See what was said n. 482, 483.

[82]This can also be done through others, as will be said below n. 737. As regards this matter, besides the authors already noted, cf. Cathrein, *Moralphil.*; Costa-Rosetti, Willems.

[83]For the rest, against this opinion, which the holy Doctor deservedly calls dangerous, unless it is a question of those who by office must protect public peace, and must execute commands with all security, the proposition condemned by Alexander VII is brought by many: "It is licit to kill false witnesses, a false accuser, and a judge from whom an unjust sentence is certainly imminent, if in another way the innocent person cannot avoid harm." Prop. 18.

2. An unjust aggressor, even if he is mad or drunk. For drunkenness and madness indeed exempt the aggressor, of themselves, from sin, but they do not deprive the one invaded of the right of protecting his own life. - In practice defense becomes easier if the aggressor is mad or drunk.

3. With moderation observed, etc.; that is, there must be in defense such moderation that nothing is done beyond that which is absolutely necessary for warding off injury. Whence, if the one invaded had another way of freeing himself from the invader, for example by fleeing, terrifying him with cries, disarming him, wounding him, he would not be in the extreme necessity which alone furnishes a just cause of killing.

But this, that they flee, etc., cannot be imposed on those who, because of omission of positive defense, even with lethal outcome, would receive a mark of cowardice or timidity. Yet this does not run for clerics, religious, and common people, for whom flight is not ignominious. - For the rest, the killing or mutilation of the aggressor must never be done from hatred, etc. Yet if it were done from hatred, the sin of injustice would not be present. Finally it must be noted that there is no moderation in defense if someone attacks, pursues, and kills the aggressor who flees.

735. • II. For protecting temporal goods of great value, it is licit to kill an unjust aggressor, provided they cannot otherwise be defended. Thus commonly.[84] It is proved from Exodus (22, 2): If a thief breaking into a house, or digging under it, should be found, and having received a wound should die: the striker is not guilty of blood. The stronger reason is because the precept of charity does not oblige one to prefer the goods of neighbor of a higher order, unless neighbor is in extreme necessity. But he is not in extreme necessity when he of his own accord exposes himself to danger of death (III, 382). Besides, the killing of such an aggressor is not against justice, which of itself rather favors the rights of the actual possessor, and shows it to be necessary that such repression be done, so that the goods which are necessary for life may be preserved.

We have said: 1. Goods of great value, whose loss namely would bring notable harm, which must be judged from the circumstances, with both the wealth or need of the person and the necessity or superfluity of the things themselves being inspected.

For it is certain that it is not licit to kill an aggressor if it is a question of goods of small moment; or of goods which we do not yet actually possess. Hence this 31st proposition was condemned by Innocent XI: "Regularly I can kill a thief for the conservation of one gold coin." And the 32nd: "Not only is it licit to defend by killing defense the things which we actually possess, but also those things to which we have an inchoate right, and which we hope that we shall possess" (III, 383, q. 2; *H. Ap.*, VIII, 15).

2. Provided they cannot otherwise be defended: for otherwise it must be said if, through the laws and police of the State, sufficient provision is made for public security and the reparation of injuries (Marres, *de Just.*, l. 2, n. 240).

From these things it is deduced: a) It is licit for each person to defend his goods with arms, even through servants. - b) If a thief has already placed in safety your thing of great value which was taken away, and you have no other way of recovering it, you can more probably, if the thief resists you demanding back the thing, strike him, and, if necessary, kill him; because he is still an invader of the thing and a true aggressor. - c) Since the right of defense is natural, it belongs also to clerics and religious, who then do not incur irregularity. Yet such defense is not to be advised to them, if it is a question of goods of fortune alone (III, n. 383-385). d) Of itself it would not be illicit to arrange certain machines for defending a house against malefactors. For what the owner can do through himself, in the act of aggression, he can do through others or through other things. - Ordinarily, however, these will not be licit, because for the most part moderation in defense will be lacking. But if they become necessary, let citizens be warned that danger is not lacking. *Ami du Cl.*, 1905, p. 1146; cf. Lehmkuhl, *Cas. consc.*, n. 670.

736. III. For protecting modesty, it is licit to kill an unjust invader, if force cannot otherwise be repelled. Thus commonly against a few. The reason is both because for the most part there is danger of consenting to an act of sin, and because modesty is a good to be esteemed most greatly, and to be preferred to all riches, indeed even to life (III, 386; *H. Ap.*, VIII, 16).

Hence: 1. A man can kill him who wishes to commit adultery with his wife, if he cannot otherwise avoid infamy (l. El. qq. ref., n. 22; III, 391).

2. It will be licit for a girl, not only while she is actually violently touched, but immediately after, to strike the invader with slaps, fists, a staff, and even with non-dangerous blows. The reason is that unless in such a mode she shows

[84]This proposition has some adversaries. Cf. Tanquerey, II, p. 144. See St. Alph., III, n. 383; ed. G., I, p. 635.

her displeasure, he will not easily depart. Hence, this is to be advised to a woman, so that the other at least may come to his senses and not solicit her another time (III, 386).

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737. IV. For protecting the goods of reputation or honor, it is not licit, at least practically speaking, to kill an unjust aggressor. This is established from proposition 30 condemned by Innocent XI: "It is right for an honored man to kill an invader who strives to inflict calumny, if otherwise this calumny cannot be avoided; the same also must be said if someone strikes with a slap or beats with a staff, and after the slap struck or the blow of the staff flees." For the one invaded can always provide for his own honor by another way, for example by flight, by action before a tribunal. Besides, this being admitted, the way would be open to innumerable slayings (III, 381; 2. El. qq. ref., n. 9).

Although it is not licit to kill the invader of honor, nevertheless by no right is it prohibited that the one invaded immediately by words or deeds make an attack against those who by words or deeds detracted from his honor. Certainly there are counsels and the example of the Lord which indicate another way; but here the question is only of licit or illicit (Noldin, II, n. 334).

Let it be noted: 1. What is licit for anyone for the defense of his own life, modesty, fortune, this also generally is LICIT for the defense of similar goods against an unjust invader of neighbor, as is gathered from the precept of loving neighbor as oneself. Except, as regards modesty, the case in which the person invaded herself consents: unless she is very near to the defender, and he cannot otherwise avoid his own infamy. - But if it is a question of life, it is licit to defend neighbor, even if this person has yielded the right of legitimate defense; because the right to defense is diverse from the right to life: for neighbor cannot abdicate the right to life, since he is not the lord of his own life.

2. No one is HELD to such defense of neighbor, unless he owes it from office, as soldiers hired for the security of citizens; or from piety toward more nearly related blood relatives, namely parents, children, brothers, sisters. The reason is that from the precept of charity alone we are not held to stain our hands with human blood, nor to undergo grave inconveniences which usually arise from homicide otherwise licit. - Yet except "if the one to be killed by the invader is drunk and in the state of mortal sin, because he is truly in extreme necessity of soul" (III, n. 389-391; *H. Ap.*, VIII, 17).

3. Civil laws do not protect the goods enumerated above in an equal way. Let each person consult the codes. Nevertheless tribunals ordinarily do not condemn those who kill an aggressor of goods of the greatest moment. Cf. Tanquerey, II, p. 144; Noldin, II, n. 334; Olshausen, *Strafgesetzbuch*, § 53.

ARTICLE III

On the Killing of an Innocent Person

There must be said: 1. concerning the killing of an innocent person in general; - 2. concerning the procuring of abortion.

§ 1. On the Killing of an Innocent Person in General

The killing of an innocent person, by reason of imputability, is either voluntary directly or indirectly, or involuntary or casual.

Indirect killing supposes an action licit in itself, from which, beyond the intention, by accident, death follows. Casual killing supposes the action to be in itself rarely dangerous, and proportionate diligence to have been used. If the action is frequently dangerous and killing follows from it, it can no longer be said that casual killing is present, although some diligence was observed.

738. - Principles. I. Direct killing of an innocent person is never licit, unless from the special permission of God. For since the dominion of life belongs to God alone, such killing is intrinsically evil, and is prohibited by divine law (Exod., 23, 7): Thou shalt not kill the innocent and just. Cf. III, 393.

Hence: 1. It is not licit to kill hostages lethally wounded, nor any other dying persons, lest they suffer longer; nor rabid persons, lest they harm others, when they can otherwise be restrained from harming.

2. It is not licit to kill an innocent person in order to satisfy a tyrant demanding his death under penalty of the overthrow of a city, and this even if the innocent person should consent to his own death; because he does not have dominion over his own life. Nevertheless, more probably, he can be compelled to hand himself over to the tyrant

for the public good; and, if he is unwilling, even to be handed over as guilty, since from charity and legal justice he is held to expose his life for the republic (cf. n. 483). *H. Ap.*, VIII, 21.

3. Physicians, midwives, guardians of infants and of the sick sin gravely if from their grave negligence they either do not impede their death, or cause or accelerate it.[85] Likewise, if from gravely culpable ignorance they furnish harmful things to the sick.

4. It is not licit for those sailing, tossed at sea and escaping from shipwreck in a skiff, in order to lighten the skiff, which otherwise they fear is about to sink, to cast into the sea any except those who, descending last into the skiff, are the cause why it is about to sink (Konings, n. 473, 6).

5. • II. Indirect killing of an innocent person is licit, the things to be posited for indirect voluntary having been posited. It is licit to posit a cause about to have immediately two effects, one good and the other evil, intending only the good and permitting the evil, provided there is present a sufficient reason proportioned to the evil effect about to follow (cf. n. 315). See III, 398, 1.

Hence: 1. If someone sitting on a horse cannot avoid assassins unless he flees through a narrow road where a child is found about to be crushed, he can pass, provided the child is baptized. 2. In war it is licit to direct war machines toward a besieged city, even if innocent persons are foreseen as about to perish. Cf. the case in the periodical *Linz. Quart. Schr.*, 1898, p. 94. 3. It is licit to baptize with cold water a child soon about to perish, although from this his death is accelerated (VI, 106).

740. • III. Casual killing of an innocent person is not a sin. The reason is that such homicide is involuntary.

Hence: 1. A cleric is excused from homicide and does not become irregular who by chance should kill a man while applying himself to the hunting of wild beasts, otherwise prohibited to him, if he used due diligence. 2. But they are guilty of homicide who strike a pregnant woman with the heel, or terrify her, from which abortion happens; parents suffocating an infant in bed; men slaughtering a man by casting stones with a sling for the sake of playing. 3. He is guilty of homicide who posits an action of itself and commonly dangerous, from which death frequently follows; for homicide of this kind is voluntary in the cause, as we said above. Cf. III, 398.

Corollary. From these things it is understood why the operation which is named PUNCTURE OF THE HEART must be reprobated. Indeed the intention of those who demand it arises from compassion; they fear lest one who is believed dead be buried alive. But is not such a mode of acting true homicide of an innocent person, in the case in which life has not yet entirely departed? Therefore to demand this operation absolutely, in every event, is directly to intend evil. Nevertheless the physician would not sin if he performed this puncture after he had known from undoubted signs that death had truly occurred. Noldin, II, n. 339; *Linz. Quart. Schr.*, vol. 54 (1901), p. 122.

§ 2. On the Procuring of Abortion

St. Alphonsus, III, 394; ed. G., I, p. 644; *H. Ap.*, VIII, 22; Lupellus, *de Castit.*, I, p. 348; Antonelli, *Med. past.*, II, *de 5 Praec.*, *de Bapt.*, *de Usu Matrim.*; Eschbach, disp. III and IV, in the work *Disput. physiol.-theol.*; Berardi, Capellmann, Olfers, Surbled, and many others.

Things to be noted beforehand. 1. Conception of the fetus. According to physicians, ordinarily conception by no means concurs with copulation; indeed most often it occurs with several hours or days intervening. - 2. Animation of the fetus. That the fetus from the beginning of conception, or at least after some days, is informed by a rational soul, St. Alphonsus already taught (VI, 124), and today it is commonly admitted.[86] Yet the matter is not proved by an altogether certain argument. Cf. Antonelli, Eschbach, l. c. - 3. Viability of the fetus. The fetus after the seventh month of pregnancy is, as they say, viable, so that, without proximate danger of destroying it, it can be drawn forth to light. In the case in which they use artificial incubation, *couveuse artificielle*, the fetus could be drawn forth from the completed sixth month without proximate danger. It belongs to the physician to judge concerning viability in individual cases. - 4. Ectopic being of the fetus. Although ordinarily the fetus lives in the uterus of the mother, sometimes it can happen that pregnancy occurs outside the maternal uterus: then ectopic fetuses are had. - 5. Life of the fetus. It is established by experience, and because

[85] It escapes no one that a great quantity of narcotic is sometimes injected for this reason, that the life of the sick person may be shortened. Cf. *Linz. Quart. Schr.*, 1937, *Pastoralfr. v. Rett.* See what will be said n. 761 concerning abuse of morphine.

[86] The opinion concerning instantaneous animation of the fetus by a spiritual soul fits better with the present sense of the Church. - The ancients judged the fetus to be animated after 40 days from conception, if it was male; after 80 days, if it was female. Today, the distinction between an animated and non-animated fetus having been omitted, penalties are enacted simply against those who procure abortion. In the treatise on irregularity alone the opinion of the ancients still appears, certainly to be removed from new codes.

of reasons taken from embryology it must be admitted, that the fetus in the uterus of a dead mother can live for some time.

741. Definition. Abortion is the ejection from the uterus of an immature fetus. Thus in the Constitution *Effraenatam* of Sixtus V.

Division. Abortion, by reason of imputability, is voluntary or casual. Voluntary is direct or indirect. Abortion is procured directly if deliberately, from whatever operation, an immature fetus is expelled; but indirectly, if a cause is posited acting of itself on the mother, but from which detriment can arise for the fetus, for example a bath, venesection, a remedy by which the health of the mother is consulted. All these things can produce contractions in the muscular coverings of the maternal uterus.

Note. Physicians directly procure abortion for several causes: if, the mother being ill, birth is foreseen as difficult; if, although the mother is healthy, she cannot give birth because of narrowness without danger, etc. Sometimes also through diverse operations, concerning which below, they directly attack the life of the fetus, afterward intending to expel it lifeless. It is plain that that very evil mode of acting cannot be called abortion properly so called, although, as regards the gravity of the crime, it is not less than abortion; see *Nouv. Rev. Theol.*, 1911, vol. 43, p. 599.

742. Principles. I. Direct abortion is never licit. The reason: homicide, whether real or attempted, will never be licit. But if the fetus is animated, real homicide is committed, and indeed the more atrocious because soul and body at once are cast into ruin. But if the fetus is said not yet animated, this always remains: that there is danger lest a man truly endowed with spiritual life be killed. Therefore attempted homicide is had. Therefore Innocent XI rightly condemned the 34th proposition: "It is licit to procure abortion before the animation of the fetus, lest a girl detected as pregnant be killed or defamed." Cf. Response of the Holy Office, 4 May 1898, ad 2, where the Decree of 25 July 1895 concerning the illicitness of abortion is confirmed. *Nouv. Rev. Theol.*, vol. 31 (1899), p. 276; *Anal.*, VI, 277.

Hence: 1. They are guilty of homicide: a) Those who so strike or terrify a pregnant woman that abortion follows. - b) Likewise pregnant women who, with grave imprudence, posit a proximate cause of abortion in various ways, say by washing the feet in cold water, carrying heavy burdens, indulging a violent commotion of mind, etc.[87]

2. Probably an oppressed woman does not commit sin who at once expels the seed emitted while she resisted. Cf. Lehmkuhl, I, n. 1013. - St. Alphonsus (III, n. 394; ed. G., I, p. 647; VI, n. 954) holds the contrary opinion. But there he supposes as certain what moderns often and more often think to be little probable: namely that conception happens immediately after emission. Indeed it cannot be denied that conception can happen at once, and therefore an unmarried woman who sinned voluntarily cannot expel the seed; but for the woman invaded the right of repelling aggression prevails.

3. Certainly they commit homicide who induce a falsely colored acceleration of birth, whether through puncture of the membranes or in another mode, at that time when the fetus certainly is not viable.[88] For this is equivalent to direct killing, just as we are said truly to kill a fish if we draw it from the water. Thus from the grave Response of the Holy Office, 25 July 1895. After this Decree, let the controversy among authors have an end. *Nouv. Rev. Theol.*, vol. 27, p. 599.

4. • II. Indirect abortion is sometimes licit.

It is said: 1. Indirect, that is, coming beyond the intention from an ambiguous action, for example by supplying to the mother a medicine indeed salutary to her, but dangerous to the offspring, as we have explained.

2. Sometimes, namely if the conditions from the indirect voluntary are present, and indeed: a) the remedy is of itself and directly curative of the illness; - b) another cannot be used; - c) provision is made for the extreme spiritual necessity of the fetus, as it can be provided.

The proposition is proved: The indirect voluntary, in which we are here, under due cautions, is no sin. The two prior conditions are required of themselves. The later condition here must necessarily be expressed, since charity and piety oblige the mother to prefer the spiritual life of the offspring to the health of her own body. - Now, abortion truly does not deprive the fetus of the hope of Baptism when, the remedy having been omitted, it would certainly die with the mother,

[87]Those are equated with homicides by canonical right who impede the natural conception or birth of the fetus through injections made to a woman before intercourse, or by poison of sterility, or in another undue mode (c. V, *de Homicidio*).

[88]The reasons brought forward for legitimating acceleration of birth, as can be seen in the Decree, were: a) The fetus can renounce life in the mother's uterus, as in shipwreck a friend can yield a plank to a friend; indeed, it is judged really to renounce it, since through accelerated ejection it can be baptized more safely. b) Existence in the mother's uterus, since it puts into risk the life of the mother first possessing it, can be considered as something secondary, which must be overcome by the primary right possessed by the mother. Nevertheless the Holy Office declared: It cannot safely be taught that any operation directly killing the fetus is licit, even if this were necessary for saving the mother.

or when it is hoped that it will be brought forth alive into the light, and therefore can be baptized, or finally if in fact it can be baptized in the uterus. - It is plain besides that it is licit to take such a remedy if the danger of abortion is equal whether it is taken or not: the condition of the fetus is not made worse from it (III, 394; *H. Ap.*, VIII, n. 26).

Note. 1. Let the physician not be too anxious as regards medicines to be furnished to mothers. For it is morally impossible, the mother perishing, that the offspring can survive for a long time, unless the mother is near birth, or the disease is very brief (Antonelli, l. c.).

2. Nevertheless attention must be given to the cautions which we indicated above in the case in which, so that he may consult the mother, he wishes to diminish the volume of a sufficiently mature fetus (Lehmkuhl, I, 1009).

3. If the fetus is only probably viable, the timorous physician will wait, insofar as can be done, for the certain maturity of the fetus. But if from delay the danger for the mother or for the offspring becomes greater, it is sufficiently probable that acceleration of birth is licit. The reason: in a desperate case it is licit to use a doubtful remedy (cf. n. 84), the more so because here there is not lacking hope of conserving the fetus alive, which otherwise would be constituted in the highest danger.

4. • Corollaries. In our times, so that the very intricate question of very difficult and dangerous birth may be solved, physicians have recourse to various operations, in which, from the end of the one operating, the safety of the mother alone is sought, with no or almost no respect had to the rights of the infant. Of these: 1. certain ones directly offend neither the mother nor the fetus, for example compression of the abdomen, puncture of the membranes, by which birth is accelerated; - 2. others directly touch the fetus, as craniotomy and similar ones; - 3. finally others directly touch the mother, as symphysiotomy, Caesarean section, laparotomy, the Porro operation. It is licit to designate the whole series of these operations by the name: medical abortion.

The operations of the first genus we have already called back under the scales. Concerning others, some things. The hinge of the question is in this, that we see whether these operations can or must be reduced to direct or indirect abortion.

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I. CRANIOTOMY, or EMBRYOTOMY. It consists in the perforation of the skull of the infant, and extraction of the cerebral mass. - Supposing that the fetus is not certainly dead, it is a most grave sin, even if it appears as the only remedy of saving the mother. For it is an action of itself and directly killing, and, since it is inflicted on an innocent person, intrinsically evil; nor can it ever be made honorable by the intention of saving the mother. Nor let it be said: only the death of the infant, otherwise certainly about to die, is accelerated; for is not this acceleration of death, willed in itself, although not for itself, true homicide? - Nor let the fetus be equated with an unjust aggressor: for one who from the sole natural course of things, for example a man infected with plague, becomes the cause of death to another cannot be held as an unjust aggressor. Whence, on 19 August 1889, the Holy Office declared: in Catholic schools it cannot safely be taught that the surgical operation which they call craniotomy is licit, as was declared on 28 May 1884, and any surgical operation directly killing the fetus or the mother carrying it. These things were confirmed by the Decree of the same Holy Office on 25 July 1895. Cf. *A. S. S.*, vol. 17, p. 601.

Note. To this operation must be assimilated and therefore condemned the mode of acting of those who attempt directly to extinguish an ectopic fetus, concerning whose presence there is certainty, by injection of morphine or by applied electrical force (Lehmkuhl, I, n. 1011).

II. CAESAREAN OPERATION. It consists in incision of the uterus, to this end that the fetus can be drawn out. This operation, which formerly they named difficult, barbarous, today is often performed by physicians, and indeed happily, while the mother is living, so that more or less 90 percent of mothers are saved. Cf. the things which Antonelli, Eschbach, and Capellmann narrate in the cited works.

A double question can be posited: 1. Whether it is licit for the mother to permit such an operation? - 2. Whether the mother is held to this?

To the first one must respond thus: It is licit if on the one side, because of her robust constitution and the skill of the surgeon, the danger of death becomes only remote, and on the other side hope shines out that the life of the offspring, both temporal and spiritual, can be consulted. But it is not licit if the danger of death as regards the mother appears proximate or truly probable, because such a danger must be equated with death (VI, 106; ed. G., III, p. 84). See the cited Response of the Holy Office, year 1898, ad 2 and 3.

To the second it must be said that if there is present a founded hope of drawing out the infant viable, of itself, from the precept of well-ordered charity, the mother is obliged to undergo the operation, which in our times, as we said, no longer remains an extraordinary means (cf. Lehmkuhl, I, n. 758, note, where he cites St. Alph., II, n. 26, 27); and even if it is

supposed extraordinary, is not the eternal salvation of the infant worth so much? (cf. above n. 483). Yet let the prudent confessor see whether, with the natural horror of the mother toward such operations standing, the intimation of this obligation can be urged.

Note. a) What we said concerning the licitness of this operation can equally and under the same cautions be affirmed of SYMPHYSIOTOMY, by which narrowness of the pelvis must be removed through the cutting of the cartilage joining two bones. - For the rest, Antonelli adds (II, n. 94) that this operation and another similar one are not approved so commonly by surgeons.

b) The same must be said concerning LAPAROTOMY, by which a tumor is cut out so that an extrauterine fetus can be drawn out, or concerning the PORRO OPERATION, by which the uterus and ovaries are cut out. The Holy Office declared, 4 May 1898, that all these things are licit, provided that serious and opportune provision is made for the lives of both the fetus and the mother (*Nouv. Rev. Theol.*, vol. 31, p. 276). The Holy Office confirmed these previous Decrees on 5 May 1902 (ibid., vol. 45, p. 161).

c) The pregnant woman having died, nothing prevents the Caesarean operation from being performed. In this case a strict obligation urges. But whatever some have said, it is certain that the priest is not obliged to this. The Holy See expressly declared that on 15 Dec. 1899, confirming the things which it had already prohibited on 15 Feb. 1780 (*A. S. S.*, vol. 32, p. 503). Cf. Antonelli, II, n. 103.

III. DOUBTFULLY PROHIBITED OPERATIONS. Three very difficult cases are especially given, in which the licitness of the operation is not established: 1. The uterus of a pregnant woman sometimes prolapses and cannot be reduced except through puncture of the covering, so that the amnion flows. But from this abortion certainly follows. 2. Sometimes also the very uterus of a pregnant woman is so infected by malignant tumors, or in a healthy uterus such tumors are formed, that the health of the mother can be restored only by removal of the whole uterus. But removal of the uterus, in the case, unhappily draws with itself the extraction of a fetus perhaps immature. 3. Finally sometimes, in the case of extrauterine conception, the tumor will cast the mother into highest risk, and, if the organs rupture, into certain death; which seems to render removal of the tumor necessary.

Concerning the three aforesaid cases, there is no consensus of authors. There are not lacking those who think that puncture, removal, in the case in which the fetus is immature, is not licit, according to the Decree of the Holy Office, 5 May 1902, in which the Eminent Fathers refer themselves to the Response of 4 May 1898 cited above. But others judge that discussion of direct abortion cannot be instituted here, but of abortion which is procured only indirectly; and that the excusing cause is the highest and certain risk of life in which the mother is placed. Nevertheless all agree in this, that these things are in no way licit as long as true and certain danger for the mother does not exist. Cf. Lehmkuhl, I, n. 1011, who says the Response of the Holy Office of 1902 lacks pontifical approval; *Nouv. Rev. Theol.*, vol. 44 (1912), p. 590; vol. 45 (1913), p. 154; Antonelli, II, n. 110.

745. • CONCERNING PENALTIES IMPOSED ON THOSE PROCURING ABORTION. I. From canonical right they are the following: 1. Papal excommunication reserved to the Ordinary (cf. n. 1349). Nevertheless those do not incur this who commit the crime of craniotomy. Cf. Noldin, *de Poenis eccl.*, n. 93; *Linz. Quart. Schr.*, 1910.

746. Irregularity, if nevertheless the fetus is animated (cf. n. 1946). 3. Inability for ecclesiastical titles, which is incurred *ipso facto*, but probably can be removed by the Bishop. 4. Privation of benefice, office, etc., but after a sentence declaratory of the crime (III, 395-397).

II. From civil right this crime is punished with grave imprisonment. Cf. French Penal Code, a. 317; Italian, a. 381; German, a. 218, 219, 220; Spanish, a. 425-428. It happens more and more often that physicians indiscriminately consider all those things which happen in birth, for rescuing the mother from certain death, as necessary consequences of their function.[89]

Practical rules. 1. Good faith can be given concerning the licitness of medical abortion, whether in parents, or in mothers, or in physicians. The confessor, if he is not asked, should speak prudently concerning these matters: for his admonition, for the most part useless, indeed frequently harmful to those to be admonished, will become so, since it draws with it danger of formal sin. Asked by a physician, let him reprove the operation as illicit, yet without always making mention of the prohibition of the Church. - Asked by a mother, in many cases he will satisfy his function if he exhorts her that she herself say to the surgeon, in the best mode by which she can, that the life of the infant must be consulted. Let him not impose on the mother without consultation that she refuse the operation, nor indiscreetly manifest the prohibition of the Church. Yet sometimes, for example if a physician not very scrupulous advises a falsely colored acceleration of

[89]Yet there are not lacking those who enter a sounder way. For example, Prof. Schauta writes (*Realenzyklopedie der Heilkunde*, art. *Kaiserschnitt*): "(Perforation of the fetus) this most foul plague must altogether be cut out from obstetrical art."

birth for avoiding inconveniences that are not grave, the confessor cannot be silent (Card. Gennari, *Cons. mor.*, t. I, n. 77; cf. *Nouv. Rev. Theol.*, vol. 45, 1913, p. 160 seqq.). 2. Physicians, especially if they are called unexpectedly, often are placed in a state of perplexed conscience. Therefore they must be judged according to the rules fitting this state, and, if fruit is hoped, admonished and instructed. 3. Sisters of Charity, if some hospital proper to them exists, are held to choose truly upright men. If the manner of acting, on the part of the physician, is less conformable to the Decrees of the Holy See, they are not held to resist his work, unless in the case in which his intention of prevaricating would evidently disclose itself (S. Poen., 7 July 1911; *Nouv. Rev. Theol.*, vol. 44, 1912, p. 35 and *Rev. Eccl. de Metz*, 1911, p. 588).

CHAPTER III

On Duel and War

St. Alphonsus, I, 400; ed. G., I, p. 656; *H. Ap.*, VIII, 27; Noldin, II, n. 347; Tanquerey, II, n. 145; *Stimmen aus Maria-Laach*, 1894, p. 345; *Nouv. Rev. Theol.*, 22, p. 589; *Linz. Quart. Schr.*, 49, p. 556; Berardi, *Theol. mor.*, II, n. 698.

ARTICLE I

On Duel

Definition. Duel in general is a fight of two or a few among themselves. In the stricter sense, DUEL is a fight of two or several equal in number, from a previous agreement concerning place, time, and weapons, with danger of killing, mutilation, or wounding.

In this matter, two things are essential: that the fight happen from agreement, and that the fighters use lethal weapons by which at least a grave wound can be inflicted, constituting an action gravely sinful. Duel, as it is prohibited by the Church, supposes danger of a grave wound. It does not seem to be essential that a space of time intervene. For some can from agreement at once take up arms (Lehmkuhl, *Cas. consc.*, n. 521).

Hence, it is not a duel, but a brawl, when two from impulse of anger challenge themselves to a fight and immediately engage. Likewise excluded are fights unfitted for inflicting grave harm, such as those which happen with rods or a light staff (III, 401).

Division. Duel is distinguished as public or private, according as it is undertaken by public or private authority; solemn and simple, according as it is had either before witnesses, or, as they call them, seconds, or with these omitted.

A true duel and a fictitious duel could also be distinguished. A duel is feigned if provocation and acceptance are simulated, or if certain hope is present that the duel will truly be impeded, or if one fights for form's sake, without any danger of a wound. Those who undertake a fictitious duel indeed do not incur censures, but are not excused from sin, with the Constitution *Detestabilem* of Benedict XIV standing, and because of the reason of scandal (Genicot, I, 382). See what is to be said n. 747.

746. Principles. I. A duel undertaken by public authority is licit if it happens from a grave cause, on account of the common good. A grave reason is that on account of which David fought with Goliath, for ending a war with lesser shedding of blood. But this or a similar case excepted, a prince would sin mortally by permitting a duel, for example for ostentation, for spectacle, for vengeance, for ending a lawsuit, etc.; because in these circumstances there would be a tending to an evil end, or to a good end through a disproportionate and illegitimate means (Bouvier, *de Decal.*, c. 5, a. 5).

Thus therefore ordeals, judgments of God, formerly commonly in force, are illicit, even if they were prescribed by public authority.

747. II. A duel undertaken by private authority can never be licit. The reason is because it is repugnant: 1. To natural right, since it is a usurpation of dominion over life and death, which belongs to God alone. - Even if it is admitted that in a private duel only danger of killing or wounding is present, natural right will always deny that such evil means can be used, which directly arise from the duel, and only in the estimation of fools can restore wounded honor. 2. To canonical right, from the constitutions of the Roman Pontiffs and from Trent (Sess. 25, c. 19), gravely admonishing: "Let the detestable abuse of duels, introduced by the devil's fabrication, so that through the bloody death of bodies he may gain the ruin of souls, be utterly exterminated from the Christian world."

Specifically Alexander VII condemned this second proposition: "A knight challenged to a duel can accept it, lest he incur a mark of timidity among others." Nevertheless since certain ones have existed who would pronounce duels licit at

least in certain circumstances, namely: if one not accepting would be deprived of office and support, or would have to lack perpetually the hope of promotion otherwise due and deserved by him; - or if one accepting a duel or provoking to it knows certainly that the fight is not about to follow, as being about to be impeded by others; - or if a leader and military officer accepts a duel from grave fear of loss of reputation and office; - or if someone accepts in order to preserve fortunes with honor, when by another remedy their loss cannot be driven off; or in the case where no tribunal had been constituted, or justice was openly denied by the magistrate; - Benedict XIV, in the Bull *Detestabilem* of the year 1752, rejected, condemned, and prohibited all these assertions as false, scandalous, and pernicious (III, 400; 1. El. qq. ref., n. 97). Cf. the Letter of Leo XIII, *Pastoralis officii*, 12 Sept. 1891.

From these things conclude: 1. It is not licit to undertake a duel with this law, that when one is wounded the fight ceases; because, besides scandal, there is danger of a lethal wound. The Constitution *Illius vices* of Clement VIII, 17 Aug. 1592, also stands in the way.

2. Academic duels are prohibited. For in them the definition of duel is verified. A difficulty indeed can be moved from the fact that in academic duels danger of a grave wound is judged excluded; but the response is that the contest is nevertheless so instituted that of itself a grave wound can be inflicted. It is answered especially that the Church truly and properly equates these duels with lethal duels. For to the question of the Bishop of Breslau, who in a supplicatory libellus had set forth all things more minutely, the S. C. C. (9 Aug. 1890) responded: Duelists of this kind and their seconds are irregular from infamy of law. From which it follows: students dueling, committing the measure, are struck by the same penalties, to be cited below, and commit the same sin as others, for example soldiers, who from agreement fight among themselves with danger of killing. Cf. *A. S. S.*, vol. 23, p. 242.[90]
3. It is licit to fight with an enemy, if he, determined to kill you or to take away from you things of great moment, from insolence concedes to you arms for defending yourself; for then it is true and legitimate defense: provided you cannot avoid the fight.
4. Likewise, one challenged to a duel can licitly respond: "I, as a Christian, cannot accept a duel; nevertheless I am prepared to defend myself against unjust aggressors."
5. The penalties established against duelists are the following: 1. Excommunication *latae sententiae* reserved to the Supreme Pontiff, which is extended to any accomplices whatsoever, as will be said n. 1330. - 2. Proscription of all goods, which penalty nevertheless is no longer in force, and perpetual infamy and therefore irregularity. - 3. Privation of ecclesiastical burial, if the duelists die in the conflict itself, although before death they had given signs of penitence (cf. n. 1387, 2; cf. also *Vind. Alph.*, P. III, q. 12).

Note. Spanish law decrees penalties against duelists, art. 439-447; likewise the Austrian Criminal Code.

ARTICLE II

On War

749. Definition. War is a public taking up of arms for the sake of protecting or vindicating the republic. - It differs from sedition, which is a tumult or conflict of a multitude against the political society to which it pertains.

Division. War is called offensive if it happens for avenging injury; defensive, if it is sustained for repelling force.

750. Principles. I. War is licit if just conditions are present. This is established both from Sacred Scripture, for example Gen., 14; Exod., 17; Deuter., 23, etc., and from the example of holy kings. And the reason is because

the prince cannot, as a private person can, pursue his right in the judgment of a superior, and therefore he is held to protect it by right of war (St. Thom., 2.2, q. 40, a. 1).

It was said: If just conditions are present, which are numbered as three: 1. Legitimate authority, that is, supreme. - 2. A just and grave cause, which would outweigh the evils about to follow from war: for example a province usurped by an adversary to be recovered, a grave injury to the republic to be driven off, rebellion of subjects to be repressed, religion to be protected from wicked aggressors, indeed the defense of another nation unjustly oppressed; cf. the 62nd proposition on the principle of non-intervention condemned in the Syllabus. - A just cause would not be: enlargement of the kingdom, diminishing the power of a neighboring prince. A war of this kind is rather great robbery, says St. Augustine (*de Civit.*

[90]Yet academic duels from which every danger, morally speaking, is absent, since they are instituted rather from jest, do not seem to be prohibited by this Decree of the S. C. C. (Lehmkuhl, I, n. 1017).

Dei, l. 4, c. 6). - 3. Right intention, namely that it happen from love of the common good. Yet if this last condition is lacking, since the war in itself is not unjust, there is not given an obligation of restoring. Cf. III, 402; S. Off., 20 Jun. 1866 (*A. S. S.*, vol. 28, p. 451).[91]

Hence you will deduce: 1. The PRINCE, before he begins war, is held diligently to weigh the matter before God and with his counselors.

In doubt concerning the justice of war, or with only a probable right, one must distinguish: a) If the war is defensive, the prince can certainly defend his own kingdom, because it is in possession. Let him always be prepared to satisfy the equitable and certain demands of the adversary. - b) If the war is offensive, in doubt even broad doubt, it is not licit to begin it; both because a possessor of good faith cannot, in doubt, be despoiled, and because here there is question of a cause from which horrible consequences arise for a third party (III, 403). Therefore they are not to be heard who think that for offensive war either greater probability or equal doubt suffices. - Let the whole controversy be proposed to the judgment of another prince, especially of the Supreme Pontiff. If the adversary rejects even this, true injury, and a certain one, is present, and offensive war becomes licit.

2. A SOLDIER doubting concerning the justice of war, if he is a subject and hired or coerced by the prince, is held to obey; because subjects are held to obey where sin is not certain, and besides they must presume war to be just, whenever the contrary is not established. But a soldier not hired, in doubt concerning the justice of offensive war, cannot hire himself; because, since there is question of the harm of a third party, he cannot inflict it unless the injustice of the possessor is established (III, 408; *H. Ap.*, VIII, 31).

But in an evidently unjust war, soldiers cannot licitly kill enemies, not even for the cause of defense. Hence, if they cannot flee, they must take care that they do not strike with their blows. For they themselves are unjust aggressors, and contrary rights cannot be given in the same thing. - Yet if they are in good faith and do not ask, the confessor ought not instruct them, lest the sin become formal from material. Cf. Bouvier, *de Bello*, § 3.

751. II. The mode of waging war must be consonant with the rules of justice and the right of nations. Recall what was said n. 136.

Therefore: 1. Before war, namely offensive war, satisfaction must be sought from the adverse party; and if worthy satisfaction is offered, the offended party is held from charity and justice to accept it.

2. During the course of war, all those things are licit which are permitted by the right of nations and are necessary for obtaining the end. Hence, it is licit to prepare ambushes, to despoil innocent persons of goods, if they themselves are parts of the hostile republic and victory cannot be had in another mode, to demolish churches if the enemies use them for defense, to inflict damages on the goods of adversaries, which are called reprisals, provided the precept of the prince is present, and the injury inflicted by enemies is established, and just compensation is not exceeded. Sometimes, but only from a most urgent cause, it will be licit for a leader to give a city to plundering. Yet this is already opposed to today's customs, except the case in which a tax justly imposed would be denied.

Frauds are illicit which by no prudence can be guarded against, for example to infect wells and fountains with poison; acts of cruelty toward envoys of the adverse party; acts of perfidy toward the leader of the army, for example to suborn assassins who may secretly butcher him; killing of captives and unarmed persons. But captives, unless scandal or their special promise stands in the way, can flee; and in a war unjust on the part of the enemies, they can take away their goods with them in compensation of harm inflicted (Laymann, l. 2, tr. 3, c. 12, n. 15).

3. War having ended, public faith made with the enemy, even if he waged an unjust war, must be preserved; unless the enemy himself first broke faith, or the treaty is objectively evil. Leaders of the army and soldiers must take the greatest care lest after victory they exceed in punishing the conquered; especially they must avoid whatever savors of cruelty or a mind of harming.

4. Of the greatest moment, especially as regards priests who give their name to military service, are the following decisions of the S. Poenitentiary, on 18 March 1912:

5. Any soldier whatsoever, from that moment when he is constituted in the state of mobilization, is equated with those who are in danger of death. Therefore he can be absolved by any priest at hand, according to the rules handed on by approved authors.

[91] Of itself, it is licit to call heretics or pagans into help; nevertheless by accident, by reason of scandal or of harms to religion threatening from this, it could become illicit (III, 406).

6. Priests serving as soldiers, other things being equal, can during military operations make the sacred rite, absolve others, notwithstanding irregularity which perhaps they have incurred. But when the war has been settled, let them have recourse to the competent authority. Clerics fighting can, although perhaps irregular, be admitted to the sacraments.

7. Priests and other clerics are dispensed from the divine office during war and its proximate preparation. It is the same whether they are actively occupied in war, or only in ministering to the wounded. Cf. *Nouv. Rev. Theol.*, vol. 44, p. 499; *Quest. actuell.*, t. 112, p. 570; *Ami du Cl.*, 1913, p. 145.

On 18 Dec. 1914, the Sacred Poenitentiary enlarged the faculties of chaplains of soldiers, and indeed: a) Chaplains of soldiers, while they accompany the army, can, during war, receive the confessions of any faithful whatsoever, and in their favor use all faculties entrusted to them for the forum of conscience. b) If they are detained in captivity, they enjoy the same power in favor of all fellow captives (*A. A. S.*, VI, p. 712).

CHAPTER IV

On Suicide and Drunkenness

St. Alphonsus, III, 366-375; ed. G., I, p. 622; *H. Ap.*, VIII; authors cited at the beginning; Krose, *Selbstmord*, *Erg.-Hefte*, 90 and 91; Hauviller, *du Suicide*; Tanquerey, II, p. 123; *Linz. Quart. Schr.*, 1909, p. 55; Willems, III, p. 251.

ARTICLE I

On Suicide

Mutilation of one's own body is referred to suicide. Hence we shall treat: 1. of killing; 2. of mutilation of oneself.

In these things it is presupposed that every man is held to preserve life and the integrity of members. For life is given by God so that we may use it in order to the life of the future age. Therefore whatever is necessary for these things is imposed on us. Yet by no right is it required that we use a difficult, extraordinary remedy, or one from which we greatly shrink (III, 372). - Indeed let there be honor to the physician (Eccli., 38, 1-4), but from this it does not follow that he sins who in a light infirmity does not summon him. Much less will he sin who rejects a dangerous operation, unless goods of the greatest moment must be saved and success is morally certain.

§ 1. On the Killing of Oneself

753. Principles. I. It is never licit, without divine authority or certain inspiration of God, directly to kill oneself. This is indeed repugnant to charity toward oneself, and is injurious both to God, who alone is the direct and absolute lord of human life (cf. n. 852), and to society, which through suicide is deprived of one of its members. This is positively prohibited by that general precept: Thou shalt not kill. Cf. also Rom., XIV, 7, 8. - There accedes the authority of the ecclesiastical precept by which it is established that suicides, concerning whose crime there is certainty, are deprived of ecclesiastical burial (cf. n. 1387).

We have said: Without divine authority or inspiration; for with this, it is most certainly licit to bring death upon oneself. Thus those holy virgins who in times of persecutions handed themselves over to death are not only excused, but are celebrated by the Church with the highest praises (*H. Ap.*, VIII, 1). - Yet that killing is never praised which is accomplished by one's own motion. If it is accomplished from invincible ignorance, it can and must be excused.

You will ask. Whether one condemned to death can, from the precept of the judge, kill himself by sword, rope, or poison?

Resp. Some affirm, probably, because in such a case the guilty person by legitimate authority, that is, by the judge, and therefore by God, is constituted executioner of himself. - But others, according to the more common opinion, deny it; because such an action is intrinsically evil, which therefore neither can the judge command nor the guilty person execute (III, 369; ed. G., p. 625). Therefore the obligation of obeying will not be present; but to obey would not be illicit.

754. II. Sometimes it is licit to concur indirectly in the killing of oneself or in lethal wounding. The precept of conserving life, as being affirmative, does not always oblige; and besides, it is licit to posit an honest or at least indifferent cause, from which, besides the good effect, an evil effect follows, as we said n. 315. Indeed, sometimes an obligation is given of sacrificing life, if charity or justice requires it (III, 366).

But the JUST CAUSES of permitting one's own death are the following, as St. Alphonsus notes (III, 366-372):

1. The common good. Thus a soldier, even if he knows he is about to die, can, indeed is held to, persist in his station, sink or burn his own ship lest the enemy obtain possession of it, set fire to powder to overthrow a hostile tower, etc. Cf. 1 Macc., VI, 43. Similarly, it is licit to throw oneself before a weapon or blow to preserve the life of a prince, to have care of those infected by disease in time of plague, etc.[92]

2. Virtue to be exercised. Faith: martyrs of Christ can choose not to flee, and voluntarily undergo death. Justice: a malefactor can choose not to go out of prison, even if a way to flight lies open; one condemned to perish by hunger can abstain from food secretly offered. Chastity: a virgin, lest she be violated, can indeed not kill herself, but can expose herself to the danger of death, both to avoid danger of consent, and also to preserve the sole integrity of the flesh, as the Doctors hold not improbably (III, n. 368). Charity toward oneself: it is licit to undergo a dangerous operation for ending very grave torments, provided it offers a founded hope of a more tranquil life. But it would be illicit to expose oneself to great danger of death so that only deformity of the body be removed. Cf. Genicot, *Cas. consc.*, I, p. 148. Charity toward neighbor: an innocent traveler can permit himself to be killed by an unjust aggressor, lest that assassin die in sin. Likewise, in shipwreck someone can yield a plank not yet occupied by himself, indeed even one occupied by himself, provided he is able to do this without casting himself into the sea while ignorant of the art of swimming.[93] Here advert that he who occupied it first is not only not held to admit the other, but can impede him, unless the plank suffices for both (cf. *Vind. Alph.*, P. III, q. 2, fin.). Likewise someone can throw himself before a weapon or blow to conserve the life of a friend. Indeed, if a friend has been unjustly condemned to death, he can offer himself to be killed for him. We say if unjustly; for if justly, he would allure him to repeat sins, or he himself would sin against vindicative justice.

3. A more certain death to be avoided. Thus, with a fire raging, if no other way is at hand by which you may avoid so atrocious a death, you can leap from a window, cast yourself into the sea, with some hope of saving yourself. The same is licit for guilty persons detained in prison, for avoiding a certain sentence of death, or even perpetual imprisonment (Bucceroni, I, n. 718).

4. Difficulty of an extraordinary or too harsh remedy. As we have already indicated, a remedy of this kind is held as morally impossible, nor with such rigor, by the consent of all, does the positive precept concerning conserving life oblige, unless the reason of the common good intervenes. Extraordinary remedies are, for example, very costly medicines, or cutting of members, or change of domicile or fatherland; for a virgin, the examination and touching of a physician or surgeon, if namely this is most grave to her, and she shrinks from it more than from death itself. Nevertheless she could permit herself to be touched, indeed would be held to permit it, so that she might be cared for by another woman (III, 372).

5. Necessity of exercising an art. Whence artisans do not sin who ascend upon the roofs of buildings and expose themselves to various dangers where there is need; nor blacksmiths, who daily lessen life for themselves by handling fire. On the contrary, daring men sin gravely who from rash wager and vain glory cast themselves without cause into grave risks, by ascending on high, letting themselves down, bearing heavier burdens, etc. Likewise tightrope walkers, who play by rope in high places with probable danger of life. But whether they sin gravely who from a cause licit of itself too trustingly are engaged in dangerous occupations cannot be so easily defined. Use, character, caution, etc., can effect that for them the danger is remote or none (Konings, n. 463, 6). According to the norm of these principles let the reader judge those who tame wild beasts, cooperate proximately in bull contests, ascend airships. *Ami du Cl.*, 1913, p. 65.

6. Concerning the shortening of life. Man, since he is not the lord of his own life, also cannot, without sufficient reason, shorten his own life. To intend the acceleration of death would be a mortal sin; to foresee the shortening of life and posit its remote cause, although a shortening of some years is probable, is no sin, indeed sometimes meritorious, if the cause is just; only a venial sin if a just cause were lacking.

From these things conclude: 1. It is an act of virtue to afflict the flesh moderately by vigils and hunger. Say the same of him who afflicts himself with graver mortifications, provided he does this by the counsel of a prudent prelate or confessor.

2. He sins venially who eats, drinks, smokes tobacco, uses morphine or opium inordinately, converses and plays with a syphilitic person, although, admonished by a physician, he is conscious of danger to health and shortening of life.

[92] Authors bring forward the reason of the common good of an Order in order to permit Carthusians, in extreme sickness, to abstain from meats, with certain danger of death. - Nevertheless the supposition is denied: namely, that there is given a disease which cannot be removed except by use of meats. Stohr, *Past. med.*, c. X, p. 457.

[93] Yet there are not lacking those who say that it is licit without restriction in shipwreck to yield to a friend a plank already seized, provided one's own life is not more necessary. St. Thomas calls this action an act of most perfect charity (in 3, D. 29, a. 15). Cf. Lugo, *de Just.*, disp. 10, n. 48; Lessius, *de Just.*, l. 2, c. 9, n. 29, 81. Extend this to the case in which someone, to lighten an airship, should commit himself to the waves for his companions.

Cf. Genicot, *Cas. consc.*, p. 151 seqq.; Antonelli, II, n. 150, *de Corpore castigando.*

Concerning desire of death. To desire death from a motive of virtue, for example so that we may be joined with God, sin no more, etc., is an act of virtue, provided there is conformity with the divine will. But to desire death on account of the smallest troubles, provided the required advertence is present, which for the most part is lacking, is of itself a mortal sin. But if death is wished because the hardships are so great that life appears more bitter than death itself (Eccli., 30, 17), no sin would be committed (II, 30).

Concerning the custody of virginity in danger of death. Above we said that a virgin can expose herself to the danger of death, even for preserving the integrity of the flesh. The question is whether a virgin is held rather to permit herself to be killed than to be violated. St. Alphonsus responds (III, 368): Speculatively speaking, a virgin placed in these straits probably can

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conduct herself permissively, provided she positively resists by the will, and danger of consent is absent: for she offers only material cooperation, which the danger of death excuses.

In practice, however, positive resistance, and therefore acceptance of death, is to be advised, at least on account of the danger of consent, which can easily be present in that permission. - A fortiori, positive resistance is to be advised, indeed imposed (whatever Genicot says, *Cas. consc.*, I, p. 7), if there is question of preserving virginity in danger only of a grave evil, for example grave beating or wounding; because, practically, on the one side, this positive resistance alone can remove the danger of consent and restrain the boldness of youths; but, on the other side, the excellent good of virginity must be preserved even with grave inconvenience. Cf. n. 736 and 778.

§ 2. On Mutilation of Oneself

756. Principles. I. Mutilation of oneself is illicit of itself. For man possesses absolute dominion neither over life nor over the body.

The sin will be grave or light according to the matter. Concerning irregularity contracted by reason of mutilation, see n. 1946.

II. Mutilation sometimes becomes licit for preserving the good of the whole. The reason is that, although mutilation is against the particular order, nevertheless it is required by nature or the universal order. This universal order requires that whatever is lower be ordered to what is higher. St. Thomas, 2.2, q. 65, a. 1 ad 1; St. Alph., III, n. 373.

III. This mutilation is licit for a private man. Reason: a part of the body is not like the life of man, to which the other things that are in man are ordered, and over which, therefore, man cannot have power (St. Thomas, ibid., ad 2). Therefore, with the conditions placed as above, a private man can accomplish mutilation by his own action.

Hence: 1. It is licit for him to cut off for himself a hand bound by a chain, in order to flee a fire, or to avoid death to be inflicted by a beast or tyrant (Lugo, *de Just.*, disp. 10, n. 22); it is licit for a virgin to disfigure herself, in order to turn procurers away from herself; it is licit by a small mutilation to render oneself fit for a lucrative art.

2. It is not licit to castrate oneself, nor to permit this to be done to oneself by another, for preserving chastity and overcoming temptations. The reason is that such a remedy does not remove temptations, and besides it deprives one of a power of the greatest moment. Cf. Antonelli, I, n. 287. Otherwise one must speak of cutting off the organ of pleasure in a woman (Lehmkuhl, I, 735).

3. It is not licit to castrate boys, even consenting ones, that they may be useful for singing. Indeed not a few permit this from custom, and from the good that comes to those boys themselves; but among most the negative opinion has prevailed; for conservation of the voice is not a good of such moment that what nature so greatly reproves may be licit (III, 374). Cf. Benedict XIV (*de Syn.*, l. XI, c. 7), who learnedly proves that the Supreme Pontiffs never approved the castration of singers.

4. Likewise, it is not licit to exercise grave cruelty upon oneself on account of private advantage, for example for a young man, so that, by help of a grave and lasting sickness, he may obtain immunity from military service; for a poor man, so that, on account of a mutilated body, he may obtain more abundant alms.

5. A woman cannot permit her ovaries to be cut out, unless there is question of conserving life. To be sure, in our times the operation is easily accomplished; but from this it does not become licit (Antonelli, II, n. 277).

Scholium

On Vasectomy

756 bis. This new mode of mutilation consists in this, that in a man the seminal ducts are divided by a very brief operation throughout in the scrotum: from this it happens that the man cannot procreate offspring, although he remains apt for copulation. This mutilation is temporary, if namely it happens (which, however, only a most skilled man can effect) that the divided parts of the ducts are joined together again.

They say that vasectomy can be sought or permitted by married persons for this end, that they may more freely enjoy the act of matrimony, without having to fear the burdens that would follow from new offspring. It is also imposed by public authority with this intention, that it may be guarded against lest unhealthy offspring be begotten by a man infected with disease.

Leaving aside for now the question whether vasectomy induces the impediment of impotence (concerning this matter in the treatise on Matrimony), let us see whether this operation is licit in itself.

Principles. I. Vasectomy constitutes grave mutilation. Reason: all organs that serve for the conservation of the species are conferred by the Creator for undertaking a grave function; therefore their conservation is of the greatest moment, and it is consonant with reason that all things that are more intimately connected with the procreation of life be withdrawn from the discretion and dominion of private persons.

II. Vasectomy is gravely illicit mutilation. The question is not whether vasectomy is licit, supposing that it must be done to restore or preserve the health of the body: the principles explained above (n. 756) are too clear. The question is whether, on account of the ends indicated above, notwithstanding the gravity of the mutilation, vasectomy can be called licit.

And one must respond: entirely in the negative, indeed that it is prohibited under grave sin. The reasons are: 1. Vasectomy sought by married persons serves for nothing except unbridled pleasure, and very often carries with it injury to the right of the other spouse. Besides, even if we suppose that vasectomy is therefore sought lest the woman suffer great inconveniences from a new childbirth, it will always be verified that these evils can be avoided by continence; therefore mutilation is not a necessary means.

2. Vasectomy imposed by public authority constitutes an aggression against the intimate goods of an innocent man, which were given to him by the Creator, so that the human species might rightly be propagated. The reason of the common good indeed avails against malefactors, who can be deprived of life or liberty; it avails also against those who can spread disease outwardly, and therefore it is right for lepers to be separated from others; nevertheless it does not avail against an innocent man who would wish to preserve his members and use his native right. Public authority indeed ought to consult the common good, but in those things that pertain to better being, the primary rights of private persons must not be injured. Cf. *Nouv. Rev. Theol.*, vol. 42, p. 417; Wouters (ap. *Nouv. Rev. Theol.*, vol. 43, p. 340); Gury-Ferreres, II, n. 856 ter; Ferreres, *de Vasectomia duplici.*

ARTICLE II

On Drunkenness

St. Thomas, 2.2, q. 150; St. Alphonsus, V, 75; ed. G., II, p. 759; *H. Ap.*, VIII, n. 4; Antonelli, *de Alcoolismo* (*Med. past.*, II, n. 113); Noldin, I, n. 340, who cites many authors; Willems, III, p. 257.

757. Definition. Drunkenness, insofar as it is a vice, can be defined: a vice causing inordinate drinking and from it a violent deprivation of the use of reason. - Insofar as it is an act, it is voluntary excess in drink even to violent deprivation of the use of reason.

Several things concur to constitute drunkenness: a) immoderate drinking; - b) relaxation of the nerves; - c) deprivation of the use of reason, and indeed a deprivation so bestial that the lower powers exercise completely entire dominion; - d) finally, absence of a sufficient cause that may render such deprivation of reason honorable, so that this immoderate drinking is truly done from pleasure. Therefore the malice of drunkenness consists in this, that a man without cause deprives himself of the faculty of using his reason, although he is awake, or awakened.

Therefore it makes no difference whether someone first drinks immoderately, but afterward commits himself to natural sleep: that man stains himself with drunkenness, because he deprives himself of the ready power of using his reason if he is roused from sleep. Yet it would be less grave if someone by a medicine impeded the effect of the drink.

Division. 1. Drunkenness is called perfect or full, if it totally takes away the use of reason.

The signs of this perfect drunkenness are: a) If someone cannot distinguish between the licit and the illicit. - b) If he does not remember things said or done in drunkenness. - c) If he does things entirely unusual, as if contrary to custom he speaks shameful things, disturbs the household, beats his wife, etc.

2. But it is called imperfect or half-full, if it does not totally take away the use of reason, but only clouds it.

Only imperfectly drunk is he judged to be who is still able to discern between good and evil, although the imagination is somewhat disturbed, or vomiting follows, the tongue stammers, the feet totter, the eyes see double things, or the house seems to turn around, etc. (V, 78, 7 and 8).

758. Principles. I. Perfect drunkenness is a sin mortal from its whole genus. This is established from the words of the Apostle (1 Cor., 6, 10): Neither drunkards ... shall possess the kingdom of God. And reason supports it: for drunkenness deforms the image of God, insofar as it casts man down into the condition of beasts, by taking away the moderation of the senses and fitting governance (*H. Ap.*, VIII, 4). Cf. 2.2, q. 150, a. 2.

It was said: from its genus; for drunkenness is not mortal if it deprives one of reason for a short time.

Most authors say that a long time seems to be one hour; some judge that a half-hour can no longer be called a short time (Tanquerey, II, n. 542, note). Besides, in practice, scarcely is there given a deprivation of the use of reason prolonged for so short a time only.

II. Imperfect drunkenness is of itself a venial sin; for it is not gravely opposed to right reason.

Yet often it is mortal by accident, namely by reason: 1. of scandal that, for example, a priest would give, even if he were imperfectly drunk only once, or a father of a family, if often; 2. of a wicked intended end, as if someone were to drink in order to excite more vehement lust in himself; 3. of harm that he brings upon health or family; 4. of grave sadness that he creates for wife, children, parents, etc. Confer n. 759, q. 2.

Corollaries. 1. He who directly intends drunkenness sins: because he wills something evil.

2. He who induces, invites, or compels someone to drink copiously, even under pretext of courtesy, sins, except the case in which moderation is preserved in quantity, although the drink is more liberal (V, 77).

3. He who induces someone into drunkenness, so that the latter may be turned away from committing a greater sin, rather probably does not sin: because he urges toward a lesser evil (cf. n. 509, 2).

4. He who foresees that he truly will be drunk in these or those circumstances, and notwithstanding this does not avoid such company, commits sin. - Likewise, he who during drinking plainly adverts to the danger of drunkenness, and nevertheless still goes on drinking.

5. Sometimes it is licit to take a great quantity of intoxicating drink, even if drunkenness is foreseen as about to follow.

Here, however, a multiple distinction is needed:

a) If this is done to drive away a grave disease, for example typhus, cholera, it is licit. Reason: the immediate effect of the drink is acceleration of the blood, from which the intended end is obtained (V, 76, q. 1).

b) If it is done so as not to feel pains in a surgical operation, likewise it is licit; for such drink of itself has a soporific power, from which the proportionate intended effect arises. Besides, since there is no one who does not permit in the same circumstances the use of chloroform, ether, or opium, it is not seen why the aforesaid manner of acting should be prohibited of itself. See also what will be said n. 761.

c) If finally immoderate drinking is applied to expel ordinary sleeplessness, common sadness, or to soften ordinary pains, it is not licit: because what is intended does not have proportion with the evil that is permitted. Besides, other remedies are present. Yet it would be licit to drink even to hilarity, if sadness had to be driven away.

Note. Sometimes they use chloroform to mitigate pains in childbirth. This remedy is licitly applied if the pains are foreseen as truly intolerable, especially if chloroform is administered in an interrupted manner, and analgesia, as they say, does not become total (Capellmann-Bergmann, ed. 16, p. 58; *Ami du Cl.*, 1910, p. 16 and 1088).

759. Questions. Q. 1. Whether it is licit for someone to make himself drunk in order to avoid death, which another threatens him with unless he becomes drunk?

Resp. A twofold opinion is given: The first (which is that of St. Alphonsus, V, 76, q. 2; l. El. qq. ref., 56) denies that this is licit. For liberation from death (i.e. an act of the will on the part of him who must desist from inflicting death) will intervene only after the fact of completed drunkenness on the part of the other. Therefore the prerequisites under the heading of the indirect voluntary do not fit. Besides, the use of reason of itself is not ordered to the life of the body, but to preserving the integrity of the soul. Thus also Cajetan, the Salmanticenses, and others.

The other opinion (which is that of Lessius, Bonacina, and recent authors) affirms. Reason: the use of reason is ordered to the good of the whole. Hence, for conservation of the whole, man can permit deprivation of the use of reason. Besides, copious drinking of wine, besides deprivation of reason, produces another effect (namely liberation from death to be inflicted) equally immediately. Hence the principles of the indirect voluntary do not stand in the way.

Q. 2. Whether and how evils committed in drunkenness are imputed?

Resp. They are imputed to the drunk man unto fault, according to the measure of advertence and voluntariness that is found in the cause, or in the act of making himself drunk. Hence a) If drunkenness is involuntary, the evils that follow from it will not be imputable unto fault. b) If it is semi-voluntary, they cannot be imputed unto grave fault. c) If it is voluntary, grave evils will be imputed unto grave fault, provided they were foreseen, whether distinctly, or at least confusedly. "Hence those evils are reputed foreseen which drunkards ordinarily are accustomed to commit, or which someone from other drunken bouts has known himself to commit before; and also all sins to which he knows himself prone. For since in drunkenness, with the use of reason lost, nature necessarily operates, it will easily break forth into the vices to which it is inclined. But, on the contrary, other evils that happen by chance are not reputed foreseen" (*H. Ap.*, VIII, 8).

Note. Several authors say that evils of the mouth, such as insults, blasphemies, and perjuries, are not imputed; because those words, uttered by a man lacking the use of reason, are purely material, as if they were uttered by a parrot; nor consequently do they have formal malice. "I accede to this opinion," says St. Alphonsus (*H. Ap.*, l.c.), "concerning insults against men: because truly, when those are uttered by a drunk man, they are not held as dishonoring, provided he does not reveal some infamous crime; but not concerning perjuries and blasphemies, because these, although materially uttered, are always injurious to God; and if they are not voluntary in act, they are voluntary in the cause."

760. Practical Rules. 1. Young men and fathers of families who are held by the vice of drunkenness are to be corrected and reproved with grave words. Let the confessor insist opportunely, let him insist inopportunely, that they become temperate and conquerors of themselves. Let him place before their eyes the inconveniences, sins, and innumerable crimes of which alcoholism exists as the perpetually flowing origin and source. - 2. Let him prudently and moderately promote all those things that have as their end propagating associations either of abstinence or of temperance. For complete abstinence has restored many men healthy to themselves and to their family. Cf. the little works that set forth the necessity or utility of abstinence.

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Scholium

On the Abuse of Morphine and Opium

761. Notions. From the poppy is extracted opium, which, among other principles, contains morphine. Opium, when it is smoked, and morphine, when it is injected beneath the skin, possess the following properties: a) if the quantity is very small, they soften pain, from the fact that they act upon the nerves; b) if the quantity is increased, they procure a state of narcosis, in which all things are affected with a certain sense of particular satisfaction and pleasure; c) if the quantity is great, death is induced. - Opium and morphine, insofar as they deprive one of the use of reason, bring grave harms to health if someone often uses them: namely, the powers are diminished, the body is broken, memory is weakened, sexual appetite is excited, indeed even perverted, harm is brought to the protoplasm (Forel, *Quest. sex.*, c. VIII), the moral sense vanishes, the will is dulled, indeed life is shortened. Many, from an unbridled desire of pleasure, come to this point, that, laboring under an invincible mania, they are driven as if necessarily to the use of these things. Physicians, in treating the sick, use morphine much; some also, whether by their own action, or in order to satisfy sick persons asking it, by help of morphine procure euthanasia, that is, a placid and tranquil death. Cf. Antonelli, II, 129. Therefore let the following principles stand:

I. As regards those not sick. 1. They do not sin who use morphine or opium in a quantity so very small that it serves rather for the quieting of the nerves. Yet let them beware of frequent use. - 2. They sin venially who, with the quantity increased, without sufficient cause apply these remedies; but mortally, who bring grave harm upon themselves from these things, even if narcosis is not present: a fortiori, if without cause they should deprive themselves of the use of reason.

II. As regards the sick. It is licit for them to use morphine, in the same cases and under the same conditions under which it is not prohibited to deprive oneself of the use of reason for procuring goods of great moment for oneself.

III. As regards the dying. 1. It does not seem illicit, in the case in which they suffer great pains, to lull dying persons for a time. - 2. But it is gravely illicit, for those not prepared for a Christian death, even if great torments are present, to administer morphine in such a way that they die while lulled: the reason is evident. - 3. Likewise, even for those well disposed, it seems prohibited under grave sin to procure such relief. The reason is: on the one side, pains are of themselves felt less in agony; on the other, such deprivation of the use of reason is a certain shortening, imposed upon the sick person, of spiritual life, which life then is especially necessary, or at least salutary. Besides, very often we are ignorant whether the dying person is truly well prepared. Since these things are so, we judge that deprivation of spiritual life at such a moment is not compensated by the temporal good (tranquillity) procured for the dying person by help of morphine. Therefore it belongs to the priest to resist the attempts of physicians. Yet he can tolerate it as regards those dying persons who otherwise would be in danger of sinning gravely again. Cf. Lehmkuhl, I, 892; Noldin, I, 343; *Ami du Cl.*, in various articles, 1900, 1902, 1905, 1908. Cf. also, for the contrary opinion, Wouters, *Nederl. Kath. Stemmen*, 1911, bl. 348; *Collat. Brugenses*, 1911, p. 412.

Note. As regards the cultivation and commerce of opium, several Decrees of the Holy Office exist. See *A. S. S.*, 24, p. 506; *Canon. Contemp.*, vol. 15, p. 424, and especially *Ami du Cl.*, 1908, p. 689.

TREATISE VI

On the Sixth and Ninth Precept of the Decalogue

You shall not commit adultery.....
You shall not desire his wife (of your neighbor).
(Exod., 20, 14, 17).

Admonition of St. Alphonsus. "Now we undertake with difficulty to treat that matter whose name alone infects the minds of men.... Would that I could have explained myself more briefly or more obscurely! But since this is the more frequent and abundant matter of confessions, and because of it a greater number of souls slide down to hell; indeed I do not hesitate to assert, on account of this one vice of impurity, or at least not without it, all are damned whoever are damned: hence it was necessary for me, for the instruction of those who desire to learn moral science, to explain myself clearly (though as chastely as could be done), and to discuss very many particulars. - Yet I pray students, ... that they not read this treatise on the sixth precept (as also that other one on the conjugal debt), unless they are now close to hearing confessions; and that they read for this sole end, casting aside absolutely all curiosity, and at that time more often lift the mind to God, and commend themselves to the Immaculate Virgin, lest, while they strive to acquire others' souls for God, they themselves suffer detriment of their own" (III, 413).

762. The sixth precept is joined by a close affinity to the fifth; for since the fifth precept looks chiefly to this, that human life, when it already exists in the nature of things, be rightly cared for, the principal scope of the sixth precept is that watchfulness be exercised over its very beginnings, and that human nature be conserved: for divine sanction ought to protect not only life, but also that wonderful faculty which man possesses, of communicating life. Cf. Pruner, *Spez. Moraltheol.*, IV Absch., II Tr.

By this precept only adultery, which at once injures justice and chastity, is explicitly forbidden; but implicitly all things whatever that are dishonorable and immodest are forbidden, and it is prescribed that we cultivate chastity of mind and body (Roman Catechism, P. III, c. 7, n. 2).

The ninth precept, which is most closely joined to the sixth, prohibits in the same matter sins of the heart, or wicked thoughts and desires. Of these we have already treated in the treatise on Sins, n. 345 ff.

Hence, in the present treatise, we shall treat: 1. of chastity and lust in general; - 2. of sins of consummated lust; - 3. of sins of non-consummated lust (which are postponed here, because they derive their species from the preceding); - 4. of dangers to chastity.

CHAPTER I

On Chastity and Lust in General

St. Thomas, 2.2, q. 151-156; St. Alphonsus, III, 412; ed. G., I, p. 665; Sporer-Bierbaum, III, n. 467 ff.; Gopfert, II, 316; Genicot, *Theol. mor.*, I, 387; Antonelli, *Med. past.*, II, 160 ff.; Eschbach, *Disp. phys.*; Tanquerey, *Suppl. de Castit.*; Sani, *de 6 Praec.*;

Berardi, *Theol. mor.*, II, p. 333 (ed. 1905); Noldin, *de Sexto* (ed. 13); Capellmann, *Pastoralmed.* (ed. 16), p. 128; Gemelli, *Non moechaberis.*

763. Things to be noted beforehand. The Author of nature implanted in each sex a generative power ordered to this most excellent end, that through the natural intercourse of man and woman in legitimate matrimony, the human species may be propagated and conserved. But the pleasure that accompanies the act of this power rightly concurs unto the same end insofar as it draws men to a thing very burdensome in its consequences; it is ordered to the common good, not to private good.

But for a fuller understanding of this treatise and of the other on Matrimony, we judge that a few things must be said concerning those things that regard human generation, reduced to the norm of more recent physiologists.

1. In the man, three organs especially serve for generation: the testicles, in which the semen is prepared; the seminal vesicles, in which the semen is preserved; the urinary tube (the male member, the rod) through which the semen is cast forth. In the female likewise three organs are numbered: the ovary, in which the little egg matures; the womb (uterus), into which the little egg proceeds; the vagina, which extends from the uterus to the external part of the body. The mouth of this canal is closed by a thin membrane, which they call the hymen, the seal of virginity.

2. Generation is distinguished into active and passive. Active generation, to which the highest pleasure is attached, is the same as copulation, concubitus, coitus, and consists in this, that the male member is introduced into the vagina of the female and the male semen is ejaculated in the female vessel. It is the connatural act by which generation is made possible, so that generation itself ought to follow unless something stands in the way. Passive generation is conception, or the conjunction of the masculine semen with the female little egg.

3. Therefore the man concurs toward generation by providing prolific semen, or sperm, which is a certain fluid secreted by the testicles of the man, containing little bodies called spermatozoa, by which it is rendered prolific. But the woman concurs in this, that she supplies the little egg to be fecundated by the spermatozoa. If at the moment of copulation, or at a time more or less distant, she has a mature little egg, and if the semen of the man meets this little egg, a conjunction is produced and the spermatozoa fecundate the little egg, whence conception arises. But the little eggs are torn away from the female testes, which are called ovaries. This tearing away is sometimes accelerated by lust, but of itself it happens without lust and spontaneously among individual females almost in individual months, or perhaps more often.

But whether the female concurs toward generation through an effusion of fluid, or semination, which she has in the act of copulation? Several among the ancients (thus the Scotists with Galen) affirmed that the semen of the woman is necessary for generation, but today (as Aristotle and St. Thomas already held) it is certain that no semen properly so called is present in women in that fluid which, either inwardly (as more often), or outwardly, is poured forth from the vulvo-vaginal glands. Physicians think that that semen improperly so called is useful for generation, but not necessary. And indeed this opinion already seemed more probable to St. Alphonsus (VI, 918).

4. Menstruation (in French: *les regles, les epoques*) accompanies ovulation and at the same time is very useful to the health of the woman. This is common blood which, as soon as the severance of some mature little egg from the ovary presses, flows more abundantly to the uterus, both indeed that by its heat it may meet the great work of ovulation to be duly performed, and that it may furnish nourishment to the new fetus, if perchance it is conceived. This flow of blood is called menstrual because for the most part it is accustomed to return on the 28th day, or in individual lunar months (and also a little more frequently), from the time of puberty up to menopause (which ordinarily in our regions happens between the 40th and 50th year), and regularly lasts for 2 or 3 days. During the time of this flow, women suffer various pains rather than feel venereal pleasure.

5. It is also to be noted that eunuchs and the impubescent lack semen. Males in our regions rarely attain puberty before the completed 15th year; but before the 18th year their semen is not accustomed to be prolific.

Among those who have reached puberty there sometimes occurs a morbid and frequent flow of semen, which in men is called gonorrhea, in women white flow or leucorrhea. Gonorrhea for the most part is a certain species of syphilis and therefore contagious; pregnant women not rarely suffer from white flow. By certain ancients (for example Croix, apud St. Alph., VI, 910), the leucorrhea of women is called gonorrhea.

According to today's physicians, semen is not corrupted, because a part of the semen, having gone out beyond its seat, is either absorbed or expelled. Therefore we shall purposely omit the questions of the older theologians looking to this.

6. The effusion of semen is to be distinguished most exactly from distillation. This is a certain subtler fluid, coming from the prostatic gland and mucous membrane of the urethra. In the effusion of semen, ordinarily the semen is

ejaculated with vehement pleasure and movement of the flesh; but in distillation, the fluid ordinarily flows out drop by drop, with light or even no pleasure and almost no movement of the flesh. Besides, it can occur even in the impubescent, indeed also in the castrated.

7. By carnal movements, venereal movements, there is understood a certain tendency toward the effusion of semen, manifesting itself ordinarily through erection of the male member or of the female clitoris, joined with pleasure. This erection has as its cause blood flowing together to those members, on account of various causes. But from venereal and pleasurable erection is to be distinguished purely natural erection, which is had from a merely physical cause and without any sense of pleasure (Aertnys, *Theol. mor.*, l. III, n. 219).

On knowledge of the sexual matter. Authors have much disputed what ought to be done concerning instructing sons (and daughters) about the sexual matter. To not a few, even Catholics, the theory was pleasing concerning the virtue and efficacy of full physiological knowledge, to be handed on to each one from tender years, for restraining the impulse of immorality. Ignorance, so they say, is the parent of all evils. Yet to others, and those weighing all things wisely, it has seemed that this theory, if ever it is brought into practice without cautions, renders a flood of lasciviousness unavoidable. Hence they established the following: a) Children before all things are to be educated in virtue, love of God, and horror of sin. b) As premature knowledge of the sexual matter is dangerous, so also is ignorance too long protracted with respect to this matter. The latter sharpens curiosity and exposes the incautious to seduction; the former kindles the fire of lust. c) Therefore knowledge of these things is to be given, but increased gradually, according to the age, necessity, and virtue of adolescents. d) It belongs to those persons to teach children these things to whom God has entrusted the office of watching over them: such as parents, guardians, or, in some cases, prudent and God-fearing outside persons. For two things are owed to a child: charity and reverence. Cf. Gatterer-Krus, *Education de la Chastete*; Forster, *Sexualethik u. Sexualpadagogik*; *Linz. Quart. Schr.*, vol. 61, p. 45 and 783; *Ami du Cl.*, 1911, p. 406.

ARTICLE I

On Chastity and Modesty

764. Definition. Chastity (from chastising), taken broadly, is a general virtue, consisting in purity of soul from every inordinate love and pleasure of creatures. Chastity, in the proper sense, is a virtue that moderates the affection for and use of venereal things.

"Modesty is the virtue moderating certain less principal acts pertaining to the aforesaid concupiscence, such as kisses, touches, looks, embraces, lascivious conversations, etc. Yet it is not a special virtue distinct from chastity, but only expressing the same chastity, insofar as it is concerned with certain circumstances. For all those lustful acts, antecedent to and concomitant with the more principal one, are restrained by reason according to the same rule, on account of the same end, and in the same manner. But it is called modesty from shame, because concerning these acts, even while they are done licitly, an honorable soul is especially abashed, both because they are less subject to reason, and because in them man comes more nearly to the condition of beasts" (Goudin, *Phil. mor.*, q. 6, a. 3, § 1).

Division. Chastity is divided into chastity specially so called and virginity. Chastity specially so called is that which only restrains the impulse toward illicit pleasures (of the flesh), but moderates licit ones, so that they may happen with the required things observed; and it can be divided into juvenile, conjugal, and widowly. But virginity is a certain heroic chastity so taming concupiscence that for God it does not concede to it even the voluntary experience of licit pleasures. Cf. Goudin, l.c.

Virginity is a special virtue, having itself toward chastity as magnificence toward liberality; because it conquers a special difficulty, and indeed a very great one (2.2, q. 152, a. 3). It consists materially, and as a state, in immunity from every experience of venereal pleasure, and in a certain integrity of the member or genital organ; but formally, and as a virtue, in the purpose of abstaining from every venereal pleasure.

1. If the integrity of the flesh is violated merely materially through rape, or involuntary pollution, the prerogative of virginity is not lost, namely the right to the accidental reward, called the aureola, with which virgins are gifted in heaven.

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2. If virginity is violated formally only through internal sin, its prerogative is indeed lost, but reparably, namely so that through penance and a reassumed purpose of preserving virginity perpetually, the right to the aureola is had again.

3. If virginity is violated both formally and materially, namely through the external sin of completed lust (or even through mere touches so lustful that of themselves, in healthy nature, they would cause pollution, even if by accident this does not happen), the prerogative of the virtue is lost irreparably, as innocence is lost through mortal sin. Cf. Salmant., tr. 26, c. 1, n. 47 ff.; Lessius, *de Temper.*, c. 2, d. 14 and 16; Eschbach, *Disp. physiol.-theol.*, disp. 4, c. 2.

4. Principles. I. Conjugal chastity is good, widowly continence better, but virginal perfection best. Thus Venerable Bede (apud Benedict XIV, *de Beatif. SS.*, l. 3, c. 24, n. 56). Hence St. Jerome (in Matth., XIII): "The hundredfold fruit," he says, "we assign to virgins, the sixtyfold to widows, the thirtyfold to chaste marriage." The reason is at hand from the things defined above.

Indeed, it must be held with divine faith that the state of virginity and celibacy is to be preferred to marriage. This is established from the words of the Apostle (1 Cor., 7), and from Trent: "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" (Sess. 24, c. 10).

II. Spiritual beauty is present most excellently in chastity. It is established: 1. From Sacred Scripture (Wis., 4, 1): How beautiful is a chaste generation with clarity: for its memory is immortal: because it is known both before God and before men. 2. From reason: "For chastity is so much the more excellent and more beautiful, as that affection (which it moderates) is more insolent, stronger, and less heeding of reason. For in it, on that account, order, vigor, and the command of reason over the raging appetite shine forth more splendidly" (Goudin, l.c.). Hence St. Alphonsus (*Vera Sposa*, c. 1, n. 12), with St. Cyprian: "Virginity," he says, "is queen of virtues, possession of all goods"; and with St. Ephrem: "If you have loved this, you will prosper from the Lord in all things."

766. Practical Rules. a) If a penitent who has sinned gravely against chastity asks whether he has irreparably lost the aureola of virginity, let the confessor rather respond by dissembling, lest the penitent fall in spirit. He will be able to say, for example, that penance restores the former goods of the soul, that there is no sin that cannot be repaired before God; and similar things.

b) If a girl asks whether, although she has sinned gravely against chastity, she can become a religious, let the confessor attend to the following:

He can respond: affirmatively, if there is question of entrance into a Religious Congregation (with other things to be posited having been posited). He must respond: negatively, if there is question of an Order with solemn vows, and the girl was voluntarily corrupted: because in Orders virgins are consecrated; hence she who without integrity of flesh would receive the veil would bring grave irreverence upon sacramentals.

A girl who several times acted shamefully with herself by touches, while conserving the seal of virginity, can be admitted into an Order: because before men she conserves the state of a virgin. Similarly, according to a rather probable opinion, a woman who was corrupted against her will can be consecrated; for it does not seem equitable that she should lose her right who by her will preserved virginity. Cf. Piat, I, n. 305.

Note. Some authors judge that even with those voluntarily corrupted the confessor can act more benignly. See Gopfert, II, § 99, at the end.

ARTICLE II

On Lust and Immodesty

767. Definition. Lust is the inordinate appetite or use of venereal pleasure (III, 412). It is said: inordinate, i.e. outside matrimony and its laws.

Venereal pleasure (libidinous, lustful, carnal) is that which arises (in each sex) from the movement of fluids serving generation and is felt in the genital parts. It differs specifically from sensitive pleasure (natural, sensible), which is had from the conformity of a sensible object with the sense, for example from the contact of a smooth thing (III, 415; *Vind. Alph.*, P. III, q. 13, a. 1).

Sensitive pleasure can be perceived: a) From the sight or embrace of him whom you pursue with tender but honorable love, insofar as that love (which resides in the will) overflows into the sensitive appetite and becomes a cause of movement in the heart and blood. It is called spiritual-sensitive, and if honorable ends are preserved, such pleasure is not to be condemned. b) From an object not of itself apt to move lust (although by accident it sometimes arises), as from hearing music; then by some it is called purely sensitive. c) From a carnal object, but not a shameful one, of itself apt to move lust

(although by accident it does not move to it), as from the touch or kiss of a woman's hand; then it is called sensual. Cf. Sporer, *Theol. mor.*, P. IV, n. 680; Ballerini-Palmieri, *de 6 Praec.*, n. 70; Noldin, n. 7.

Immodesty is a vice, repugnant to human shame, in the use of venereal things and of things ordered to them: for example in carnal copulation, and in looks, touches, kisses, embraces, and other things ordered to it. Akin to these is lasciviousness, which is an indecent motion of the body, proceeding from dissolution of the soul.

Immodesty, of itself, differs from lust, because it is not necessarily joined with venereal pleasure; yet it easily leads to this, and on account of the proximate danger of this sort it is ordinarily gravely evil, and therefore, in practice, sins of immodesty are scarcely distinguished from sins of imperfect lust, or of lust indirectly willed (cf. n. 769).

Division. Lust is divided in several ways:

1. By reason of the intended end, one kind is directly willed, namely when pleasure is intended in itself by deliberate plan; another is indirectly willed, when something else is intended, from which pleasure arises. 2. By reason of the effect that follows, one is consummated (or perfect), in which effusion of semen or fluid intervenes; another is unconsummated (or imperfect), in which that terminus of venereal things does not intervene. Both differ specifically among themselves (cf. n. 791, 792). 3. By reason of the act, one is internal, another external.

Lust is subdivided, by reason of circumstances, into various species, as will be explained below n. 771 ff.

Causes of lust. The occasions and causes that lead man to acts of lust are innumerable: a) External causes are given, such as: bad examples, idleness, imprudent questions (sometimes in the sacred tribunal), solitude, certain times of the year, dances, visits of lovers, etc. Cf. n. 824. b) Internal causes are given, namely those that are observed in the subject: not having care of the genitals, sitting for a long time, lying supine in bed, wearing garments too tight, using exciting foods or narcotic substances, etc. All these things either irritate the genital parts, or first bring congestions in the spinal marrow.

Certain diseases are to be numbered among internal causes, especially those that affect the nervous system or the spinal marrow. The more important are: pulmonary phthisis, arthritis, chlorosis, neurosis of the genitals, epilepsy, progressive paralysis of the demented, and especially hysteria. Therefore it is no wonder that there are many who labor under hypersexuality or sexual perversion, that is, who incline excessively to sexual things or to perverse things. There are those who do not feel pleasure unless they act cruelly against themselves (masochism) or against others (sadism). There are those who are insanely drawn to the unspeakable crimes of sodomy. Let the prudent confessor see to what Christian physician he should commend such penitents; because hygienic remedies contribute much to relieving them. Let him also remember that among these, imputability is often diminished, indeed sometimes taken away. Cf. Antonelli, II, n. 160, where all things are given copiously.

768. Principles. I. Lust directly willed is a grave sin from its whole genus. It is said: 1. It is a grave sin; the reason is taken from the frustration of the natural end of this pleasure. For it is a grave sin, or grave inordination, to usurp for a merely private good the highest pleasure that nature constituted and ordered to the common good, namely the conservation and propagation of the human race. But lust directly willed does this. St. Thomas, 2.2, q. 153, a. 3.

It is confirmed from the reason of the common good. That indeed is gravely illicit which, unless it were prohibited, would yield to the grave harm of the whole man, indeed also of the human race. But if venereal pleasure were licit outside matrimony, man without restraint, with the greatest detriment of himself, would give himself to it; because it is proper to carnal pleasure to corrupt the whole rational nature, and indeed in each sex. For we are much affected by those things in which we take pleasure; and therefore reason is either entirely taken away, or greatly weakened concerning other things, in him who hands himself over to pleasures of this sort. Add that the body itself is weakened by lust and a mass of diseases is frequently generated. There accedes a most grave argument from the harm that would come to the human race itself; for men would care little about entering marriage and generating offspring, if pleasure were licit without such a burden. Finally it is evident from the Apostle declaring the lustful to be excluded from the kingdom of God (Gal., 5, 19).

2. From its whole genus; so that every venereal pleasure, even light, taken with full advertence and consent, outside matrimony, is a mortal sin. The reason is that any carnal pleasure, even light, on account of man's highest propensity to venereal things, either implies the aforesaid inordination, or exposes man to a proximate danger of progressing even to complete and certainly grave pleasure. But that which generates danger of gravely sinning, even if in itself it were venial, becomes grave by reason of the danger joined to it (Billuart, *de Temper.*, D. V, a. 2).

Therefore the natural law prohibiting directly willed lust is as it were the law of the Creator of the human race, founded on the presumption of common danger, or on the presumption of law. Cf. the things said on the obligation of a law of this kind, n. 191-192.

It is confirmed from proposition 40, condemned by Alexander VII, with which, as Viva says, the contrary opinion can scarcely be reconciled: "The opinion is probable which says that a kiss had on account of carnal and sensible pleasure, which arises from the kiss, with danger of further consent and pollution excluded, is only venial" (III, 415; *H. Ap.*, IX, 2).

769. II. Lust indirectly willed (and likewise immodesty) admits smallness of matter, i.e. it is reputed grave or light according as the act from which carnal pleasure is foreseen as about to follow influences it, by its force and nature, either proximately and gravely, or only remotely and lightly. The reason is that the evil effect, which follows from an action beyond the intention, must be held evil to that degree to which the cause itself was evil. Recall the things said concerning the indirect voluntary (n. 313-315).

Corollaries. To know the gravity of indirect lust, one must attend to the end on account of which acts are exercised, and besides to the danger that they bring. Acts can, outside matrimony, be exercised from a fourfold end: 1. from the intention of venereal pleasure; 2. from the intention of sensible pleasure; 3. from levity of soul, petulance, and curiosity; 4. from necessity, or from some other just cause.

a) If the aforesaid acts are exercised on account of carnal pleasure, they are mortal sins, even if they are not in themselves greatly dishonorable. Reason: because the intended end is gravely evil; from which end the act of immodesty falls back into lust directly willed. Hence, to touch the hand of a woman on account of carnal pleasure is a mortal sin (III, 415).

b) If they are exercised, with venereal affection excluded, from the sole intention of sensible pleasure, several authors indeed deny that they exceed venial fault; because, they say, it is not more inordinate to take pleasure from the contact of a woman's hand than from the contact of a smooth thing, for example a rose, a silk cloth, and the like. - But, with attention given to the circumstances of manner and time, this opinion, especially if the touches are done with full advertence and consent, is not practically probable,[94] since studiously to seek that pleasure, for the most part, on account of our corrupted nature, carries with it the danger of falling into and consenting to carnal pleasure, especially in persons apt for copulation and especially if those acts are had with some affection and delay.

c) If they are exercised from levity, jest, curiosity, they are not, of themselves, except venial sins; provided they are not in themselves very dishonorable, nor are done with delay and proximate danger of lust, or with the scandal of others, as would be the case if they were done by ecclesiastics (III, 418). - The same must be said if the acts are done from irritation of the nerves.

d) If they are exercised on account of necessity or a just cause, for example touches by a surgeon for healing, they are not sins, even if venereal pleasure arises: provided the will turns away from it and the danger of consenting to it is absent.[95] This is evident from the things said concerning the indirect voluntary (n. 315).

Note. The danger of indirect lust can arise not only from acts that of themselves hold themselves in the matter of lust (touches, looks, etc.), but also from acts that wander outside the matter of lust, and only by accident influence lust, for example from drunkenness, from the sight of the killing of animals, etc. - Each kind of actions can have proximate or remote influence. See what is to be said n. 795, where at length.

770. It is asked. Whether invincible ignorance can be given concerning sins of lust?

Resp. With experience as witness, it can be given concerning the grave malice of certain sins of lust, whether non-consummated, or even consummated: 1. in adolescents, for a short time, especially when deep silence has been preserved before them about these matters; 2. in the uneducated (indeed perhaps also in others for a short time), when a special circumstance apparently rendering the act honorable intervenes. Thus, for example, there can be ignorance of the grave malice of dishonorable kisses or touches between betrothed persons, of the malice of internal acts, of the malice of onanism among spouses who are already burdened by numerous offspring. Cf. the things said n. 125; Gopfert, II, 320.

Let the confessor beware lest he admonish penitents accustomed to a vice, whose gravity indeed they know, but whose special malice they are ignorant of, concerning this special malice. For such an admonition seems to be of little profit, and from it formal sins would be multiplied. Otherwise one must speak if the penitent thinks that some lustful act that he exercises is not a sin, or is not mortal; because amendment of frequently committed lust will scarcely be possible thereafter, and ignorance, in such a case, cannot be anything except exceedingly harmful to the penitent (*Praxis*, n. 39; Scavini, I, 391).

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[94] Cf. III, 416, 418; *H. Ap.*, IX, 3; Lehmkuhl, I, 1027. These words "is not practically probable" mean: let the confessor not permit it, as father and as physician; because the action concerning which there is question is to be reprehended, on account of the certain danger that it contains. See below n. 837.

[95] If the cause is not indeed just, yet has something of utility, for example a non-necessary study of the medical art, it is probable that the sin will not be mortal (Lessius, *de Just.*, l. 4, c. 3, n. 118).

CHAPTER II

On Sins of Consummated Lust

St. Thomas, 1.2, q. 73; 2.2, q. 153, 154; *de Malo*, q. 29, a. 7; St. Alphonsus, III, 432; ed. G., I, p. 677; Sanchez, l. 9, disp. 17, n. 16; Van Roey, *Quaest. de 6 praec.*; and finally the authors already cited.

771. Sins of consummated lust are of two kinds. Some are according to nature, in the sense that in these are preserved the things that the nature of an act apt for man's generation postulates, namely identity of species, diversity of sex, and natural congress. Others are against nature, in which, namely, the conditions necessary for generation are not preserved.[96] Hence a twofold article.

ARTICLE I

On Sins of Lust According to Nature

Sins of consummated lust according to nature are: fornication, stuprum, raptus, adultery, incest, sacrilege. These sins differ specifically among themselves, not indeed by reason of lust, but on account of the special malice that (fornication excepted) is added to each one, namely from opposition to other virtues, especially justice and religion.

§ 1. On Fornication

772. Definition. Fornication, in the broad sense, is sometimes called every illicit concubitus. In the strict sense, it is defined: Concubitus of an unmarried man with an unmarried woman, by mutual consent (III, 432; *H. Ap.*, IX, 11).

It is said: 1. Concubitus, namely such as is required for generation, so that it may be distinguished from sins against nature; hence copulation of a castrated man with an unmarried woman is not fornication. 2. Of an unmarried man with an unmarried woman, that is, one who is free from vow, marriage, religion, etc.; for from these a new species would be added to the sin. 3. By mutual consent, to exclude violence, because otherwise it would be stuprum.

773. Principle. Fornication can never be excused from grave sin. It is established: 1. From Sacred Scripture (Eph., 5, 5): Every fornicator or unclean person ... does not have inheritance in the kingdom of Christ. 2. From reason: fornication is directly intended lust, because of itself it provokes carnal pleasure. Besides, the end assigned by God to congress is not generation alone, but also good education of offspring. But offspring conceived from fornication ordinarily cannot be well educated. St. Thom., 2.2, q. 154, a. 2.

"Therefore fornication, from the right of nature, is always intrinsically evil, although sometimes by accident offspring would be well educated by the fornicator. The reason is, both because in this, on account of the great danger of hallucination because of excessive pleasure, one can most easily err; and because nature considers the things that commonly happen, not those that happen by accident; and because of itself it is against the right of nature to subject reason to the flesh, as happens in fornication, on account of the pleasure of the act. But in matrimony, although the same pleasure intervenes, God nevertheless by special providence disposes that such disorder be absent" (III, 432; cf. I, 199). Hence, proposition 48 was deservedly condemned by Innocent XI: "It seems so clear that fornication according to itself involves no malice, and is evil only because forbidden, that the contrary seems altogether discordant with reason." But whether fornication is forbidden from the primary principles of the natural law is not so clear.

774. Corollaries. 1. Fornication of betrothed persons does not assume a different species of sin. The reason is that "neither hands over to the other any right over his own body, so that he could not use it according to his own discretion without injury to the other" (*H. Ap.*, IX, 13).

Yet if fornication introduced danger lest the betrothed man be compelled to support another's offspring, justice would be injured.

2. Concubinage and meretricious life are rightly referred to fornication, as to the same species. For more or less does not change the species. Yet sometimes, especially in meretricious life, other species can be added.

a) Concubinage, which is the keeping of a woman as if she were a wife, is defined (according to the sense of Canon Law): "Frequent fornication with the same person, with the mind of retaining her as enslaved to one's own lasciviousness, whether in the same house or otherwise." It is a greater sin than simple fornication, because it adds a vicious habit and has joined to itself a continuous purpose of sinning, at least virtual. - Hence the Council of Trent (Sess.

[96] III, 412; see the various penal Codes, concerning penalties passed against lust; French Code, 330 ff.; Spanish, 448-466; Italian, 331 ff.; Austrian, 125-133, 502, 505; German, 172-185, 235 ff.

24, c. 8, *de Ref.*) established against concubinarii both excommunication of a sentence to be passed after a threefold warning, and the penalty of expulsion outside the town, or even outside the diocese, with the help of the secular arm implored: would that it still could be implored in every region! Hence also it is why, in many dioceses, concubinage is numbered among reserved cases. See as regards clerics, for whom particular penalties are prescribed, n. 2233.

b) Meretricious life is the state of a woman who lies open to the lust of many, whether for gain, or for lasciviousness. Hence, in order that someone can be called a prostitute, she ought to admit at least more than two. Meretricious life is either clandestine, or public, i.e. permitted by civil power under certain norms. It is a most grave sin, by reason of the disposition of soul, scandal, and harm to offspring, which rarely is born from meretricious life, and if sometimes it is born, is accustomed to be educated very badly.

775. Special question: On Prostitution. In our times also the question is sharply disputed: Whether prostitutes are to be permitted?

Resp. One opinion, and this probable, affirms with St. Augustine (*de Ord.*, l. 2, c. 4, n. 12) and the Angelic Doctor (2.2, q. 10, a. 11). The sole reason is because in this way greater evils are impeded, namely acts of sodomy, adulteries, prevarication of honorable women, etc. "Take away," says St. Augustine, "prostitutes: you will disturb all things with lusts."[97] But the other opinion, which is practically more probable, denies. The reasons are: a) from such permission the way is not closed to the aforesaid evils; - b) because prostitutes can be approached easily, lust fixes deeper roots; c) other evils arise, namely: more girls are prostituted, adolescents reject honorable marriages, neglect studies, etc. Thus St. Alphonsus (III, 434). - In every case, as Venerable Januarius Sarnelli proves (*op. de Abusu meretr., aggiunta*, § 2), meretricious life cannot be permitted except in great cities, and this under certain conditions, for removing scandals. Cf. Noldin, n. 18, at the end.

Note. For practice, three things are to be noted: 1. The circumstance of concubinage or meretricious life is not indeed of itself to be manifested in confession, since it does not constitute a species; but it is to be manifested both by reason of the occasion to be removed, and especially by reason of the intention had from the beginning and embracing many sins in number. - 2. Neither concubinarii nor prostitutes can be absolved unless it has been plainly established concerning the removed occasion and amendment (III, 435). Say the same of procurers and procuresses, who, for the sake of gain, prostitute their own women or those of others (see n. 1822). - 3. Fornicators are to be asked by the confessor whether offspring has been born from fornication, or is about to be born; whether they have attempted to impede conception of offspring or procure abortion, or have neglected offspring born.

§ 2. On Stuprum

776. Definition. Stuprum, in the broader sense, is the violation or oppression of any woman, even a widow, or otherwise corrupted. In the stricter sense, as in canon law, it is "the deflowering of a virgin, she being unwilling." But a virgin is said to be deflowered when, for the first time, through the concubitus of a man, she is deprived of virginity or integrity of flesh. The malice of stuprum is found, although in an imperfect mode, in the shameful touching of an unwilling woman.

Principles. I. Stuprum, in each sense, has special malice. The reason is that besides fornication it contains grave injury, on account of violence brought in. This malice is increased (but more probably within the same species) when someone takes integrity away from a virgin: for this is reputed, and deservedly, as a good of the greatest price, by which virgins are especially honored, and are sought for suitable marriages. And hence it is why stuprum of a virgin is punished by special penalties in canon law (cf. Craisson, n. 6266).

777. II. Moral and interpretative violence suffices for the crime of stuprum. For commonly he is judged guilty of stuprum who has led a virgin into evil by fraud (for example by a false promise of marriage or of a great dowry) or by grave fear, even reverential fear; as also he who has dishonored a girl not yet having obtained perfect use of reason, or one drunk, foolish, or sleeping, without her previous consent.

778. Questions. Q. 1. What ought a woman oppressed by force to do, so that she may be immune from sin?

Resp. She cannot behave negatively or permissively, but is held to resist, both internally, lest she consent to pleasure, and externally, with at least ordinary resistance, namely by repelling force by force, so that thus she may report victory, and deserve to be crowned by God (cf. n. 736 and 755, end). See Salmant., tr. 25, c. 1, n. 29.

Q. 2. Whether she is also held to cry out?

Resp. Distinguish: Affirmatively (and even with manifest danger to life), if proximate danger of consent is imminent; for then extraordinary resistance also is necessary. But negatively, very probably, with such danger excluded (as can

[97] Yet it should be noted that the aforesaid words rather report the opinion of a friend of St. Augustine. If we consider what the Holy Doctor teaches in his retractions and in his exposition against Faustus, he seems to adhere to the second opinion. Cf. Rosler, *Frauenfr.*, p. 221, 222.

happen when there is question only of touches) with danger of notable harm, whether of infamy, or excessive shame. Yet the contrary opinion, as safer, is to be counseled; and it becomes plainly obligatory if the woman, on account of past experience, or on account of known frailty, is in special danger of afterward consenting to the consummated act (III, 368, 430).

Note. For practice, it is to be noted that cases of a woman oppressed, without her own fault, by reason of irreligiosity that always increases, the condition of labor in workshops, etc., in some regions, become more frequent day by day. Hence women are to be warned not to return home without a companion, and to show themselves strong and circumspect. "Besides, the natural timidity of women, and often confusion from an unforeseen case, can effect that a woman does not oppose a great and manly resistance, and nevertheless is immune at least from formal fault" (Berardi, *Praxis*, 266).

On restitution on account of stuprum, see n. 956 ff., in the treatise on the Seventh Precept.

§ 3. On Raptus

779. Definition. Raptus (not insofar as it is an impediment of matrimony, but insofar as it is a species of lust) is defined: The violent abduction of a person, for the sake of satisfying lust.

It is said: abduction, i.e. carrying from a safe place to an unsafe one where liberty is taken away; violence, i.e. force brought in, whether physical or moral, either to the abducted person herself, or to those under whose power she is, namely parents or guardians or husband; of a person, female or male, whether married, virgin, etc.; for the sake of satisfying lust: hence, if someone is abducted for another end, for example so that she may be used for services, that raptus is a sin against justice, but is not a species of lust. - Similarly if a woman of full age or emancipated departs of her own accord with a lover, the parents being unaware, such departure is not properly raptus, but flight, nor in this case is a new species of malice added to fornication (III, 444).

780. Principles. I. Raptus is a grave sin against chastity and justice. Against chastity, on account of the lustful intention; against justice, on account of violence brought in either to the abducted person, or to those under whose power she is, or to both.

II. Raptus is a sin specifically distinct from stuprum. For the raptor unjustly takes away liberty, which is a good distinct from integrity of flesh. From this it follows that the circumstance of raptus must necessarily be disclosed in confession, although lust had not been satisfied, or although the abducted person finally had freely consented to the sin.

Note. In Canon Law (caus. 36, q. 1), raptus is called any violence brought against a woman for the cause of lust; and against such violence the same penalty is established, without the circumstance of abduction being mentioned. In this sense, therefore, stuprum does not differ from raptus according to species, but only as the inferior from the superior, so namely that every stuprum is raptus, but not vice versa.

§ 4. On Adultery

781. Definition. Adultery is copulation had with a married person.

Therefore the perfect malice of adultery is present when, by concubitus, either one's own marriage-bed or another's, or both at once, is violated. But imperfect malice of adultery is had if this violation happens through imperfect acts, for example touches, or through actions by which a married person illicitly disposes of his own body or of the body of his wife (see below n. 782).

Division. Adultery is either simple, when an unmarried man sins with a married woman, or a married man with an unmarried woman; or double, when a married man sins with a married woman.

Principles. I. Adultery is a grave sin against chastity and a most grave sin against justice, even if consent of the spouse is present. It is established: 1. From Scripture (Deut., 22, 22): If a man has slept with the wife of another, let each die, that is, the adulterer and the adulteress; and you shall take away the evil from Israel. And (1 Cor., 6, 9): Neither adulterers shall possess the kingdom of God. 2. From reason: for adultery injures, in a most grave matter, the right of the other spouse, harms the good of offspring, hurts the family, often begets scandals and quarrels, and generates innumerable other evils, as daily experience teaches.

We said: even if consent of the spouse is present, because such cession is null, since the right over the body of the spouse belonging to each spouse is exclusively proper and entirely inalienable, from the divine institution of matrimony and from

the very law of nature. Hence this 50th proposition was proscribed by Innocent XI: "Copulation with a married woman, the husband consenting, is not adultery." Cf. Viva on this proposition; see what we established above, n. 723.

782. II. Adultery of a married man with a married woman includes in itself a double injustice distinct in number. The reason is evident; for the rights of each marriage-bed are violated. Hence, such a circumstance is to be disclosed in confession (cf. n. 330).

From these things conclude: 1. Adultery of an unmarried man with a married woman is, speaking of itself, a graver sin than that of a married man with an unmarried woman. The reason is that, in the first

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case, copulation either harms generation (which not rarely happens), and then the husband is unjustly deprived of offspring; or it introduces false heirs into the family, or at least often begets uncertainty of offspring (III, 445). 2. He who knows his own wife sodomitically or onanistically, or is voluntarily polluted, according to the common opinion, more probably commits adultery; because such a crime is against the good of the faith given, and an injury against the body of the spouse (III, 446; Sanchez, *de Matrim.*, l. IX, disp. 18, n. 5; Lehmkuhl, I, 1049; Berardi, II, n. 816). 3. He who has relations with another's betrothed does not commit true adultery. Indeed, on the part of the betrothed woman, there is a promise of her body, but the completed handing over of the body is lacking, as we already said n. 774.

§ 5. On Incest

783. Definition. Incest is concubitus with a person joined by kinship or affinity, within the degrees in which it is not licit to enter matrimony. Moreover the malice of this sin is contracted not only by natural congress, but also by sins of lust against nature, or non-consummated sins.

Division. Since a threefold kinship is given, namely natural, spiritual, and legal, and since besides kinship affinity is also given, hence a fourfold incest is distinguished, namely: 1. incest with a blood relative up to the fourth degree; - 2. with an affine up to the fourth degree, if the affinity comes from licit copulation, and up to the second, if from illicit; 3. with a spiritual relative (which kinship arises from baptism or confirmation); - 4. with a legal relative (which kinship comes from adoption). Cf. n. 2015 ff.

784. Principles. I. Incest is a special sin, having most grave malice. For it is opposed both to chastity, and to piety and reverence owed to relatives and affines. Hence in Leviticus (20, 14 ff.) it is punished with the penalty of death; and Blessed Paul (1 Cor., 5, 1-5) gravely rebukes the incestuous man, handing him over to Satan, that he may be corrected.

785. II. Incests between spiritual and legal relatives differ in species both from one another, and from incest with blood relatives and affines; but incest between affines more probably does not differ in species from incest between blood relatives. The reason for the first is that the diverse kinships have their origin from formally diverse roots, namely: natural kinship from nature, spiritual kinship from a sacrament, legal kinship from law. Indeed, according to St. Thomas (2.2, q. 154, a. 9 and 10, ad 2), through copulation between spiritual relatives sacrilege is committed in the mode of incest. Hence this quality of incest is to be disclosed in confession. The reason for the second is that it is material whether the conjunction arises from blood or from marriage, since copulation with blood relatives and with affines is prohibited from the same motive of piety.

The opinion, indeed, that teaches these incests specifically to differ, is also probable; and the reason is that the conjunction of blood relatives arises from an intrinsic bond, i.e. from identity of the same blood received through generation; but the conjunction of affines draws its origin from an extrinsic bond, i.e. from copulation had with their blood relatives (III, 448-450; VI, 469). But in practice, this circumstance or distinction (for example, that someone sinned so many times with a sister-in-law, and so many times with his own sister) can be kept back before the confessor.

786. It is asked. Whether incests differ in species according to diversity of degrees?

Resp. 1. Incest between blood relatives of the direct line, in the first degree, differs in species from the others according to the common opinion of the Doctors; because this nearness of blood-relationship by natural law so dirimently impedes matrimony that the Church herself cannot dispense. Besides, incest committed in this degree injures piety of itself and properly, while, in other degrees, this happens only by participation.

Hence, in confession it is to be explained if a father has sinned with a daughter, or a son with his mother: which crime has a diverse malice by reason of the special reverence owed to a parent. In the same way, incest between a stepson and stepmother, and between father-in-law and daughter-in-law, mother-in-law and son-in-law, differ in species from incest between other affines (VI, 469, 470; *H. Ap.*, IX, 17; Lehmkuhl, I, 1050).

Note. Recent authors indeed call probable the contrary opinion, which denies that incest in the first degree, between blood relatives or affines of the direct line, differs in species from other degrees. Thus Noldin, Genicot, Ballerini, and among the ancients Sporer, Suarez, Tamburini. But our opinion (which among the ancients was more common) is defended by Lugo, Cajetan, Salmant., Roncaglia, and weighty reason supports it. Cf. n. 63, 2, and 65. - See Berardi, II, n. 830, who follows St. Alphonsus.

2. It is disputed whether incest between blood relatives, in the first degree of the transverse line, namely between brother and sister, differs in species from the others. Some probably affirm, because the Church, with the law of nature apparently resisting, never dispenses in this degree. Others probably deny, because the prohibition of the Church does not seem to import any difference, and matrimony between brothers and sisters, children of Adam, was licit (VI, 470; *H. Ap.*, IX, 18; cf. St. Thom., 2.2, q. 154, a. 9, ad 3).

As regards the other degrees of blood-relationship, according to the more probable opinion, incest does not differ in species, just as neither does it as regards the diverse degrees of affinity and legal kinship. The reason is that among them matrimony is prohibited only by positive law (ibid.).

Hence, for practice, you will conclude: a) Outside the first degree in the direct line, whether of blood-relationship or of affinity, the circumstance of degree, although it notably aggravates the sin, is not necessarily to be confessed.

b) Relatives, having obtained a dispensation for matrimony, probably do not commit incest if they fornicate before matrimony. The reason is that the dispensation takes away the prohibition of matrimony; but where matrimony is not prohibited, there is no incest (III, 452; IV, 1140). Cf. n. 2052.

c) A confessor more probably does not commit incest by having relations with his female penitent, since between them no spiritual kinship exists. But a pastor sinning with his female parishioner sins against justice, since by force of his office he is held to feed his sheep by word and example (III, 451). Several say the same of a guardian toward a ward, and of all those to whom care of minors has been specially committed. More probably otherwise, if a master sins with a maidservant, or a believer with an unbeliever, although the sin is graver. Cf. Porpora, V, 285.

The rest, as regards penalties, etc., will be explained in the treatise on Matrimony.

§ 6. On Carnal Sacrilege

787. Definition. Sacrilege (in the matter of lust) is violation of a sacred person, place, or thing, through a venereal act. It is a great sin (for holy things are to be treated holily), and contains a double malice, one against chastity, the other against religion, as is established from what was said n. 578.

Principles. I. Concerning a person, sacrilege is committed if someone sins lustfully while having a vow of chastity, or with one having it. Cf. n. 581.

Hence: 1. A priest sinning with a person consecrated to God is guilty of double sacrilege; because he injures religion in a double way. 2. More probably, a priest who is at once a religious, sinning against chastity, is guilty of only one sacrilege; because, although he remains bound to the vow of chastity by a double precept, nevertheless, because he sins against the same precept imposed twice from the same motive, he injures only one virtue of religion. 3. He who, bound by a vow of chastity, induces another to a sin of lust is guilty of sacrilege, at least if he induces from a positive affection toward lust, or with delay takes pleasure in another's carnal sin, or pollutes him with his hands, although without his own pleasure (III, 455-457; *H. Ap.*, IX, 20).

788. II. Concerning a place, sacrilege is committed whenever an external lustful act is perpetrated in a sacred place. See n. 582.

Hence, voluntary pollution and fornication committed in a church are sacrilege; and so it is more probable, although the crime is hidden, and the church does not need reconciliation (as in notorious pollution or fornication). Likewise, according to the more probable and more common opinion, conjugal copulation which moral necessity does not excuse, such as danger of incontinence of the spouses, or their long confinement in a church; likewise more probably, gravely immodest acts, namely touches, kisses, obscene looks, as also obscene conversations; and the reason is because all these indecencies injure the reverence owed to a sacred place. But internal acts, such as desires and thoughts, are not sacrileges, unless they are concerned with sins to be committed externally, although hiddenly, in a sacred place (III, 458-462; *Conf. dir.*, IX, 6, where useful things are given).

789. III. Concerning a thing, sacrilege is committed whenever there is abuse of a sacred thing for shameful things, for example solicitation in the confessional (cf. n. 583). - The same must be said of a priest who sins shamefully

while vested for Mass, or while carrying the Eucharist, or after communion, as long as the sacred species remain (III, 463; *H. Ap.*, IX, 23).

ARTICLE II

On Sins of Lust Against Nature

Sins of lust against nature are those most shameful acts in which the conditions necessary for human generation are not preserved. But from the things said above n. 763, it is established that four things are required for generation, namely, concubitus of two, of the same species, of diverse sex, in the due vessel; in the first of these pollution fails (to which onanism is referred); in the second bestiality; in the third perfect sodomy; in the fourth imperfect sodomy.

We shall treat of each one separately.

§ 1. On Pollution

790. Definition. Pollution (or softness, masturbation, from disturbing by hand) is the effusion of human semen, without congress with another. Here by the name semen there is understood not only semen properly so called, such as the semen of a man, but also improperly so called, such as the semen of a woman or of boys or eunuchs, which ordinarily is not produced unless pleasure has reached its final terminus. Cf. n. 763, 3.

We already said (ibid., 6) what distinction is present between male pollution and distillation.

Division. Pollution can be: either voluntary in itself, or directly, as masturbation; or voluntary in the cause, or indirectly; or involuntary, which happens especially in sleep.

I. On Directly Voluntary Pollution 791. Principles. I. The sin of pollution essentially consists in this, that it is completed lust against nature; in other words, that it is "the complete use of the genital members outside concubitus." This is the common opinion among theologians and the much more probable opinion. For all agree in this: that pollution is a sin against nature; but the note must be designated by which it is diversified from other sins of lust, and this consists in this, that there is had effusion of semen without concubitus, and indeed perfectly satisfying of concupiscence, through acts that can no longer be ordered to procreation (Van Roey, *Quaest. de 6 praec.*, p. 17). The same is established from the authority of theologians (cf. Eschbach, c. IV, where many things are given; Genicot, I, n. 396) and from the common doctrine concerning virginity.

792. II. Directly voluntary pollution is always a mortal sin; so that it is never licit directly to procure it. Theologians agree unanimously, so that "no Catholic appears who contradicts" (Cajet., 2.2, q. 154, a. 12). It is established: 1. From Scripture (1 Cor., 6, 10): Neither the soft shall possess the kingdom of God (likewise Rom., 1, 24 and Gen., 38, 9). 2. From reason: the primary reason, which avails as much for males as for females, boys, and eunuchs, is that (as we proved above n. 768) it is wicked directly to seek carnal pleasure outside the legitimate use of matrimony. But pollution is direct lust and carries with it the most vehement venereal pleasure. Therefore it is intrinsically evil. But this pleasure, because it satisfies the appetite and is physically complete (cf. the preceding number), differs in species from non-consummated pleasure, which can still be ordered to procreation; hence in confession it is to be distinctly accused (cf. Lehmkuhl, II, 1039, 3).

Another reason accedes, which up to the end of the sixteenth century was judged to avail for all, but today is judged valid chiefly for males, namely: pollution frustrates the end intended by nature, which ordered the effusion of semen, especially in the man, solely to the good of the human race, that is, to the generation of offspring. Finally it is confirmed from proposition 49 condemned by Innocent XI: "Softness is not prohibited by the right of nature; hence, if God had not forbidden it, it would often be good" (III, 467, 476; cf. Sanchez, l. 9, disp. 17, n. 15).

793. III. All pollutions, according to themselves, are of the same species, in whatever mode they happen, if they happen without concubitus. Thus commonly, against certain authors who think that pollution in females is not of the same species as in males. Reason: in any pollution there is had the same special note that we indicated in the first principle.

We say according to themselves: because by reason of circumstances other malices distinct in species can be joined. These circumstances are taken: 1. from the part of the subject, for instance if one having a vow of chastity is polluted, sacrilege is added; if married, adultery; 2. from the part of the object imagined or desired: thus pollution has joined to itself the species of fornication, adultery, etc., if it happens with the desire of sinning with a girl, married woman, etc., or with pleasure

concerning concubitus with such a person; 3. from the part of the accomplice: if someone is polluted by another's touches, he sins both by reason of his own sin and by reason of the other's sin, i.e. by reason of scandal, seduction, or cooperation. Hence, if the accomplice was a married person, or bound by a vow of chastity, or a blood relative, this circumstance also is to be disclosed in confession; but not, according to the more probable opinion, whether it was a man or a woman; because when concubitus is not had, there is not of itself affection toward sex, but toward pollution (III, 416); 4. from the part of place or thing, for instance if a sacred thing is taken or pollution happens in a sacred place (cf. n. 788, 789).

From these things you will gather: 1. Not even for conserving life will it be licit directly to procure pollution for oneself; likewise it is not licit by touch, posture, etc., voluntarily to promote pollution begun. Yet movements that arise from the muscles while involuntary emptying is standing are not counted among deliberate movements. Cf. Lehmkuhl, I, 1042, note.

2. "No concern is to be had about the various modes applied to pollution. For whether a man uses imagination alone, or the sight of a shameful thing, or touches, or other means…; similarly whether a woman procures for herself the highest pleasure by compression of the thighs alone, or by handling of the clitoris, or by introduction of fingers or some instrument into the vulva,

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whether penetrating more deeply, she solicits the very neck of the womb by more shameful itching, one crime is present in all these modes of acting, namely pollution" Lapellas, *de Castit.*, P. 3, sect. 2, c. 1.

3. Similarly, he who is polluted by touching a sleeping person, or one incapable of deceit, or an animal, or an inanimate thing, provided affection toward sex or concubitus is absent, contracts only the malice of pollution.

4. Practical Rules. 1. Those polluting themselves should also be asked about immodest touches separated from pollutions, and they should be admonished that such touches are mortal sins, namely by reason of the proximate danger of falling into pollution or into venereal pleasure (III, 454; *Praxis*, n. 41).

5. From boys and girls one should not ask whether effusion of semen was present, or great pleasure: for it is better that something be lacking in the material integrity of confession than to give knowledge of those things that are unknown, or at least to sharpen dangerous curiosity (*H. Ap.*, tr. ult., n. 37). Yet let the confessor know what skilled physicians say, namely: that girls, although naturally less prone to venery than boys, give themselves earlier to masturbation, on account of an itching in the private parts so easily existing among them (Antonelli, II, n. 246 ff.; Bossu, *Anthropol.*, II, p. 48).

6. It is never to be asked of women whether pollution was present; for the question is useless. They are held polluted when from vehement movement of the organs great pleasure arises in them; once this is completed, the venereal appetite is satisfied and rests. Hence it suffices if they are asked whether they have satisfied themselves in a dishonorable manner, or have fulfilled passion (Scavini, I, n. 778, adn.).

7. If boys ask about this or that sin concerning which they have heard in preaching, one must respond either by general words, by inspiring horror of this sin, or by turning the mind away to other things.

8. If someone, most miserably agitated by pleasure for hours, indeed for days, by help of a light action that of itself does not tend to pollution, for example by placing leg over leg, procures emptying for himself, do not condemn him a priori of the guilt of directly willed pollution, provided the intention of pollution is lacking. In this manner of acting, there is present rather licit permission than volition (Lehmkuhl, I, 1042).

II. On Indirectly Voluntary Pollution The question of the imputability of indirectly voluntary pollution is not to be confused with the question, although related, concerning the danger of consent.

Indirectly voluntary pollution is that which, at least confusedly foreseen, comes from an action more or less influencing it, and voluntarily posited.

795. Principles. I. Indirectly voluntary pollution is imputed unto fault when no reason of necessity or utility is given for positing the action from which it is foreseen as about to follow. But the fault is grave or light according as the action, posited without sufficient reason, gravely or lightly influences pollution. This is established from what was said concerning the indirect voluntary (n. 314-315).

Hence: 1. It is a grave sin whenever the action that is posited without necessity is a proximate or direct cause of pollution: as, for example, reading or hearing of very shameful matters, voluntary and lingering sight of entirely obscene things, a prolonged conversation with a girl inordinately loved (at least on account of the danger of consent), injections, shameful

and lustful touches, especially on another's body, attentive thought concerning concubitus, etc. For these of themselves gravely influence, and he who posits such a cause, adverting to the danger of pollution at least confusedly, by that very fact wills the effect connaturally joined to it, even if he does not intend it (III, 424-426, 482; *H. Ap.*, IX, 33).

2. It is venial when the action that is posited without necessity and without utility is a remote cause of pollution, i.e. such that danger is rarely or by accident joined to it. - Actions of this sort are: curious sight of a beautiful woman, or of an indecent picture, or of the coitus of animals (provided the sight is not prolonged), curious reading of a lightly shameful book, and similar things, which in the genus of lust are venial sins. Except if someone knew that pollution frequently comes to him from there; because then from that special disposition these would be, with respect to himself, a proximate cause of pollution[98] (cf. n. 769).

Yet it would be said more mildly "if the causes (in the genus of immodesty) were altogether light, as would be sight of the honorable parts of a woman, lightly shameful reading, conversation with a woman not prolonged, or lightly obscene; because it is as if morally impossible commonly to avoid all these causes" (III, 484).

3. Likewise, pollution is imputed to venial fault if the cause is indeed mortal, but not in the genus of lust, such as drunkenness or gravely sinful intemperance; because such a cause is judged to influence not of itself, but rather from the weakness of nature, and by accident[99] (*H. Ap.*, IX, 35).

4. II. Indirectly voluntary pollution is free from every fault, if there is present a sufficient reason for positing its cause, with all consent to venereal pleasure and its danger removed. This is established from what was said concerning the indirect voluntary, n. 315. But the reason of acting is reputed sufficient when it is proportionate, i.e. grave for proximate danger, light for remote danger. Thus any reasonable cause of necessity, utility, or convenience excuses from a light influence (even in a shameful genus). Cf. III, 483; *H. Ap.*, IX, 34, 35; Berardi, *Theol. mor.*, n. 760.

Hence, it is not of itself a sin: for the sake of recreation to ride; to take heating foods temperately; to perform gymnastic exercises; to lie in bed in a certain posture; from an honorable cause to speak with a person of the other sex; to kiss or embrace a relative according to the custom of the country; to serve the sick; to help them in baths; to exercise the surgical art; to hear sweet singing; to hear the confessions of the faithful, and similar things; although pollution is foreseen as about to follow by accident, provided it is not intended, and there is present a firm purpose of not assenting to it, if perhaps it comes. See also n. 810.

Note. Where, besides the danger of material pollution, some danger of formal consent is given, a graver reason and special caution are necessary, as was said n. 375. - See n. 800, concerning cautions or remedies to be applied.

III. On Involuntary Pollution 797. Principles. I. Involuntary and natural pollution is free from every fault. The reason is evident of itself. Cf. St. Thom., 2.2, q. 154, a. 5; 3, q. 80, a. 7. It is called involuntary and natural: namely that which, without any cooperation (neither direct nor indirect) of the will, comes from merely natural causes and can stand with pleasure. Thus pollution sometimes arises from the superfluity of nature, weakness of the organs, excessive heating of the body, etc. Directly to intend and procure nocturnal pollution is mortal (Genicot, I, n. 400).

798. II. There is not of itself an obligation of restraining pollution occurring spontaneously; provided both consent to pleasure and its proximate danger are absent (which each one can judge from past experience). The reason is both because it is most difficult to restrain it once begun, and because man is not held to impede this natural effect with danger of a graver temptation or of another inconvenience (cf. n. 353, q. 2). - Yet it is expedient for the health of the body to restrain or impede it, especially for those who are weakened by frequent pollution (III, 479).

St. Alphonsus notes: 1. He who suffers pollution ought to take care that at that time he turns the mind away from pleasure, and devoutly and trustingly invokes the Most Holy Names of Jesus and Mary, so that thus he may avoid consent. 2. He who, half asleep, takes pleasure concerning pollution is not to be condemned of mortal sin, since for mortal sin both full advertence and perfect consent are required. And the same is to be said of nocturnal touches (*H. Ap.*, IX, 32).

[98] Except also if someone, by positing a light cause, should feel himself moved, and nevertheless should go on without reason positing that cause (Lehmkuhl, I, 1030).

[99] Some authors (for example Noldin, n. 12) explain the matter otherwise. According to them, if some cause remotely influences movement, there is always only venial sin, even if someone, by positing such causes, knew that he frequently suffers pleasure from this. Their reason is the following: the evil effect in these persons is produced rather by accident, namely from the special weakness under which they labor. Influence into the effect should rather be taken from the nature of the action. But these things do not please; because, since it is certain, in the question of those in occasions and in other matters, that much attention is given to the relative connection of the action with the effect, why in our matter should these things be neglected? Therefore St. Alphonsus is better. Besides, Noldin himself afterward (n. 35, 6) teaches other and sounder things.

799. What, you will ask, about distillation and carnal movement?

Resp. 1. "If it is with some venereal pleasure, or with movement of the spirits, it will indeed be mortal if it is not avoided, just as pollution is to be avoided. But if it happens without sense and movement, it can be permitted, as the emission of another excrement, but it can never be procured deliberately" (*H. Ap.*, IX, 30). In other words: no concern is to be had about it, nor is there an obligation of omitting the causes of such effusion.

2. The same, with proportion observed, seems to be said of movement of the genital parts. If it is grave and lustful, it ought to be avoided, as pollution itself is, and with the same cautions applied; if light, and coming from an honorable action, or from weakness of nature, it is better to disregard it, and divert oneself to other things (cf. n. 322). - Generally it can be said that the same principles that are established concerning pollution have force here.

3. Note. Remedies for healing those accustomed to the sin of pollution are: 1. In the natural order, abstinence from warm or irritating liquors and foods; discreet mortifications; labor and weariness of the body; custody of the senses; prompt repulsion of shameful thoughts; flight from occasions, bad books, persons of the different sex, sadness, solitude, idleness, etc. They counsel also covering and compressing the moved parts with clothing (St. Alph., V, 8; Berardi, *de Sexto*, n. 772; Sani, *de Sexto*, n. 1885, I and II). 2. In the supernatural order, fervent prayer, and invocation of the Blessed Virgin Mary, especially in time of temptation, alms, but especially frequent approach to the sacraments. "I scarcely think there is another efficacious remedy than to use most frequent confession; for this sacrament is the greatest bridle, and he who does not use it, let him not promise himself amendment, except by miracle." Thus St. Alphonsus with Toletus (VI, 464). Cf. Antonelli, II, n. 176 ff., where many very useful things are given. See below (n. 1831) how one must act with the habituated and relapsing.

§ 2. On Onanism

801. Notion. Onanism (or the sin of Onan) is copulation so performed that from the semen poured out generation cannot follow. This crime perpetrated among unmarried persons is a double sin, namely fornication begun and effective, and pollution in effect. Concerning onanism between spouses it will be said in the treatise on Matrimony (2114 ff.).

The special malice of onanism, when it is committed by unmarried persons, is not rarely unknown; because they easily persuade themselves that less evil intervenes there, where scandal is avoided and the honor of the girl is consulted. Therefore let the confessor not press questions if the penitent seems to be in good faith, nor a special reason is present for admonishing him or asking whether the sin was consummated, for example on account of suspicion of attempted abortion.

Note. To onanism is referred, insofar as inducing its danger, inordinate congress, in which, namely, the natural order of lying together is not preserved: for example when the man lies beneath, or approaches backward in the manner of beasts, or from the side, or standing, or sitting, or in another unusual mode. Whether and what kind of sin it is, see n. 2100.

§ 3. On Sodomy

802. Definition. Sodomy is concubitus with an undue sex, or in an undue vessel (III, 466). It is said: concubitus, i.e. conjunction of bodies: for in this is found the constitutive reason of this sin; penetration of the vessel does not necessarily pertain to it, except in imperfect sodomy.

Sodomy is a vice of particular friendships, and is called pederasty or lesbian love, according as males pursue males, or females pursue females, with undue love mutually. Today in many regions physicians move every stone so that sodomites (Uranists, tribades, the third sex) may not be punished so severely by civil law.

Division. A twofold sodomy, and indeed diverse in species, is distinguished: namely perfect and imperfect. Perfect is concubitus toward a non-due sex, as of a male toward a male, or of a female toward a female. Thus more probably with St. Thomas (2.2, q. 154, a. 11). Imperfect is concubitus with a person of diverse sex, but in an unnatural vessel. Each, by reason of the effect, is either consummated, if it happens with effusion of semen inside the undue vessel, or non-consummated, if semination is lacking, or if semen is poured out outside the vessel.

The whole specific malice of perfect sodomy consists in affection toward an undue sex; and therefore among persons of the same sex "perfect sodomy is present in whatever part of the body congress happens, because ordinarily affection toward the undue sex is then always present" (*H. Ap.*, IX, 24). But the malice of imperfect sodomy consists in affection toward an undue vessel. Wherefore, if the sex is diverse, copulation in a posterior vessel is required to contract the malice of this sodomy.

Principles. I. Sodomy is a crime much graver than simple pollution. This is established from the horror that it excites among all, and also from the unheard-of punishments that God inflicted on Sodom (cf. Gen., 19; and Rom., 1, 26, 27).

803. II. Sodomites, whether they are agents or patients, are punished by each law. 1. If they are laymen, they deserve by civil (Roman) law the penalty of death and burning of the corpse. These are no longer in force today, but other penalties are imposed. 2. If they are clerics or religious, they incur by canon law (but after sentence) deprivation of offices, benefices, and every clerical privilege; and they must be handed over to the secular arm, when namely sodomy is perfect, consummated (in the posterior vessel), and repeated. Const. *Horrendum* of St. Pius V (cf. III, 470; *de Privil.*, n. 19).

Bishops also are accustomed to reserve this case to themselves, if the sodomy is perfect and consummated, i.e. if it is carried out with a person of the same sex, and penetration of the posterior vessel and semination are present.

804. From the things said, you will resolve: 1. It is not sodomy if there are only mutual touches, even with pollution, but without concubitus, or conjunction of bodies. Nor is it sodomy if a man pollutes himself between the legs, arms, or breasts of a woman; but it is fornication in effect, pollution in effect; but if in her mouth, some say it is a special sin against nature, which they name irrumation; others, as above, call it fornication in affection, pollution in effect. But if pollution of a man happens in the mouth of a male, it will be perfect sodomy (III, 466; VI, 935; *H. Ap.*, IX, 25).

805. In confession, of itself, the following must be declared: a) The sex of the accomplice, namely to distinguish perfect sodomy from imperfect. - b) The sodomitical congress itself, i.e. shameful concubitus; but not in what part of the body it was present, if the sex was the same; but copulation in the posterior vessel, if the sex was diverse. c) The quality of the person, whether married, a relative, etc. d) Whether pollution was present or not; which indeed is presumed in the agent, often arises in the patient; but the circumstance whether someone was agent or patient does not change the species of itself. Pollution, if it happened, is to be confessed in species as a sin distinct from sodomy. e) Whether force was applied (III, 468 ff.; *H. Ap.*, IX, 24).

806. But the confessor, when he has understood that a woman was known by a man outside the natural or posterior vessel, should not inquire further in what place, or how (III, 466). Similarly, if a man says: I lay with a man; or a woman: I lay with a woman; he should not inquire whether upon bare flesh, or upon clothing, etc.; for once the lustful congress and quality of the person have been declared, nothing further is to be investigated; and sodomy is supposed to have been done in that mode in which, by reason of the sex, the thing

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could have happened. - But if the case were reserved, the confessor would have to investigate whether it was perfect consummated sodomy (which can be had only between males); but, in practice, let him proceed most cautiously, lest he place indecent questions.

§ 4. On Bestiality

805. Definition. Bestiality is coitus with a beast. The special deformity of this sin consists in this, that venereal pleasure is sought with a being of diverse species, through access and affection toward such a being. Cf. what is to be said below n. 833.

Principle. Bestiality is among sins of lust the gravest, as is evident of itself. Hence it was punished by death in the Mosaic law (Lev., 20, 15): He who has gone with a beast and cattle, let him die by death; kill also the beast. A woman who has lain beneath any beast, let her be killed together with it.

To bestiality is recalled sin with a succubus or incubus demon. To this sin is added malice against religion. Besides, there is had the malice of affective sodomy, or of fornication, if the demon appeared in the form of a boy or of a woman; of adultery, or incest, if in the form of a married woman, blood relative, or affine; nevertheless, otherwise very probably it is to be denied, if the one lying together takes pleasure in that woman represented by the demon not as married or a nun, but as beautiful (III, 475; *H. Ap.*, IX, 28).

Note. 1. If this sin is reserved, ordinarily the reservation is not incurred unless penetration in the vessel with semination is present.

2. Concerning bestiality, those much given to lust are to be questioned cautiously, especially farmers and keepers of cattle; because many of these judge the crime sufficiently declared by pollution. From another side, how many are found who, when they have committed it once or twice, perhaps only in adolescence, remain silent about it for a very long time! (Scavini, I, n. 922). Certain persons who love dogs or cats excessively, and flatter them insanely, should also sometimes be questioned cautiously.

3. It is enough, when the confessor knows of the horrible congress with a beast, that concubitus be discerned from simple obscene touch. As the inquiry concerning the mode of congress, the species or sex of the beast, would be unsuitable, so also would it be superfluous; because the whole deformity of the crime consists in access to a diverse species.

4. Practical Rules. Concerning works of the flesh, says St. Alphonsus, penitents should be asked: "with what (person) they had relations (namely whether on the part of the accomplice circumstances changing the species were present); - whether at other times they sinned with the same one; - where the sin was perpetrated (for removing occasions); - how many times the sin was consummated, and how many interrupted acts were present, separately from the sin; - whether they consented to the sin long before; for then internal acts are interrupted, and then it is expedient to form the judgment that sins were multiplied so many times as pauses of sleep, distraction, etc., were present, as they are before God, only by asking concerning the duration of time in the sin. Otherwise, if the evil purpose was conceived for two or three days before the consummation of the sin and within that time was not retracted; because then the sin is taken for one in number" (*Praxis*, n. 41).

N. B. Concerning remedies of lust, see n. 367 and n. 800.

CHAPTER III

On Sins of Non-Consummated Lust

St. Alphonsus, III, 419; ed. G., I, 668; Lehmkuhl, I, n. 1032; Aertnys, l. 3, n. 227; Berardi, *Theol. mor.*, II, n. 778; Gopfert, II, § 104; and other authors already adduced.

807. Things to be noted beforehand. Sins of non-consummated lust, namely those in which effusion of semen does not intervene, are of two kinds: some that contain lust itself and are called lustful acts, carnal movements (n. 763); others that embrace not lust itself but only the cause producing lust, and are called immodest acts. But these are either internal, namely morose delectation, joy, and desire (concerning which we have treated in the treatise on Sins); or external, namely words and readings, looks and touches. But since there has already been discussion concerning the morality of carnal movements, it remains only to treat of external acts provoking to lust.

General conspectus. 1. External acts, concerning which we shall speak, are not intrinsically evil; for they can be directed to good and to evil.

2. But in themselves they are dangerous, insofar as remotely or proximately they prepare the way for venereal things. Therefore, in order that they become licit, a proportionate reason is required. He who exercises these acts without cause acts more or less implicitly from the end of lust. Except (but these cases are very rare), if it is truly established that for such or such a person danger to chastity is absent. Yet hallucination is always to be feared, or habituation to certain things that afterward can become dangerous. Cf. the things said n. 769.

3. To constitute grave sin in these external acts (prescinding from a wicked end), three things can concur: a) danger of consent to pleasure; b) scandal; c) influence of the action in order to venereal pleasure. Here there will chiefly be discussion concerning the last. For judging the reason of the influence, attention should be given to circumstances. For there are certain actions ordinarily dangerous for all; there are others that move only some. As regards these, the gravity of the influence depends on the circumstance of the mode in which the action is posited, if namely it happens studiously, with delay, repeated times, etc.

4. He who by external immodest acts procured pollution for himself does not satisfy the precept of confession if he accuses only the impure acts (cf. 792); but, once pollution has been accused, he is not obligated (with the things to be posited from n. 793 being posited) to accusation of the means applied. The same must be said if someone intended to procure carnal movements for himself, or only foresaw that such things would arise. For in carnal movements lust is already contained, although not yet consummated.

ARTICLE I

On Shameful Speech and the Reading of Obscene Things

Corruption of morals, for the most part, arises from obscene conversations and obscene readings, according to that saying of the Apostle (1 Cor., 15, 33): Evil conversations corrupt good morals. Wherefore, in hearing the confessions of adolescents and of others unknown to him, the confessor, when he has come to the sixth precept, will be able very fittingly to begin the questions from shameful speech.

Acts that regard human conversation are generally a cause of lust by reason of scandal. By reason of the knowledge that they bring to the ignorant, they influence lust less. Therefore the gravity of sin here will be discerned from the circumstance of the intended end, or of the persons who speak or before whom speech is held, or finally of the mode in which shameful speech happens.

808. Principles. I. To speak, sing, write, hear, or read shameful things from carnal pleasure, or with proximate danger of consent to it, or even with grave scandal, is a mortal sin. Thus all from the principles concerning lust or pollution indirectly admitted (III, 426).

Hence, generally, the following sin gravely: 1. Those who mix into conversations, even from levity, about the conjugal act, about licit and illicit things between spouses, about modes of impeding generation, of procuring pollution, especially if this happens among young persons of different sex.

2. Those who for boasting recount their shameful sins; and indeed ordinarily in three ways: a) because they glory concerning an evil thing; b) because they provide great scandal; c) because they easily take complacency in sins perpetrated (*H. Ap.*, IX, 9).

3. "Those who say shameful things on account of pleasure taken from thought of the shameful things themselves, or with danger of such pleasure, or with danger of grave scandal, which is frequently present when such things are uttered before young men or girls" (III, l.c.).

4. Those who read, without just cause, plainly obscene books (as Zola, Alfred Musset, George Sand, Guy de Maupassant, etc.), although they may seem to do this from curiosity alone or for the sake of recreation; for such reading generally greatly incites to lust.

It is to be noted that the danger from immodest speech is so much greater as particulars are more described, as the speech is more prolonged, and finally as greater sympathy intervenes between those speaking. Wherefore authors advert, with St. Thomas, that prolonged conversation with a girl inordinately loved is not without grave danger (*H. Ap.*, l.c.).

II. To speak shameful things for the sake of recreation or jest is not of itself mortal, unless the hearers are so weak in spirit that they suffer scandal, or unless the words are too lascivious. Thus St. Alphonsus with St. Antoninus and others (III, 426, 427).

Hence: 1. Commonly, amorous words and shameful jests uttered in passing (for example by harvesters, grape-gatherers, muleteers) are not grave; because they are said and heard playfully. Except, as already said, words too lascivious, especially when uttered before adolescents and younger honorable women. - 2. They do not sin gravely who from mere curiosity read witty books, for example comedies lightly shameful; because they do not gravely excite to lust, nor expose to great danger (Gury, I, n. 420).

809. III. To speak, write, read, or hear shameful things with legitimate cause, without wicked intention and danger of consent, and without scandal, is no sin.

Hence: 1. They do not sin who read obscene books in order to acquire necessary knowledge, to correct morals, to learn the truth of history, to inform Superiors, etc., provided they do not assent to shameful pleasure. The same must be said of those who read poems of the ancients in order to exercise and perfect style; these, however, are not to be handed to youths (cf. Const. *Officiorum*, n. 10).

2. "As regards the reading of romantic books that treat of loves, in practice a distinction must be made between assiduous or frequent reading, and fortuitous or rare reading. The first, especially as regards youths, must for the most part be forbidden under grave sin; not so the second, at least ordinarily" (Berardi, *Praxis*, n. 810).

3. On Those Hearing Shameful Things. 1. If they have authority over those speaking, they are held from office to restrain them. 2. But if they are inferiors or equals, let them either admonish, or be silent, if silence is held as a sufficient admonition.

If the shameful speeches are mortal on the part of the one speaking, the hearers, if they laugh a little, either commit no sin (because it is a first-first movement), or are not immediately and indiscriminately to be accused of mortal sin; for it can happen that they laugh rather about the mode of speaking than about the things themselves, or even so that they may not give occasion for worse things to be said. - Yet religious and clerics, who are held to chastity in a special mode, would easily provide grave scandal (*H. Ap.*, VII, 37, 3).

811. Practical Rules. Concerning obscene words let penitents be asked: 1. What words they said, i.e. in genus, not in species; whether they had very shameful conversations; so that thus it may be known whether they sinned gravely

or lightly. 2. Before whom and how often they uttered them, by reason of scandal: - whether before men or women, married or unmarried, boys or adults? For girls and boys are more easily scandalized than adults, especially if there is question of adults who are habituated in this vice. - 3. Whether they uttered the words from anger, or jest; for from anger complacency and scandal will be present with more difficulty. 4. Whether they boasted about some sin; for then often three sins concur, as was said (n. 352, 2).

They should also be asked whether they took pleasure in hearing others speaking dishonorably; and whether then they adverted to the precept of correction, thinking it would profit. Then St. Alphonsus gravely adds these things: "Let the confessor beware of absolving those relapsing in shameful conversations, although they say that they uttered them from jest, unless first they are amended, or bring an extraordinary sign of sorrow. Alas, how much harm from dishonorable words! One dishonorable word can effect that all who hear it be damned" (*Praxis*, n. 40; *Inst. Cat.*, P. I, c. 6, n. 21).

ARTICLE II

On Immodest Looks

812. Things seen influence the imagination more than things heard, and thence the carnal appetite. Wherefore, one who does not know how to restrain the eyes cannot live chastely, and his soul, like an open citadel, lies open to unclean spirits.

Influence on venereal things here is discerned from circumstances: a) the end: it is one thing to look on account of pleasure, another thing to look with pleasure, from curiosity, or necessity; - b) the person: certain things move youths, not old men; virgins, not married persons; strangers, not domestic or habituated persons; c) the mode: it is one thing to see, another to contemplate; one thing by chance, in passing, rarely; another studiously, with delay, frequently to inspect; - d) the object: for some things are more incentives than others.

Theologians are accustomed to divide the members of the body into three classes, according to the greater or lesser aptitude they have for exciting a depraved sense. Therefore there are distinguished: honorable parts, such as the face, hands, feet; less honorable parts, such as the chest, back, arms, legs; dishonorable parts, such as the genitals and parts nearer to them.

813. Principles. I. Immodest looks, had from a lustful intention, are mortal sins. The reason is that the end to which they are directed is gravely evil; and it is established from the words of the Lord (Matt., 5, 28): Everyone who has looked at a woman to lust after her has already committed adultery with her in his heart.

II. Immodest looks, had without just cause, are either gravely or lightly illicit, according to the gravity or lightness of the danger of exciting venereal pleasure. Cf. n. 769 and 807, where we discussed at length the gravity of the danger and its causes.

814. From these things you will resolve: 1. To look at human concubitus, unless it happens from afar and in passing, without doubt is lethal (III, 419). Likewise, to look at the private parts of a person of diverse sex is with difficulty excused from mortal sin, unless perhaps the look happens from a very distant place, and so in passing that no danger of pleasure is present. And St. Alphonsus thinks this must be held, even if danger of movement is absent by reason of childish or senile age, or cold temperament; because it brings at least danger of lusting. Except if the eyes are fixed on an infant, because such a look moves concupiscence little; unless it happens with delay or repeated times with wicked affection (III, 421).

815. To look at one's own private parts is mortal if it happens studiously and with delay, without necessity; otherwise, if briefly. But it is no sin if it happens from necessity or from just cause, nor is danger of consent present (III, 419, 482).

816. To look at the private parts of the same sex, from curiosity or levity, as happens among those swimming, or sometimes among the impubescent, is not mortal. Otherwise, if lustful affection is present, or special danger of lust, for example if the one looking were greatly prone to sodomy, or if a beautiful adolescent were looked at naked with delay and pleasure (III, 420). - Hence, they are to be gravely reproved

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those who swim together with the private parts uncovered; also boys and girls uncovering their private parts to one another, even in passing and from levity; for that, if it is not mortal, without doubt gradually conduces to mortal sin.

4. To look at the less honorable parts of a person of diverse sex, but not the shameful parts, namely arms, legs, or breast, is not always mortal of itself; but if the look is deliberate and prolonged, or if the one looking is prone to venery, with the greatest difficulty will it be excused from mortal sin. "And I think the same," says St. Alphonsus,

"concerning him who looks lingeringly at the face of a beautiful woman, at least if he loves her with inordinate affection" (III, 422; *H. Ap.*, IX, 8).

5. "To look at obscene pictures or statues from mere curiosity, authors say is not mortal, if the danger of shameful delectation is absent; but a man looking lingeringly at the private parts of a naked painted woman, or one covered only with a light veil, I do not know," continues the holy Doctor, "how he can be excused from mortal sin" (III, 424).
6. To look at the coupling of animals (scandal and the danger of venereal consent being excluded) is venial. Those who couple animals for the begetting of offspring are excused, provided a lustful mind is absent (III, 419, 484).

815. III. Sinful looks, which happen without desire, do not assume the species of the object. The reason is that a look is an act of the apprehensive faculty, and not of the appetitive faculty, and therefore is terminated not toward the object or person existing outside us, or taken concretely, but as it is expressed in us by an image.

It is said: of the object, i.e. of the person who is looked at; because on the part of the acting or cooperating subject (who offers himself for a shameful look), certain species of sin can arise, as was said above (n. 793) concerning pollution. - As regards scandal, see n. 512.

Scholium

On the Art of the Painter and Sculptor

From what has been said it follows that the exercise of certain arts excuses from the guilt of sin as regards looks at a less honorable thing. But which art excuses is not the one opinion of all. - Certainly the art of the surgeon or physician excuses; for exercising it, looks of this kind, for the sake of study or duty, exist as necessary, as is clear.

But whether the art of the painter or sculptor, for producing honorable works, excuses of itself, so that painters or sculptors can use as a model a nude woman, the private parts alone being covered (or the less honorable parts), is sharply disputed. It seems to us that those authors think more rightly who declare means of this kind, employed for excellent art, to be licit of themselves, provided that, more strictly than in another matter, safeguards are employed. The reasons are: 1. The arts of which there is discussion are necessary for the better being of society. - 2. The means mentioned above are very useful for the end; indeed, as experts testify, necessary for a perfect work; because if these are lacking, uniformity in the work will easily be present, and that exact proportion and harmony of all things, which are essential in the beautiful, will not be attained so quickly and so accurately. - 3. There is added, on the part of beginners (disciples), necessity in academies, where such models are employed, of completing their studies; from which there afterward follows a great difficulty of employing another method in their labor.

The safeguards to be employed more strictly than in another matter are the following: 1. Let the painter or sculptor not use such models except insofar as they need them. - 2. Let the nudity not be extended beyond necessity. - 3. Let the will make use of spiritual remedies, as is clear of itself.

From these things conclude: a) Painters are excused who cannot abstain from attending such academies without grave inconvenience.

b) Directors of academies are excused who, for necessity, expose such models. - This, however, we would not have said concerning directors of a private school, in which, besides other sciences, certain things concerning the art of painters are also handed on (*Ami du Cl.*, 1910, p. 852).

c) Authors are excessively severe who accuse indiscriminately of grave sin women serving as models from tender age. Sins, if any are committed by those looking, are not to be attributed solely to these women themselves, but sometimes rather to the malice of those looking. - Cf. Ballerini-Palmieri, n. 44; Berardi, *Prax. conf.*, n. 930; Genicot, I, n. 407; Noldin, n. 56; Tanquerey, n. 31; Gopfert, II, n. 235; Piscetta and others.

1. If, however, in some region the custom of swimming without any clothing has been introduced, habituation can effect that pleasure is less easily excited. - As regards those who use baths, as they say, of air or sun, for strengthening health and increasing the vigor of the nerves, of themselves, with safeguards employed, they act licitly. The safeguards are the following: while a reasonable end stands, let curiosity with respect to oneself or another be excluded; let at least the private parts be covered. It would be better if a very thin and ample garment were employed, clothed in which the patient would attain the intended end equally easily. - The modern theory concerning the opportunity of accustoming the eyes to the sight of the nude is altogether to be rejected. It smacks of the sense and luxury of pagans. Cf. *Ami du Cl.*, *Morale des artistes*, 1912 and 1913; *Linz. Quart. Schr.*, *Nacktkultur*, vol. 61, p. 530; Walter, *Der Leib in seiner Bedeutung* (passim).

ARTICLE III

On Lustful Touches

816. Lust grows from contact; indeed, such is the nature of venereal delectation that ordinarily it is not completed except with some contact of bodies, either real, or at least imaginary.

1. It is certain among all that touch is not something intrinsically evil, but indifferent. - 2. As regards sensual delectation proceeding from touch, those things must be recalled which we have already said in n. 769, 2: some things are speculatively, but not practically, probable. The gravity of the danger or sin here is taken from the circumstances of the person, mode, or end. - 3. The greatest danger, in general, can arise from the object that is touched, if namely it has a direct relation with lust. The places of generative pleasure in a man are: the glans of the penis and the anal opening; in a woman: the clitoris, vagina, neck of the womb, and breasts (Antonelli, II, n. 166).

Note. What we say concerning touches is valid also for kisses and embraces.

817. Principles. I. Outside marriage, all touches exercised on account of carnal delectation are mortal sins. The reason is that they are exercised on account of a gravely evil end (*H. Ap.*, IX, 3).

II. A venereal end being excluded, touches exercised without a legitimate and proportionate cause are mortal or venial, according as they bring grave or light danger of venereal delectation. The reason is clear from the things said in n. 769.

Hence: 1. They are mortal sins if, either from their own nature or on account of circumstances (for example on account of delay, on account of proneness to venery, etc.), they induce proximate danger either of venereal delectation or of pollution. - 2. If they induce only remote danger, they do not exceed venial sin. - 3. If they happen from a just and proportionate cause and with caution, they are free from fault, even though pollution follows accidentally, provided there is not consent to delectation (III, 417 seqq.).

818. III. Sinful touches upon another's body are of the same species as the consummated act. The reason is that they touch the object in its individual being. Hence, in confession it must be explained whether they were had with a married or sacred person, etc. (III, 416, 2).1

819. But the species of the consummated act is found in these touches only insofar as they betray affection toward concubitus, toward sex. Cf. the doctrine expounded above (n. 793, conclusion 2).

But that it may be known better when proximate danger of venereal delectation is present from such acts, and when remote, and what reasons excuse from sin: the following rules can be laid down.

819. I. Concerning one's own body. 1. To touch one's own private parts from necessity, or for another just end, for example on account of cleanliness, on account of soothing a non-venereal itching (provided the danger of pollution or of consent to it is absent, if perhaps unexpectedly and beyond intention it should occur), is no sin (III, 419).

820. To touch one's own private parts without just cause is never free from fault. If it happens in passing from levity or curiosity, it is venial. If lingeringly with venereal commotion, it is mortal. - And the same is valid concerning a girl touching her own breasts (III, 419, 484).

It is asked: Whether it is licit to drive away itching by touch with danger of pollution?

Resp. Very many indeed affirm; but Roncaglia rightly prohibits this, if namely the itching is not very troublesome, although he permits one to drive it away with only some commotion. In women, natural itching is discerned from venereal ardor by the fact that the former is only alleviated by friction, but the latter is immediately quieted by subsequent pollution. "In doubt, liberty possesses the right of freeing oneself from a molestation of this kind" (III, 483). "Nevertheless one should not easily believe certain girls who are accustomed to pollute themselves by touches under pretext of ardor of this kind; for if they are diligently examined, it will be known that that itching very often has rather been excited either by wicked thoughts previously had, or by a wicked habit contracted of touching themselves" (*H. Ap.*, IX, 34).

820. II. Concerning another's body. 1. Touches (even over clothing) on the private parts of another's body, especially if it is a person of diverse sex, had without just cause, although without venereal affection, are hardly ever, outside marriage, excused from mortal sin. - The reason is that such touches, even though exercised in passing, strongly excite to lust and are greatly opposed to natural honesty (*H. Ap.*, IX, 3). Cf. Lehmkuhl, I, n. 1036, 3.

We said: a) Without just cause; for on account of this, for example, physicians are excused, even though, while touching thus, they accidentally suffer involuntary pollution, provided they do not consent to delectation. "Would that," our holy Doctor exclaims, "in practice physicians did not continually sin in these matters" (III, 420, note 1).

b) Are hardly ever excused: because if touches of this kind should happen among the impubescent, from levity and jest without delay, they can be excused from mortal sin; because they are not accustomed to cause commotion.

Likewise, "Croix probably excuses from mortal sin female servants touching the private parts of boys while they dress them, unless they do this with delay or carnal delectation" (ibid.). But if they do that frequently and studiously, even to quiet them, certainly they sin gravely, unless they are excused by ignorance. For in this way they beget the incurable pest of masturbation.

821. 2. Touches on the less honorable parts (cf. n. 812) do not exceed venial sins, if they happen from levity of soul, jest, curiosity, or wantonness and without delay; because ordinarily they do not cause proximate danger of delectation. - But otherwise, even when venereal affection is excluded, if they happen lingeringly and with ardor.

Therefore they are to be gravely reproved who, from sensible delectation, touch a person of diverse sex on the less honorable parts. The reason is that sensual delectation very easily passes into carnal delectation. Likewise, with those (whether men or women) who touch the breasts of a woman, one must always act more severely, because this greatly moves. Cf. the things said in n. 816.

Hence, and a fortiori: a) A young man who draws a girl upon his knees and keeps her sitting there, or presses her against himself, sins mortally; as also does the girl voluntarily suffering these things. - b) Kisses impressed on less usual parts of the body, for example on the breast, must ordinarily be held mortal, especially if they happen between persons of diverse sex.

822. 3. Touches on honorable parts (i.e. kisses on the face, embraces, pressings of hands, and similar things) are free from every fault if they happen decently according to the custom of the country, for the sake of civility or honorable benevolence. They are venial sins if they happen in passing from levity, jest, wantonness; but mortal (at least ordinarily) if they are exercised with delay or ardor. "Say the same concerning kisses on the mouth, or if someone receives with his mouth the tongue of another" (III, 417). Cf. n. 769, 2.

Hence: a) "A woman or adolescent does not sin if she permits herself to be touched modestly according to custom; unless there is certainty concerning the wicked affection of the one touching, and she can then resist without infamy to herself or scandal of others. But she sins if she does not oppose lingering kisses, or even furtive ones; because evil affection is presumed" (III, 430; *H. Ap.*, IX, 5).

b) He sins only venially, speaking of itself, who lightly touches and without delay the fingers, hands, or face of a person of diverse sex, a wicked end or affection of lust being excluded, if these things, for example, happen from mere levity, and do not have annexed to themselves a special danger by reason of his own or the other's frailty.

c) "To kiss children (understood of very young children), even with sensible delectation, ordinarily is only venial, because that delectation is ordinarily only natural" (III, 417).

d) Delay and repetition in honorable embraces are of themselves free from every fault among persons joined by close consanguinity, and not suspected of mutual concupiscence, for example between a father and daughters, a mother and sons, if they happen as a sign of special love, even with some organic delectation, provided this is not sought nor willingly felt.

Note. Since in lingering embraces there are very often the thought and desire of copulation, carnal movements, and thereafter pollution, penitents who declare embraces without those circumstances, as ordinarily happens, must prudently be questioned concerning these things.

823. 4. To touch the genitals of brute animals is ordinarily only venial. It is more probably to be said otherwise if the touch were carried as far as the animal's pollution. - The reason is that, although such things happen only for the sake of levity, it is nevertheless an action of itself strongly exciting to venery. Those who, from necessity, join horses, bulls, etc., are excused from sin, provided they do not consent to lust (III, 419, 420). - Immodest touches with a beast are not properly sins of bestiality (III, 474).

CHAPTER IV

On the Dangers of Chastity

St. Alphonsus, III, 427; ed. G., I, p. 674 seqq.; VI, 452; ed. G., III, p. 457; *H. Ap.*, App., IV, *Monit. ad par.*; *Prax. conf.*, n. 62 seqq.; Aertnys, *Theol. mor.*, II, p. 210 seqq.; Berardi, *de Occas.* (1909), P. II, p. 286 seqq.

824. Things to be noted beforehand. Chastity is exposed to many dangers, from many occasions of sinning, but especially: in visits of betrothed persons and lovers; - in dances; - in spectacles and in bacchanalian games; - in profane vigils (*veillees*); - in baths; - in schools and gymnasia (St. Alphonsus, *Regol. per i semin.*, § 1, n. 4); - in taverns (*Praxis*, n. 205); - in workshops of various arts (ibid.); - in the barracks of soldiers; - in pastures, in fields at harvest time, and in vineyards at vintage time; - in certain feasts, which are called by St. Alphonsus (*Instr. Cat.*, P. I, c. 6, n. 23) "feasts of the demon, in which indulgence is given to dances, loves, songs little honorable, jests, and wicked conversations"; - in various conversations or cohabitation of men with women, for example if a woman meets alone with a physician, surgeon, or hairdresser (*Praxis*, n. 62), if a girl is taught letters or art by a man; if a man lives with a younger servant girl or kinswoman; if boys and girls sleep in the same bed, etc. (*Instr. Cat.*, P. I, c. 4, n. 22).

We shall treat in particular: 1. concerning the familiarity of betrothed persons and lovers; - 2. concerning dances; - 3. concerning spectacles. The other cases you will judge both from the general principles handed down (n. 373 seqq.) and from those things which we shall now expound.

I. On the Familiarity of Betrothed Persons and Lovers

825. Principles. I. Visits and conversations that are had between a young man and a girl with the intention of contracting marriage are not illicit of themselves. "For no one," says Roncaglia, "is held to marry an unknown person; but for some time he can test by what

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morals the other is endowed. This assertion," St. Alphonsus adds, "speaking speculatively, seems reasonable" (VI, 452). - Therefore betrothed persons are to be equated with those who are in a morally necessary occasion.

826. II. Visits among those loving one another are very dangerous and cannot be permitted unless they have been undertaken for a good end, are moderate, and furnished with due safeguards. Thus all; and the reason is evident.

Hence St. Alphonsus: "Generally speaking concerning adolescents and girls who love one another, not all these are indiscriminately to be condemned for grave fault; but ordinarily I think that they are with difficulty outside the proximate occasion of sinning lethally.1 This is exceedingly clear from experience; for out of a hundred adolescents scarcely two or three will be found immune from mortal sins in that occasion; and if not in the beginning, at least in the progress: for such lovers first converse with one another on account of inclination, then inclination becomes passion; and passion, after it has fixed roots in the heart, darkens the mind and makes them rush into a thousand crimes" (*H. Ap.*, final treatise, n. 3).

1. These things are valid as regards youths who are capable of marriage. With relation to the impubescent, to younger persons who pursue one another with tender love, proximate danger very often arises from a special disposition: let a prudent confessor oppose beginnings. - As regards that mode of courtship which they call *flirt*, it must be said that there a good intention is lacking, and often the sexual appetite rules all things, although it manifests itself less uncouthly. Cf. Forel, *Quest. sex.*, c. 4, § 3.

We said: 1. Undertaken for a good end, that is, from the intention of entering marriage soon.

Hence they are not to be permitted to those who cannot or will not celebrate marriage within a reasonable time (for example young men before military service), which indeed is to be determined by the judgment of prudent persons according to the practice of the God-fearing. Generally speaking, if marriage is contracted within six months, or at least within a year, the time does not exceed measure. Sometimes, however, it can happen that the suitor is compelled to prolong the courtship longer, because he could not quickly obtain a home, office, etc.

2. Moderate, i.e. not too frequent, nor too protracted. Moreover, generally they seem moderate if within the year that precedes marriage they are had once or twice in single months, and then, as the time of marriage approaches, once in a week for one or another hour.

But certainly they would be immoderate if for months the girl were visited daily or almost daily, or for years every week.

3. Furnished with due safeguards, namely so that the danger becomes remote.

Therefore: a) let lovers not converse among themselves without the knowledge, or at least against the will, of parents; - b) let them never remain alone, especially at night; - c) let them permit themselves no touches on the less honorable parts, none except those held decently, nor approach one another in an unusual manner; - d) let them fortify themselves with spiritual helps, namely frequenting of the sacraments, or at least prayer (Berardi, l.c., n. 222).

Note. It sometimes happens that lovers cannot converse except alone, for example if the betrothed girl is a maidservant or widow. Necessary visits are not forbidden to these. Yet let the confessor take care that these happen in a public place, and that safeguards for strengthening the will be more severe (Aertnys, II, n. 344).

827. III. After betrothal has been entered, safeguards ought to increase. The reason is that the betrothed are now certain concerning future copulation; hence, morally speaking, it is impossible, St. Alphonsus testifying, for them to converse with one another and not to feel stimulants toward those shameful acts that afterward must follow in the time of marriage (*H. Ap.*, XXII, n. 3). - The danger also grows because the fear of shameful pregnancy vanishes; since the marriage soon to follow will cover all things. Thus rightly Aertnys, l.c., n. 342.

Hence thus the holy Doctor (VI, 452): 1. "I, taught by experience, would scarcely once or twice permit the betrothed man to approach the house of the betrothed woman, or the betrothed woman or parents to receive him in the house. For rarely have I found one who in such access did not sin by words or thoughts, since all looks and conversations between betrothed persons of this kind are incentives to sinning." - 2. "Let the parish priest take care not to receive the words of betrothal much time before marriage; because, once betrothal has been entered, all that time which intervenes before the nuptials will be passed in sin both by the betrothed and by their parents" (*H. Ap.*, App., IV, n. 5).

For the rest, as to the rarity of visits, if the betrothed until now have conversed honorably in courtship, let the confessor have regard for the practice of the God-fearing; for in this case the danger appears remote, and it would be useless to require from the betrothed that they recede from the received custom of the God-fearing (Aertnys, n. 48).

828. Questions. QUAER. 1. Whether kisses are licit for the betrothed for capturing sensible delectation or in manifestation of love?

Resp. St. Alphonsus: "Scarcely can those kisses or embraces be permitted to the betrothed, as Lacroix, Viva, and others say, which the custom of the country permits (for example on arrival or departure), provided they are not pressed, nor protracted for a notable time. - Nor is the opinion of those authors practically probable who say that modest touches are licit for the betrothed, if they themselves do not intend venereal delectation, but only sensible delectation; for in this there is ordinarily danger of falling into venereal delectation, so near to the sensible, or at least of progressing into wicked desires toward venereal delectation" (*H. Ap.*, XVIII, n. 7; cf. *Vind. Alph.*, P. III, q. 14).

QUAER. 2. Whether a girl sometimes can consent to the immoderate visits of a suitor?

Resp. It seems that sometimes she can consent, provided: a) a true hope of marriage is present; - b) the circumstances render these visits necessary, for example if the girl would incur danger of remaining unmarried, especially if this would be with some disgrace, infamy, poverty, temptation, etc.; - c) special safeguards are opposed to the special danger.

Note. 1. Little gifts among the betrothed (or even among suitors led by honorable love) do not seem to be prohibited when, by the custom of the country, they are signs of benevolence. - 2. But letters among those who can licitly visit one another at certain times do not seem to have a sufficient end, especially if they are frequent. They are gravely or lightly illicit according as, without just cause, they prepare grave or light danger of excitation (cf. n. 375, 376).

II. On Dances

829. Principles. I. Dances are licit of themselves, provided they are done by secular persons with honorable persons and in an honorable mode. Thus St. Alphonsus, with St. Antoninus and others commonly; the reason is that to dance is not of itself an act of lust, but of joy (III, 429; cf. Benedict XIV, *Inst.* 76).

Therefore dances are illicit: 1. If they are led by clerics or religious, against the prohibition of the Council of Trent (Sess. 24, c. 12), even if scandal were absent. - 2. If they are had with dishonorable persons, for example with prostitutes, with women dishonorably dressed, or also with suitors concerning whose lustful affection there is certainty. - 3. If they happen in a dishonorable mode, as happens in dances that provoke to lust, by reason of dishonorable gesticulation (the dances called Tango, or belly-dancing), by reason of total nudity (angelic dances), by reason of partial nudity and dangerous gesticulation (dances in the theater, ballet), etc. Cf. Berardi, II, n. 142 (*de Occas.*); and the Letter of the Bishops of Belgium, 1914.

830. II. Dances that are not in themselves dishonorable often become illicit by reason of danger or scandal; especially if they are frequent. And hence it is that the holy Fathers unanimously inveigh against dances (Benedict XIV, l.c.).

It was said 1. By reason of danger, which is greater or lesser; but it is never absolutely present for all. But the acts whose danger dances can induce are: a) close and lascivious embraces, for which certain dances called modern provide occasion

first of all, such as Waltz, Polka, Mazurka, Scottish, etc.; likewise dances with masks: for there are not lacking those who cover the face for this reason, that, no longer held back by the bridle of modesty, unknown they may do things which, known, they would not dare to do. - b) Malicious pressings of the hands, namely with immodest affection (nevertheless the simple taking of hands, which the dance requires, is not a sin, or certainly does not exceed venial sin). - c) Obscene touches, which are accustomed to happen outside the act of dancing, whether before or after, or in intervals, when youths from time to time rest from dancing, or finally on the road, when young men lead girls home. - d) Amorous and shameful speech. - e) Malicious looks, especially when women come with the breast too much uncovered; or when the women themselves fix their eyes upon young men shamefully moved. - f) Lingering delectations and shameful desires, which are accustomed to happen not only in the act of dancing but also afterward. - Yet let the confessor advert that external sins happen more rarely in honorable society, and that malice is more often found in men than in women, who seek praise and admiration rather than pleasure.

2. By reason of scandal, which can be direct or indirect. - Direct scandal happens, for example, when young men by conversations, embraces, touches, etc., openly solicit girls to shameful things. - Indirect scandal occurs, for example, when the mode of dancing is indecent, or the dress of the female dancers is immodest (cf. n. 516, 3).

3. Especially if they are frequent; for danger (and likewise scandal) grows from frequency. - And indeed, if danger is not always grave for a girl sufficiently formed in morals, who sometimes, on account of some honorable reason, attends dances (because attention to dancing well in some manner blocks the way to lust), the same cannot be said of girls and youths mad with love of dances. For in these, as experience teaches, modesty is gradually taken away, every sense of piety perishes, prayer is neglected and lust burns; whence there are accustomed to arise wicked friendships, rash loves, jealousies, quarrels, disobedience, a hard heart toward parents, etc. Cf. Aertnys, II, n. 322; Berardi, *de Occas.* (6th ed.), n. 142 seqq.; *Ami du Cl.*, 1911, pp. 104, 439, 503.

4. III. Dances in which the danger becomes proximate, and no grave cause excuses undergoing it, must be avoided under mortal sin; but those in which the danger is remote, or a grave cause excuses, are free from fault, or certainly do not exceed venial sin. The reason is sought from the obligation of avoiding the danger of sin (cf. n. 374 seqq.).

5. Questions. QUAER. 1. When are dances to be judged as inducing proximate danger of sinning?

Resp. The judgment must be taken: a) From experience: if someone on other occasions has been present at dances, and because of them has sinned frequently, and now the circumstances are not so different that it must be presumed he will not sin this time, the gravity of the danger is openly certain.

b) From the other adjuncts, namely from the character or education of the dancing person, from the corruption or forwardness of others dancing with that person, from the mode of dancing (as was said n. 829), from the circumstances of place and time; for in villages, in the suburbs of cities, and in small taverns, especially at night, occasion is given to sins more than elsewhere and in daytime; from the frequency of dances, as above n. 830, 3.

QUAER. 2. What are judged just and excusing causes?

Resp. a) If the danger is remote, a reasonable cause can excuse from every fault. Causes of this kind are accustomed to be, for example, the end of relaxing the mind once or twice in a year, of more easily finding an occasion of marriage, of not displeasing a lover, of satisfying neighbors inviting to dances, of not exposing oneself to some censure or mockery, etc.

b) If the danger were proximate, only a grave cause can excuse, for example grave offense of husband, parents, brothers. But it is necessary that no other means be present by which disturbances of the family of this kind can be avoided, and that the person undergoing such necessity fortify himself against the danger with due safeguards, namely pious thoughts, prayers, right intention, and firm purpose of preserving modesty (Aertnys, II, n. 323).

833. Practical Rules. 1. The confessor: a) Let him not absolve those who without grave cause and caution indulge in dances commonly dishonorable or dangerous, whether in themselves or by reason of circumstances, which he must diligently weigh. But with young men and girls of higher condition, let him see by what necessity, with what ornament, how often, and with what mind they are present at dances. - b) Let him remember also that the obligation of deserting dances can also arise from the prohibition of cooperating with the sins of others; yet in that case, if good faith is present, and fruit is not hoped for from the denial of absolution, let him proceed only by way of exhortation and admonition. - c) Universally, insofar as he prudently can, let him turn penitents away from dances, or, if he cannot do that, by admonitions and opportune means let him strive to lessen the danger, according to the things said in n. 832, q. 2. See Aertnys, II, 324.

834. Let the parish priest strive with all diligence to take dances entirely out of the midst, or at least to diminish their frequency. Yet in practice let him use great prudence. - First indeed, in every way that is fitting, let him seek to infuse into souls the fear of God and benevolence and esteem toward himself. - Then, in this matter he will make the greatest progress if he fosters piety in girls and promotes frequenting of the sacraments. - Thirdly, in preaching let him not expressly propose the question concerning the liceity of dances, but let him directly inveigh against the sins that are accustomed to be committed in them or on their occasion. - But if finally he must prudently tolerate certain dances, for example in feasts of the place, let him labor with all his strength that they happen honorably, that they not be prolonged into the night, that girls return home separately from young men; especially, that civil prescriptions be observed, which perhaps have been established for moderating dances (Berardi, l.c., n. 167; Gousset, I, n. 651).

Concerning the cooperation of tavern-keepers and others in dances, we have already spoken in n. 522 and 525.

III. On Spectacles

834. Principles. I. Spectacles, of themselves, are not illicit. "Play," says St. Thomas, "is necessary for the conversation of human life. But to all things that are useful for human conversation certain licit offices can be assigned. And therefore also the office of actors, which is ordained to exhibiting solace to men, is not of itself illicit; nor are they in a state of sin, provided they use play moderately, that is, not using any illicit words or deeds for play, and not applying play to undue affairs and times" (2. 2, q. 168, a. 3, ad 3). Indeed, by reason of matter and end, spectacles can be commendable, because they can powerfully incite to good.

835. II. Spectacles, as they are had at the present time, are commonly harmful and gravely dangerous. For very many, as Aertnys says, are either 1. notably shameful, whether on account of the obscene matters that are represented and acted out in obscene ways; or on account of women with breasts and arms immoderately bared, either acting or present in the spectacle, especially if, as is customary, they are contemplated with opera glasses; or on account of the quasi-nudity and shamelessness of female dancers in scenic dances that are intermingled; - or 2. moreover contrary to religion, which they traduce as tyrannical, bloody, now as hostile to science and progress, now as ridiculous, contemptible, now as false, superstitious, impious; they expose sacred rites and the sacraments themselves to mockery; they exhibit priests,

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pontiffs, religious men and nuns as given over to shameful dealings; they teach, extol, or excuse crimes, for example vengeance, suicide, adultery, divorce, vices of the flesh, etc. Cf. also Berardi, l.c., n. 169.

836. From these things you will resolve: 1. Today it is licit for no one to go to the theater for the sake of solace unless beforehand he has knowledge concerning the quality of the performance, i.e. unless beforehand he has certainty concerning the absence of obscenities and impieties; for from the reasons adduced the presumption stands against public theaters, especially if they are not destined for cultivated society, but for the common people (Aertnys, II, 326).

837. That someone may licitly be present at a spectacle commonly gravely dangerous for men, or specially dangerous for himself, there is required both a grave cause and prudence or caution for removing danger and scandal. Thus, for example, soldiers can be excused, who are held to be present in order to keep watch; servants, who would suffer grave indignation from their masters, children from parents, wives from husbands, if they refused to be present. - Nevertheless they are held to oppose safeguards to the danger, for example by closing the eyes, by thinking about other things, by fortifying themselves with ejaculatory prayers, by remembering the last things, etc. (Scavini, I, 799).

Nevertheless St. Alphonsus notes (*H. Ap.*, IX, 10): "Those who hear shameful comedies on account of curiosity alone, or on account of vain solace, can sometimes be excused from mortal sin, if namely there is absent: a) shameful delectation; - b) the danger of that delectation (which will easily always be present in adolescents, or others of a conscience little fearing God); - c) scandal of others."

3. By reason of scandal the following sin gravely: a) clerics and religious who attend shameful comedies; - b) those who by money or applause cooperate in notably shameful (or impious) comedies, although they are secondary spectators, i.e. without whom the comedy would still be represented (*l. El. qq. ref.*); - c) those who are held to impede them, or conveniently can do so and do not impede them; - d) a fortiori, those who represent them.

It is asked: Whether a woman sins by using male clothing, for example in carnivals?

Resp. St. Alphonsus (III, 425): "A woman using male clothing does not of itself sin gravely; but not rarely it will be mortal," namely on account of the danger of lust or scandal. - There is no sin if it should happen from a just cause, for example for hiding herself, as St. Thomas teaches (2. 2, q. 169, a. 2, ad 3).

General Admonition

837. "It must here be diligently noted," says St. Alphonsus (*H. Ap.*, IX, 34, end), "that in the matter of the sixth precept it is necessary, insofar as is possible, to employ every severity, since in so slippery a matter no caution should ever be judged excessive; and many opinions which, speaking speculatively, are probable, become improbable in practice. Hence, where the confessor sees the danger of penitents, although he cannot condemn as certainly a mortal sin the action which they would wish to perpetrate, nevertheless let him in no way permit it. This belongs to the physician of souls, especially with respect to those who in the past have had a habit in the shameful vice; for for these it will be necessary not only to avoid proximate occasions, but also remote ones (i.e. those that are commonly such). Otherwise, because of contracted frailty, they will always fall back into the same thing; since in this matter, to which men are naturally prone, they themselves easily progress from lesser things to further evils" (cf. n. 376). - He repeats the same in *Instr.*, n. 36 and *Praxis*, n. 16.

TREATISE VII

On the Seventh and Tenth Precept of the Decalogue

You shall not steal.
You shall not covet your neighbor's house ...
nor anything that is his.
(Exod., 20, 15, 17).

838. Things to be noted beforehand. The seventh precept, under the name of theft, prohibits any lesion whatever of the right which one's neighbor has in goods of fortune, and commands (indirectly) that each one show himself kind and liberal toward others. - The tenth is connected with the seventh precept, by which internal sins regarding the same object are forbidden. Hence, with the Roman Catechism (n. 14), "we advert that by the law of this precept it is forbidden to us that we greedily seek riches; ... but that, content with our state, whatever it may be, whether humble or exalted, we be satisfied."

It is not of our institute, in so broad a matter, to expound the several rules of law, in which there exist many varieties according to the various regions. - It will be enough to have handed down the principles of justice, especially according to natural law, with the principal dispositions of modern law indicated, and with places added where each one, at least insofar as there is question of the principal European States, will be able to learn the proper laws of his own country.

Obligation of Conscience Arising from Civil Law. We have already said (n. 151) that civil law is divided into old and modern.

1. The old law, or Roman law, ruled peoples through many centuries. Today the Austrians, French, Belgians, Spaniards, Dutch, Italians, Germans, and Russians are ruled by proper Codes. The English do not have a Code, but old laws founded in the feudal system.[100]
2. Roman law, although modern legislators have borrowed much from it, now flourishes nowhere. Therefore one must beware lest in our times we apply solutions of authors older than our century, which rest solely on this Law. But that these theologians may be read through more easily, we shall touch lightly in the present treatise on notions of Roman law as there is need.

As regards modern laws, to the question whether they oblige in conscience, the response must be made thus:

a) A civil law that transfers ownership or establishes rights on account of the common good obliges in conscience. Reason: civil law can determine the obscure matters of natural law, and order what is necessary for restoring peace, even in goods of fortune. This the Sacred Penitentiary recognized on January 21, 1873 (*A. S. S.*, vol. 7, p. 211).

[100]Cf. Aertnys, *Suppl.* for Dutch, French, and German Law; for English Law, see Crolly, *de Just. et Jure*; for Belgian Law, cf. Genicot, *de 7 Praec.*; for North America, cf. Konings, *de 7 Praec.*; for Spain and Latin America, see Gury-Ferreres, I, App.; for France, consult Allegre, *Le Code civil commente*; for Italy, Berardi, *Theol. mor.*, vol. III; for Germany, Lehmkuhl, *Das bürgerl. Gesetzbuch*; Barre, *Das bürgerl. Gesetzbuch u. der Code civil*; Pelt, *Manuel de legislation civile*; for Austria, see Noldin, Delama, Aichner, Pruner, Schindler, Gopfert.

Therefore he who violates, for example, the right of authors (cf. n. 856), the right of him who finds a treasure (n. 883) or a lost thing (cf. German Law, 965), or a right founded on legitimate prescription, sins against commutative justice.

b) A civil law that invalidates a juridic act (i.e. a human act from which a right is conferred or removed) on account of defect of a formality prescribed by law does not oblige in conscience. - See those things which we have already said in n. 168 seqq., and which we shall say in n. 1054, 1081, 1086, where there are examples.

c) Nevertheless, it is clear that an obligation in conscience is present if civil law invalidates juridic acts for this reason, that the things essentially required in every contract are lacking in them: for example liberty in contracting, due knowledge, etc.

This civil law invalidating juridic acts also obliges in conscience if the sentence of a judge accedes. This is required by the common good. - This obligation sometimes takes its origin from legal justice, sometimes from commutative justice alone. Cf. n. 933.

d) But a civil law that, as regards juridic acts, contradicts ecclesiastical law, for example as regards the marriage contract, etc., cannot oblige in conscience. - In these matters the Church alone is competent (cf. n. 149).

Note. a) Sometimes civil law declares juridic acts invalid by natural law to be rescindable. The authors think that here anyone can licitly follow civil law, which on account of the common good grants validity to these acts, until they are rescinded by the competent party. Thus, for example, the German Law (§ 119) names contracts entered with error as rescindable. Cf. Lehmkuhl, *Das bürgerl. Gesetzbuch*; Noldin, II, n. 356.

b) Often also civil law invalidates onerous contracts (sale, purchase, etc.) in contradiction to the law of nature. It can sometimes be admitted that these contracts do not have force in conscience. Reason: the contracting parties are judged to offer their consent only according to the norm of civil law.

Order of things to be said. We have already expounded above (n. 720) general principles concerning right and justice; therefore it remains that here we treat: 1. concerning the right of man in external goods; - 2. concerning lesion of right, or injury in external goods; - 3. concerning reparation of right, or restitution; - 4. concerning the transfer of right by the will of private persons, or contracts.

DISSERTATION I

CONCERNING THE RIGHT OF MAN IN EXTERNAL GOODS

St. Thomas, 2. 2, q. 58-78; St. Alphonsus, III, n. 486-962; ed. G., II, beginning; Lugo, *de Just. et Jure*; Lessius, *de Just.*, l. 2; Carriere, 3 vol.; Delama; Vermeersch, *de Just.*; Marres, etc. - The authors who in moral theology have written excellently concerning this matter should also be consulted: Aertnys, Konings, Lehmkuhl, Noldin, Gury-Ferreres, Genicot-Salsmans, Tanquerey, Berardi, Gopfert, Schindler, etc.

The perfect right of man in external goods is of two kinds: right to a thing and right in a thing.

839. Right to a Thing (*jus ad rem*), or personal right, is the reason which someone has that some thing become his; and therefore it gives an action, not against the thing, but only against the person; namely it effects that the debtor can, by the sentence of a judge, be compelled by the creditor to hand over either the thing itself or its price; but it does not effect that the thing can be occupied before the sentence.

Right to a thing is not only a hope of acquiring a good, but is a title, a way, a debt, by which right in a thing may be acquired. Such is, for example, the right of a legatee to a legacy left to him and not yet accepted.

That right to a thing may be acquired, a just title is sufficient, which is the cause and root of the obligation itself. This is either a contract or quasi-contract, or a delict or quasi-delict, or finally the authority of law. Hence this right will be treated most of all where there is discussion concerning restitution on account of unjust damage and concerning contracts.

840. Right in a Thing (*jus in re*), or real right, is that which someone has in a thing already his own, and therefore it confers a real action, i.e. the right of exclusively occupying, retaining, and vindicating it, into whatever hands it has come. Such is the right of ownership of property, concerning which we shall soon treat.

That right in a thing may be acquired and retained, these things are required: a) Existence of the thing; for no thing can be said to be obligated which does not yet exist, and perhaps will never exist. Hence a usufructuary does not have a real right in fruits to be gathered in the following year, because they do not yet exist. - b) Legitimate title; because right in a thing presupposes right to a thing. Hence a thief does not have a real right in the goods that he possesses by theft. - c)

At least for the external forum, all other conditions are required which the laws of each region attach so that ownership of the thing may be transferred. Thus, for example, in Austria and in Germany, as in Roman Law, delivery of the thing is regularly required, so that a buyer, donee, etc., may acquire a real right. Otherwise in England, France, Spain, etc., where determination or designation of the thing in the individual generally suffices, as we shall see in its place.

Right in a thing does not differ from ownership of things, taken in the broad sense. Wherefore it will be enough to have expounded concerning this ownership: 1. the nature and species or parts; - 2. the object and subject; - 3. the mode of acquiring.

CHAPTER I

On the Nature and Species of Ownership

841. Definition. Ownership, taken in the broad sense, is the faculty of disposing of some thing or action as one's own. - Defined thus, it comprehends both ownership of property, concerning which we must treat here, and ownership of jurisdiction, concerning which we treated in n. 138.

Ownership of Property is the faculty of disposing of a thing as one's own, insofar as the reason of law permits.

It is said: 1. of a thing, i.e. of the substance of the thing, or of some emolument of the same, or even of both; - 2. as one's own, i.e. for one's own advantage, others being excluded; - 3. insofar as the reason of law permits; for this faculty of disposing can be restricted, either by law: thus, for example, a minor, although he is owner of his goods, nevertheless cannot alienate them; - or by the will of a private person, the law not resisting: for example if someone bequeaths land to another, under the condition that the legatee not enjoy it except after a year (Lessius, l.c., c. 3, n. 1-9).

Division. Ownership is commonly distinguished into high and low. High Ownership, or public ownership, can be defined: the faculty that belongs to the supreme authority of disposing of the goods of private persons, for example of your field for constructing a road, the public good so requiring.

It is ownership improperly so called; because the state does not dispose of the goods of a subject as its own, but only by reason of public necessity or very grave utility: and that without acceptance of persons, and ordinarily with the citizen made unharmed (cf. n. 891). See Carriere, n. 19.

Low Ownership, or common ownership, is the ownership of private persons, to which the definition properly agrees. It is divided into full and half-full: 1. Full Ownership, or perfect ownership, is that which embraces all the parts of ownership, or the special rights contained in it: namely, property of the thing, advantage from use, and the right of perceiving the fruits. - 2. Half-full Ownership, or imperfect ownership, is that which lacks one of the aforesaid rights.

One is direct, or of naked property, which regards only the substance of the thing. Another is useful, which, without property of the thing, has either use or fruit, or conjointly usufruct. - To this belong the right of servitude, by which another's thing serves our thing, the right of pledge, for the security of a thing obligated to us, and similar accessory rights. - Possession is added, which is, as it were, the garment and sign of ownership.[101]

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Note. In some regions imperfect right is divided into direct right, which regards only the substance of the thing, and indirect right, which extends itself to the substance and to the usufruct, concerning which it can dispose exclusively. Cf. Austrian Code, 360; Delama, n. 18. - This right is limited either by law, or by the will of the owner.

Therefore these things come to be explained: 1. full ownership; - 2. ownership of naked property; - 3. usufruct; - 4. use; - 5. real or predial servitude; - 6. possession.

1. Full Ownership

842. Full Ownership is the legitimate power of disposing of a thing as one's own, for every use not impeded by law or pact. - For every use, not only for a determined use; not impeded by law, but permitted as valid, although perhaps prohibited as illicit.[102]

[101] You have an example of these diverse kinds of ownership in the condition of parish priests: they have usufruct of parochial goods; use of the parochial house; but the city, or the Church, or the parochial community possess direct ownership.

[102] The fullness of ownership, in a case of necessity, is circumscribed by many limits, for example the owner must suffer that in a fire water be drawn from his well. Therefore ownership of this kind is not full from every side (Pelt, l.c., p. 12).

Therefore the owner can: 1. According to his own judgment, without injustice, enjoy, use, and abuse his own thing. He indeed sins by abusing it, for example by wasting the thing or destroying it without cause; but he violates only liberality. - 2. Alienate his own thing, either in whole (by giving, selling, exchanging it, etc.), or in part, for example by leasing it, pledging it, burdening it with a servitude, and generally by ceding any real right whatever in it. - 3. Repel immediately and at once by external force an unjust invader of the thing, according to the things said in n. 735. - 4. Reclaim his own thing from any possessor whatever, even one of good faith, through a judge, by promoting in court the action that they call petitory. The law, however, on account of the common good, excepts certain cases (cf. n. 1027 seqq.).[103]

Note. Ownership can be common to several owners, for example in an undivided inheritance, in a common wall, etc. That condominium or co-property is subject, in various States, to various dispositions of laws.[104]

2. Direct Ownership, or Ownership of Naked Property

843. Direct Ownership, or ownership of naked property, is that by which the property of a thing is had, without its usufruct.

The direct owner can do those things which the perfect owner can; but with the right of the usufructuary or user preserved. - He is not ordinarily deprived of every utility of the thing. Thus the law attributes to him part of a treasure found on his land by another; certain proceeds that are not counted among fruits, such as veins of metals, etc.[105]

3. Usufruct

844. Definition. Usufruct is the right of using and enjoying another's thing, as the proprietor himself, while the substance of the thing is nevertheless preserved. He to whom this right belongs is called the usufructuary or fructuary.

It has been said: 1. the right of using and enjoying, i.e. of taking from the thing every utility that can be renewed; - 2. another's thing, whether movable or immovable; - 3. as the proprietor himself, namely in the sense explained in n. 842; - 4. while the substance of the thing is nevertheless preserved, both as regards matter and as regards form. For the fructuary does not abuse, nor can he change the thing, even for the better.[106]

Fruit is whatever can be born and reborn from a thing. Law distinguishes fruits: 1. natural, which are born from a fruitful thing, either spontaneously or with slight work of man, as grass of meadows, offspring of animals, etc.; - 2. civil, which are acquired on account of a contract entered or by means of a civil obligation: for example annual revenues, the price of a rented house, etc.; - 3. industrial, which nature brings forth with the industry of man added, as crops, wine, oil, etc. Theologians call these mixed; but they call merely industrial those that are acquired by the industry of man alone, for example profit from money handed over for business (III, n. 610).

Natural and Industrial Fruits are divided again into those to be born and those born; - and these into pending, or perceived or gathered; - and these finally into existing or consumed.

Division. Usufruct is: 1. legal or conventional, according as it is constituted by law (for example the usufruct of parents in the goods of minor children), or by contract, for example donation, testament; - 2. proper or improper, according as there is discussion of things that are not consumed by use, as a house and garden, or of things that are consumed by use, as money, fruits already gathered.

The latter is called improper, or quasi-usufruct, because things consumable by use cannot be preserved, and therefore their substance is not preserved (as the definition requires), but only their value, which, when the usufruct is finished, must be returned to the owner.[107]

845. Effects. The rights and burdens of the usufructuary are, generally, the following:

I. Rights. 1. That from the beginning he make his own all natural and industrial fruits still pending, without the burden of paying for cultivation, seed, etc.; likewise civil fruits that then begin to be owed. But he has no right to other fruits. - 2. That he can give, lease, sell, or put under mortgage his right to another, provided the condition of the owner is not changed. - 3. That, when the time of usufruct has been completed, he himself, or his heir, alone take for himself the fruits

[103] Cf. Doveri, *Instit. di Diritto rom.*, l. 2, § 59-136.
[104] Cf. French Code, 653-660; Italian, 546-569 and 673-684; Austrian, 825-858; Spanish, 392-406; German, 741, 921, 1008 seqq.
[105] Italian Code, 714, 1958, 3; Spanish, 471, 476 seqq.
[106] III, 489; cf. French Code, 578; Italian, 477; Austrian, 509; Spanish, 467; German, 1030 seqq.
[107] French Code, 587, 589; Italian, 483, 484; Spanish, 468, 481, 482; German, 1067; Austrian, 510.

already mature and separated; likewise civil fruits, acquired day by day according to the proportion of time, even if their payment had been delayed justly or unjustly.[108]

II. Burdens. The usufructuary must use the thing as a good father of a family, and return it to the owner in a state presupposing and following good administration.

Therefore: 1. At the beginning of the usufruct, he is held to make an inventory (indeed to give security in France), unless he is exempted by law (as, for example, parents with respect to minor children). - 2. During the usufruct, he is held to minor or conservatory repairs, to annual burdens (taxes), to cultivation, to expenses for lawsuits moved concerning the enjoyment, etc. - 3. When the usufruct is finished, he indeed cannot demand compensation for himself for cultivation or a building made; but he can remove all ornaments added at his own expense, yet on this condition, that the things be restored to their former state.

Note. Usufruct ceases: 1. By natural (or civil) death; because the right of the usufructuary is personal. - 2. By the destruction of the usufructuary thing, likewise by total change, for example if a meadow becomes a pond; because from this part the right is real. - 3. It ceases when the time set by law or pact has elapsed; - by non-use, prescription acceding; by renunciation of the fructuary, provided it does not happen in fraud of creditors; - by consolidation, i.e. if the fructuary becomes owner of the thing; - by abuse, with the sentence of a judge intervening.[109]

4. Use

846. Use, as it is taken here, is the real right of using another's thing, while its substance is preserved.

It is said: 1. Right; and thus it differs from use of fact, which is the actual use of another's thing, revocable at the nod of the one granting, such as, for example, is granted to religious. - 2. Real, i.e. affecting the thing itself, which is subject to use. - 3. Of using, which word does not sound the same as that other word, to enjoy. For to use signifies to perceive from the thing only that which necessity requires; but to enjoy means to perceive all things that proceed from the thing.

I. The rights of the user are determined by convention or law, but are restricted to personal necessity.

Wherefore: 1. The right of using extends only to those things that are necessary for the user and his family (even children to be born and guests), according to their condition, for daily use. - 2. If the user has received, at the beginning of the year, those things that were necessary to him for the whole year, and dies before the end of the year, the heirs must restore what remains to the proprietor. - 3. The user cannot transfer his right to another, unless it is clearly evident that such a faculty was granted.

II. The burdens are the same as those of the fructuary, but only according to the proportion of fruits which the user perceives. - Use can cease in the same manner as usufruct.[110]

Note. To use are referred: 1. Habitation, i.e. the real right of using for one's own need some habitable part of another's house. - 2. Taking Wood (*lignatio*), i.e. the right of gathering dry wood (or even green wood according to the custom of places) in another's forest, for example of the nation or municipality.[111] - 3. Pasturing (*pastio*), i.e. the right of leading cattle into another's pastures, for example after haymaking (cf. n. 910, 5).

5. Predial Servitude

847. Definition. Servitude, accepted generically, is a certain subjection, by which some thing or person must suffer something from another thing or person.

If a person lies subject and serves another person as a thing, there is had, in the strict sense, personal servitude, in which slaves, or bondmen, were among the Romans. - If a thing serves another person besides its proper owner, there is had mixed servitude or personal predial servitude (among moderns, simply personal), such as use and usufruct. - If finally a thing serves a thing, there is had predial or real servitude, concerning which there is discussion here.

Predial Servitude is defined: a real right constituted in another's thing, by which the owner is bound in his own thing to suffer something, or not to do something, for the utility of a third party.

[108] French Code, 582-599; Italian, 479-495; Austrian, 511; Spanish, 471-490; German, 1055.

[109] French Code, 617-624; Italian, 515-520; Austrian, 524; Spanish, 491-522; German, 1061. - Nevertheless, by Spanish Law, usufruct is not lost by abuse of the thing, but use and the right of habitation indeed are lost (art. 501, 502).

[110] See French Code, 625-635; Italian, 521-530; Austrian, 504-508; Spanish, 523-529; German, 535, 1090.

[111] III, 529; cf. Bouvier, *de Jure* etc., P. I, c. 4, a. 4.

Division. 1. By reason of origin, servitude is either natural, or legal, or conventional; according as it arises either from the disposition of places, as the course of water; or from law, as the right of view, of drip; or from contract, for example of donation or conditional sale, etc.[112]

In some places, however, servitudes arising from nature are rather recalled to limitations of property.[113]

2. By reason of mode, it is continuous or non-continuous; according as it can endure without an act of man, as the right of view, aqueduct, etc., or cannot be exercised without it, as the right of drawing water, of passing through a field, etc.

It is called apparent if it is openly declared by some external sign, for example the servitude of a door, of a window; non-apparent, if it lacks such a sign, for example the prohibition of building the neighboring house higher.

3. By reason of object, it is urban or rustic; according as it tends to the utility of an urban estate, i.e. a building erected for the sake of habitation, whether in a city or in a villa, and the garden annexed to the same; or of a rustic estate, i.e. a field, vineyard, meadow, stable of cattle separated from the house.

4. The rights and obligations of servitudes depend on the nature of the thing, on law, on convention.

5. He who actively has a right to a servitude can accomplish all works that are necessary for using and conserving it. - 2. If the fund for whose utility the servitude was constituted is divided, this servitude is owed to each part of that fund. - 3. The owner of the serving estate can do nothing by which the use of the servitude is diminished; and conversely, he to whom the servitude is owed can do nothing from which the condition of the serving estate becomes more burdensome.

Note. Predial servitudes are extinguished: 1. When the appointed time has elapsed, or the condition has been fulfilled. - 2. By express or tacit renunciation of the proprietor. - 3. By consolidation, by which the owner of the dominant estate at the same time becomes owner of the serving estate, or vice versa. - 4. If the thing can no longer serve, for example if the spring from which you could draw water is dried up. If, however, the thing returns to its former state, the servitude revives, unless prescription opposes. - 5. By prescription, or non-use, through the time required by positive law (cf. n. 899).[114]

6. Possession

849. Definition. In the broader sense, possession is called every detention of a thing. - But in the proper sense: possession is detention or insistence upon a thing as one's own, namely by the assistance of body and law.

It is said: 1. detention, i.e. the fact of apprehension,[115] first or continued apprehension, by which the thing is constituted in the power of the possessor; - 2. of a thing, even incorporeal, as of a census, benefice, servitude, and similar rights, which are said to be quasi-possessed; - 3. as one's own, i.e. apprehension must happen with the mind of having the thing as one's own, even if perhaps it is known that the thing belongs to another. Hence a depositary does not properly possess the deposit, nor a tutor the goods of a ward; - 4. by the assistance of the body; because possession does not begin, nor is it possession, unless a corporeal act intervenes, by which, either by foot, or by hand, or by eyes, or in another similar manner, the thing is apprehended in itself or in another thing in which it is judged to be contained; - 5. by the assistance of law, not because it is necessary that the law positively approve, but at least that it not resist: i.e. that it not declare the object to be removed from human commerce, or the subject to be incapable of possessing it. Hence detention of a thing placed outside commerce, i.e. of a public thing by a private person (or of a sacred thing by a layman), is not possession, not even of fact, the law prohibiting and invalidating it; but detention of a stolen thing (profane), although unjust, is nevertheless true possession of fact, because law does not impede that the detention of such a thing suffice for possession (Polman, 2. 2, n. 356 seqq.).

Division. 1. Possession, by reason of title, is just or unjust: just, if it rests upon legitimate title; unjust, if it is destitute of such title. - 2. By reason of the conscience of the possessor, one kind is of good faith, when the possession is reputed just by the possessor, even if perhaps it is not; another is of bad faith, when the holder of the thing knows the possession to be unjust. - 3. By reason of the mode of possessing, it is natural or civil or mixed. Natural is that by which someone occupies a thing by body and soul together, knowing or doubting that he is not the owner. Civil is that which, begun by the assistance of the body, is retained by the assistance of soul alone. Thus he possesses his own things who is absent

[112]French Code, 649; German, 1018.

[113]Austrian Code, 472.

[114]Cf. De Luca, in S. C. Ep. et Reg., June 10, 1887 (*A. S. S.*, 20, p. 350). See French Code, 637-710; Italian, 531-672; Austrian, 472-530; Spanish, 530-604; German, 1018-1030; Crolly, t. I, n. 616.

[115]Therefore possession differs entirely from ownership. For this consists in the right by which the thing is the owner's.

from them, and is not cast down from the right of possession by another. Mixed is when someone by the assistance of body and soul actually possesses the thing in such a way that no one else retains civil possession of the same thing: this is the most perfect possession (Schmalzgrueber, in *Decr.*, l. II, tit. XII).

Possession is acquired by true apprehension, fictive apprehension, and disposition of law. True apprehension happens either by hands, for example, the hand

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being placed upon a movable thing; or by feet, namely by standing upon land which we contend to have as our own. Fictive apprehension is completed by an act which, from a fiction of law, is equivalent to true apprehension, for example by delivery of keys or of a document. Disposition of law sometimes attributes the advantages of possession without any apprehension of the thing.

850. Effects of Possession. Possession attributes certain advantages from natural law, and still greater ones from civil law. Cf. Vermeersch, *Quaest. de Just.*, n. 255; Delama, n. 15.

I. From natural law, in doubt the condition of the possessor is better. To this pertains that rule of law (l. II, ff. *Uti poss.*): "Any possessor whatever, by the very fact that he possesses, has more right than he who does not possess." - And the reason is that, as was said at length above (n. 44), no one is presumed evil, and therefore no possessor unjust, unless it is proved. - Besides, this privilege of the possessor conduces to public peace and stirs the diligence of citizens in guarding their own things.

Hence: 1. In a petitory judgment (i.e. concerning the property of a thing) the possessor is presumed to be owner; and therefore the burden of proving is transferred to the petitioner. - 2. During litigation, the possessor must be retained in his possession until the right of the petitioner is proved. - 3. A legitimate possessor cannot be displaced except by another certain right. - 4. A possessor is disturbed illegitimately in his possession by private authority. Wherefore he can protect possession by himself and repel force by force. - Otherwise, he has in court an action that they call possessory, i.e. he can ask from the judge either that every molestation cease, or that possession already taken away from him in fact be restored to him.

II. From civil law, the possessor has the benefit of prescription, the right sometimes of acquiring fruits, etc., as will be explained in n. 890. - If possession itself is doubtful, in a possessory judgment he will prevail who, through the whole preceding year, possessed not by force, not secretly, not precariously. But if neither possessed in such a way, possession is to be adjudicated to him who at present detains the thing, or the thing is to be divided between both (cf. n. 945, 3).

Note. Possession is lost: 1. naturally, when someone is deprived of the thing possessed in such a way that it is placed outside his custody; - 2. civilly, when the possessor, even if he retains the thing with himself, has nevertheless cast away the mind of possessing it, or when law ceases to defend him in such possession; - 3. naturally and civilly at the same time, when he renounces or abandons the thing, with efficacious intention of no longer having it as his own, whether he does this freely or under compulsion.[116]

CHAPTER II

On the Object and Subject of Ownership

Cf. Encyclical of Leo XIII, December 28, 1878 (*A. S. S.*, 11, p. 369), May 15, 1891 (*A. S. S.*, 23, p. 641), concerning Socialism and concerning the condition of workers; besides the authors cited, Leroy-Beaulieu, *Le Collectivisme*, passim; Cathrein, *Sozialismus*, *Moralphil.*, II, p. 124; Pesch, *Die soziale Frage*, III vol.; Biederlack, same; Weiss, same; Schrijvers, *Man. d'Econ. polit.*; Vermeersch, o.c., n. 231 seqq. and 529, where there is discussion of moral persons.

ARTICLE I

On the Object of Ownership

851. The object of human ownership is all things that are subjected to man's use. Hence Scripture: You have subjected all things beneath his feet, sheep and oxen, etc. (Ps. 8, 8). But he gave the earth to the children of men (Ps. 113, 16).

Private ownership is founded in natural law, insofar as this postulates that things belonging to no one become the things of the first occupant, and that he be able to receive the fruits of his own labor. Moreover, ownership is altogether inviolable:

[116]Cf. Austrian Code, 309-352; Italian, 685-709; Spanish, 430, 446, 460 seqq.; German, 856, 872 seqq.

1. by natural law; for, with ownership taken away, society would be overturned: each one would wish to rule over all, to serve no one, and to be free from every labor; - 2. by divine law, as is clear from the prohibition of theft; - 3. by human law, both ecclesiastical and civil, which is wholly occupied in this, that it protect for each one the right of property (Salmant., tr. 12, c. 2, n. 1).

Therefore deservedly there was reproved by Pius IX (Encyclical *Qui pluribus*, November 9, 1846) the doctrine of communism and socialism, as "abominable and exceedingly opposed even to the natural law itself; once it is admitted, all rights or properties and even human society itself would be utterly overturned."

852. The objects of human ownership are divided in many ways:

853. There are internal and external goods. - External goods are all sublunary things placed outside man; internal goods are those that man possesses in himself and that accompany him everywhere.

These are of a diverse kind: for either they are not distinguished from man, as life, members; over these man has only useful ownership; or they proceed from man, for example actions: over these he has full ownership; or they are mixed, insofar as he himself concurs toward them by acts, although they are external, as reputation, honor: over these also he has full ownership, but to be limited in many things (cf. n. 753, 1198).

2. External goods are corporeal or incorporeal. - Corporeal are those that are subjected to the senses, as garments, land, a house; incorporeal are those that are perceived only by the intellect, and consist in some right, for example the right of enjoying, of using, an obligation assumed by the Public Debt.

3. Corporeal goods are divided into movable and immovable. - Movable are those that, their proper form preserved, can be moved in place; immovable, those that cannot be moved in place, because they adhere to the soil or to a house.

Moreover, in the new codes, the determination of things is often made minutely; rights themselves also, according to their nature, by determination of law, are referred to one or the other species.[117] The word movables, if it is used alone, has a restricted sense; otherwise if it is opposed to immovables. The word furniture (*meubles meublants*) comprehends only movables destined for the use and ornament of houses and rooms.

Movable goods are subdivided into fungible and non-fungible. Fungible are those that can function in the place of other things, and thus can be equivalently substituted for them, provided they are of the same genus and the same quality. Things of this kind are oil, wheat, wine. - Non-fungible are those that must be handed over in their own proper nature, for example a painting.

To fungible things are to be referred those that consist in weight, number, measure; - likewise counted money;[118] - likewise things consumable by the first use, as bread, meat, wood for burning; but not regularly things to which detriment is brought from successive use, as garments, furniture.

4. Finally, external goods are constituted either in commerce or outside commerce. Things are said to be in commerce that, as they can be destined for private uses, so also can be brought into obligation, and be alienated and acquired. Outside commerce are (according to Roman Law):[119] a) things of divine right, i.e. sacred things and sacred places; b) common things, namely those whose ownership belongs to no one, but whose use belongs to all, as air, light, water; - c) public things, whose use pertains to all citizens, as rivers, ports, fortified citadels, and public roads. It must be said otherwise of other goods, for example fields, forests, and public buildings, which the state enjoys after the manner of private persons (cf. n. 872).

Note. In England, where the feudal system continues to flourish in many matters, a special mode of distinguishing goods also flourishes, which must be learned from authors who have written concerning English Law (cf. Crolly, o.c., n. 253 seqq.).

These things having generally been set down beforehand, it remains to inquire specifically: 1. concerning man's ownership over other men; 2. concerning the same man's ownership over the offspring of his own genius.

§ 1. On Man's Ownership Over Other Men

853. Principles. I. Man does not have full ownership of property over another man. For this ownership belongs to God alone (cf. n. 729 and 753). In no way can it be conceded that man, as regards personality, is directed to another as to an

[117] French Code, 517-536; Italian, 406-424; Austrian, 291-301; Spanish, 333-347; German, 90.
[118] *Instit.*, 3, 15; Law 1, ff. 18, 1.
[119] *Instit., de rer. divis.*, 1-10.

end. Hence the commerce of Black persons is illicit. Cf. Leo XIII, Constitution *In plurimis*, May 5, 1888, and Encyclical Letter *Cath. Eccl.*, November 20, 1890.

854. II. Man can have useful ownership over another man, i.e. there can belong to him the legitimate faculty of disposing, for his own advantage, of another man's acts and of the fruits of these acts.

The reason is that any man has ownership of his own acts and of the fruits of his own labor, and therefore he can lease them to another, as happens in the state of service, or even, unless something opposes, alienate them in perpetuity.

§ 2. On Man's Ownership Over the Offspring of His Own Genius

The question regards both writers and ingenious craftsmen, who illustrate the arts, whether liberal or industrial, with new inventions.

855. Principles. I. From natural law, full ownership of his works or inventions belongs to an author or inventor, certainly before their publication, probably also after publication.

1. As regards works not yet published, the thing is clear of itself. Therefore he who publishes such things is guilty of theft. And the same thing seems to have to be said concerning him who would print the public lectures of a professor or the sermons of a sacred orator; because to teach publicly, or to preach, is not to publish one's work, to hand it over publicly in such a way that anyone can subject it to the press. Except if it is certain that the author is not unwilling.

2. Then, as regards works already published in public, certain authors judge that after publication the exclusive right in a work of genius is lost (ap. Vermeersch, o.c., n. 246). Others contradict this, saying: ownership and the right of further publishing remain with the author, who grants only the use of the published work (Noldin, II, 379).

At least it must be admitted to be consonant with equity that to any author there be attributed a right of property in the fruit of his labor or industry, and indeed an exclusive right, so that without his consent, or after him the consent of his heirs, no one can publish those works again in public (Carriere, l.c., n. 61). Since there was question of a thing too uncertain, it belonged to public authority to determine all things more clearly.

856. II. From positive law, after publication (provided certain conditions are fulfilled), a monopoly belongs to the author or inventor, which attributes a strict right as regards principal things, a less strict right as regards accessory things. This privilege is conceded by reason of the common good, both for fostering industry, and for compensating the expenses that often must be made, and for remunerating labors that yield to the common utility. Therefore civil law confers on authors a strict right both in the external and internal forum (Carriere, l.c.).

We distinguished between principal and accessory things. The principal thing in these laws is the prohibition of reproduction that would be made for taking profit, by way of commerce. Those who thus violate the right of the author act unjustly. - The accessory thing is the prohibition of reproduction that would be made by help of a machine for a restricted group, the prohibition of printing and diffusion in distant regions, or of translation into another language, the insertion of many parts into another work under another form and another title, according to, for example, Noldin, II, n. 379; *Ami du Cl.*, 1910, p. 113. These accessory things do not certainly oblige in conscience. The reason is that the author, on account of this transcription and reproduction, does not suffer so appreciable a damage; besides, the fine imposed on transgressors is disproportionate to the delict.

In France, a privilege is granted to inventors of industrial arts for 5, 10, or 15 years, at the will of the petitioner, provided he pays a proportionate sum of money. He who has received such a privilege or patent of invention can call violators of his right into judgment; and unless the accused proves either that the patent was obtained by a false title, or that imitation does not exist on his part, the inventor obtains confiscation of the adulterated objects and compensation of damages. - As regards books, paintings, musical compositions, etc., the exclusive right of reproduction (of translation into another idiom and of sale) is granted for the life of the author, and for 50 years after his death. - The conditions for books are that two copies be deposited in the public archive of the prefecture, and that the certificate of deposit be retained by the author. - But the right is alienable in whole or in part, for example to a bookseller, with the right of the heirs preserved for the legitimate portion. Law of July 14, 1866.

In Italy, a writer who fulfills nearly the same legal conditions as in France likewise acquires for himself, for the whole of life, the exclusive right of sale together with the right of reproduction. If he dies before the fortieth year from the first edition of the work, his heirs enjoy the same rights until those forty years have elapsed. But when those have elapsed or the death of the author has followed, the work can be subjected to the press by others and exposed for sale, yet under

this condition, that for forty other years there be paid to him who acquired the right of the deceased five per one hundred (as they say), namely from that price which is read inscribed on the several copies, and which was reported before civil authority. - The right of reserved translation does not extend beyond ten years from the first edition of the work. Royal Decree, September 17, 1882.

In Spain, to a writer, during life, and to his heirs for eighty years after his death, an exclusive and alienable right of reproduction is attributed. The same right is obtained by those who, with the author's license acceding, abridge a book or transfer it into another language. Code n. 428, 429; law of January 10, 1879. See Gury-Ferreres, n. 566 seqq.

In Austria, from the law of December 26, 1895, the right of heirs continues as regards all works for thirty years, as regards photographs for ten years. Privileges have been abrogated.

In Germany (from the Introductory law, n. 76), the same law does not flourish in the individual kingdoms. Commonly the privilege of authors is not extended beyond thirty years after the death of the first editor. Cf. Kurschner, *Lexicon des deutschen Reiches* v. *Urheberrecht.*

In England, there is granted to the author a right either for life and seven years after his death, or for forty-two years from the first edition of the work (Crolly, t. I, n. 654).

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ARTICLE II

On the Subject of Ownership

§ 1. On the Subject of Ownership in General

857. Principle. Every and only intellectual nature is the subject of ownership. For intellectual nature alone can enjoy the faculty of disposing at will of some thing as its own. - Besides, ownership draws with itself the right of warding off those who, against one's will, would seize what is one's own. But only an intellectual nature can be unwilling.

Hence you will deduce: Infants are not incapable of ownership, nor even the insane; for the use of reason is necessary only for the exercise of right, but not for having radical ownership, as founded in the powers of the soul, which precede the use of reason; otherwise everyone who has given himself to sleep would become incapable of ownership. - Civil law agrees, which attributes to an infant even before his birth the right of possessing. French Code, 906; German, 1923, 2, 2109, 2178.

§ 2. On the Subject of Ownership in Particular

Positive law, for the good both common and private, has restricted the capacity of possessing that belongs to every intellectual nature. The capacity of ownership has been restricted in children under paternal power and minors, in wives, in moral persons (for example municipalities, convents, etc.), in those civilly dead and interdicted, in religious and beneficed clerics.

There will be discussion of those civilly dead and interdicted in n. 1042, of religious and clerics in n. 2156, 2245.

1. On the Ownership of Children Under Paternal Power

The goods and rights of children under paternal power (and of other minors) vary greatly among various peoples. We shall here relate the principal laws that exist concerning this matter (recall the things said concerning distinction of persons, n. 698). Since these various laws establish rights for the common good, they oblige in conscience (cf. 838, 1).

858. From Roman Law, in the goods of children under paternal power there are distinguished: 1. camp goods, which the son or ward acquires for himself from military service, or on the occasion of military service; to which quasi-camp goods come nearest, which he acquires from civil service or from public offices, for example of judge, advocate, lector, physician, cleric, etc.; - 2. adventitious goods, which come to a son under paternal power either from his mother, or from the maternal line, or in consideration of his mother, or by another way, for example inheritance, donation, fortune (as if he finds a treasure), business with non-paternal goods, or in his own name, etc.; - 3. profectitious goods, which a son receives from his father, or in consideration of his father, or which he gains from the things of his father by doing business in his name (Doveri, *Instit. di Diritto rom.*, l. 1, § 134).

859. From the new Codes, the goods of children are generally divided into a double class. The former comprehends goods obtained by children by labor and separate industry, or those that are given to them with the express condition that

their usufruct not come to the parents. The latter embraces all other goods that come to children, for example by donation or by another similar title.

860. Moreover, as regards both these kinds of goods, one must diligently distinguish between direct ownership, administration, and usufruct. - 1. Direct ownership of all goods that come to children by just title pertains to them, although they are minors and not emancipated, since they are capable of such ownership. Just title is donation, inheritance, separate industry, etc. - 2. Administration of all goods is in the possession of the father or guardian, who must supply the incapacity or inexperience of the children, until they themselves are of age or emancipated. Those of age obtain full administration of their goods, but emancipated persons restricted administration. - 3. Usufruct belongs either to the children or to the parents, according as positive law establishes.

861. In France. Usufruct, generally, pertains to the father (or, he being dead, to the mother remaining in widowhood), until the emancipation of the children or the completed eighteenth year. From the proceeds, however, the offspring must be fed and educated according to their condition. - We said generally, because there are excepted: 1. goods that children obtain for themselves by their own labor and separate industry; - 2. goods that are given to them under the express condition that their usufruct not come to the parents. Civil Code, 384-387.

In Italy. Usufruct is conceded to the father or mother having paternal authority, until the children are of age or emancipated. It is lost by either parent who, after the death of the spouse, contracts new nuptials. Fructuary parents are held to procure for the offspring such education as is consonant with his fortune and condition. - There are excepted: 1. goods that children acquire for themselves by their own labor and separate industry; - 2. goods that are given to them with the condition annexed that the parents not perceive usufruct; - 3. goods that come to them, according to the disposition of law, while the father dissents. Code, 228-239.

In Spain. Usufruct is generally conceded to the father (or mother having paternal power). There are excepted a) goods that are given to children so that they may serve for their education; - b) goods that children acquire by separate industry, if with the father's consent they live at their own expense outside the paternal home; - c) goods of children who have been recognized or adopted; indeed the father cannot even administer the goods of these unless security has been given (Gury-Ferreres, n. 545). Code, 160-162, 166.

In Austria. Usufruct belongs to children even minors and not emancipated, the expenses of education nevertheless being deducted. And although a son not yet emancipated does not have the administration of his goods, nevertheless he can freely (and therefore also validly, if nothing else opposes from another source) dispose: 1. of goods acquired by his own industry, provided he himself does not receive support from his parents; 2. of goods that are attributed to his use, provided he is pubescent (Delama, n. 37). Code, 149 seqq.

In Germany. The new law distinguishes the goods of children under paternal power into free and not free. - Those are called free: 1. which children have obtained for themselves by their own labor and separate industry; - 2. which they have received by gift, the parents being excluded from usufruct; - 3. which, by living sparingly, they have set aside from goods that had been conceded to them in full power for living, while they lived outside the paternal home. - All the rest are called not free. The father has the usufruct of these with administration, until the time at which the son passes out of paternal power. The usufruct of free goods belongs to the son, but administration to the father or to the third person to whom the author of the goods committed it (Pelt, o.c., p. 34 seqq.). Code, 1617 seqq.; 1649 seqq.

In England. Usufruct pertains to the children. But whether the expenses of education must be refunded from the goods of the father, or from the goods of the children, the tribunals are accustomed to decide according to the circumstances of the case (Crolly, n. 456-465).

862. Special Questions. It will not be beside the matter here to institute discussion both concerning the right to wages that children acquire when laboring for their father, and concerning the right in small and movable goods that they receive from parents or kinsmen.

I. Concerning Labor in the Paternal Home. 1. A minor son does not have a strict right to wages for ordinary labor that he performs for the advantage of the family; but he possesses that right for extraordinary labor. Reason for the first: parents can by right require that he labor for conserving and increasing the domestic estate; this labor of minors is owed from piety. - Civil law also agrees, for example German Law, § 1617. Reason for the second: extraordinary labor (i.e. that which exceeds the expenses of living, or by reason of age or condition is not owed) is equated with labor undertaken by strangers, and therefore it merits wages. Cf. St. Alphonsus, III, n. 488, 544, 810; Lugo, o.c., disp. 5, n. 42; Delama, n. 34, q. 1.

2. A son of age, for labor even ordinary, of itself merits wages: for they are owed to a stranger; hence, by parity, to a son of age. But it must be considered that a son of age is sustained by his father, that by his labor he also amplifies the

father's estate. From this it follows that the wage owed to the son often must be diminished, namely with expenses for food, clothing, and habitation deducted, and with attention given to the hope of inheritance.

Note. Some authors attribute to the son, even a minor, a strict right to wages; others deny that a son of age possesses a right to salary for ordinary labor. Cf. the diverse opinions apud Tanquerey, II, n. 149; Noldin, II, n. 354; Lehmkuhl, in *Theol. mor.* and in *Cas. Consc.*; Delama, l.c. ad 1. Besides, some civil Laws (for example German Law, n. 1617) in general deny children a right to wages. - From this it follows: parents do not act unjustly if they do not increase the inheritance for laborious children; but children who, before the separation of goods, have set something aside for their labor, after the fact are not to be compelled to restitution, especially if other children contributed nothing toward increasing the domestic estate. But since the right to wages for ordinary labor, on the part of children of age, is not altogether certain, before the fact there is not securely present a right of compensation (n. 917).

II. Concerning Labor Outside the Paternal Home. 1. A minor son laboring outside the home, and hired out by the father, labors in the name of the father. Therefore the profit that he acquires seems to be a profectitious good, pertaining to the father. Reason: the same debt of piety, which we indicated above, flourishes here. Nevertheless, he does not certainly sin against justice if he retains something. Cf. German Law, 1651.

2. A son hiring out his own labors makes the profit his own. He would be held from justice to pay something to his parents if he were living at the expense of the family; from piety if the necessity of the parents were present.

3. A son doing business in the name of his father makes his own only that which he has gained from special industry, even if by theft he had procured his father's money for himself. Indeed, in this last case, if namely he intends to do business in his own name, the whole profit is to be ascribed to the son (Lehmkuhl, I, n. 565).

III. Concerning the Right in Goods Received. 1. In goods that are not immediately consumable by use, as garments, books, etc., a child under paternal power possesses only useful ownership; for, from common sense, the child, as regards those things, does not receive property, but only use. Therefore he cannot without the consent of parents or kinsmen, at least reasonably presumed, sell, give, or alienate them.

2. In goods that are consumable by first use, as foods or money, if they have been given without any condition, a child under paternal power has perfect ownership: therefore he can dispose of them at will. - But if they have been given under some condition, for example of buying books, paying board, etc., he sins against justice by spending them for other uses.

Whether, and when, a child under paternal power is held to restitution, see n. 907.

2. On the Ownership of Wives

863. Things to be noted beforehand. 1. Goods serving in marriage can be ordered in many ways; hence it is necessary to know the diverse regimes of goods, so that the ownership of each spouse may be rightly delimited. - 2. The goods of wives can be either dotal, or paraphernal, or common (III, 489; *H. Ap.*, tr. X, n. 5). This depends either on the will of those about to marry, or on law.

Dotal goods are those that are handed over by the wife, or by parents, or by another to the husband, for sustaining the burdens of marriage, i.e. for providing for the family.

Paraphernal goods (extra-dotal) are those that the wife has besides the dowry, and in which there is no right of the husband, except that which she herself has committed to him. - To paraphernal goods are to be reckoned those which a wife acquires for herself by peculiar skill, by administering the family estate more prudently and attentively, or by subtracting for herself from the goods conceded to her by her husband for food, clothing, and recreation.

Common goods are those that from the pact of the spouses (or from law supplying the place of pact) are brought into society. To these are rightly referred those things that either spouse acquires by ordinary labor and by care of the family estate.

Authors sometimes speak of goods of the family. These are those that have been given for the prosperity of the family or are acquired by common labor, although they cannot always be called common, because the husband can have ownership of them (Noldin, II, 376, c.).

864. Principle. From natural law, either spouse remains owner of his or her own goods, with the obligation of sustaining, according to a proportionate part, the burdens of marriage; but from positive law and from pact, the rights of spouses in goods can be very diverse. Therefore let us see the principal dispositions that the various Codes, or laws, of various peoples contain concerning this matter.

Roman Law. 1. It adjudicates the usufruct and administration of dotal goods to the man, but property to the wife; and therefore, when the man is dead, she is preferred to all his personal creditors for reclaiming the dowry. She can also reclaim the dowry during his life, if it is feared that the man may become unable to restore it. But if the dowry consists in money or consumable goods, or even in stable goods that are handed over to the man valued and with the intention of sale, then the man acquires full ownership, with the obligation of restoring the value when the marriage is dissolved; and therefore, if goods of this kind perish, they perish for the man. - 2. Of paraphernal goods the wife has full ownership and use. - 3. Of common goods (if they are present from a special pact) the property and use pertain to both spouses; but administration to the husband alone (III, 542; *H. Ap.*, l.c.).

865. French Law.[120] It concedes to the betrothed, before marriage, the faculty of making as regards their goods all the pacts that they wish, provided these pacts happen before a public notary, and are not opposed to good morals or laws, or to paternal or marital authority. But if the making of a pact of this kind is omitted, the betrothed are judged to enter a legal community. Now:

I. The Legal Community stands thus: 1. Immovable goods acquired before the nuptials, or afterward coming by donation or succession, remain proper to each spouse. But the proper goods of the wife become quasi-dotal, and the husband alone has their usufruct and administration; yet in such a way that without the wife's consent he cannot alienate them. - 2. Common become both movable goods possessed before marriage, and the fruits of immovables and other revenues, and also immovables acquired in marriage from the goods or by reason of the community. The husband can alienate, pledge, etc., these goods without the wife's consent. Yet concerning immovables, or concerning the totality or a quota of movables, he cannot dispose by gratuitous title. When the community is dissolved, the goods and burdens are divided into two parts, unless the wife or her heirs prefer to renounce the goods, and thus exempt themselves from the burdens.

II. By the Conjugal Pact can be constituted: 1. The regime of conventional community, by which the legal community is extended or restricted with respect to goods. - 2. A regime excluding community (but without separation), namely by which all the goods of the wife become quasi-dotal, and are handed over to the husband for use and administration, without the faculty of alienating. - 3. The regime of separation, by which all goods of the wife become quasi-paraphernal; for the wife retains the use and administration of all her goods, and contributes to the burdens of marriage only a third part of her revenues according to the norm of law, or another sum,

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and this determined, whose full ownership is transferred to the husband. - 4. The dotal regime, by which dowry strictly such is constituted, nearly as in Roman Law.

It should be noted: a) There is no regime in which the wife is entirely independent from the husband;[121] namely none in which she can alienate her immovable goods, or present herself in civil court, without the authority of the husband or judge. Nevertheless, even against the will of the husband, she can make a testament. - b) In the prenuptial contract, the betrothed can mutually receive certain donations from themselves or from others, which after the nuptials are prohibited by law.

866. Italian Law.[122] It has these things proper to itself: 1. Dowry is generally constituted according to the rules of Roman Law (n. 864). This can also embrace future goods of the bride; but after the marriage has been entered, it can no longer be constituted or increased by the spouses. - 2. The betrothed before the nuptials can enter community, not indeed of goods, but of the fruits proceeding from those goods themselves, whether movable or immovable, whether present or future. But that society cannot comprehend debts and credits existing before the marriage. In other matters, Italian Law agrees sufficiently with French Law.

Spanish Law.[123] Dowry can be constituted, as in Roman Law; likewise paraphernal goods. But a prenuptial pact, which can be instituted, being excluded, the legal community flourishes, as in French Law. When the community is dissolved, first dowry and paraphernal goods must be restored, then common debts paid (Gury-Ferreres, n. 551, where all things are treated at length).

867. Austrian Law.[124] The goods of wives are subjected to almost the same rules as in Roman Law. - Only these things are to be noted: 1. Community of goods can be stipulated, whether before or after marriage has been entered, but under the conditions and in the form prescribed by law. Regularly, community is judged to have been entered

[120] French Code, 1387-1581.

[121] The law of July 13, 1907 conceded more right to the woman, so that now she can enter some contracts, and administer the fruits of her own labor independently from the husband (*Questions actuelles*, vol. 92, p. 316).

[122] Italian Code, 1378-1446.

[123] Spanish Code, 315 seqq.

[124] Austrian Code, 1217-1266.

only for the case of death; and therefore, during marriage, the property of common goods belongs to both spouses, the usufruct to the one to whom it belonged before the pact, and administration to the husband alone. When the marriage is dissolved, from the common goods that remain, half pertains to the surviving spouse. - 2. A special pact being excluded, either spouse retains the right of property of his or her own goods, and also the exclusive right to all those things that he or she acquires for himself or herself during the marriage, or that come to him or her. Yet the use and administration of the wife's goods are judged to have been handed over to the husband, as long as she has not contradicted. In doubt, because the wife must help the husband, the profit is presumed to have been made by the husband.

868. German Law. There is a legal or conventional regime (cf. Pruner, n. 609; Pelt, o.c., p. 39).

I. The Legal Regime[125] imitates the dotal law of Roman Law. Administration and usufruct of dotal goods belong to the husband, who nevertheless, if the wife requests it, is held to explain the state of the things;[126] nor can the husband alienate or pledge those goods without the consent of the wife. But that they may be placed in safety, there belongs to the wife the right of seeking security or separation of goods. But ownership of paraphernal goods and their free administration are in her possession. As regards debts, see § 1410-1426.

II. The Conventional Regime admits various pacts, which can be entered before or after marriage, and even after marriage be dissolved or changed.[127] - 1. Universal community can be instituted, by which all goods of the spouses become common, both those possessed before marriage and those acquired afterward; but it must be well noted that in this community of goods either spouse can reserve certain goods to himself or herself, which in the dotal regime and in partial community is granted to the wife alone;[128] or partial community, by which only a determined part becomes common. This community is twofold: a) community of acquisition, in which both profits made by the spouses and revenues of goods brought in become common goods; but goods, both movable and immovable, possessed by either before marriage remain proper to each. The wife (but not the husband) can reserve paraphernal goods to herself; - b) community of movable goods, which adds to community of acquisition the communion of movables possessed before marriage, and is subject to nearly the same rules as the legal community in French Law.[129] Administration of common goods belongs to the husband, who nevertheless cannot dispose either of immovables, or of the totality or quota of movables, without the consent of the wife.

2. Separation of goods can also be instituted either from the beginning, or during marriage, in which case the goods of the wife are held as paraphernal.

Under any regime, the wife can, without the consent of the husband, accept or repudiate an inheritance, legacies, and gifts offered to her.

In marriages contracted before January 1, 1900, the condition of goods continues to subsist according to the laws that flourished up to this time.[130]

869. English Law. From the year 1870 (August 9), a wife can by full right make her own, without the consent of the man, those goods that she has acquired by separate industry (by separate art or trade), so that both usufruct and administration pertain to her alone. - By the more recent law also (January 1, 1883), a woman who has married remains of full right, like an unmarried woman, concerning possessing, acquiring, and administering her goods. Wherefore, as regards the right of the husband, one must see what goods perhaps were conferred on the husband in the marriage contract.[131] - Concerning the inheritance of the husband or wife, see n. 1076-1078.

870. From the things said conclude: 1. Before marriage justice is violated: a) by either spouse, when one deceives the other concerning goods, by amplifying them, or concerning debts, by concealing them; - b) by both, when in the prenuptial pact they express what is false (for example if the bridegroom declares that a dotal good was given to him, which in fact was not given), so that a third party is deceived thereby.

871. After marriage injustice is committed: a) by the wife, if from goods either common or personal to the husband she takes away anything that is necessary neither for her own support nor for the support of her own people (father, mother, or offspring received from a prior marriage); or if in alms and gifts she exceeds the custom that other wives

[125] German Code, 1363-1425.
[126] § 1374.
[127] § 1432.
[128] § 1437-1518.
[129] § 1519-1557.
[130] Introductory Law, art. 200. Yet those marriages that before January 1, 1900, were entered according to French legal Law, after this day, by law, are subjected to the convention of community of movable goods and are ruled according to it (Introductory Law, art. 144).
[131] Lehmkuhl, I, n. 1066.

of the same condition observe; if, when the marriage has been dissolved, she renounces the community, or does not make an accurate inventory, in fraud of creditors; - b) by the husband, if he dissipates the dowry of the wife, or her paraphernal goods, or common goods, by juridic acts against the tenor of law, for example by giving by gratuitous title some immovables, or the totality or quota of movables; and in all these cases he is held to restitution.[132]

The question is whether a husband who dissipates common goods unworthily, by living lavishly, yet not against the tenor of civil law, besides the sin against piety that he certainly commits, also sins against justice? It is controverted: authors commonly affirm, in the case in which the wife has handed over all her goods, or the greater part of them, into community; otherwise, if she has handed over only the fruits, as happens from Italian Law (St. Alphonsus, III, 541, 5; Marres, *de Just.*, n. 69).

Things to be noted as regards the wife. The wife is not a maidservant, but a companion, a helper of the man. Therefore it is equitable that there be conceded to her a certain liberty in administering the domestic estate, in making ordinary alms, and this even if the man does not know it, or, from hardness or avarice, is altogether unwilling. Cf. *Ami du Cl.*, 1913, p. 377.

Therefore a wife can, if the man squanders goods to the detriment of the family, hide them and reserve them for the good of the family; or subtract something for the necessary expenses of the family. - She can also, if she does not have paraphernal goods, nor the man wish to give what is necessary, take something from the common goods, provided it is not very notable, for relieving the necessity of parents or children received from a prior marriage (probably, also brothers and sisters). - Finally she can employ means so that, according to her condition, after the man's death necessary things not be lacking to her: understand, if law has not sufficiently foreseen all things (cf. German Law, 2303).

§ 3. On the Ownership of Moral Persons

871. Things to be noted beforehand. A moral person, as it is taken here, is a juridic being, or civil body, to which laws have conceded the privilege of perpetual succession. - It consists either of several coexisting persons, as a college; or of one person who never dies, as the Bishop, who always lives in his successors. - It differs, of itself, from a conventional society: for this is entered by contract among private persons, who have co-ownership, and therefore retain a strict right to common goods. Cf. n. 1157. A conventional society (for example industrial) can receive legal existence, but it does not become a juridic being and moral body in the strict sense.

Colleges are held, generally, after the manner of private persons: hence they can enter contracts, act in judgment, etc.

We said generally: for in the ownerships of stable colleges, members have only the right of administering them and perceiving fruits from them, and that according to the norm of the foundation; yet with the substance of the ownership preserved. For this reason, communities are ruled in many things by the law of minors. Thus, for example, immovables and precious movables of churches, monasteries, municipalities, etc., cannot be alienated without the command of the supreme power (D'Annibale, *Summ.* I, n. 43 seq.; Ferraris, v. *Collegium*).

These things having been noted beforehand, let there be discussion of moral persons: 1. in the civil order; 2. in the religious order.

I. On Moral Persons in the Civil Order

872. Moral persons, in the civil order, are States or republics and communities, whether regional (of provinces or districts) or municipal.

The state and municipalities have the right of possessing temporal goods and administering them. - The reason is that such a right is required for the end of civil society, i.e. for the common good of citizens.

Scope of ownership. I. The ownership of the state, or State, embraces things of a twofold kind: 1. Things generally unfruitful, but devoted to common necessities, for example the more principal roads, navigable rivers, seashores and lands emerging by the recession of the sea, ports, warships, fortified citadels and military garrisons, houses destined for supreme rulers and their ministers, public libraries and museums, etc. - 2. Fruitful things, movable and immovable, acquired by any legitimate title, for sustaining the expenses of the universal government.

II. The ownership of regional and municipal communities consists of common buildings, schools, lay hospitals, prisons, public roads, fields, forests, etc. - To these are numbered, in certain regions, palaces of Bishops, seminaries, canoni-

[132] A husband badly administering those goods of which he himself is owner sins against piety alone. But he would act against justice if, against the will of the wife, he dissipated those goods of which he has administration or usufruct.

cally erected hospitals, cemeteries, churches, indeed also sacred vessels; which certainly is repugnant to Canon Law, unless some concession has been made by concordats (Carriere, o.c., n. 67; Craisson, *Man. Juris can.*, 936, 5315).

II. On Moral Persons in the Religious Order

873. Principles. I. The Church can legitimately acquire and possess temporal things. It is of faith, as is certain from the condemnation of the tenth proposition of Wycliffe: "It is against Scripture that ecclesiastical men have possessions" (likewise, from proposition 32 and 33). To this also pertains the twenty-sixth proposition condemned by Pius IX in the *Syllabus*: "The Church does not have a native and legitimate right of acquiring and possessing."[133]

874. II. The right of acquiring and possessing, which the Church enjoys, cannot be limited to movable goods. For immovables are necessary for churches, episcopal houses, presbyteral houses, for monasteries, hospitals, seminaries, etc.; and therefore the faculty of possessing goods of this kind inheres in the Church, by natural and divine law, namely by the same law by which it was given to her to exist and to spread herself into the whole world, independently of every secular power (cf. Aichner, *Comp. Juris eccl.*, § 222).

Hence it is inferred: 1. The civil State that does not admit the aforesaid right violates divine law, just as it would violate natural law if it did not permit a singular person at will to become the subject of right (De Angelis, l. 3, tit. 5, n. 4).

2. Ownership of ecclesiastical goods does not pertain to the state; indeed, not even high ownership belongs to it. For the Church is a society altogether diverse from the state, and superior to it. - Therefore if the state needs some ecclesiastical good, for example to construct a road, it is necessary that it obtain the consent of the Church (cf. n. 149). See the Spanish Concordat of the year 1851, art. 40; Spanish Civil Code, n. 38, 746.

3. Ecclesiastical goods are regularly immune from taxes and civil burdens; otherwise the right of the Church in temporal goods would not be independent (St. Alphonsus, *de Privil.*, n. 20). Yet these goods can, from privilege, be burdened with taxes, as in fact sometimes happened in certain places, from concession of the Holy See (Aichner, § 227).

4. Violators of ecclesiastical ownership are always guilty of injustice, indeed often of sacrilege (cf. n. 583), and deservedly are punished with penalties and censures (cf. n. 1325 seqq.).

5. Questions. QUAER. 1. Who has ownership of the goods of the Church?

Resp. 1. Direct Ownership of those goods pertains immediately to particular churches, but mediately to the Catholic society itself, i.e. to the universal Church.

Hence: if some pious institute, parish, monastery, etc., is suppressed, the goods of the suppressed institute continue to belong to the universal Church, by which they are to be destined to another end. Nor does the Supreme Pontiff himself bear himself in this matter as proprietor, but as supreme administrator (Aichner, l.c., § 223).

2. Usufruct respectively pertains to those special associations or institutes to which the same goods have been left by the faithful.

Whence it happens that the rights of each institute are separate, and cannot be taken away thence by the mere will of prelates, or transferred to other places. This, however, the Supreme Pontiff can do as supreme administrator of all ecclesiastical goods.[134]

QUAER. 2. To whom does the administration of ecclesiastical goods pertain?

Resp. 1. The right or power of administering the goods of the Church belongs to those ecclesiastical persons to whom ownership, at least useful ownership, belongs: for the accessory follows its principal.

Therefore by law the administrators are: a) the Roman Pontiff for the whole world; - b) the Bishop for his diocese; - c) Chapters and Superiors of Orders for the goods of the Order, province, convent: all these, however, inferior to the Pope, according to the judgment of the Holy See and according to the laws of the universal Church, in whose possession is the principal ownership and government.

[133] Cf. Tanquerey, II, n. 195 seq.; Laurentius, *Instit. Juris eccl.*, n. 955; Heiner, *Kirchenrecht*, p. 367. Indeed many theologians teach, with Lugo and Lessius, that there belongs to the Supreme Pontiff a certain indirect right in the temporal goods of all the faithful, if the spiritual good requires this. See St. Alphonsus, III, 592, 615; ed. G., II, p. 80 and 95.

[134] Concerning the ownership of clerics in patrimonial, casual, and parsimonial goods, there will be discussion in n. 2245 seqq.

2. The administration itself pertains, in fact, to those to whom it was legitimately committed by the one having power, and therefore remains necessarily subject to the one committing it.[135]

In this administration indeed, laymen are sometimes permitted to have their part; but from this they acquire no right, just as curators acquire none from administration of goods that pertain to minors (Bargilliat, *Prael. Juris can.*, n. 970; Craisson, n. 5303; Aichner, § 225).

876. Note. 1. If the aforesaid rights of the Church are restricted by secular power, for example if by law (which they call amortization) the quantity of goods to be acquired is determined; or if the consent of the civil government is required beforehand: laws of this kind, although contrary to sacred canons, can be observed, insofar as namely the Church does not contradict. Indeed, they often must be observed, lest acts of administration become civilly invalid, and from this a greater detriment come to the Church.

877. If the right of the Church is entirely denied, recourse should be made to common Law, i.e. to the law that the laws concede to all citizens. Religious communities and pious institutes can acquire and preserve goods especially in three ways; and indeed: a) by obtaining the right of a college or civil corporation, or recognition of public utility; - b) by entering some contract of society, for example that by which goods are possessed in common for attaining a certain end approved by law; - c) by taking care that a simple contract of purchase be entered in a private name. In which case, one must watch that those possessing goods of the community in their own name immediately make a valid testament, which is diligently preserved in the community's archive (Konings, n. 623). Cf. Pelt, o.c., p. 61, as regards religious Congregations.

CHAPTER III

On the Modes of Acquiring Ownership

St. Alphonsus, III, 493 seq.; ed. G., II, p. 17; *H. Ap.*, tr. X, n. 9; Lugo, o.c., disp. 6; Lessius, l. 2, c. 5; Molina, disp. 55; Lehmkuhl, I, n. 1079; Noldin, II, n. 382; *Cas. consc.* apud Lehmkuhl, Genicot, Bucceroni; Pelt, *Legisl. civ.*, p. 66; Tanquerey, II, n. 210; Vermeersch, o.c., n. 211, 267.

877. Things to be noted beforehand. There are three titles by which ownership is acquired:[136] a) a natural title, founded in natural law, to which the determination of positive law accedes, namely through occupation and accession; - b) a legal title, resting on human law, which sometimes, by reason of the common good, transfers ownership from one to another, for example through usucapion or prescription, or through the sentence of a judge;[137] - c) a conventional title, or the will of the prior owner, either presumed (as in hereditary succession), or express, as in the various contracts entered according to the norm of laws.

This last title being omitted, which will be explained in Dissertation IV, here we shall treat: 1. concerning occupation; - 2. concerning accession; - 3. concerning prescription.

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ARTICLE I

On Occupation

878. Definition. Occupation is the apprehension of a thing that belongs to no one, with the mind of having it as one's own. - It is said: apprehension, i.e. real and external occupation of the thing.

Division. There is distinguished: 1. warlike occupation, concerning which we spoke in n. 751; - 2. occupation of animals; - 3. occupation of things found, or finding, concerning which, with the principle first set down, we shall soon speak.

Principle. Occupation is a legitimate mode of acquiring ownership. This is required by nature itself, which made man capable of possessing, indeed which, on account of the condition of life, imposed on him the law of possessing. Occupation

[135]Nothing prevents the parish priest from laboring for this, that for his church, on the civil side, he procure the benefit of inscription among works of art. By such inscription, indeed, the exercise of the rights of the Church is restricted, but this is compensated by many other advantages. *Ami du Cl.*, 1913, p. 432.

[136]We do not speak of labor, as though labor were the sole source of ownership, as socialists suppose. A title taken from labor is reduced either to occupation, which labor completes, or to specification, which labor perfects, or finally to a conventional title from free contract. See what is to be said in n. 1149.

[137]The sentence of a judge, which imposes a fine for juridic fault, does not in every case of itself transfer ownership. There is indeed an obligation of paying, but this urges from legal justice alone; the faculty of later compensating oneself is lacking. See n. 930 seqq. Cf. however n. 1028.

is the first mode of satisfying this law, nor can it be admitted that it has force only if either positive law or the consent of peoples accedes. Hence positive law cannot totally suppress the right of occupation.

§ 1. On the Occupation of Animals

Animals are of a threefold kind: some are wild or become wild, which enjoy natural liberty, as hares, birds, fish; or, although tame, have altogether recovered that liberty; - others are tamed or domesticated by training, which are deprived of liberty by the industry of men, so that, although they go out, they are always accustomed to return, as bees, doves; - others are tame or domestic, which by their nature use the society of men, as oxen, sheep, hens, etc.[138]

879. Principles. I. Wild animals or those become wild become the property of the first occupant. For things that belong to no one are licitly occupied by natural law.

Hence: 1. A nest occupied by you, even on another's land; animals reduced for a time into someone's ownership, if they have resumed primitive liberty (i.e. if they have escaped custody in such a way that their pursuit becomes difficult), pertain to you, by natural law, when you have occupied them.

2. He who kills wild animals enclosed by a wall or hedge; he who takes fish, oysters, etc., from a fish-pond or pond well closed, and a fortiori from another's net, commits injustice: for he occupies tamed animals. Lugo, l.c., n. 72.

3. A wild animal or bird wounded or ensnared on open land pertains to the one wounding or to the one setting nets, if it is certain that it could no longer escape; but it pertains to the one catching, if struck by a light wound or impeded by a light bond it could escape, or had already been abandoned by the hunter; finally it pertains to both, and is to be divided according to the proportion of hope, when the matter is doubtful.

It is asked: Whether laws that regard hunting and fishing oblige?

Resp. 1. Of these laws, some refer to external regime and good order: for example they determine at what time, or with what instruments, hunting or fishing is permitted. These laws (except those that protect the multiplication of wild animals) are merely penal (I, 145).

2. There are others that refer to the protection of another's right: for example a law prohibiting you from entering an enclosed field to place a snare, lest you cause damage. These laws oblige by force of natural law, and cannot be violated without lesion of commutative justice.

If, however, the fenced land is of great extent, take the gravity of damage from the hope that the owner had of catching wild animals.

3. Besides, other laws protect the right of hunting or fishing in an open place, conceded exclusively to someone by force of contract, for example of lease; and these bind by the same justice so that someone cannot be deprived of that right legitimately acquired. But he would be deprived of his right if others caught or destroyed such a multitude, for example of fish in a river conceded exclusively to him, that the right of fishing would thereby be notably injured. But the damage inflicted must be estimated not from the quantity of fish caught, but from the probable profit that on this account ceased (III, 605, 614; Konings, 644; Noldin, II, n. 388).

Note. a) A lessor of this kind, since he has the right of accusing delinquents, can accept money from delinquents, so that he desist from denunciation.

b) An illegitimate hunter makes animals his own (if they are in small number), unless some civil law opposes (cf. German Law, 958). Let the confessor always remember that the lessor is always held to avert damages from neighboring possessions. Therefore let him not easily condemn a farmer who, by making some wild animals his own, compensates himself.

4. Finally, there are laws that concede the right of hunting by way of mere privilege (for example if it has been conceded to nobles), or of mere license, even if it has been obtained by money. These laws bind in no way from strict justice, and there is no place for restitution (Lessius, l. 2, c. 5, n. 44).

5. II. Tamed animals remain the property of the prior owner, as long as they have not escaped his custody, or have not lost the custom of returning. For these pertain to the possessor, both by reason of occupation and also by reason of education and detention. - But otherwise, if they have escaped custody, etc.; for in such a case they

[138] As regards rabbits living almost in liberty (*lapins de garenne*), see *Ami du Cl.*, 1911, p. 634. They are not domestic animals; they are rather semi-tamed; and the reason is that occupation, on the part of the owner, was not complete. Whence it happens that it is not licit by unjust means to attract rabbits from the warren (*garenne*); but it is licit to occupy them when they wander outside it.

have recovered their connatural liberty, and therefore become the property of the first occupant, provided that their escape is not procured by fraud, or their return to the possessor impeded.

Particular laws do not define in the same mode the time and other circumstances from which doves, bees, etc., are judged to have escaped the custody of the prior owner in such a way that they can be licitly occupied by another.[139] At the time of harvest and sowing, doves inflict notable damage; hence they can licitly be killed by the owner of the land on which they are found.[140] - The law that in France adjudicates a swarm of bees to the owner of the land on which they settle, when the proprietor no longer pursues them, does not oblige before the sentence of a judge (Gousset, in art. 715). Cf. German Code, 833.

881. III. Tame animals remain the property of the prior owner, however much they wander. Hence, even when dead, they cannot be occupied by others, and natural fruits perhaps perceived from those occupied (for example milk, eggs, wool, etc.) must be restored.

But indeed: 1. if they inflict damage, the owner is held to repair it, insofar as theological fault or the sentence of a judge has intervened; - 2. if they are judged totally lost or abandoned, there is place for finding (cf. n. 886); - 3. if they are freed from danger, for example from a fire, there is place for a just stipend, but of themselves they must be restored. Cf. below n. 884.

§ 2. On the Occupation of Things Found

Goods that can be found are reckoned of a fourfold kind, namely treasures, abandoned goods, vacant goods, and things recently lost.

882. Notions. Treasure, in the new Codes, is generally called: any thing whatever estimable by price, hidden or buried for a long time, which is found by chance and which no one can prove to be his own.[141]

If therefore the owner of a hidden or buried thing could be found, the thing would not have to be held as a treasure, but as a lost thing. - Similarly, if it could be proved that the thing had been put away there by the actual or prior possessor. Cf. the case apud *Ami du Cl.*, 1910, p. 203. Metallic or coal veins are not equated with treasures.

Abandoned goods are things that the owner has rejected, with the intention of renouncing ownership of them. Of this kind are grapes, chestnuts, ears of grain, etc., which remain after the fruits have already been gathered.

Vacant goods are called those that are left by one intestate, to whom no heir according to law succeeds, or wishes to succeed.

Lost things are those that the owner has lost involuntarily, and that for this reason are judged still to have an owner.

883. Principles. I. Treasure, from natural law, becomes the property of the first occupant. For it is judged to be a thing belonging to no one.

From positive law: Treasure found by the owner of the land himself belongs wholly to him. But found by chance on another's land, it is to be divided equally between the owner of the land and the finder; found in a public place, it is to be divided between the finder and the fisc, if namely the place was profane; but if it was sacred, between the finder and the fabric or prelate; and authors commonly teach that such division obliges in conscience. If the finding was made deceitfully, not only must half the treasure be restored to the owner of the land, but the whole treasure, as penalty for the delict of the finder, must be restored; nevertheless not before the sentence of a judge. Thus French, Italian, Austrian, Spanish, German Law, etc. (cf. St. Alphonsus, III, 602; Code, l.c.). - English Law adjudicates all treasures to the king or state. But, Crolly testifying (I, n. 642), that law does not oblige before the sentence of a judge, for it is merely penal.

It must be observed: 1. He is the finder of a treasure who uncovers it and renders it visible, or even who sees and apprehends it, but not he who only sees it after it has been uncovered by another. Wherefore if some servant, in the presence of his master, labors and renders the treasure visible and apprehends it, the master would retain such a treasure unjustly, because he is not the finder.[142] - 2. If some owner, suspecting a treasure, hires a wage-earner to seek it, not the wage-earner, but the owner is judged to have found it. - 3. He who buys a field at the common price, drawn by suspicion

[139] French Code, 564; Italian, 462, 711 seqq.; Austrian, 384; Spanish, 609, 612, 613; German, 960; (English) Crolly, I, 623-635.

[140] Extend the aforesaid things to other harmful animals, for example cats, dogs, provided the damage cannot otherwise be averted and is truly appreciable, so that it can be compensated by the killing of the animals.

[141] Cf. French Code, 716; Italian, 714; Spanish, 352, 514; German, 984 seq. The Austrian Code (392) recognizes only money, jewels, and precious things as treasure.

[142] But if, of two workers, one uncovers and sees the treasure, the other sees and apprehends it, their share (according to some) is to be divided between them pro rata, because the reason of finder is verified in both. - Others say that it is verified only in the one apprehending.

that a treasure lies hidden in it, commits no injury. But otherwise, if after he has by chance found a treasure on another's land, he covers everything again and buys the land, lest he be compelled to divide. Thus theologians most commonly, although others think otherwise. - 4. According to the more recent Codes, it matters little whether the treasure was found in a movable or immovable thing, for example in a garment or in the corner of a house, provided it is certain that it is truly treasure, i.e. a thing not pertaining to such a person or to such a family (Gury, n. 577, q. 2).

884. II. Abandoned and vacant goods belong to the first occupant. Thus from natural law, because they belong to no one.

From positive law, these goods can pertain to the state. And in fact, in several kingdoms, the goods of him who died intestate, and to whom neither wife nor other blood relatives up to the tenth degree are surviving, devolve to the fisc.[143] Likewise, from positive law part of a gold, coal, etc., vein is ascribed to the state.

Of themselves, things cast away, or left in danger, are not to be reckoned among abandoned things: for no one is presumed to renounce ownership of his own things as long as there remains hope of recovering them. - Yet he who has rescued things from danger retains the right to the price of his industry.

Hence: 1. Goods found on the shore after shipwreck cannot be held as abandoned; things saved from a fire (even with some danger or labor); wood that in a flood is carried from one place to another; another's sheep snatched by your dog from the jaws of a wolf, etc.

2. But a thing can be held as abandoned if it is prudently judged: a) that the owner is no longer solicitous concerning it, for example because he is too far distant, or because the thing is of small moment (as nuts, grapes, remaining after the fruits have already been gathered [cf. n. 910, 5]); - or b) that he has lost every reasonable hope of recovering the thing

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whether by himself, or through another: hence little stones, gems, coins, which are found at the bottom of a river, belong to the first occupant (cf. Lugo, l.c., n. 99; *Ami du Cl.*, 1907, p. 183, 844; 1910, p. 349; Lehmkuhl, *Cas. consc.*, I, n. 601 seq.).

885. III. Lost things, if they are found, must be restored to their owner. The reason is that the thing cries out for its owner, nor does the adverse fortune of him who lost it effect that it cease to cry out. Hence St. Augustine: "What you found and did not return, you have seized."

A manifold obligation can arise from the finding of a thing.

1. He who finds it is held from charity (unless grave inconvenience excuses) to take care of it upon himself, if otherwise it would perish for the owner.

2. He who has apprehended a lost thing is held, from justice: a) to take care of it, and to guard it from the quasi-contract that is called management of another's affairs; - b) not to conceal it, but to employ suitable and proportionate means (or those determined by civil law), so that knowledge of the thing existing with him can come to the owner. If he has deliberately neglected these, he is certainly held to restitution.

3. The owner of the lost thing is held, from justice: a) to reimburse to the finder or holder all those expenses that were made both that the thing might be preserved and that the owner himself might be found; - b) to give that remuneration which either he himself freely promised, or civil law established.

Note. Civil law, for only things of greater moment exceeding 4 francs, indicates the means to be employed so that the owner can thus be found. - Of themselves, no obligation in conscience urges to employ these. - Yet if the finder has neglected them, the owner of the lost thing is not held to give the remuneration indicated by law, although the finder of the thing claims it.[144]

886. It is asked: What if, diligence having been made, the owner of the thing is not found?

Resp. Dist. 1. If no hope of finding the owner remains (which must be judged either from the determination of civil law, if it is present, or from circumstances of time, distance of place, or impossibility of recognizing the thing, as happens in ordinary coins), the finder can retain the thing for himself, even if the owner appears afterward, because then it is held as abandoned; and it is only counseled that he give it to the poor.

[143] French Code, 583, 713; Italian, 742 and 758; Spanish, 913, 914, 956, 958.
[144] Cf. Austrian Code, 389; Spanish, 615-617; German, 965-984.

Note. If, however, law attributes to an appearing owner the right of reclaiming the thing after some time, and the finder has omitted the legal modes of detecting the owner, restitution must be made to the owner, even if on the part of the finder moral diligence for seeking the owner was present (see Code, l.c.).

2. If some hope remains, the thing must be preserved for a suitable time; or if it cannot be preserved, its price must be preserved. But if neither can be preserved, or the thing cannot certainly be transmitted to the owner, it must be expended for pious causes.[145] The reason is that, while such hope lasts, the owner preserves ownership of the thing, and therefore that thing is to be expended according to his presumed will. Cf. also those things that will be said in n. 999.

But to the owner appearing after the thing has been handed over for pious causes, if it exists in equivalent and has not been prescribed, it must be restored by the poor person or by the one having it; for such handing over seems to include this condition: unless the owner becomes known. Thus St. Alphonsus with St. Thomas, Lugo, etc., against others thinking otherwise (III, 589 seq.; *H. Ap.*, X, 69).

From these things you will resolve: a) A maidservant of an inn who, while sweeping the tavern, finds some coins, when there is no hope, namely on account of the great crowd, that the owner will be found, can retain them for herself. - b) He who retains animals wandering from their owner, diligence for finding the owner having been omitted, is guilty of injustice; and thereafter, if the owner cannot be found, or he himself cannot reveal the thing without infamy, because of omitted diligence he must expend the price for pious causes (Konings, n. 656).

Note. Whether and how the goods of absent persons can be occupied, see in the Codes themselves.[146]

ARTICLE II

On Accession

887. Definition. By the name of accession is understood that right by which the owner of the principal thing becomes owner of the accessory thing, i.e. of all things that are produced by some thing of his, or are united to it naturally or artificially.

Division. Accession is either natural, or industrial, or mixed.

I. Natural Accession is had: 1. By birth of animals, when namely from your animal another is born: "for the offspring follows the womb." - 2. By fructification, i.e. production of fruits from land, without human industry. - 3. By alluvion, when by force of waters an increase is added gradually to your estate.

But if a notable part of land is suddenly added, which is called avulsion, its prior owner does not lose ownership if within a useful time he exercises his right.[147]

888. II. Industrial or artificial Accession can happen:

889. By building: when someone builds on his own land from another's materials, or on another's land from his own materials, the building generally belongs to him whose land it is; but with due compensation made to him who built in good faith (III, 500). Nevertheless, concerning this matter, let the laws of each region be consulted.[148]

890. By specification: when a new form or species accedes to preexisting matter, for example if from another's wool you have made a garment, from wood or gold a vessel, from grapes wine.

From old Law, the new species falls to the craftsman, the price of the material being paid, if this material cannot be reduced to the first form, for example a wooden vessel, etc.; and in conscience good faith is more probably required. - Otherwise, the thing falls to the owner of the material, for example a golden vessel (III, 496). See *Ami du Cl.*, 1913, p. 303.

From the new Laws, in either case, the thing falls to the owner of the material, unless the work of the craftsman far exceeds the material in price.[149]

3. By adjunction: when the thing of one is so joined to the thing of another that they make one whole; in which case, the whole composite pertains to him whose thing has itself as principal. Yet this man must make the owner of the accessory part unharmed.

[145] What pious causes are, see below n. 1083, II.
[146] French Code, 120-138; Italian, 20-42; Austrian, 24, 276; Spanish, 181-198; German, 973 seqq.
[147] French Code, 546 seqq.; Italian, 444 seqq.; Austrian, 404-413; Spanish, 353-374; German, 946 seqq.; (English) Crolly, I, n. 639.
[148] French Code, 555; Italian, 449; Austrian, 417-419; Spanish, 358 seqq.; German, l.c.
[149] French Code, 570; Italian, 468 (cf. Austrian Code, 415).

Thus a usufructuary who has painted the walls of a house cannot erase the painting with detriment to the walls. - On the other hand, a painter who has expressed a beautiful image on another's canvas can, with the price of this canvas paid, retain the painted canvas for himself. Thus almost from the law of all.[150]

4. By commixture: when solid things, and by confusion: when liquid things, belonging to diverse persons, are joined.

From the new Laws, the thing becomes common, and, unless something else has been agreed among the owners, must be sold at auction and divided. But if the part of one can be seen as quasi-principal, and otherwise far exceeds the others in price, the owner of this part can vindicate the whole for himself, with the price paid back to the others.[151]

889. III. Mixed Accession happens especially by planting and sowing.

It is called mixed, because two things, i.e. nature and industry, coalesce into one. It is subjected to the same rules to which building is subjected.[152] Hence the very well-known verse:

Whatever is planted, sown, or built upon,
All yields to the soil, if nevertheless it has taken root.

ARTICLE III

On Prescription

890. Definition. Prescription is a mode of acquiring ownership or a right, or of freeing oneself from some obligation, within a certain space of time, under conditions defined by law.[153]

Division. Prescription is: 1. By reason of effect, either acquisitive (usucapion); through this a right is acquired; or liberative: this exempts from some obligation or from a servitude.

2. By reason of time, it is ordinary or extraordinary: a) Ordinary is that which is completed within the space of years below thirty. It is subdivided into prescription of long time, if it is prolonged for ten years (or above), of short time, if below ten years, or of shortest time, if below three years (in Germany, two years). - b) Extraordinary, or of very long time, is prescription if it reaches or exceeds thirty years.

3. Principle. Prescription is a legitimate mode of acquiring or of freeing oneself, having force in both the external and internal forum. This is the common opinion among jurists and theologians; and the reason for this is "because human law can well transfer ownership from one to another on account of the common good, for avoiding quarrels, and lest ownerships of things remain uncertain" (III, 504-517; *H. Ap.*, X, n. 15). Wherefore the Angelic Doctor says: "If someone prescribes by possessing in good faith, he is not held to restitution, even if he knows after the prescription that the thing had belonged to another" (*Quodl.* 12, a. 24). Cf. Vermeersch, o.c., n. 270.

Note. 1. Since prescription rests on positive Law, it follows that it does not have force unless the conditions required by Law are accurately observed.

2. No one can prescribe against himself, because justice is toward another. Thus, for example, a beneficiary who for a long time has celebrated four Masses by error, although from the foundation of the benefice he is obligated to only two, will not therefore be held in the future to four (Scavini, II, 356).

3. Anyone capable of alienating can renounce prescription, not indeed future prescription, but completed or begun prescription, insofar namely as he can cede his own right. - But creditors and all others whose interest is involved can oppose a renunciation damaging to themselves.[154]

We shall treat separately of acquisitive and liberative prescription.

§ 1. On Acquisitive Prescription

For valid acquisitive prescription it is required that a prescriptible thing be possessed, with some title, and with good faith, for the time defined by law. - Hence those very well-known little verses:

[150] French Code, 566; Italian, 484; Spanish, 375; German, 948.
[151] French Code, 573-574; Italian, 472, 473; Austrian, 414; Spanish, 382; German, 947.
[152] III, 501 (from Roman Law); French Code, 553; German, 94; Austrian, 420-422.
[153] French Code, 2219; Italian, 2105; German, 194-225, 937-945 (cf. Austrian Code, 1451).
[154] French Code, 2225; Italian, 2112; Spanish, 1935. Not only direct ownership, but also usufruct and use, etc., can be constituted by prescription (cf. Spanish Code, 468).

You will not usucapt, unless these five things are yours:
Let there be a suitable thing, faith, title, possession, time.

1. A Thing Suitable to be Prescribed

892. A prescriptible thing is that which by its own nature, or from the disposition of laws, can be acquired and possessed by private persons. The reason is that prescription is a transfer of ownership; but those things that are of public ownership strictly taken cannot be alienated (III, 515). Cf. the things said in n. 852.

Therefore these cannot be prescribed: 1. Those things that are of divine Law, natural or positive. Thus, for example, the right of a father over a son; likewise spiritual rights, the right of perceiving tithes, of conferring benefices, etc., are never prescribed by laymen; but indeed the right of patronage can be. - 2. Sacred things, churches, cemeteries.[155] - 3. Things deputed to public uses, as a public road, a square, bridges, and similar things, unless their use among the people has ceased or unless another community used them. - 4. Things that the law itself, whether canonical or civil, declares imprescriptible. Thus from the holy Canons, not even by immemorial custom can the undoubted boundaries of dioceses be prescribed, or conditions attached to pious foundations[156] (legacies of Masses, various burdens, alms to be made; but see below n. 1613); and from civil law, prescription does not run against dotal goods, against goods of wards, against the goods of a minor with respect to a tutor or curator, etc.[157]

Note. a) Prescription of the goods of the Church is subject to the rules of Canon Law alone (VI, 324). - b) Stolen things can be prescribed by him who in good faith received them under the conditions of law. Cf. n. 936.

2. Possession

893. For prescribing, possession is required (cf. n. 849). This is certain both from the Third Rule of Law in the Sixth: "Without possession prescription does not proceed"; and from the unanimous opinion of jurists, who affirm that possession is the foundation of prescription.

Possession, that it may induce prescription, must be: 1. dominative, i.e. it must be had with the mind of a proprietor, but not of a depositary, tenant, usufructuary, etc.; - 2. certain, i.e. concerning which there is no doubt in any way, otherwise good faith would be lacking; - 3. peaceful, so that there is not litigation concerning it; - 4. public, at least for the external forum, so that he against whom prescription runs can protest. Thus, for example, predial servitudes that are not apparent cannot be prescribed (especially if they are without title: in which case the matter is certain; otherwise, controverted); - 5. continued, i.e. not interrupted through the whole time defined by Law.[158]

3. Legitimate Title

894. Title generally is the cause on account of which we possess something, for example purchase, donation.

A fivefold title is distinguished: 1. true, which has all the conditions required for transferring ownership, for example purchase of a thing from its owner;[159] - 2. colored, or apparent, which indeed has the appearance of a true title, yet from a hidden defect lacks effect, for example purchase of a thing taken away by theft; - 3. estimated, which from the adjuncts is prudently believed to have been present, although in fact it was not present: as if a son possesses from inheritance a thing that he thinks was bought by his father, although it was not bought; - 4. presumed, which namely cannot be demonstrated, but from peaceful and long-lasting possession is presumed to have intervened; - 5. vicious, which, on account of the defect of some required condition, is not a sufficient cause for transferring ownership, for example a donation extorted through grave fear.

A vicious title differs from a colored, estimated, and presumed title in this: that these, as they appear, are estimated, or are presumed, are a cause that in fact suffices for transferring ownership, while a vicious title, even as it is estimated, does not obtain a force of this kind, although it is falsely believed to obtain it.

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I. For prescription a true title is not indeed required, but neither does a vicious title suffice. The reason for the first is that a true title with possession already suffices of itself for acquiring ownership, without prescription. The reason for the

[155]Yet these can be prescribed by a church against another church, or by a private person against a private person who, for example, possessed a chalice.

[156]Trent, Sess. 25, c. 5, *de Ref.* (cf. *H. Ap.*, XV, 74); *A. S. S.*, 13, p. 220, 224; 30, p. 149.

[157]French Code, 2252-2258; Italian, 2119-2130; Austrian, 1455-1459; Spanish, 1932, 1965; German, 204.

[158]III, 506; cf. French Code, 2228; Italian, 686; Austrian, 1460; Spanish, 1940, 1941; German, 208.

[159]In German Law, moreover, for immovables inscription is required: 873, 875, 882, etc.

second is that a vicious title impedes the possession itself required by law. Hence that saying: "It is better not to have a title than to have a vicious one."

Thus acts of mere tolerance (for example as regards passage through fields), which are conceded to someone for the sake of friendship, neighborhood, or consanguinity, are not apt for this, that usucapion run.

II. For prescribing, a colored title suffices, and sometimes also an estimated or presumed title. Namely: 1. Colored title suffices when the law (as often happens) requires some title. - 2. Estimated or presumed title suffices (namely for founding good faith in the internal forum) when no title is required in the external forum (III, 505).

Moreover, in the external forum, title is not required: a) As regards immovable goods, if there is question of prescription (usucapion) of very long time, i.e. thirty or forty years: from common Law.[160] - b) As regards movable goods, for example from French Law, if there is question of prescription at least three years long; for before the law this holds: "For movables, possession is equivalent to title."[161] (cf. below n. 897, II).

4. Good Faith

895. By Good Faith here is understood a firm opinion by which someone prudently judges that the thing which he possesses is his own, although in reality it is not.

For the internal forum, good faith supposes invincible ignorance. Nevertheless it is not vitiated, in the present matter, by negligence in inquiring that is lightly culpable (III, 511, 625).

I. For legitimately prescribing, Good Faith is necessary, not only from the beginning, but within the whole time that is required for prescribing. This is certain from the Second Rule of Law in the Sixth: "A possessor of bad faith never prescribes at any time." And the reason is that it is repugnant to every right that someone vindicate for himself a thing not his own, or retain it for himself.

Hence, when good faith is lacking, prescription does not have force in conscience, even if civil law, in some case, for example in the general prescription of thirty years, did not expressly require good faith (Gousset, I, n. 723).

II. Good faith is required in one way in him who begins possession, and in another way in him who continues it.[162] For in the one beginning, positive good faith is required, as is certain from the things said concerning the necessity of title. Hence he who from the beginning doubts whether the thing is his own cannot begin possession. - But in the one continuing possession, only this is required, that bad faith not supervene, namely through consciousness of another's thing, as is certain from that rule of Law (c. fin. *de Praescript.*): "It is necessary that he who prescribes, in no part of time, have consciousness of another's thing."

Wherefore, if a doubt supervenes upon a possessor of good faith, prescription is not interrupted; and one continuing possession enjoys the benefit of the years of the one beginning, provided that meanwhile (at least for the forum of conscience) he employs diligence for inquiring into the truth (III, 504, 511).

896. QUAER. Whether a successor prescribes who doubts concerning the good faith of predecessors?

Resp. Affirmatively, if he has employed due diligence for solving the doubt. The reason is that in doubt bad faith must not be presumed, at least ordinarily and of itself; for no one is presumed evil unless it is proved.

From the new Laws, a particular successor (not universal) in possession can begin prescription, even if the predecessor was in bad faith.[163]

5. The Time Required by Law

897. Things to be noted beforehand. 1. The time required for prescription is not to be computed from hour to hour, but from day to day, nor does prescription become valid before the last day has entirely flowed by. - 2. For completing possession, the actual possessor can add to his own possession the possession of his author or predecessor, by whatever title he succeeded to him, as we have said above.

Now the time required from various laws is as follows:

[160] In Austrian Code, 1462, it is established that if the testator had no title, the heirs cannot prescribe.

[161] French Code, 2279; Spanish, 1955; cf. German Code, 929 seqq., as regards prescription of movables.

[162] Note, here there is discussion of acquisitive prescription alone. Concerning good faith for liberative prescription, there will be discussion below (n. 899).

[163] III, 512-516; French Code, 2235 (cf. Allegre in this place; Delama, *de Just. et Jure*, n. 289, question 4); Italian, 2137; German, 937, 953, 987. - But from Spanish Law (a. 442) every hereditary successor can begin prescription, except if he knew of the bad faith of the predecessor.

From Roman (and Canon) Law: 1. A movable thing with title (colored or estimated) is prescribed after three years; without such title, only after thirty years. - 2. Immovable goods of private persons are prescribed without title after thirty years; with title after ten years among those present, and twenty among those absent. But if someone is partly present and partly absent, the years of absence are to be doubled. - 3. Goods of minors after thirty years; goods of pious places after forty years; goods of the Order of St. Benedict after sixty years. - 4. Goods of the Roman Church or St. John Lateran, likewise goods of the Cistercians and Mendicants, only after one hundred years. - 5. Stolen things, received in good faith from the hands of a thief with title, are prescribed after thirty years among those present, and after forty among those absent. But the thief never prescribes, even if through forgetfulness he finally comes into good faith (III, 515).

II. From French Law[164] the following prescriptions are given: 1. Prescription of thirty years, than which a longer one is not admitted. It is most universal: for all actions, whether real or personal, even of moral persons, are extinguished after thirty years, without defect of title or good faith being able to be opposed. Possession, however, must be legitimate, in the sense in which we spoke above (n. 893). - 2. Prescription of ten or twenty years, by which immovable goods are prescribed, yet with title and good faith. Ten years are required and suffice if he against whom prescription is made is present, i.e. if he dwells in the territory of the court of appeal in which the immovable is situated. But twenty years are required if he is absent (or proportionately, if he has been partly present and partly absent). - 3. Prescription of three years, which with good faith suffices in every case for acquiring a movable good (cf. n. 895). - 4. Prescription that some call instantaneous, namely by which movable things, not stolen nor lost, immediately after delivery are legitimately possessed and acquired by a possessor of good faith; because for movables possession is after the manner of title, and because the law concedes the space of three years only for reclaiming a stolen or lost thing (cf. n. 885). Whether these things have force in conscience was formerly sharply disputed; today it is commonly affirmed.[165] Wherefore in this case, a possessor of good faith cannot be bound to restitution. But one must diligently advert whether the thing is in reality movable in the sense of the law (cf. n. 852).

III. From Italian Law.[166] Prescription of ten years has force also among the absent. Two years, in place of three, are granted for reclaiming a stolen or lost thing. - The rest agrees with French Law.

IV. From Spanish Law.[167] Prescription of thirty years is admitted, as in French Law; likewise prescription of ten or twenty years for immovable goods. Those are reputed absent who live outside the kingdom, or in an overseas region. For immovable goods three years are required with good faith, or six without another condition. The rest is as in French Law.

V. From Austrian Law.[168] 1. The ordinary time: a) as regards movable things to be usucapted, is three years; - b) as regards immovable things and predial servitudes, likewise three years, if they are inscribed in the public tables in the name of the usucapting possessor; otherwise, thirty years. - 2. Extraordinary time: a) against the fisc, churches, and other communities that enjoy the right of corporation, six years are required in place of three years; and in place of thirty years, a space of forty years; - b) against one voluntarily (but without fault) absent from the province where the thing is situated, a year of absence is computed as half a year; - c) for one immediately procuring a movable thing for himself from a vicious or bad-faith possessor, or from one not able to indicate his author, the space of ordinary time is doubled.

VI. From German Law.[169] a) For usucapion of movable things it is required that someone have possessed the thing in good faith as his own for ten years. - b) Where the law concerning the land register has been perfectly introduced, usucapion of immovables is not admitted except in the case in which someone, inscribed in the land register as proprietor of the land, has peacefully possessed this immovable thing as his own for thirty years. - Indeed peaceful possession alone (without inscription) suffices after thirty years, provided that then an invitation be made to those who could have rights. With no one protesting, ownership is acquired through inscription. - c) Instantaneous prescription is also given, as in French Law, but under diverse conditions. See below n. 936.

VII. From English Law, certain prescriptions indeed are admitted with respect to immovable goods (and debts); but "movable possessions cannot be acquired by title of prescription."[170]

898. It is asked: How is prescription interrupted or suspended?

Resp. 1. It is interrupted, so that it must be begun anew, either naturally, if the one prescribing loses possession (namely

[164]French Code, 2260 seqq.
[165]Cf. Aertnys, *Suppl. ad tr. de VII Praec.* (1902), n. 17.
[166]Italian, 2133 seqq.
[167]Code, 1940 seqq.
[168]Code, 1465-1478.
[169]Code, 900, 935, 937; cf. Pelt, o.c., p. 74 seqq.; Barre, *Das burgerl. Gesetzbuch u. der Cod. civ.*, §§ 27, 29, 47.
[170]Crolly, *de Just. oblig.*, n. 600, where you can see more, if you wish.

natural possession), or if bad faith supervenes upon him; or civilly, if litigation concerning the thing is moved, unless the one moving it does this unjustly for interrupting prescription. - But it is not interrupted if the thing possessed is transferred from one to another, for example by purchase, donation, etc.[171]

2. Prescription is suspended, or sleeps, when an impediment is placed before it so that it does not proceed further, yet in such a way that, when the impediment has been removed, it continues without any other detriment than the time of sleeping.

This happens in a twofold mode: a) when judgments cannot be exercised, for example in time of war or plague in certain kingdoms;[172] - b) when he against whom prescription is made cannot pursue his right. Thus prescription does not run against interdicted persons, against a church lacking a rector. Thus from Roman Law; otherwise, however, from the new laws[173] (cf. n. 892, 4).

Note. Notwithstanding legitimate prescription, there is sometimes conceded (for example to minors for four years after majority) the benefit of restitution in whole, i.e. rescission of the prescription to be pronounced by a judge.[174]

§ 2. On Liberative Prescription

899. Things to be noted beforehand. 1. There are laws that deny only judicial action, and there are others that declare that the right has been extinguished.

2. Liberative prescription profits someone in a twofold mode: a) either on his part there are true debts, or also an obligation of suffering a servitude, and then liberative prescription prevents the other from being able in conscience to reclaim his right; - b) or he himself committed only juridic faults, and then liberative prescription closes every way to him who would wish to seek indemnity.

3. For liberative prescription (as also for acquisitive) good faith is required: a) If true debts are present, positive good faith must be present. - b) As regards claims that are founded on juridic fault, in a petitory action before a judge (or that suppose the use of some servitude continued after another), negative good faith suffices; in other words, it is enough if you impede the other neither directly nor indirectly from the exercise of his right of making a claim. But you are not obligated to warn him that he should use his right.

4. Legitimate time is also required. Authors, especially modern ones, distinguish: a) Prescription of very long time, or thirty years, by which all debts not reclaimed for thirty years are extinguished, likewise usufruct when he who had the right does not use it for thirty years. Rents can also be extinguished, not only as regards annual revenues, but also as regards the right itself or capital (in Austria,[175] however, forty years are required against the fisc and corporations). - b) Prescription of long time, or ten years, by which actions for nullity or rescission of contract are extinguished, when law does not establish a shorter term.[176] - c) Prescription of short time, or five years (in Germany four years, in Austria three years), which regards sums to be paid periodically by way of civil fruits.[177] - d) Prescription of shortest time, for example two years for the stipends of procurators, the case being finished; one year for the stipends of physicians, servants, merchants, etc.; six months for the stipends of workers, guests, etc.[178] These are especially various in various regions. In German Law[179] no prescription is admitted against rights related in the land register, or against family rights.

5. I. Liberative prescriptions both of very long and long time, and of short time, have force in conscience, provided good faith has persevered through the whole time. Thus commonly, from the reasons adduced for prescription in general (III, 517). Cf. above n. 890.

Note. As regards prescription of short time, controversy is not lacking. Cf. Tanquerey, II, n. 262; Lehmkuhl, *Das Burgerl. Gesetzbuch*, ad § 194 and 929.

901. II. Prescriptions of shortest time do not have force in conscience, nor do they constitute anything except a presumption of payment made, as all confess. - Reason: 1. because from the laws themselves it is clear that

[171] III, 511; Spanish Code, 1943, 1948, 1973 seqq.; German, 941, 208 seqq.
[172] Austrian Code, 1496.
[173] French Code, 2251-2259; Italian, 2145; German, 206, 207, 939.
[174] III, 514; cf. Croix, l. 3, p. 2, n. 558.
[175] Code, 1472.
[176] Cf. French Code, 1304, 1676, 2270; Spanish, 1963, 1964.
[177] French Code, 2276-2277; Italian, 2144; Spanish, 1966; German, 1973; Austrian, 1480.
[178] French Code, 2271 seqq.; Italian, 2138 seqq.; Spanish, 1967, 1968; German, 196, 222.
[179] § 194, 902. - French Code, 2275; Italian, 2138-2143; German, 222; cf. St. Alphonsus, III, 516 (and 347, as regards a servant); *H. Ap.*, X, 12. - But Spanish Law speaks in a similar mode concerning the shortest and longer prescriptions.

the legislator did not have the intention of transferring ownership, but only of denying action in the external forum, lest the administration of justice be rendered too difficult; - 2. the legislator cannot have this intention, because as regards these prescriptions of shortest time good faith is often lacking, nor is the reason of the common good present, since this would conduce to oppressing the weak and poor.

"A debtor, therefore, who is certain that payment has not been made, is in no way exempted from the obligation of payment," except after prescription certainly sufficient, which must be judged from the individual Codes and jurisprudence (III, 515). - If someone, however, for example a successor in good faith, after the time assigned by law has passed, begins to doubt, for example, whether his author paid, he can use the presumption of law, unless omission of payment is duly proved. Noldin, II, n. 407; Pelt, o.c., p. 112.

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DISSERTATION II

CONCERNING LESION OF RIGHT IN EXTERNAL GOODS

902. Lesion of another's right happens through injury, both material and formal, as we said in n. 722. - Concerning formal injury we shall now treat.

Moreover, formal injury is twofold: 1. lucrative, which happens, for example, through theft, through unjust usurpation, and is called generically unjust acceptance of another's thing; - 2. non-lucrative, which is inflicted upon one's neighbor without advantage of the one inflicting, for example through fire, slaughter, and is damaging strictly so called. Concerning these in two chapters.

CHAPTER I

On the Unjust Acceptance of Another's Thing, or On Theft

St. Thomas, 2. 2, q. 66; St. Alphonsus, III, 518-546; ed. G., II, p. 27 seq.; *H. Ap.*, X, n. 14-34; Lugo, disp. 16; Lessius, l. 2, c. 12; Sporer-Bierbaum, tr. V, n. 779; Lehmkuhl, I, 1109; Noldin, II, n. 414; Aertnys, l. III, n. 285; Tanquerey, II, n. 431; Berardi, *Theol. mor.*, III, n. 242.

There must be treated: 1. concerning the nature and gravity of theft in general; - 2. concerning certain thefts in particular; - 3. concerning causes excusing from the delict of theft.

ARTICLE I

On the Nature and Gravity of Theft in General

903. Definition. Theft is: the carrying away of another's thing, while the owner is reasonably unwilling.

It is said 1. Carrying away of another's thing, namely with the mind of having it as one's own. Hence he does not commit theft who takes away a thing by jest, or on account of the good or advantage of the owner; for example wine lest he become drunk, a heretical book lest he read it. - 2. Owner, under which name comes he to whom any strict right whatever belongs, for example the right of usufruct, of deposit. - 3. Reasonably unwilling, for if the owner is presumed to consent, or if he cannot, by force of right, dissent (for example when a thing is taken away by title of necessity or compensation), the carrying away of another's thing is not theft.

904. Principles. I. Theft is from its genus a mortal sin. This is certain from 1 Cor., 6, 10: Neither thieves ... nor the rapacious shall possess the kingdom of God. The reason is that by theft commutative justice is injured, which of itself obliges under grave matter. Add that, if men everywhere stole from one another, human society would perish, as the Angelic Doctor observes (l.c., a. 6). - Theft nevertheless admits smallness of matter.

905. II. Grave matter of theft must be determined from the gravity of the damage that through it is inflicted upon one's neighbor. Thus commonly, from the Rule of the Angelic Doctor (2. 2, q. 73, a. 3): "Sins that are committed against one's neighbor are to be weighed of themselves according to the harms that are inflicted upon one's neighbor; because from this they have the character of fault" (cf. n. 337, II).

Hence: a) The matter must be measured relatively, namely so that attention is given to the various conditions of men, places, and times, and to the varied value of money; for the end of the right of property for a private person (namely that he enjoy life in peace) can be more or less impeded and injured. - b) Some absolutely grave matter must also be

determined, that is, matter that never, without grave fault, can be stolen even from the very richest; this is required by the end of the right of property as regards society: otherwise the greed of thieves would grow excessively, and society itself would certainly suffer grave damage. For the crowd scarcely attends to venial sins.

906. On this account the following Rules are established:

Rule 1. Matter is judged relatively grave when it would suffice for the injured person according to his condition for daily sustenance of himself and his family.

Therefore, with consideration given to the present value of money (which is at least twice lower than in the time of St. Alphonsus), and with attention given to the common estimate of more recent theologians (whose opinions here become intrinsically more probable), we judge that the following grades can be established, as a general norm in the principal places of Europe:

a) With respect to beggars, grave matter would be the value of one franc, or 20 asses; and less, if some poor person gains less by his daily begging. - b) With respect to ditch-diggers and similar workers, about 2-5 francs. - c) But with respect to craftsmen and merchants of slender fortune, 4-8 francs. - d) With respect to the moderately rich, or those who live from their own revenues, 8-10 francs. - e) But with respect to the absolutely rich, for example with respect to merchants sufficiently wealthy, 10-20 francs. - f) With respect to magnates, 30 francs and above.

In doubt, for example if you do not know to whom the damage was done, theft of 8-10 francs is reputed grave; because the damage is presumed to have been inflicted on one moderately rich. - Thus today commonly. Cf. Gousset, *Theol. mor.*, I, 980; Crolly, III, n. 272; Konings, n. 695; Aertnys, l. III, n. 285.

Rule 2. Absolutely grave matter is that which, of itself and independently from the damage that the owner suffers, is commonly reputed to have notable utility or value.

Hence St. Alphonsus (III, 528) assigned as grave, with respect to kings, a sum exceeding 2 aurei, or about 10 francs. But today, with circumstances changed, 30-40 francs seem to be assigned, or even more, in places where the value of money is lower. Thus for England 1 1/2-2 golden pounds, in North America 7-10 dollars, can be named absolutely grave matter.

Note. 1. The relatively grave matter indicated above regards of itself theft that is committed by one action against one and the same person. As regards little thefts that inflict damage either upon one person by diverse actions, or upon diverse persons at one time, see n. 908.

2. In sacrilegious theft, if the thing, as regards physical species, is estimable by price, conclude in the same mode as for a profane thing; if otherwise (for example in sacred relics), consider its dignity, rarity, or attend to the special prohibition of the Church (cf. n. 583, 1342).

3. Theft with respect to a community (for example a commercial society), that it may be grave, ordinarily must reach the matter indicated for the absolutely rich. Others require absolutely grave matter. Except if the community is poor or small. - Say the same if a religious community is injured. Cf. St. Alphonsus, III, n. 528; IV, n. 25, with the notes added beneath.

ARTICLE II

Concerning Certain Thefts in Particular

§ 1. On Domestic Thefts

907. In domestic thefts, i.e. of children, wives, and servants, more is required for grave matter than in thefts of strangers. - The reason is that, with respect to those persons, the owner is less unwilling, or at least less reasonably unwilling.

Often also he is unwilling more as regards the mode, i.e. that the thing is taken secretly; or as regards the end, for example that it is taken for playing, drinking, etc.; than as regards the substance of the thing stolen (*H. Ap.*, l.c., n. 32).

1. A child under paternal power sins gravely by stealing a quantity twice greater than that which for strangers would constitute grave sin.

Nevertheless less is required if the father is tenacious, if the son has not yet reached adolescence, if the money is spent for dishonorable uses (III, n. 543).

Note. a) A son more often sins gravely by abuse of money than by thefts. b) Even if the theft was grave, the son is not held to restitution if he has already consumed it: because the father is presumed to condone it. Except if from the adjuncts

something else is certain, or if co-heirs have been gravely injured (*Conf. dir.*, X, 14). Cf. Lugo, disp. 16, n. 76. - c) As regards members of a religious community, the rule established for children under paternal power cannot be applied: for their condition is not the same, whether with respect to their Superiors, who are not judged to condone as easily as parents, or with respect to the goods themselves, which will never be handed over to religious to possess. See IV, 24; Lugo, *de Just.*, disp. 3, n. 172.

2. A wife sins gravely (in almost the same mode as a son), if she steals a notable sum, while the husband is unwilling, even from dowry or common goods; because although the half part looks to her, nevertheless the husband has the usufruct of that part.

Note, however, that one must act more mildly with wives if the things taken away are expended for the use of the family or relatives. See other things in n. 870.

3. Servants by stealing sin unequally: a) If they steal foods that are not accustomed to be carefully guarded, they sin only venially, provided they do not sell them or carry them outside, and provided they do not take them in extraordinary quantity, or things of extraordinary price. - b) But if they steal other things, for example money, clothing, linen things, etc., no greater quantity is required for grave sin than in thefts of strangers; because owners are not less unwilling toward them than toward others. Indeed, such thefts, by law, are to be punished with a greater penalty, on account of the perfidy that is committed against owners, who entrust domestic things to servants (cf. n. 705).[180]

§ 2. On Small Thefts

908. Theft light of itself can in many ways become grave (cf. n. 905), but especially: 1. through intention of arriving at grave matter; - 2. through grave damage coming from a light theft; - 3. through conspiracy; - 4. through multiplication.

I. Through intention of arriving at grave matter the thief sins gravely, for example a merchant using false weights, as often as by stealing some very small thing he renews, at least implicitly, his purpose.[181] The reason is that an external act takes its malice from the internal act, which is gravely sinful. - Say the same concerning him who steals a small quantity with the mind of taking away a notable quantity if he could. But he is held to restitution only under light matter, because the matter is not grave.

II. Through grave damage, which the thief foresaw would come from his light theft, he likewise sins gravely. Thus, for example, to take away a needle from a tailor can be grave matter, if he could not have another by which he would be able to procure a living for himself (*H. Ap.*, X, 22).

He who takes away from an owner a small thing very dear to him, for example a rare and singular flower, first fruits from a tree destined for honoring some distinguished man, and at the same time foresees that the owner will be gravely afflicted from such a loss, sins gravely against charity; but against justice lightly, unless perhaps grave damage is foreseen as to follow from it.

III. Through conspiracy, little thefts are committed when several persons, by common counsel and consent, at the same time or successively, steal some small thing from one or several. - Now, little thefts of this kind are grave sins if, taken together, they constitute matter either relatively or absolutely grave: for then the individual thieves truly and efficaciously cooperate in the whole damage.

We said: by common counsel, because if individuals act independently of one another, whether they were ignorant of, or knew, the damage inflicted by others, then none of them is the cause of the whole grave damage (III, 535 seqq.).

If several, moved by mutual example, commit light thefts, the individuals sin against charity by reason of scandal (and indeed they sin gravely if the total damage is grave, and they could easily have impeded it); but more probably they are not held to restitution solidarily as regards the whole; because example is not a cause directly influencing another's damage, but only an occasion (cf. n. 949, 2nd Cond., and 989). Nevertheless each one, as is clear, is held as regards his own part (III, 537; II, 45).

IV. Through multiplication, light thefts can coalesce into grave matter and induce a grave obligation of restoring.

[180] French Penal Code, n. 386; Italian, 419; Spanish, 593; differently, however, German Code, 247. As regards servants who buy things for the owner and retain five centimes from the franc (*le sou du franc*), see *Ami du Cl.*, 1903, p. 294. It is an abuse, nor can it be tolerated, unless it is certain that the owners are conscious and consenting.

[181] V, 44; 2. *El. qq. ref.*, 6. See the things said in n. 328. For this renewal of purpose, that it become truly new, some interval is required; otherwise, if by reason of externalization it remains continuous.

Light thefts can coalesce physically or morally. Physically, if the things are preserved, so that the heap becomes grave matter. Morally, if the things are indeed consumed, but the thefts are repeated within a brief interval of time. For small little thefts ordinarily an interval of 15-30 days, for greater little thefts an interpolation of two months, prevents the little thefts from coalescing morally (III, 530).

The assertion is proved. 1. It is certain from the thirty-eighth proposition condemned by Innocent XI. - 2. As regards little thefts physically coalescing (whether they injure one or several), there can be a physical union, one heap, from which the thief is enriched unjustly and beyond measure. - As regards little thefts morally coalescing, there is something one in the genus of morals, from which notable damage can arise for a private person, or, if diverse persons have been injured, notable damage for the community and right order. Lugo, l.c., n. 37.

Note. The matter required in small thefts, that it become grave, is not always the same: 1. If they happen to the same person at diverse times, or to diverse persons (if they are few) at the same time, the matter is grave if it exceeds by half the sum commonly required for grave theft. - 2. If they happen to a few diverse persons by diverse occasions, the matter is judged of itself grave if it is twice greater than the sum commonly required for grave theft. - 3. Finally, if they happen to diverse persons in a great number, absolutely grave matter is required, or twice greater than absolutely grave, according as the thefts were committed once or by diverse occasions (III, 530). Cf. Lehmkuhl, I, 1115.

909. It is asked: Whether he sins gravely who, after grave matter has been completed, steals still some other light thing?

Resp. It is disputed. The more probable opinion, however, denies, unless, an interruption having been made, for example by the will of restoring, the thief reaches, or intends to reach, another new grave quantity. The reason is that the little theft with respect to taking is certainly light; but with respect to detention it seems to constitute one sin with the preceding: for sin is not multiplied when the purpose of not restoring is renewed or confirmed, but only when it is morally interrupted, as we said in the treatise on Sins (n. 328, Rule 3). Cf. III, 538.

910. From these things you will resolve: 1. Tailors, and their servants, sin gravely against justice, where they reach grave matter, by retaining for themselves or selling fragments of cloth still useful to the owners, which remain over. - Except if somewhere

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a custom flourishes that less is paid, and the fragments remain to the tailors; or if it is certain that wealthy owners do not wish fragments to be restored to themselves, or care little about them.

2. Those who dig coal are prohibited from carrying it away for their own use unless a certain price has been paid. - Nevertheless, those who sometimes carry away coals necessary for their family, although they are to be reproved, do not seem to be compelled to restitution; for in mines there is so great an abundance of coals that owners are scarcely to be judged altogether unwilling, and ordinarily they do not employ solicitude to detect thieves of this kind. - It must be said otherwise concerning those who frequently do this, or take away a great quantity of coals deposited on the banks of rivers or elsewhere (Konings, 703, 8).

3. Those who cut wood in the forests of their own community (or neighboring community) do not sin, nor are they held to restitution, unless they make great destruction with damage to the community; because a law strictly prohibiting every cutting of wood is judged to be penal: hence only the penalty is to be paid, and indeed after the sentence of a judge. - But otherwise in the forests of private persons, unless the matter concerns some rather small tree, or dried woods, for which the owner's consent can be presumed (III, 529, q. 1). - As regards the poor, it is certain that they can gather dried woods not only for burning, but also for selling, if they are in grave necessity. Cf. Gopfert, II, n. 148, where there are many things.

4. Those who eat fruits in the vineyards or orchards of others can easily be excused, provided they carry nothing outside, and the fruits are not rare and of great price. That this is probably licit is gathered from Deut., 23, 24 (likewise Luke, 6, 1), and from the law of charity which among Christians mitigates the rigor of right. - This at least is certain, "that in thefts of exposed things, as are fruits beside roads and woods in forests, that the theft be grave, greater matter is required" (*H. Ap.*, X, 23). Yet we would add this: that the value of fruits, even exposed ones, in the common estimation, has much increased today.

5. Note. The confessor, in small thefts, indeed ought not to urge restitution, yet neither should he easily dissimulate, but according to the condition and capacity of persons should always enjoin some restitution, to be made to the creditors themselves or to the poor. For otherwise, when they are dismissed with impunity, penitents become more prone to little thefts of this kind, and they make a step toward greater ones (Lessius, l. 2, c. 12, n. 50; *Ami du Cl.*, 1903, p. 97).

ARTICLE II

On Causes Excusing the Carrying Away of Another's Thing

The carrying away of another's thing does not have the character of theft if the owner cannot be judged reasonably unwilling. But he cannot be judged reasonably unwilling if the neighbor takes the thing either by reason of necessity or by title of compensation. - Hence two paragraphs.

§ 1. On Necessity Excusing the Carrying Away of Another's Thing

912. Things to be noted beforehand. 1. One necessity is extreme or quasi-extreme, or gravest; another grave; and another common (recall the things said in n. 480, 3).

2. The right to life is prior to the right to property.

3. The rich person from charity alone is held in ordinary cases to provide for his neighbor: therefore he must give, not hide the things that the neighbor needs. - But from justice the rich person is held not to impede the poor person by violent means from using his right; if he has impeded him, he is liable to restitution.

4. Here it must be asked: when does the poor person use his right legitimately?

5. Principles. I. It is not licit to steal another's things in grave necessity, nor a fortiori in common necessity. The reason is that then the owners are reasonably unwilling; and otherwise an easy entrance would lie open to plunderings. It is confirmed from the thirty-sixth proposition condemned by Innocent XI. Except with Viva (*Theses damn.*, prop. 36, n. 10), if from the adjuncts, for example from the piety of a wealthy owner, his consent is prudently presumed.

6. II. Anyone constituted in extreme necessity can steal another's thing, as much as suffices for freeing himself from such necessity. Thus commonly with St. Thomas (2. 2, q. 66, a. 7). - The reason is that the primary end for which God created things is the conservation of human life; hence the right of property must yield to the right to life (cf. n. 216). - The case is excepted in which the owner himself, by the taking away of his thing, would be reduced to equal necessity. For then the rule has force: "In an equal cause, the condition of the possessor is better"; and therefore the owner would be unwilling by right (III, 520, q. 3).

Hence it is inferred: 1. One constituted in extreme necessity is not held to seek the thing from the owner, if that thing in species is absolutely necessary to him; for then he has the right of vindicating it for himself.

2. If the thing that someone needs in such necessity is of great value, nevertheless, according to the truer opinion, he can vindicate it for himself; because he has the right of taking whatever is actually necessary for the conservation of his life. - Yet the rich person is not held to give that precious thing from justice, which does not impose the burden of providing for a neighbor; nor from charity, which does not oblige with so great a loss, as was said in n. 488, 2. - But from piety he would be held to give to a father or son; and from justice he is held not to impede positively the poor person from the use of his right (St. Alphonsus, l.c.).

We said: as much as suffices, etc. For thus the order of justice requires, which indeed uses its own right, but does not go beyond it.

Hence: a) If only the use of the thing suffices, for example of a horse for fleeing, when the necessity ceases there remains the obligation of restoring. - b) If the one in extreme need has elsewhere in reality or in probable hope something from which he can pay, he cannot take another's thing except with the burden of restitution: because necessity then does not require the thing to be received gratis when it can sufficiently be relieved by a thing received by loan or commodatum. - c) But if the one in extreme need has nothing elsewhere in reality or in hope, after he has consumed another's thing he is not held to restitution, even if he has come to a better condition. - The same must probably be said if the thing was stolen; because, if it had existed with the owner, the needy person could have taken and consumed it without obligation of restoring (III, 520, q. 4 and 5).

915. III. The same things are valid for him who is in gravest or quasi-extreme necessity. For this necessity is equated with extreme necessity. In such necessity someone can provide for himself from another's goods through ordinary means, but not through exquisite and extraordinary means. Thus St. Alphonsus (III, 520) and others commonly.

But such gravest necessity is judged to exist when someone is in probable danger of undergoing death, for example from assassins, unless he hand over such a sum of money; or of losing some principal member, say an eye; or of falling into perpetual captivity, or into perpetual illness, or of incurring infamy. For it is not necessary that evils of this kind actually

be inflicted; it suffices that they threaten proximately and morally certainly, indeed that a certainly probable danger of them threaten.

It is asked: Whether it is licit to steal another's thing in order to come to the aid of the extreme necessity of one's neighbor?

Resp. affirmatively: the reason is that then you bear the role of one showing indulgence and you show that you love your neighbor as yourself (St. Thomas, l.c., ad 3). Indeed piety and, grave inconvenience being excluded, charity itself can sometimes obligate you to this. - "But if you could have bestowed your own thing, and you gave another's, it seems that you are held to restitution; because you could not determine another's thing when your own was at hand." Thus St. Alphonsus, II, n. 33. Cf. the things said in n. 489, q. 2.

§ 2. On Occult Compensation

Notion. Occult compensation is the act by which someone takes that which is owed to him, while the debtor is unaware.

916. Principle. Occult compensation, with certain conditions concurring, is just and licit. It is 1. just, because he who secretly compensates himself does injury to no one, but takes only what is his own; - 2. licit, because, with the conditions observed, the order also of legal justice and charity is observed (III, n. 521).

917. The conditions are: that commutative justice, legal justice, and charity remain uninjured.

918. Let commutative justice not be injured: a) Therefore let the debt be strict, certain, and demandable; for compensation would be unjust if the debt were either not strict, i.e. from charity or gratitude alone; or uncertain, i.e. only probable, because in doubt the condition of the possessor is better; or not yet demandable, because "he who has a term, owes nothing."[182] - b) Let damage to the debtor be excluded, that is, let him not be exposed to the danger of paying again (or of living in erroneous conscience). This can be excluded, for example, by fictive condonation. - c) Let damage to a third party be avoided; hence do not take away a thing loaned or pledged.

919. Let legal justice not be injured: wherefore the creditor must first, if he can, demand in court, namely for preserving public order.

Nevertheless, if this is neglected, there will be no need of restitution, nor will there be grave sin; indeed not even light sin, if through the judicial way expenses, hatreds, or other grave inconveniences would have to be undergone.

3. Let charity not be injured: let precaution be taken lest one's neighbor receive detriment, for example lest someone undergo an unjust accusation and condemnation of theft, etc.; which nevertheless you are not held to avoid with your own great inconvenience (n. 949). Cf. *H. Ap.*, X, 21; Lugo, disp. 16, n. 87.

Compensation can be made also in another species, if it cannot be made in the same; provided the debtor undergoes no detriment from deprivation of some determined thing, for example a horse, a precious thing, etc.

918. It is asked: Whether servants, workers, officials of the government can steal something to compensate their own labor, which they judge to be greater than the salary concerning which they agreed?

Resp. Negatively, generally speaking, as is clear from the thirty-seventh proposition condemned by Innocent XI. - The reason is that they would act against the pact by which they consented to the lesser price (III, 522-524).

We said generally, because (up to the lowest price) a servant, worker, etc., can compensate himself: 1. If he was compelled by necessity to consent to a notably unequal price. Yet except if the owner had already found others justly for the same small price, or if out of mercy alone he had taken on the servant who asked. - 2. If he increases the works from the will of the owner, whether express or tacit; because then the rule must be observed, namely that every worker is worthy of his wage. But otherwise, if he increases from his own choice; because then he is judged to condone his labor, to conciliate for himself the favor of the owner. - 3. If the owner is judged to consent to compensation, as, for example, can happen with drivers hired at a lower price; for since he knows that he will be defrauded by very many, he is not to be presumed to wish to deprive honest drivers of the due salary, because he guards himself against dishonest ones.

Note. 1. Let confessors not easily permit compensation, as a thing full of dangers. But indeed, to compensation already made, to which no condition required by commutative justice was lacking, it is licit to connive to this extent, that the penitent not be bound to restitution. - 2. What compensation is just can sometimes be left even to the judgment of the

[182] A fine imposed by a judge for juridic fault, if it has been paid, cannot therefore be reclaimed through compensation, because after payment the other has justly acquired the thing. He who from a motive of legal justice is compelled to give truly transfers ownership into the one accepting. - But he who was compelled by force to give or pay can compensate himself, because in reality he did not transfer ownership. Cf. n. 617, 3 and 1051.

creditor, if namely he is God-fearing and prudent, and the danger of self-love is absent; which nevertheless will happen very rarely (Konings, n. 710; Aertnys, l. III, n. 298).

CHAPTER II

On Unjust Damaging

St. Alphonsus, III, n. 582-588; ed. G., II, p. 73 seqq.; *H. Ap.*, X, n. 60; Aertnys, l. III, n. 341; Lehmkuhl, I, n. 1160; Genicot, I, n. 514; Noldin, II, n. 430; Tanquerey, II, n. 587; Berardi, *Theol. mor.*, III, n. 305.

919. Notion. Unjust damaging, in the strict sense, is an act by which, through formal injury, damage is inflicted upon one's neighbor, without any advantage of the one inflicting (cf. n. 948 seqq.).

General Principles. I. Unjust damaging is a sin from its genus grave. The reason is clear. Hence, no otherwise than theft, it admits smallness of matter that excuses from grave sin (cf. n. 904).

II. Formal damaging does not extend more broadly than foresight, at least confused, of the damage inflicted itself. The reason is clear from the things said in n. 724.

This species of injury will bring with itself very many things to be investigated and weighed in Dissertation III, where we shall treat of restitution. - In this place it will be enough to have discussed three cases in which injury is accustomed to appear doubtful, namely: 1. concerning a thing abandoned or put away in danger; - 2. concerning privation of a hoped-for thing, or concerning one impeding the obtaining of a just good; - 3. concerning unjust distribution of offices.

1. Concerning a Thing Abandoned or Put Away in Danger

920. QUAER. 1. Whether you ought to prefer another's endangered thing, deposited with you or in any way committed to you, to your own thing, so that you are held concerning the damage if you have not preferred it?

Resp. Dist.: the contract or act by force of which you have another's thing either yields to your utility alone, or to the utility of the other alone, or to the utility of both. - If the first, for example if you have received the thing by commodatum, i.e. so that you may use it, you must prefer it to your own; unless yours is more precious, but in this case you are held to make the owner of the other thing unharmed, because the thing perished for your favor alone. - If the second, for example if you have received the thing by deposit, it must be subdistinguished: a) if the other thing is far more precious, you must preserve it; nevertheless, you can demand compensation of the whole damage that you have suffered in preserving it. - b) If your thing is almost equally precious, according to some you are not held to prefer another's thing to your own, since you retain this for the utility of the other alone; according to others, you are obligated to prefer the thing of another, since with respect to that thing the reason of justice intervenes, but with respect to your own, the reason of charity alone. - If the third, for example if as a broker you have been hired at a price to sell another's thing, there are those who think that, other things being equal, you can prefer your own thing; because charity does not oblige that in equal necessity you prefer another's thing to your own; but others judge that some compensation is owed to the other party, which is more equitable

seems more equitable. Here the Codes of commerce are to be consulted (III, 752; Lessius, l. 2, c. 7, n. 27).

QUAER. 2. Whether he is guilty of unjust damage who again commits another's thing, which he has withdrawn from danger, to the same danger, in which it afterward perishes?

Resp. Some, very probably, affirm, because that better condition which another's thing had obtained has become a certain quasi-accession for the advantage of the owner. Others, no less probably, and perhaps more probably, deny, whenever the avoidance of one's own damage requires that the thing be put back in its own place; for thus no injury is done, because no one is held to preserve the thing for the owner with his own damage.

Therefore, if you have taken away another's thing found in the road, and afterward you know that you will suffer damage if you retain it, you can rightly put it back in the same place and permit another to carry it away, although by doing this you put the thing into a worse state; for then the taking by the thief occurs from his own malice, and your cooperation is only permissive of another's detriment, which you are not held to avoid with your own damage (III, 569).

2. On One Impeding the Obtaining of a Just Good

STATE OF THE QUESTION. It is asked whether he is an unjust damager who impedes another from obtaining a just good. For a man can be damaged not only in the goods which he actually possesses, but also in those which he hopes for, such as, for example, spiritual goods, whether supernatural or natural, and temporal goods of a benefice, alms, a legacy, etc.

NECESSARY DISTINCTIONS. 1. These goods which one's neighbor hopes for are often owed to him from justice, because concerning them he possesses a right in a thing or a right to a thing; sometimes also they depend upon the merely free will of those conferring them.

2. One's neighbor can be impeded, lest he obtain hoped-for goods, in many ways: a) directly or indirectly, according as an impediment is placed with the intention or with the mere foresight of inflicting damage; b) efficaciously or not efficaciously, according as the action of impeding obtains in itself a greater or lesser force; c) by just or unjust means, according as the means employed in themselves tend against something to which he has a right; for example, if someone impedes his neighbor by fraud, most importunate prayers, calumny, or force, he uses unjust means, because one's neighbor has a right to liberty in acting and to the preservation of reputation. But if someone has recourse to persuasion, counsel, or non-importunate prayers so that his neighbor may be turned away from obtaining the hoped-for good, there can be no question of injustice, since neither the liberty of the giver in willing and acting nor the reputation of the one aspiring to the benefice is injured.

Note. Those means must be directed against the neighbor; but if they are directed against the benevolent giver of the hoped-for good, then they will be formally unjust toward the one hoping for the benefit only if they directly redound to his damage; for example, if the benefactor is struck with fear, lest he ever confer a benefit on anyone.

921. PRINCIPLES. I. To impede another efficaciously, even by non-violent means, from obtaining a good owed to him from justice is unjust damaging, whether it is done directly or indirectly, without a just cause. The reason: in this case it is verified that your action is the true cause of the damage inflicted on your neighbor. See what will be said in nn. 949 and 979 concerning an effectively unjust action and concerning unjust counsel.

From these things conclude: If someone without cause moves a father by prayers to this, that he deprive his son of a due inheritance, he is the author of the damage which the son suffers. - Generally, in whatever way truly efficacious impediments are set against the strict rights of a third party, there is injustice, which obliges to restitution.

II. To impede one's neighbor efficaciously from obtaining a good to be conferred from free will will be unjust damaging only then, if it is done by unjust means. The reason is that, as regards goods of this sort, another does not have a right, since they are to be conferred freely.

We said 1. It will be unjust damaging. But the magnitude of the damage to be repaired here must not be measured from the magnitude of the goods which were expected, but rather from the hope itself which the neighbor had. Therefore in practice such a damager will always be bound to less.

2. Only then ... if it is done by unjust means. There will be no unjust damaging if someone acts from hatred or vengeance; there will be only a lesion of charity.

Conclude from what has been said: a) He is not held to restitution who, although he does this from hatred, without deceit or force moves a testator not to leave an inheritance to a friend; who dissuades a Bishop from conferring on someone a simple benefice, for which a competition is not used; who by lies impedes the treasury from obtaining a sentence favorable to itself for juridic fault (III, 583, 588). Cf. Lehmkuhl, *Cas. Consc.*, nn. 690-694; *Ami du Cl.*, 1903, p. 297.

b) But he is held to restitution who calumniates a poor person, lest he obtain alms; a servant, lest he be admitted to service, etc. He is held, even if he only foresaw these inconveniences, provided the privation of the hoped-for good is to be ascribed to his calumny.

c) He is held to restitution who suppressed another's open letters, or retained them so long until he himself or others anticipated the writer in obtaining, in his place, the good which he expected. The same must more probably be said of him who, although he delivered the letters in due time, used the knowledge which he had acquired from them, so that he might anticipate or impede the writer (III, 585). See what is to be said in n. 1188.

III. To impede someone from averting the damage of one's neighbor is unjust damaging if it is done by unjust means, or if he who is impeded has been deputed by office to avert the damage. The reason for the first is clear from the preceding principle. The reason for the second is that, from the fact that he must avert the damage by office, the neighbor has a strict right to this, that you not turn him away, even by persuasion, from fulfilling his office.

Note. Here it is always supposed that the means employed place an efficacious impediment (cf. n. 980).

It is asked. If someone impedes another, even by unjust means, from obtaining a good which cannot be accepted or conferred without sin, whether he must restore?

Resp. Negatively, provided the acceptance or conferral is sinful on the part of the thing, for example the donation is prodigal, the testamentary disposition is illicit. The reason is that, although there is sin in the fraud or calumny employed, nevertheless no new malice of injustice is joined to this by reason of the impediment placed, since the neighbor possesses neither a right to the good which he seeks, nor a right not to be impeded by any means whatever from obtaining this good. Cf. Lehmkuhl, I, 1162.

3. On the Unequal Distribution of Offices

922. An unjust distributor of public offices injures principally distributive and legal justice, and subsequently commutative justice (cf. n. 400).

It is asked. Whether he who chooses an unworthy or less worthy person is held concerning the damage that follows?

1. With respect to the society: a) He who chooses an unworthy person is held concerning the damages which thence come upon the community and were foreseen. The reason is that, by force of a quasi-contract between himself and the society, and often by force of the stipend which he receives, there lies upon him an obligation from justice to procure the good of society, and consequently not to choose an unworthy person. - b) He who chooses a worthy person, while passing over a more worthy one, more probably is held to nothing toward society, even if perhaps he has sinned gravely. The reason is that the society is not judged to bind electors by so rigorous a title, namely by the title of strict justice, to choose the more worthy (III, 585; IV, 106).
2. With respect to those to be chosen: a) More probably he is held to nothing toward the worthy or more worthy person passed over, if no competition has been instituted. The reason is that he has violated no one's strict right. b) It must be said otherwise in the case of a competition, as is very commonly taught against some, whose opinion nevertheless St. Alphonsus does not dare to condemn as improbable (IV, 109; *H. Ap.*, XIII, n. 37).

The reason for doubting is that public offices and benefices are instituted solely or principally for the common good; and therefore they are not conferred as prizes promised to those competing in a contest, which are instituted principally as rewards of merits. - A fuller discourse concerning these matters will be given in n. 2240. Cf. Noldin, II, 454.

DISSERTATION III

ON THE REPARATION OF INJURED RIGHT, OR ON RESTITUTION

923. "The present matter of restitution needs careful consideration: both because it abounds in most intricate questions, and because the confessor ought equally to make a scruple for himself if he does not oblige penitents to restitution who are held to restore, as if he obliges those who are not held" (*H. Ap.*, XIII, n. 35).

We shall discuss: 1. the obligation of restoring; - 2. those who are held to restitution; - 3. the measure and order of restitution; - 4. those to whom restitution must be made; - 5. the circumstances of restitution; - 6. the causes exempting from restitution.

CHAPTER I

On the Obligation of Restoring

St. Thomas, 2. 2, q. 62; St. Alphonsus, III, n. 582; ed. G., II, p. 73; Lugo, disp. 8, n. 17; Lessius, l. I, c. 7, dub. 4; Carriere, III, n. 1021; Vermeersch, o. c., n. 155; Hohenlohe, *Grunde der Schadenersatzpflicht.* - As to practical cases, besides Lehmkuhl, Genicot, Bucceroni, see *Ami du Cl.*, *Tabl. gener.*, word Restitution, and *Linz. Quart. Schr.*, v. Restitutionspflicht.

There are two things concerning which we must dispute here: 1. the notion and gravity of the obligation of restoring; - 2. the roots from which this obligation arises.

1. On the Nature and Gravity of the Obligation of Restoring

924. DEFINITION. Restitution (*rursus statuo*) is defined: an act of commutative justice by which damage inflicted on one's neighbor through injury is repaired.

Therefore restitution differs: 1. from satisfaction; for satisfaction is the compensation of an offense which was inflicted without external damage; - 2. from payment; for payment is the counting out of a price or the extinguishing of a debt, to which one is held without having inflicted injury, for example the payment of the price for a thing bought.

It is said: an act of commutative justice; therefore, when it is a question of legal or distributive justice alone, there can be no place for restitution strictly so called. But if it is sometimes said, for example in n. 949, 3rd Condition, 3, that something must be restored, this is to be understood of restitution improperly so called, which is rather the necessity of obeying a just law (Vermeersch, *de Just.*, n. 158).

DIVISION. A twofold restitution is distinguished: 1. Restitution in the stricter sense, by which another's thing or its equivalent is returned. - 2. Compensation, by which damage unjustly inflicted and profit ceasing are repaired.

If satisfaction or reparation of the offense is joined to compensation, there is had what in Law is called full satisfaction.

925. PRINCIPLES. I. Restitution must be made, in reality or in desire, by precept of natural and positive Law. a) Of natural Law: for nature dictates: As you wish that men should do to you, so you also do to them likewise (Luke 6:31; Matt. 7:12). But each one seeks from his soul the reparation of injury. - Besides, the law of nature intimates that spoliation which is not repaired by restitution is truly prolonged (cf. n. 726). b) Of positive Law: for it is said in Exod. 22:5: If anyone shall damage a field or vineyard ... he shall restore according to the estimation of the damage; and Rom. 13:7: Render to all their due. Hence St. Augustine says: "The sin is not remitted, unless what has been taken away is restored, when it can be restored" (Epist. 153, to Macedonius, n. 20). Cf. Rule 4 in the Sext.

We said 1. Restitution must be made by precept, that is, restitution is not to be made by necessity of means; for it is necessary by the same reason as the omission of theft, and not otherwise. Hence he is not excluded from eternal salvation who in good faith, or because of inability, omits restitution.

2. It must be made in reality or in desire; for he who cannot restore is never excused from restitution in desire, that is, he must always have a firm purpose of restoring when he can; otherwise he would retain an affection for an evil thing.

3. II. The precept about restitution to be made is affirmative and negative at the same time. It is affirmative according to its form; it is negative insofar as it includes the prohibition of detaining another's thing. Thus St. Thomas (2. 2, q. 62, a. 8, ad 1).

Hence: 1. The obligation of restoring urges always and for always, that is, at every moment, until restitution has been made. - 2. Restitution must be made as soon as it morally can be made, because at no time is it licit to retain another's thing without the owner's consent, at least presumed.[183] - 3. He who cannot restore the thing here and now is held, at least according to his condition, to take care that he satisfy his obligation as soon as possible; because one obligated to an end is obligated also to the means. - 4. He who cannot restore the whole is held to the part, if it is a question of a divisible thing (*H. Ap.*, X, 118).

927. III. The precept about making restitution obliges gravely in grave matter, and lightly in light matter. Thus all.

Hence: 1. He who has stolen a great sum of money from his neighbor, or has inflicted grave damage, is held under grave sin to restore at least that part which completes grave matter, although this in itself would be light. - 2. He who has inflicted light damage is held to restitution under light sin, and with inconvenience proportioned to the thing. Therefore he can more easily be excused from restitution, especially from restitution to be made to the owner himself (III, 534 seqq.).

These things are regular; but let it be noted (III, 706): a) In doubt whether a thing taken away and existing in species is grave or light matter, you are held under grave sin to restore the thing itself, lest you expose the owner to the danger of undergoing grave damage. b) If you

doubt whether you owe more or less, you are held to the less; likewise, if you doubt whether the damage which you inflicted is light or grave, you are not held to compensate except light damage (see n. 44, and 949, 4th Condition). c) Indeed it can happen that there is only a light obligation of restitution, or none, however grave the matter may have been in itself. Cf. the things to be said below in nn. 949, 950.

928. Corollaries. 1. He who is unable to restore in one genus of goods is not held to restore in another inferior genus; for example, he who has killed, wounded, or defamed a man is not held to give money, even if he cannot otherwise

[183]From this, however, it does not follow that sins are multiplied by delay of restitution, if namely the evil will is not morally interrupted (see the things said in n. 328, Rule 2).

compensate the damage. The reason is, says St. Alphonsus (III, 627), "because commutative justice obliges to restoring according to the equality of the damage inflicted; but where restitution must be made in a different genus, there is no equality, nor will there ever be any compensation of the damage; for by any money whatever the damage will by no means be repaired, neither in whole nor in part."

Nevertheless, the opposite opinion, which is that of St. Thomas (2. 2, q. 62, a. 2, ad 1), is also probable. - Apply the doctrine of St. Alphonsus to those cases where there is damaging in spiritual goods: for these, as regards themselves, cannot be compensated by money. Besides, often an injury can be repaired in the same order, for example by leading back the scandalized person into the good way, by correcting errors. Noldin, II, n. 464; *Ami du Cl.*, 1911, p. 409.

2. A judge or Superior can, for an injury concerning one good, impose that, by reason of punishment, something be furnished from goods of another order, and this sentence must be obeyed.

Moreover the injured person, since he has the right of denouncing before the judge him from whom he has received injury, can accept money from that man, so that he omit the denunciation. Thus, for example, a woman violently oppressed, since she is able to compel the violator before the judge, can, in order to renounce her right, exact money from the scoundrel (III, 556; cf. German Law, § 847). See another example, n. 879, 3, note a.

3. Finally confessors can impose on a penitent as a penance, or from equity, that he bestow something upon the injured person.

4. PRACTICAL RULES. I. Unworthy of absolution are, grave matter always being presupposed: 1. those unwilling to restore, while they can do this; - 2. those not able to restore, but neglecting to obtain for themselves the faculty of restoring; - 3. those committing to an heir a restitution which they themselves can make by themselves; - 4. those able to restore wholly, and restoring only a part. See nevertheless the things to be said presently under III. - And here it must be noted that absolution is to be deferred for him for whom restitution is morally possible, until he has satisfied the obligation of restitution: "For goods are a certain blood, which is not torn out from the veins except with great force and pain. Hence, if restitution is not made before absolution, it will be made afterward with the greatest difficulty, as experience very much teaches us. - Only some penitent can be excepted who would be of such fearful conscience that no place of doubting concerning him would remain" (III, 681, 682; *Praxis Conf.*, n. 43).

II. With many, especially with the dying, one must act cautiously: 1. If the penitent seems to be in good faith, and no time remains for prudently admonishing him concerning his obligation, or if the admonition is foreseen not to be useful, it must be omitted. - 2. But if the admonition is hoped to be useful, or if the penitent is in bad faith, or in vincible ignorance, he must be admonished concerning his obligation strongly and at the same time sweetly, and helped to carry it out at once. 3. If the obligation is occult and cannot be fulfilled at once, the sick person must be induced to commit the sum of money to the confessor himself, or rather to a faithful man, so that afterward it may be remitted secretly to the creditor; or, if it can be done prudently, to leave that sum in his testament to the same creditor, mention of restitution being omitted. 4. If the obligation is not occult, and cannot be fulfilled at once, let the confessor bring it about that it be fulfilled, whether through the heirs, or through a note to be handed to the creditor, etc.

III. As regards the very quantity to be restored, one must act cautiously in this likewise; for in those causing damage, especially in cooperators, good faith is very frequently found. Hence, if admonition concerning restitution, or concerning its quantity, seems by no means or doubtfully useful, the debtor must be left to his own conscience. But if the thing itself is doubtful, and possession favors the penitent, one must in practice pronounce positively for him (cf. n. 927, note).

2. On the Roots of Restitution

930. The root of restitution is the cause on account of which restitution must be made.

1. The remote and general root of restitution is every real lesion of commutative justice, so that one's neighbor has less than by strict right he ought to have; hence equality must be restored by the rendering of the thing (Viva, *de Restit.*, init.).

2. The proximate and special root of restitution is distinguished as twofold: a) the thing accepted, or the retention of another's thing. To this root is attached the obligation of restoring or paying from contract. b) Unjust acceptance, or unjust damaging, even if another's thing is not retained (III, 548; cf. St. Thomas, 2. 2, q. 62, a. 6).

For discerning the first root, attention is paid only to this, that another's thing is in the actual possession of this or that man; as regards the second root, attention is paid to the will, to the actions of the damager, insofar as they are directed against

the legitimate possessor, under the motion either of concupiscence, as in theft, or of hatred, as in damaging. Therefore from the first root, the quantity to be restored is defined by the quantity of another's thing which you retain in its own species or in equivalent; from the second, by the quantity of damage which you have voluntarily inflicted (Vermeersch, o. c., n. 160).

931. PRINCIPLES. I. From the thing accepted there arises the obligation of restoring, if another's thing is found with someone without a just title, although it has come to him without fault. The reason is that a thing always cries out for its owner, and the inequality remains until the thing has returned to its owner; for the one retaining has more than is his, and the other less. No one loses his right except by voluntary consent, or by his own fault of injustice, or by disposition of Law, or by a fortuitous event; and therefore the owner alone of himself enjoys the right of possessing the thing and enjoying it. Hence the axioms of Law: A thing cries out for the owner; - A thing bears fruit for the owner; - A thing naturally perishes for the owner; - No one can be enriched from another's thing (Salmant., tr. 13, c. 1, n. 6).

Note. 1. The obligation of paying a debt from a contract or quasi-contract is reduced to this first root: insofar as payment not made is an unjust retention of that which is owed to another, although the debt has not come from fault.

2. But if deceit, fraud, violence, or negligence in fulfilling an office has intervened in entering upon or executing a contract, there arises in these cases also the second root, concerning which something must immediately be said.

3. II. From unjust acceptance there arises the obligation of restoring if someone knowingly and unjustly has occupied another's thing, for example by theft, fraud, usury, etc. The same obligation also arises from unjust damaging; for he who damages another, even without his own advantage, takes away from him and, by fiction of law, occupies something, namely that very thing in which he damages him. - Hence, since in both ways the inequality is culpably posited, this must be repaired by an act of justice, that is, by restitution, so that the whole foreseen damage is repaired.

4. From these things you will gather: 1. The burden of restoring can arise from one root only, or from both. Thus, for example, a thief who has accepted and retains another's thing is held to restore under both heads. If he has consumed the thing and has not become richer, he is obligated only from unjust acceptance.

5. Between the two roots there is a manifold difference: a) The first can arise without a harmful action; but not the second, which always arises from a delict, as is sufficiently clear. b) The former can perish without restitution being in fact made, for example if the thing perishes by chance, because it perishes for the owner; not likewise the latter. c) One obligated only from the thing accepted must restore as much as he detains; yet this without his own detriment, because he has not admitted fault. But one obligated from unjust acceptance, or from delict, must restore as much as he has damaged; so that, namely, he render not himself but the other unharmed (Viva, l. c.; cf. Lugo, disp. 8, sect. 2, n. 25).

6. The burden of restoring from commutative justice does not exist unless at least one of these roots is present. Therefore the sentence of a judge then only introduces an obligation of commutative justice when a root of restitution accedes to it; otherwise it obliges from legal justice alone. Thus, for example, when an informal testament has been rescinded by the sentence of a judge, the inheritance does not pass into the ownership of the testamentary heir, who, if he detains it, is held to restore from the thing accepted. On the contrary, a servant condemned to repair damage inflicted from merely juridic fault is held to furnish this from obedience only, by force of legal justice, because he neither detains another's thing nor is the author of formally unjust damaging (cf. n. 949, 3rd condition). - But the sentence of a judge which protects the right of an author, of the finder of treasure, etc., obliges from commutative justice, since the law itself establishes such rights.

CHAPTER II

On Those Who Are Held to Restitution

St. Alphonsus, III, n. 542-582; ed. G., II, p. 52; Soto, L. IV, c. 7, a. 3; Reuter, P. III, tr. III, c. 2; Lehmkuhl, I, n. 1127 seqq.; Noldin, II, n. 437; Aertnys, tr. VII, n. 307; Genicot, I, 511; Loenartz, *Restitutionspflicht des Besitzers fremden Gutes*; Carriere, n. 1035 seqq.; Ciolli, *Dir. prat. du j. conf.*, II, 230.

934. To restitution are held: 1. the unjust possessor of another's thing; - 2. the unjust damager; - 3. the unjust cooperator.

ARTICLE I

On the Unjust Possessor of Another's Thing

Another's thing can be possessed unjustly in a threefold way: 1. with good faith, in which case there arises the obligation of restoring from the first root only, that is, from the thing accepted; - 2. with bad faith, and in this case there arises the second root, namely unjust acceptance; - 3. with doubtful faith, from which, according to the various conditions of the doubt, the first or the second root can arise.

§ 1. ON THE POSSESSOR OF GOOD FAITH

DEFINITION. A possessor of good faith is he who invincibly is ignorant that the thing possessed by him is another's. As is clear, such a one does not injure the right of his neighbor except through merely material injustice (I, 34).

In civil Law, he is called a possessor of good faith who possesses as proprietor, from a title transferring property, the defects of which he is ignorant.[184]

935. PRINCIPLES. I. A possessor of good faith ought not to become rich from another's thing. There is exception if the thing has already been prescribed; in which case he does not become rich from another's thing, but from a thing which, by force of laws, has been made his (III, 556, 607).

II. A possessor of good faith ought, of himself, to be preserved unharmed: that is, just as he can acquire nothing from another's thing, so he ought to lose nothing; because he is not in fault.

We said of himself, because, in a case of conflict between the possessor and the owner, the owner of the existing thing is superior in right; but laws, on account of the common good, sometimes favor the owner of the thing, sometimes the possessor.

From these principles flow the possessor's obligations and rights, both as regards the thing itself and as regards fruits and expenses.

936. A. Rights and obligations as regards the thing itself. 1. If he still has the thing, for example a horse, money, etc., once the error has been discovered, he is held to restore to the owner the thing existing in whole or in part. For the thing cries out for the owner. Thus from natural and Roman Law.

From French, Italian, Austrian, and Spanish Law, he who has bought a thing in a public market, or from a merchant selling such things, is not held to return it to the owner unless the price is refunded to him; and the owner of the thing can afterward in turn seek this price from the seller.[185]

From English Law, if the thing was bought in fairs or markets (*market overt*), except in the case of eviction by the sentence of a judge, ownership is likewise transferred to the buyer of good faith.[186] And since this has been established for the security of commerce, the thing can be retained with a safe conscience.

From German Law, he who in good faith has acquired another's thing, not stolen nor lost, from a person not suspect, by that very fact becomes the owner of the thing and can retain it. Indeed, although afterward it is established that it is stolen or lost, he can retain it if he acquired it in an auction, or if it is a question of money, or of titles (*titres au porteur*). In every case it becomes his after ten years.[187]

2. If the possessor no longer has the thing, in reality or in equivalent, he is held to nothing; because a thing naturally perishes for the owner; unless he has become richer.[188] In this case he must restore to the owner that in which he has become richer. Now he is said to have become richer who either has spared his own thing while using another's, or has something which otherwise he would not have had. In doubt whether he has become richer, he is held to nothing; because in doubt no one ought to be deprived of his own thing (III, 706). Cf. above n. 45.

Hence: a) If in good faith you have bought a thing taken by theft and sold it without profit, you are held to restore nothing; but only he with whom the thing is. But if you have received profit, you must refund this, unless it is the fruit of your industry, to the owner seeking it. - b) If you have sold another's thing given to you by gift, you must return the whole price, by which you have become richer; indeed to the owner, if he is unable otherwise to recover his right; but to the

[184] French Code, 550; Italian, 701; Spanish, 433; German, 932.
[185] French Code, 2280; Italian, 709; Austrian, 367; Spanish, 464.
[186] Crolly, *de Restit.*, n. 512.
[187] German Code, 929-935; 1000.
[188] Thus also French Code, 1302 seqq.; Spanish, 1897.

buyer, if the thing itself has already been restored to the owner. - c) If you have donated or consumed the thing, sparing your own things, you are held to restore as much as you have spared. - d) If you have donated or consumed the thing solely because you had it, and otherwise would not have donated nor consumed an equivalent, you are held to nothing (III, 601, 609).

Note. When a donation of another's thing has been made, the donor, once the error has been discovered, is held from charity to warn either the donee, that he return the thing to the owner, or the owner himself, that he may be able to recover his own thing. Indeed, from the reason of justice, he seems to be held to the same thing, namely from the obligation which the author even of merely material injustice incurs (III, 564).

3. If the possessor has sold the thing, and it has perished in the hands of the buyer: a) he is held to nothing, if he had the thing from an onerous title; for the obligation

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of restoring arises neither by reason of the thing, which he no longer has, nor by reason of damage, of which he is not the cause; - b) he is obligated to restore the price of the sale if he obtained the thing from a gratuitous title; for in this he has become richer. But restitution can be made at will either to the buyer or to the owner, since the rights of each appear equally founded.

Except: 1. if the thing would equally have perished with the owner, for example from age; 2. if it perishes by the buyer's fault; 3. if the law disposes otherwise (III, 607-609).

Note. There are not lacking authors who say that, even in the case in which the possessor received from a gratuitous title the thing which has perished, he is held to nothing. See Noldin, II, n. 439, 2.

937. B. Rights and obligations as regards fruits. 1. No one is held to restore industrial fruits, because they are not the fruits of the thing, but of the man who has gained them by occasion of the thing or through the thing. Hence he who, by negotiating with another's money, has acquired riches for himself, is held to bestow none of these upon the owner of the money (III, 610 and 825).

938. As regards natural and civil fruits: a) From natural Law, the possessor of good faith must restore all certain fruits, for example of letting, whether existing or even consumed, insofar as he has become richer from them; expenses and labors, however, being deducted. And the same must be said of mixed fruits, insofar as they are not industrial (III, l. c.). b) But from positive Law, he certainly is not held to restore prescribed fruits, and probably also those already received.

French, Spanish, Austrian, Italian, and German Law transfer to the possessor of good faith all fruits received during his peaceful possession[189] (except, in Germany, fruits received from a thing accepted by title of donation or inheritance); and this disposition of law more probably has force also in the forum of conscience, since it favors the public good by removing innumerable difficulties and complaints which could continually be stirred up concerning fruits to be restored. Thus Gousset, Gury, Del Vecchio, Porpora, and not a few others.

938. C. Rights and obligations as regards expenses. From natural Law: 1. It is licit for the possessor of good faith, when restoring another's thing, to deduct necessary expenses, indeed useful expenses, which he has made for the conservation or increase of the thing. Otherwise the owner would receive more than is his. - 2. But he can demand back or retain nothing for merely pleasurable expenses, which namely he has spent on the ornamentation of the thing, for example for paintings, gardens; because it is not equitable that the owner tolerate costs made on things useless to him. The possessor can carry away the ornaments themselves, provided he does this without detriment to the thing.

Modern laws confirm natural Law almost entirely.[190] Yet they raise several difficulties in estimating the facts; nor before the sentence of a judge do they compel the owner of the thing to refund expenses doubtfully useful or doubtfully necessary.

939. Questions. QUAER. 1. Whether he who in good faith buys a stolen thing can return it to the thief in order to recover his price?

[189]French Code, 549; Italian, 703; Austrian, 330; Spanish, 451; German, 987-989, 2020 (see Lehmkuhl, *Burgerl. Gesetzbuch*, 953). - Indeed, from Spanish Law, pending fruits are to be divided in proportion to the time of possession between the possessor and the owner, who besides must refund to the possessor the expenses made for cultivation, unless he prefers to yield all the pending fruits to him. - In Austrian Law, not only all natural fruits received, but also civil fruits already due for the time of possession and already received, are attributed to the possessor of good faith.

[190]French Code, 1381; Italian, 707; Austrian, 331; Spanish, 453, 454; German, 102.

Resp. 1. Negatively, if the owner appears seeking his own thing. For then he must return it to him, even with the loss of his own price; because by natural Law the owner can occupy his own thing in whatever place he finds it; nevertheless an action is given to the buyer against the thief. - But see n. 936, 1, as regards civil laws.

2. If the owner does not seek his own thing, very probably, and perhaps more probably, the buyer, to whom no other way is available for preserving himself unharmed, can remit the thing to the thief in order to recover his money: both because no one is held to preserve a thing for the owner with equal damage to himself; and because each one has the right to recover his own goods; "and an action is forbidden to no one which is of itself necessary and direct for repairing his own damage, although indirectly and accidentally damage may thence come upon another" (III, 569).

QUAER. 2. What then must be done if you indeed know that the thing possessed by you is another's, but you do not know the owner?

Resp. Concerning this one must determine as concerning a thing found (cf. n. 886). Therefore, if the owner cannot be found, you can retain the money. "And the same must be said of a poor person to whom a thief has given the theft, when the owner has not been found. For if there was no hope of finding him, ownership has already been transferred to the poor person, so that he is not held to return the thing to the owner, even if the latter afterward appears" (*H. Ap.*, X, 69, fin.).

Note. If the possessor of good faith is in culpable delay in restoring, he begins to be of bad faith; and therefore he is held to compensate the damage coming from the delay, as will be clear from the things to be said. But since he must restore in the place where the owner dwells, if the owner is absent, he can defer restitution.

§ 2. ON THE POSSESSOR OF BAD FAITH

DEFINITION. A possessor of bad faith is he who accepts or retains a thing, knowing that there is no just title for himself for accepting or retaining it. He injures the right of another through formal injury.

940. PRINCIPLES. I. A possessor of bad faith, from the title of the thing accepted, can never become rich from another's thing. The reason is evident.

II. A possessor of bad faith, from the title of unjust damaging, must render the owner of the thing unharmed; in other words, he is held to compensate profit ceasing and damage emerging, at least foreseen in a confused way. The reason also is clear.

This, however, is understood if the owner has a full right in the thing; for if he possesses only a right to a thing, compensation must be weighed according to the value of the hope which the owner had of making the thing his own.

941. From these principles flow the following obligations:

A. Obligations as regards the thing itself. 1. If the thing still exists, it must be restored in the individual. Yet if the thing, which would not have been worse with the owner, has come into a worse state with the thief, the latter is held, at the owner's option, either to restore it with the value of the detriment done added, or to restore its price in full (III, 620).

We said: it must be restored in the individual, and indeed even if the thing taken away has meanwhile increased in price, and notwithstanding that the owner would have consumed it before its increase; for the thing, as long as it exists, bears fruit for the owner.

Note. If the stolen thing first increased in price and afterward decreased, the greater price must be restored. The reason: the thing bears fruit for the owner, and the thief by culpable delay is the cause of the damage which the owner suffers, because the owner was unable to use his thing while it was worth more (*H. Ap.*, X, 78).

2. If the thing has perished, even by a fortuitous event, it must be restored in equivalent. The reason: it is presumed that it would not have happened that the thing perished with the owner. - Moreover, because of the taking away, the thief has taken every damage upon himself.

A fortiori, it must be restored in equivalent if the thing has perished by the fault of the thief alone or of another; for example, if a horse was killed for this reason, that it had been led away by the thief from a safe place. - The obligation of restitution does not cease from the fact that, after the destruction of the thing, a common danger arrived in which the thing certainly would have perished; because the obligation has already been contracted.

Note. a) Yet if the thing perished without the thief's fault, and otherwise would certainly have perished with the owner, the thief is held to nothing; for there is only injury without damage.

b) If the thief, at the same time at which he foresaw the threatening ruin, consumed the thing, he would probably be held to nothing.

c) If, after the common danger had passed, the thing perished in another common danger, the thief in practice is held to nothing else than to restore only the fruits of the thing which the owner would have received from the thing (*H. Ap.*, X, n. 79). The reason: culpable delay in restoring impeded the owner from receiving them.

d) Several modern Codes oblige the thief to restore the price, in whatever way the thing has perished or been lost (French Code, 1302; Italian, 1298; Spanish, 457). This, however, binds the conscience only after the sentence of a judge.

B. Obligations as regards fruits. A possessor of bad faith is held to restore all fruits, both those which he himself has usefully received and those which he has consumed without thence becoming richer; and besides, all the fruits which the owner would have received from his own thing.

Thus a thief is held to restore stolen money with interest, if it is established or conjectured that the money would not have remained idle in the owner's possession. This must most certainly be conjectured according to the custom of men today, if it is a question of a great sum of money, and especially because civil Law also binds one to pay interest even for small sums. *H. Ap.*, X, 74.[191]

Note. 1. But lest we go beyond measure in computing unfavorable consequences, it is useful to note that evils which are inflicted on someone are not to be extended to empty possibilities, but are to be measured as they are usually appraised from the common estimation of men. Thus, for example, it would be ridiculous to propose to him who killed another's hen a calculation of how many chicks could in the course of time have been born from this hen. Account must likewise be taken of accidents in which things can perish; likewise of those expenses which would have had to be made for the sake of repair, etc.

2. As regards industrial fruits, these can always be retained. Therefore if someone has stolen small trees and planted them, he must restore not the trees which have grown, but the price of the small trees; which price, indeed, must be greater. Roman Law says that a double price must be paid (Lehmkuhl, *Cas. cons.*, n. 654).

C. Rights as regards expenses. A possessor of bad faith can deduct, besides industrial fruits, both necessary and useful expenses; indeed even merely pleasurable ones, where, with the substance intact, they can be separated.[192] - The reason is that he is held to no more than that he preserve the owner unharmed; but unless he can deduct expenses, the owner would make a profit, receiving more than is his. Except the case in which, as a punishment of the delict, he would be condemned to lose all expenses, at least non-necessary ones (III, n. 618).

942. Questions. QUAER. 1. What if another's thing has passed through the hands of several possessors of bad faith, by donation or sale?

Resp. 1. As regards the thing, it must be restored by the last possessor. If he fails, the robber is held for the price of the thing. But if neither satisfies, the rest must pay the price of the thing in equal portions. Finally, if the rest fail, each one is held to the whole. - 2. As regards the fruits and damages of the thing, each is held to compensation for the part of time for which he detained the thing. If the others do not restore for their share of damaging and fruition, the reparation of the whole damage lies upon each one, in proportion to the time elapsed from the day on which they successively became unjust possessors of another's thing.

QUAER. 2. Whether he who knowingly buys another's thing from a thief can return it to him in order to recover the price?

Resp. Doctors more commonly deny, as St. Alphonsus testifies. But the holy Doctor himself holds the affirmative opinion as absolutely probable and perhaps more probable. "The reason is that, although that man sinned by buying the thing in bad faith, nevertheless after the purchase he has the right, just as the buyer of good faith, to rescind the contract," nor does he become guilty of the damage inflicted on the owner, because by returning the thing to the thief he does not place it in a worse state than he himself found it, from which, moreover, he was not held from justice to withdraw it (III, 570).

But otherwise, if, because of longer detention, the things could no longer be recovered by the owner.

943. From these things resolve: 1. He who carried another's grain elsewhere and sold it more dearly than the owner would have sold it is not held to restore that increase of price. But if he sowed the same grain in his own field,

[191] French Code, 1378; Austrian, 1333; Spanish, 455, 1896; German, 249, 987.
[192] Likewise from French Code, 1381; German, 850, 994; Austrian, 326, 1035-1040.

he is held only to return similar grain, so that the owner may be preserved unharmed. Likewise, if someone puts another's eggs under his own hen to be incubated, he is held to restore only the value of the eggs (III, 609, 8).

944. If someone accepts another's thing mixed with the thief's things, for example another's grain with the thief's grain, the one accepting, although in bad faith, is not held to restitution if the thief is equal to restoring; because what was accepted was now the thief's own, as we said in n. 888, 4. But if the thief for that reason would not be equal to restoring, the one accepting is held to restore, because through that acceptance he efficaciously influences the alienation of the thing, with detriment to the creditor (III, 612).

945. He who feigned himself poor in order to extort a notable alms is held to restore this to the owner or to other poor persons. Otherwise, if the alms had been small, or if one truly poor feigned himself upright (III, 622).

946. Those who on account of simulated poverty obtain pensions destined for poor youths who aspire to the priesthood are held to restitution, because they defraud the will of the benefactors, since they can comfortably complete the course of studies at their own expense. And the same must be said of those who are indeed poor, but apply themselves to studies for another end; but not of those who, not excluding at the beginning the intention of entering the clerical state, afterward, the matter having been considered more maturely, recognized that they were not called to such an institute of life; for these are sufficiently in good faith, and the benefactors themselves do not wish someone not called to creep into the priesthood (Konings, n. 703, 7).

§ 3. ON THE POSSESSOR OF DOUBTFUL FAITH

944. NOTION. A possessor of doubtful faith is he who positively, because of probable reasons, doubts whether the thing which he accepts or possesses is his or another's (I, n. 37).

PRINCIPLES. I. Every possessor of doubtful faith is held seriously to inquire, so that thus he may lay aside his doubt. The reason is that, if he contemns a doubt of this kind, he exposes himself to the danger of retaining another's thing and of frustrating another at least of the hope of ownership.

Otherwise, if the reasons are slight; because these cannot weaken the moral certitude which possession itself begets (cf. n. 44).

II. While the inquiry is being made, the possessor of doubtful faith cannot abuse the thing as proprietor; nor can he alienate it, unless he has forewarned the new possessor of the existing doubt. But he can accept it, not with the intention of retaining it, as is clear, but with the intention of restoring it to the owner if, after diligent inquiry, the latter appears (Bouvier, *de Jure*, P. II, c. 2, a. 1, § 3).

But because doubt can arise when possession itself begins, or when possession has already begun, two things come to be discussed as regards restitution itself.

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1. On Doubt Beginning with the Possession Itself

945. 1. He who in doubt has begun to possess, disturbing another from his possession, for example by taking away from the possessor a litigated thing, is held to restore the whole thing to him, unless it is established that he began possession with bad faith. For in doubt the condition of the possessor is better (Lugo, disp. 17, n. 80).

2. He who has accepted a thing with a title of itself legitimate, for example of donation or purchase, but with doubt whether it is another's and possessed in good faith by the predecessor, if after inquiry he remains wavering, is held to restore, in proportion to the doubt, to the probable owner, if he is known; or to the poor, if the owner is unknown.

The reason is that, on the one hand, possession begun with doubtful faith does not favor him, and therefore he cannot retain the whole thing for himself; on the other hand, it does not seem equitable that he be obligated to restore the whole, since it is doubtful whether the thing is another's (III, 625). - Civil laws and the consensus of all cannot be invoked here so that possession of fact may become useful for such a possessor; for from the beginning positive good faith was lacking.

3. If none of the litigants in fact possesses the thing itself, and the doubt is equal, the thing, or its price, is to be divided equally between them. But if the doubt is unequal, it seems it must be divided according to the proportion of the doubt (Lacroix, l. 3, P. 2, n. 566).

Notice: 1. He who has accepted a thing or right, for example an inheritance, from a possessor of good faith, and has begun to possess with doubt, can protect himself by the right of his predecessor and conduct himself as if he were a possessor

of good faith to whom doubt has supervened. - 2. He who doubts negatively whether his predecessor was in good faith can use the axiom: "No one is presumed evil unless he is proved so." - Otherwise, if he has found him in bad faith and doubts whether he began his possession with such a disposition of soul; because "once evil, he is always presumed to be evil," according to the 8th Rule of Law in the Sext (I, 36, 37). Recall the things said in n. 895.

2. On Doubt Beginning after Possession

946. 1. A possessor of good faith, to whom a doubt arises concerning a possessed thing from a probable motive, for a slight motive is to be contemned, if, due diligence having been used, he recognizes that the thing is another's, is held to restore it, together with that in which he has become richer, as a possessor of good faith.

2. If the doubt perseveres equal on both sides, or if the possessor has for himself a probable opinion and against himself a more probable one; or for himself mere possession, and against himself an opinion only probable: he can still retain the thing for himself until it has not been morally established, that is, by a proof overcoming the presumption of possession, that the thing is another's. - The reason is that as soon as the possession itself is certain and legitimate, that possession, although alone, by itself begets a certain presumption concerning the justice of possession, which outweighs all non-convincing reasons and yields only to truth (I, 35, 36). Cf. the things said in n. 45.

3. A possessor of another's thing who, after doubt has arisen, culpably has neglected to inquire, is held, if afterward the presumed true owner of the thing can no longer be found, to restore something, either to the presumed owner or to the poor, if the owner is uncertain. The reason is that "since he himself culpably deprived the owner of the hope which the owner could have had toward the thing, and that hope was indeed estimable by price, now certain damage has been inflicted on the owner, who also certainly possessed that hope." Thus the truer opinion, which St. Alphonsus defends (I, 37) against Tamburini (cf. Lehmkuhl, I, 1144).

Nevertheless restitution is not to be made in proportion to the doubt, but less and perhaps very much less; because the detainer of the thing is in a better condition, on account of the right of possession which favored him and still favors him; for possession of the thing is valued much more highly than possession of the hope.

Note. In one case the opinion of Tamburini perhaps could be sustained: if namely the possessor of another's thing doubts only in an indeterminate way whether the thing is another's. Cf. Genicot, I, 534, v. fin.

947. On doubtful payment. To what is a debtor held if he seriously doubts concerning payment having been made?

Resp. There are three opinions. The first opinion says that such a debtor is no longer held to payment, provided he himself did not culpably cause the uncertainty. Thus among the more recent authors, Waffelaert, Genicot, Noldin. Their reason is that, on the one hand, the debt here and now is uncertain, and on the other hand, no one is to be despoiled of his own thing unless the debt is established. - The second opinion judges that all things are to be arranged in proportion to the doubt. Marres, Ballerini, Lehmkuhl defend it. Lehmkuhl (I, 1147) explains the reason of this opinion thus: the value of that debt is in the peaceful possession of neither, neither of creditor nor of debtor, but is a thing concerning whose possession and property each contends with the other; hence, in proportion to the doubt, it is to be divided between the litigants. - Finally, the third opinion, which is that of St. Alphonsus (I, 34; *H. Ap.*, I, 20), affirms that a debtor who truly doubts whether he has paid must pay the whole. Cf. also III, 700; *H. Ap.*, X, 120. Lugo, Suarez, Vasquez, Sanchez, and others teach this opinion. The reason: the creditor, who is in possession of his credit, has a certain right to recover the whole. If the debtor, who doubts about payment, refuses to pay, he always exposes himself to the danger of injuring the creditor's certain and earlier right; which cannot be done, as we said in n. 84. For in doubts of a perilous fact, the safer thing must be followed, although our liberty is in some way restricted.

We said: 1. Who truly doubts. For the debtor would not be held to paying if, from things ordinarily or contingently by law occurring, he believes with moral certitude that payment has been made. Presumption will greatly assist here in practice.

2. He must pay the whole, namely in the case in which he alone doubted. But if the creditor himself also doubted concerning his right, the debtor would be held only to a part, in proportion to the doubt, because possession on each side is weak. "Nevertheless Laymann adds that he would not dare to condemn the creditor if he received the whole" (I, 34).

Note. The reason adduced by the holy Doctor is directed against the two contrary opinions, which for this reason are rejected by us. The first opinion especially does not appear safe. Lehmkuhl (l. c.) rightly says: "There are some who, in the case of doubtful payment, dispense from every further obligation; - which cannot be sustained by solid reason."

ARTICLE II

On the Unjust Damager

We must treat: 1. of the unjust damager in general; - 2. of various damagers in species.

§ 1. ON THE UNJUST DAMAGER IN GENERAL

948. An unjust damager is said to be one who injures another's right, or harms his neighbor in goods, without thence becoming richer of himself or directly.

PRINCIPLES. I. An unjust damager is held to restore an equivalent price, both of the thing damaged and of the other damages which have come from his action and were at least confusedly foreseen by him. The reason is that the injured owner must be made wholly unharmed, according to equality (cf. n. 931). Yet injury is to be estimated not from damage only, but also from the will of the agent (n. 724).

949. II. In order that a damaging action induce an obligation of restitution from the law of nature, a threefold condition is required, namely that the action be strictly, effectively, and formally unjust; and these three things are altogether certain. These are to be explained part by part (cf. Lugo, disp. 8).

Condition 1. It is required that the damaging action be strictly unjust, that is, that one's neighbor has been despoiled of some thing to which he has a strict right. The reason is that the obligation of restoring, as we have already often said, arises from the violation of commutative justice alone (III, 547).

It is explained: 1. The strict right which can be injured is either a right in a thing or a right to a thing, which supposes a legitimate title. You do not have a right to all things to which your neighbor, in conscience, is obligated either from charity or from religion, namely a vow.

2. He violates a strict right who takes away the thing of his neighbor, although he himself abuses it for sinning (see nevertheless n. 1020); indeed although he received it as remuneration, a pact concerning a shameful thing having preceded (n. 1036). Cf. Lehmkuhl, *Cas. consc.*, n. 691.

3. He violates a strict right who inculpably indeed has placed an action harmful to another, but culpably does not impede it from proceeding; for example, if someone does not extinguish a fire applied by himself without fault to another's houses; or does not warn a buyer after he has noticed that he gave poison for a remedy (III, 564, 994; VI, 621). Therefore there is an obligation of restitution.

4. Nevertheless a damager is not held to restitution who had the right of placing an action harmful to another. For the Rule of Law, Law 151, *de Reg. Jur.*, favors him: "No one does damage, except because he does that which he does not have the right to do." Thus a merchant is not unjust who sells at the lowest price, although he injures other merchants; nor a proprietor who turns waters from his own field into another course harmful to his neighbor, lest he himself suffer gravely; nor a smith who sells a sword to a homicide, lest he himself perish by death. - But otherwise, if actions of this kind are placed without a just cause (III, 584, 697). Similarly, the owner does not act unjustly who digs a pit on his own estate, although he intended that an enemy, whom he knows sometimes passes through there illicitly, should fall and break his leg. Lehmkuhl, *Cas. consc.*, n. 672. Nevertheless charity requires that the enemy at least be warned in general.

5. He is also not held to restitution who has injured charity alone, for example if you were conveniently able to impede the burning of another's house and were unwilling; or religion alone, as if you neglected your vow; or piety, for example if you did not feed your needy parents; or legal justice, if, for example, you denied a crime as accused or witness, lest your own or another's goods be applied to the treasury; or distributive justice, if, for example, by distributing alms left by legacy to the poor, you neglected the poorer. And the same must be said of every debt which does not arise from commutative justice (III, 547, 583).

Condition 2. It is required that the damaging action be effectively unjust, that is, a true and efficacious cause of the damage. The reason is clear: for only the author of damage is held to repair it. Therefore it is required: a) that the damage has truly been inflicted; for damage merely willed, just as also that of which you indeed placed the cause, but which another impeded, for example in a fire made by you but extinguished by another, brings no obligation of restitution; b) that the damage has emanated from your action as from its proper cause; for there can be no obligation of restitution unless the cause of the damage is established, and the true influence of this cause into the damage (III, 562, 584; cf. II, 43, 45).

Hence: 1. It does not suffice for the obligation of restitution that injury without damage has intervened. Thus, he who committed adultery without the damaging of another is held to no restitution in conscience, although he can be compelled

by a judge to make satisfaction for the injury (III, 556).

2. The occasional cause of damage does not suffice, because it is not an efficacious cause, but only the occasion of an efficacious cause, that is, at whose presence the principal cause acts. Hence, if by occasion of a theft or homicide perpetrated by you, another has been accused and condemned, you are not held to repair his damage. - And the same holds even if you foresaw this or even intended it, unless the circumstances of the action were such that they proximately and morally influenced the imputation against the third party, say if you killed clothed in the garments or arms of Paul (III, 635). - In this last case the guilty person is held from justice to denounce himself, or at least to turn suspicion away from the accused; otherwise he would be held from charity alone. - Hence also, if, by occasion of a violated sacramental seal, Peter has learned the author of a theft, so that through proofs and indications he can reclaim his good before the judge, he, Peter, although he sinned by listening to the thief's confession, is not the efficacious cause of the damage which comes upon the thief from the sentence of the judge. *Linz. Quart. Schr.*, 1906, p. 829. *Ami du Cl.*, 1905, p. 971, certainly otherwise. Cf. the things to be said in n. 1188.

3. A cause without which the effect would not occur does not of itself suffice; for example, if you did not return the sword, another would not be killed: from this you do not become the efficacious cause of the damage.

4. A remote and accidental cause does not suffice; for a cause of this sort does not of itself and directly influence the damage, but through some unforeseen and improbable accident; and therefore it cannot be called the efficacious cause of the damage (III, 632). Now damage is judged to follow by accident when for the most part it does not arise from the cause posited, or even could not arise from that alone without the concurrence of other causes.

5. Likewise he is not held to restitution, according to the more common and more probable opinion, who by his bad example has induced others to inflict damage. For bad example is not properly a cause positively influencing the damage, because of itself it does not tend to this, that it impel others to doing the same thing; but it is a mere occasion at whose presence others, of their own accord, take up the thought and counsel of inflicting damage. See the things said above under 2. - But it must be said otherwise if the example should put on the nature of counsel or mandate, for example if the leader of soldiers began to plunder (II, 44).

Note. a) According to grave authors, sometimes a cause which ordinarily influences damage by accident is considered as a cause causing damage of itself, if it is placed solely with the intention of harming. Causes of this sort would be, for example, to steal something small from a miser so that he may become sick; to place a snare in a forest so that an enemy, rarely passing through, perhaps may bring evil upon himself; to kindle a fire in a remote place so that, if perhaps a wind arises, the granaries of the enemy may be burned. - Nevertheless it is not to be denied that this theory concerning the efficacy of intention with respect to action does not please all, as we noted in n. 727. See Lehmkuhl, *Cas. consc.*, n. 713.

b) Since attention should rather be paid to the action considered in itself, it follows that if someone culpably placed the cause of damage and afterward, led by repentance, tried to impede the damage, but in vain, he is nevertheless held to restitution. For retractation takes away fault before God and contumacy before the Church (n. 1264), but it does not change the natural influence of the action. - Except if it is a question of counsel, whose influence revocation takes away (n. 982). Cf. St. Alph., III, 559; VII, 40.

Condition 3. It is required that the damaging action be formally unjust, that is, theologically culpable.

For a twofold fault is distinguished, namely theological and juridic.

Theological fault is the omission of ordinary diligence which the matter demands and which is customarily employed by the timorous in their own office; and indeed a voluntary omission, whether in itself or in its cause. According to the degree of the damaging, it constitutes sin, whether grave or light.

Juridic fault is the omission of diligence required by positive Law or by the nature of the contract for forestalling damages, although in the omission no theological fault intervenes. This omission is called lata fault if the diligence which men commonly are accustomed to employ in a similar business is omitted; light, if the diligence which diligent men, as a good father of a family, employ is omitted; very light, if the diligence which the most diligent put forth is omitted (III, 549). - Juridic fault becomes theological fault only then when due diligence is advertently omitted; because, when there is no advertence, not even in the cause or in a confused way,

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there is lacking consent of the will into the damage, or the mind of harming. - Very often broad juridic fault has theological fault as its companion.

Therefore the sense of the third condition here is: In order that there be an obligation of restitution, there is required, on the part of the one causing damage, broad juridic fault placed advertently.

It is proved: "In order that conscience remain obligated, it is necessary that the delict have been perpetrated in conscience" (*H. Ap.*, X, 39). Thus from natural Law.

Hence there is no obligation of restitution, at least before the sentence of a judge: a) If you killed an enemy whom, in killing, you thought to be a wild beast, even if you rejoice after the fact. - b) If a thief, by occasion of the theft, indeed efficaciously, but beyond all advertence, inflicted a new damage, for example because by overturning a lamp he excited a great fire. - c) If a maidservant from merely juridic fault breaks the crystal vessels of the owner. - d) If an industrial man omitted in his workshop the slight precautions prescribed by law, while ordering all else prudently, and a great misfortune occurred (Lehmkuhl, *Cas. consc.*, n. 665). - Some authors indeed judge that there is an obligation of restitution if someone, in doubt whether damage may come upon his neighbor from his action, omits diligence required only by law. Yet this obligation is not established (III, 551).

Note. 1. From merely juridic fault there sometimes arises an obligation of restitution; and this can happen under a twofold head: a) By force of positive law, after the sentence of a judge. Thus a judge can justly condemn you to the reparation of damage truly inflicted by your animals or by boys committed to you, without theological fault;[193] and such a sentence obliges in conscience from legal justice (cf. n. 192). Yet the law itself does not oblige before the sentence, unless theological fault was present, as is commonly taught (cf. n. 933). b) By force of an express convention in contracts, or in fulfilling offices; for you can often justly obligate yourself even concerning a fortuitous event, as will be said in its place (cf. n. 1162).

We said by force of an express convention, in contracts; for Lessius, Lugo, and others teach very probably that it is not equitable to oblige someone in conscience to a grave penalty, without grave fault of his, whenever it is not established that he wished to subject himself to juridic fault alone (III, 554). - The same reason holds for quasi-contracts, or fulfilling offices. Wherefore no one obliges physicians, advocates, confessors, and theologians to restitution from juridic fault alone; for if the matter were otherwise, no upright and timorous man would wish to discharge these offices, which would fall to the damage of the republic (III, 555). See nevertheless what is to be said in n. 974.

2. From venial theological fault, sometimes, although grave damage is truly present, there arises no obligation of restitution: if namely the theological fault is venial by reason of inadvertence or indeliberation. Thus the more common and more probable opinion. An obligation of restitution under grave sin is not induced, because such an obligation does not have proportion with light fault; not under light sin, because a light obligation does not have proportion with grave matter; so much the more because fault imperfectly deliberated cannot induce a perfect obligation, just as in contracts and vows an obligation does not arise from consent not fully deliberated.[194]

3. Finally, all know that theological fault which is venial by reason of the damaging obliges to restitution under light sin (cf. n. 927).

It is added, 4. that these three things be altogether certain. Doubts concerning a damaging action can be moved: a) before the fact; concerning these antecedent doubts we are not speaking. All know that an action is licit to no one concerning which one antecedently and positively doubts whether it is unjust or not (cf. the things said in n. 81). b) After the fact, that is, subsequently to the damaging action already placed. But the object of doubt in the case can be either the existence of the damage, or the efficacy of the action, or its injustice taken objectively, or the theological culpability of the agent; and we say: as long as these doubts have not passed into certitude, there is no obligation of restitution. The reason is that, where it is a question of goods of fortune, no one ought to be deprived of his certain right unless it is established that the right has been lost (nn. 44, 850). Compare St. Alph., III, 562, 658; *Conf. dir.*, X, 20.

Yet a twofold exception must be admitted: 1. If several have acted by common counsel, and afterward a doubt arises in what degree each concurred. 2. If someone inflicting damage notices that, by his action, he is the cause why the author of certain damage becomes uncertain. Cf. n. 963, 2.

950. Special question: On error in damaging.

In the matter of damaging, there can be a twofold invincible error: one concerning the object, the other concerning the person.

I. ERROR CONCERNING THE OBJECT. If someone thinks from invincible error that the damage inflicted by him is much less than it really is, he is probably not held to restoring except in proportion to the known damage. The reason: that

[193] Cf. French Code, 1382, 1386; Italian, 1153; Austrian, 1294; Spanish, 1905 seqq.; German, 831 seqq. - Ordinarily, however, the judge will not condemn the accused if they can prove that they could not have impeded the fact.

[194] III, 552; *H. Ap.*, X, 40. Cf. *Linz. Quart. Schr.*, 1909, p. 81; Lehmkuhl, *Cas. consc.*, I, n. 694.

damage which is not known, at least in a confused way, is not judged willed.

Thus, therefore, he who throws into the sea another's gem worth 100 aurei, thinking it to be worth only 10, must restore only 10 aurei (III, 613). See nevertheless the note to be placed below.

II. ERROR CONCERNING THE PERSON. If someone, intending to harm one person with any other excluded, harms another by invincible error, he probably cannot be obligated to restitution in the internal forum before the sentence of a judge. The reason is that it is not enough that the damaging action be unjust, but it is required that it be formally injurious toward the one damaged; and therefore error concerning the person is a substantial error.

Therefore if someone, wishing to kill Caius, kills Titius; intending to burn the house of an enemy, burns the house of a friend, etc., he will not be constrained to restitution. Thus St. Alphonsus (III, 628, 629), Lugo, Croix, and others.

Another probable opinion is given concerning this question. Besides Bonacina and Haunold, recent authors defend it, such as Lehmkuhl, Vermeersch, Noldin, Tanquerey, Schindler, Pruner. They affirm that in the case there is an obligation of restitution, because, they say, that action is unjust, an efficacious cause of damage, and theologically culpable, and error concerning the person is only accidental. These arguments are indeed not slight; nevertheless the reasoning of our holy Doctor is not to be despised, which even the adversaries concede; hence the possessor is to be favored.

Note. Yet in each mode of erring there is an obligation of restitution: a) If the damager was actually so disposed in soul that, even if he had known, nevertheless he would have inflicted the damage; because then ignorance was not the cause of the damaging. b) If he has been condemned by a judge; because in doubt one must stand for the judge (III, l. c.). Cf. Genicot, I, 522; *Linz. Quart. Schr.*, 1905, p. 890; *Ami du Cl.*, 1905, p. 984.

§ 2. ON VARIOUS UNJUST DAMAGERS

951. The unjust damagers concerning whom one must especially treat are: 1. a homicide; - 2. a stuprator or fornicator; - 3. an adulterer; - 4. one defrauding taxes; - 5. one inflicting damage by occasion of military service; - 6. one negligent in fulfilling an office. Concerning one who causes damage in spiritual goods, or in other goods, see nn. 513, 928, 1205, 1214.

1. To What Is a Homicide Held?

In order that it may be known what and to whom a homicide must restore, a threefold genus of damages must be distinguished, which can be inflicted in goods of fortune through homicide, namely damages which are inflicted: 1. on the one killed himself before his death; - 2. on his family, that is, on his children, parents, and wife; - 3. on his creditors.

We are not speaking of compensation to be given on account of bodily torments, or the other damages which bring no loss in goods. For from these there does not arise an obligation of restoring except after the sentence of a judge, if namely positive laws grant the damaged parties the right of exacting reparation. Cf. German Law, 847.

952. PRINCIPLES. I. A homicide or mutilator is held to compensate all temporal damages which, from his crime, have been inflicted on the one killed or wounded. The reason is clear from the things said above (n. 948); for killing is of itself the cause of damage. - The one attacked himself who, with true deliberation exceeding the moderation of inculpable defense, kills the attacker, is held to compensation of damage. For the enemy, on account of his unjust aggression, does not altogether lose the right which he has to life. St. Alphonsus, III, 637, with Lugo and others. Cf. the things said in n. 734.

The homicide is held to compensate all damages, and indeed: a) damage emerging, or the expenses of treatment, etc.; b) profit ceasing, that is, the profit of which the one struck has been deprived during the time of his infirmity because of the interruption of labor, and which he had in hope; yet with the expenses which would have had to be made to obtain the profit deducted according to prudent estimation; likewise with funeral expenses deducted, unless perhaps on the occasion of the death inflicted, for example outside the fatherland, greater expenses had to be made, or unless he is bound by the judge to refund them.[195] In Germany he is held to pay them (§ 844).

Compensation must be given not only to the wounded man himself, but these debts, as real, are to be paid to the heirs of the slain person, whoever they are; because all heirs succeed to all the real rights of the deceased. Except if the deceased before death validly remitted these things to the killer. We say validly; for he would remit them invalidly if he were so poor that he could not have made the necessary expenses from his own goods, or if from such remission others, for example physicians or benefactors, would be unjustly burdened (III, 630; *H. Ap.*, X, 86).

[195] III, 626, 631; cf. Lessius, l. 2, c. 9; Lugo, disp. 11, s. 4; German Code, 823.

953. II. A homicide is held to repair for the family of the one struck the profit ceasing for them and the damage emerging on account of the wounding or death of the one killed. The reason is that all the aforesaid persons, but not brothers or sisters, are judged morally one person with the one killed as regards sustenance; hence even after his death the damage is continued in them (III, 631; *H. Ap.*, X, 87; German Code, 844).

Let it be noticed: 1. The reparation of damage must be made according to the value of the hope which each one had, considering the age, health, etc., of the one killed or wounded, of receiving goods or advantages from him if he had not been killed or wounded. 2. Compensation to be made to the aforesaid persons is not from the title of inheritance of the one killed, but from the title of damaging inflicted on them, and therefore it could not be condoned by the one killed. 3. If there is no damage, either because those persons receive sustenance equally from elsewhere, or because the deceased was bringing no utility to them, there is no obligation of compensating. 4. The best mode of compensating is a peaceful settlement with the persons mentioned (III, 631).

954. III. A homicide is held to restore, in proportion to hope, to all those whom he directly intended to harm. Thus, for example, he is held to compensate damages to consanguineous creditors, or to the poor, whom he wished to frustrate of the hope of payment, inheritance, or alms; because each one has a right not to be directly and by force impeded from obtaining a just good.

It was said: whom he directly intended to harm; because if damages of this kind were only foreseen and not intended, a certain nexus is lacking between the homicide and the damages that followed; those are judged to have happened by accident, and it is more probable that the killer, in this case, is held to nothing by reason of justice (cf. 921, 949, Condition 2). St. Alph., III, 632, 633.[196] See nevertheless the things said in n. 727, II, v. fin.

IV. In defect of the homicide, his heirs are held to compensate the aforesaid damages, even if the killer is punished with death. The reason: punishment satisfies vindicative justice, and therefore legal justice, but not commutative justice. Heirs succeed to all the strict burdens of the killer. Except if the injured parties are judged to yield their right, from the fact that they do not seek restitution (III, 631, 705).

955. Questions. QUAER. 1. To what is one provoking to a fight held, if he kills the one accepting, for example in a duel?

Resp. According to the opinion of Suarez, he is held to restore the damage, because the provocation was a true cause of the damage. - But Lugo (disp. 11, n. 66), with Vasquez and others, more probably contradicts; because although the one provoking sins against charity, nevertheless the other, since he freely accepts the fight, renounces his right to the reparation of damage (III, 638).

Note. Another question is related to this question: whether there is an obligation of restoring if one provoking to a duel is the cause why the one provoked, refusing the contest, is expelled from the army, or undergoes other damages.

Resp. It is not established that the provocation is the cause of itself of the damages which the one provoked suffers; rather it itself is their occasional cause; hence restitution is not to be imposed. Cf. the things already said in n. 949, Condition 2 and the added note.

QUAER. 2. To what are administrators of railways or ships held, if, the rules of prudence not having been observed, someone is killed or wounded in them?

Resp. They are held to pay as much as the judge by equitable judgment decrees must be paid; and they sin and are held to restore if by fraud, deceit, or bribes they induce the judge to render an unjust sentence (Konings, n. 808, q. 4).

Note. It is counsel that the confessor impose alms and Masses for the benefit of the one killed, for the killing itself (III, 631, 5). Cf. the things said in n. 928. If the homicide is imputed to an innocent third party, see n. 2302, q. 1 and 2306 seqq.

2. To What Is a Stuprator or Fornicator Held?

956. Here stuprator is understood in a broad sense as whoever has had relations with a free and honorable person, that is, one who is neither married nor a prostitute. Hence what we shall say concerning a girl is to be understood equally concerning a widow of good reputation (III, 646, fin.; *Conf. dir.*, X, 38).

Now a threefold case must be distinguished: either the woman consented spontaneously in the crime; or she was induced by force or fear; or under a promise of marriage.

[196] Yet let it be noticed that often from homicide no damage of the creditor arises, since the heir transfers the burdens of the deceased onto himself; often also it must be attributed to the frauds of others that the real rights of creditors are not satisfied. Cf. Lehmkuhl, I, 1180, 4.

957. PRINCIPLES. I. He who has violated a consenting girl, without any promise of marriage, is held to nothing, of himself strictly speaking, except to the education of the offspring, if perhaps one is born. The reason: 1. he owes nothing to the girl, even if he solicited her with gifts or prayers, because injury is not done to one knowing and willing; 2. he owes nothing to the parents, because he did not violate their right, since the daughter is mistress of her own body. Hence authors very commonly say "that the man is not held to make good to the father the damage of goods by reason of the greater dowry which he needs for placing the daughter in marriage" (*H. Ap.*, X, 91).

We said 1. Of himself; because exception is made: a) if the stuprator has manifested the delict; for then he is held concerning the damages following from defamation; b) if he is very rich, and the girl poor; for in this case she is presumed to have consented under the condition of some compensation; c) according to some, if by the sentence of a judge he is compelled to repair damages; but in truth, since laws presume deception or force, such a sentence, if the woman truly consented spontaneously, does not bind the conscience (cf. n. 191).

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2. Strictly speaking, or in the rigor of justice; for the stuprator, at least from piety, against which he offended together with the girl, ought to repair the injury of the parents by some signification of honor or by asking pardon, unless perhaps they are ignorant of the delict, or are presumed to refuse such a reparation of honor. Thus probably St. Alphonsus with Sanchez, Croix, Lugo, etc., against St. Thomas and St. Antoninus, etc., who equally probably say that he is held from justice to repair the honor of the father (III, 641).

3. Except to the education of the offspring; for since the stuprator and the girl are equally in fault, both are held, and indeed from natural right, equally and in solidum, to feed and educate the offspring until it can provide for itself. Nor can any disposition of law or sentence of a judge exempt from this obligation (cf. n. 700). Cf. French Code, 340; German, 1708; Austrian, 166-171.

Note. If the girl has had relations with several lovers, it is not licit for her of herself to denounce whomever she prefers as the father of the offspring. Similarly this is not licit for the parents or guardian of the girl. Nevertheless, if civil laws (cf. Austrian Code, 163), as punishment of the delict, oblige the fornicator, as such denounced, to feed the offspring, the girl or parents do not seem to act unjustly in denouncing one of the lovers, in the case namely in which she herself does not know who precisely is the father of the offspring. Thus Noldin, II, n. 471; Delama, n. 391, note; Lehmkuhl, *Burgerl. Gesetzb.*, 1717.

958. II. He who has violated a girl by force or fraud is held to make good all damages of honor and fortune that come upon both the girl and the parents. The reason is that he is the efficacious and unjust cause of these damages.

We said who by force, namely absolute; because if the violence was only moral, that is, if threats, or reverential fear, importunate prayers, or similar things drew the woman to consent, the seducer is held only to part of the damages (III, 642; *H. Ap.*, X, 92; German Code, 825).

From these things it is inferred: 1. If the crime is manifest, the stuprator must indeed ask pardon from the parents, unless they do not care for a matter of this kind; but for the girl, he must increase the dowry, so that thus she may be able to marry equally well as if she had not been violated. Yet he is not held to marry her, since he did not promise this, unless perhaps the damage cannot be repaired otherwise, or unless by the sentence of a judge he is compelled to marriage (III, 641, 646).

2. If offspring has been conceived, he alone is held to sustain the expenses of nourishment and education, or to refund them to the mother; in Germany, § 1708, up to the completed 16th year, and further if this is necessary because of certain defects of the offspring. And this obligation indeed urges by force of natural Law; therefore even in the case in which the law would not favor the mother or the offspring and would deny every civil action. Cf. Gousset, on French Code, a. 340; Spanish Code, 464.

3. If the crime is occult, and the girl marries equally, the stuprator is held to nothing. For he owes nothing for the violation of honesty, which is not commensurable with money; nothing for damage, because there is none; nothing for the injury of the parents, because they are ignorant of the crime. Nevertheless, if the woman is afterward badly treated by her husband because of the known defloration, he is held to compensate the damage to her (III, 642; Lugo, disp. 12, s. 1).

4. III. He who, under a promise of marriage, whether true or fictitious, has violated a girl, is held to accept her for himself as wife. The reason is: a) because such damage cannot be repaired adequately in any other way; b) because in unnamed contracts, *do ut des*, *facio ut facias*, as soon as the other party has fulfilled his onerous part, the other also is held, and indeed from justice, to fulfill his own, provided, as in the case, he can do it

without sin. Nor does it stand in the way that he promised fictitiously, because he is held, precisely in order to remove the injury, to furnish true consent, when this is necessary so that frauds, which would impede human commerce with common damage, may be removed from contracts (III, 642, q. 1; *Vind. Alph.*, P. III, q. 16). Thus the common and to-be-held opinion, which in practice the S. C. of the Council has confirmed several times (*A. S. S.*, I, 341; III, p. 304).

Note. The Decrees of April 19, 1908, concerning betrothals innovated nothing as regards the present matter. Truly only those pacts are betrothal pacts which are made in writing; but the obligation of entering marriage can arise not only from betrothals, but also from an onerous unnamed contract (cf. n. 1036). See Lehmkuhl, I, 1250; II, 842.

Exceptions. 1. Only the obligation of entering marriage ceases, the obligation of restitution remaining: a) If the girl yields her right, even if the parents dissent; because the right to marriage properly belongs to her. - b) If the law of avoiding scandal or the dishonor of the family stands in the way. c) If a very bad outcome is feared, say, if the girl is known to be too frivolous, or if she is non-Catholic and the perversion of offspring is feared, etc. d) If canonical law stands in the way, for example because of consanguinity, or a vow, for example of chastity, etc., and dispensation is not usually granted, or only with great expenses or inconveniences, which were by no means foreseen. Otherwise, more probably, in the contrary case; because he who is held to the end is held to the means, in our case, to the petition of dispensation. - e) If civil law stands in the way, for example because of the dissent of the man's parents, and marriage becomes morally impossible. - f) If the woman has already been dishonestly corrupted, that is, outside marriage; because to enter marriage with such a woman, at least in many regions, is valued much more highly than that which the stuprator received from her, and otherwise the damage inflicted on her can be repaired sufficiently in another way. g) If the seducer is far more noble or richer, although the girl could not have noticed the deception; because the one seduced, in these circumstances, cannot reasonably intend the reparation of the injury through marriage, and the seducer by joining her to himself in marriage would render more than equal to the injury inflicted (cf. St. Alphonsus, III, 643, dub. 2, 646-650). Yet according to some, disproportion in riches does not free from the obligation of entering marriage.

2. The very obligation of repairing damages also ceases: a) If the seducer is prepared to stand by the promise, and the woman without sufficient reason refuses. Otherwise, if she refuses justly, for example because the man pretended to be of better or equal condition, when he is of lower. b) If the woman from words or other circumstances could easily have noticed the deception, say if she knew the seducer to be much superior to herself in nobility or fortune; for then it can deservedly be presumed that she wished or feigned the deception. - c) If the woman deceived the seducer by pretending herself a virgin; for deception compensates deception. - d) If she is defamed for this reason, that she herself manifested the stuprum perpetrated secretly. e) If the promise of marriage was not the motive cause of the girl's consent; because, in such a case, it must be interpreted like any other gratuitous promise (cf. n. 1062). Let St. Alph., III, 645-648; Lugo, disp. 12, S. 2; Lessius, l. 2, c. 10, dub. 3 be read.

3. It is asked. What if the man has only touches with a virgin?

Resp. He is not held to marriage, because touches alone are not of so great an injury that they induce the obligation of entering a fictitiously promised marriage, nor of so great weight that they do not suggest to the woman the suspicion of fiction; provided, and this is excepted, the woman was not noble or very honorable; or the man had requested only touches with a promise of marriage, and the girl remained marked with infamy because of those touches now made known, or because of notorious familiarity (III, 645; *H. Ap.*, X, 95).

Note. Modern laws do not oblige the deceiver to marriage, but generally oblige him to the reparation of damage inflicted by the unfulfilled promise (Austrian Code, 46; Spanish, 464; German, 825, 847). But if someone has satisfied these laws in good faith, he does not seem to be disquieted. See other things in n. 963, q. 2 and 3.

3. To What Is an Adulterer Held?

Here it is a question only of adultery from which offspring has been born and damage has followed; for personal injury alone inflicted on a spouse cannot be repaired by money (cf. n. 928).

961. PRINCIPLES. I. If each adulterer freely consented in the crime, each is held, in solidum, to the reparation of the damage. The reason is that each was the efficacious and formally unjust cause of the whole damage (III, 655, 659; Lugo, disp. 13, s. 1; Lessius, l. c., dub. 5).

Hence: 1. Both are held to restore all expenses which the husband made for feeding and educating the spurious offspring. - 2. If the spurious child has received an inheritance with legitimate children, or with other legitimate heirs, they are held to compensate these in proportion. - 3. An adulteress who does not have separated goods must repair the damage in the better way she can, for example by administering the family property more diligently, by subtracting from herself

superfluities in clothing, in food, etc. But each is held to repair damages insofar as he or she can without detriment to a higher good and without the bringing in of a greater evil (cf. n. 1018). See St. Alph., II, 652.

"Some authors say that if the adulterer had not induced the mother to suppose the offspring among the legitimate, but in this had behaved himself negatively, then he would not be held to maintenance, or at least not to the inheritance. But we say, with the common opinion, that he is obligated to both, because he is always the proximate moral cause of the aforesaid damages, by casting the adulteress into the moral necessity of supposing the offspring. But it must be said otherwise if the adulteress, without her infamy and danger of supposition, can keep and feed the offspring outside the house" (III, 659; *H. Ap.*, X, 101).

962. II. If one adulterer by force, fear, or fraud extorted the consent of the other, he alone must repair the whole damage. The reason is that he is the efficacious and unjust cause of the whole damage. Yet if he fails, the other is held, unless he or she suffered absolute force or invincible deception (cf. n. 995, 3).

963. Questions. QUAER. 1. Whether an adulteress who can repair damages only by manifestation of the crime is held to manifest it?

Resp. Negatively, regularly speaking. The reason is: 1. because in this way, for the most part, she cannot repair damages; for no one is held to believe one witness, although most approved, and therefore neither is a spurious son held to believe the mother asserting that he is illegitimate, unless those indications accede which in the external forum would prove the matter evidently, for example impotence or absence of the husband, etc.; 2. "because rarely can it happen that from such manifestation she would not undergo enormous damages," say grave infamy, savagery, discord, etc. Indeed, generally it is of greater interest for the husband himself and the legitimate children that the matter remain hidden.

Except: a) if she is already of ruined reputation and does not fear the grave indignation of the husband; b) if otherwise public damage is feared which can be impeded, for example if the spurious child is of ruined morals and ought to succeed in the principate; c) if there is probable hope that the spurious child will believe her and renounce the inheritance. The reason is that she is excused when her own damage certainly and notably outweighs another's damage; but by no means when it is equal or only a little exceeding (III, 653 seqq.).

QUAER. 2. To what is an adulterer held who doubts whether the offspring is his or another's?

Resp. 1. If he doubts whether it is his or the husband's, he is held to nothing. For in this case the damage is not established; and the offspring is presumed to be the husband's unless the contrary is proved (III, 657).

2. If the doubt is between two adulterers, whose the offspring is, it is absolutely more probable that neither is held to restitution, and the same holds for fornicators. The reason is that no one is held to repair damage unless it is morally established that he was the cause of the damage.

Except: a) If the second adulterer noticed, which is rare, that by his deed he would be the cause why it cannot be known whose the offspring is. In this case, he alone would be held to the damage inflicted from that uncertainty. b) If by common counsel they perpetrated adultery; for then each would be held in proportion, and, if the other fails, to the whole (cf. n. 908, III, and 984, Quaer., and n. 992, 2).

Note. As regards adulterers who send offspring to the hospital, see the things said above in n. 700, 2, with note.

4. To What Is One Defrauding Taxes Held?

964. NOTIONS. A tax or duty, taken generically, is everything which by legitimate ruling power is imposed to be paid by citizens for sustaining the common burdens of the republic.

Taxes today generally are of two kinds. Some are called direct, which immediately and by name affect the person, or his goods, according to the estimation of faculties. Of this sort are real taxes, for example on fields and houses, and personal taxes, for example for a family and its members or for the exercise of commerce.

Others are indirect, and fall immediately indeed on things or merchandise, but mediately on persons. To this class especially come duties concerning merchandise to be made or transported, and tolls concerning things to be sold or bought; likewise those which must be paid for the right of succession, for the registration of contracts, for the sealing of letters, for salt, tobacco, etc. Cf. Waffelaert, *de Just.*, II, n. 414; Vermeersch, o. c., n. 97; Willems, *Philos.*, III, p. 505; H. Pesch, *die Soz. Frage*, I, p. 144; *Staatslexicon*, v. Steuern.

Note. Taxes are not all those things which are imposed by the Office of posts or railways, etc. In all these things the State performs work as though a private man and enters a true contract with private persons. Yet very many statutes which are laid down by administrators are merely penal, for example that money not be joined to letters, that a ticket not be

handed to others, etc. Cf. Genicot, I, p. 574; *Ami du Cl.*, 1906, pp. 265, 367, 467; 1911, p. 369. The author of the article in the periodical *Linz. Quart. Schr.*, 1901, p. 388, seems to embrace the stricter opinion.

965. PRINCIPLES. I. All those in whose hands is the supreme administration of affairs can impose just taxes. The reason: this is necessary for sustaining common burdens.

We said 1. Just taxes: for since it is a question of an imposition burdensome to peoples, the burden must be divided equally.

But taxes are just if there are present: a) a grave cause, that is, the necessity of the common good, to which the worthy sustenance of the prince deservedly pertains, but not the mere utility or abundance of the prince; b) proportion of the tax, both with necessity, lest the people be burdened more than is equitable, and with the riches of individuals, so that those who have more ought also to pay more. Taxes are also just if there is lacking lesion of privileges conceded by the law of a Superior, for example of real immunity as regards clerics (cf. n. 201).

2. Can impose, and indeed in conscience, since supreme authority can direct subjects to their proper end. Yet from this it does not follow that all just taxes oblige in conscience, as we shall see immediately.

3. All those in whose hands, etc. For the imposition of taxes, since it tends to the ultimate and universal good of society, can arise only from supreme authority.

Hence these can impose them: a) emperors, republics, princes, together with assemblies if they exist; b) councils and Supreme Pontiffs, by reason of spiritual governance (cf. n. 873); c) cities, communities, with the prince approving.

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966. II. Officials and ministers are obligated from commutative justice to the just exaction of taxes. The reason: for whatever is held concerning the obligation of paying taxes, they are obligated to exact by office, by stipend. Therefore from commutative justice.

Yet from the presumed will of the Superior, collectors can act more benignly with the poor, with those who diligently pay, or who carry goods for their own use (III, 616).

967. III. Those defrauding direct taxes regularly sin against legal justice alone; those defrauding indirect taxes violate a merely penal law. The reason for the first is that subjects in general are held in conscience to observe just laws which directly conduce to the common good; which belongs to legal justice. To this pertain the words of the Apostle (Rom. 13:5): Render ... tax to whom tax is due. The reason for the second is that, as regards indirect taxes, the ordinary indications of merely penal laws are present: a) a very great fine; b) not so intimate a connection with the common good; c) disproportion with the state of fortune of each one, since at times certain indirect taxes burden the poor more than is equitable; d) the practice of the timorous; e) finally extrinsic probability. Cf. n. 183, 2.

We said 1. Those defrauding direct taxes, etc. Therefore we hold a middle way between the opinion which proclaims that all taxes oblige in conscience, and the opinion which says that all are merely penal.

The first opinion has as patrons Sanchez, Lacroix, Lessius, Lugo, etc.; among moderns Schindler and a few others. The second is held by Genicot, Bucceroni, Berardi, Gury-Ferreres. - St. Alphonsus (III, 616; *H. Ap.*, X, 81) rather inclines to the opinion of Lugo and Lessius, and advises this to peoples (see ed. G., II, p. 96). Aertnys, l. III, 377; Lehmkuhl, I, 1173; Noldin, II, 314; Hamm, *Steuermoral*, p. 310; Porpora, *Theol. mor.*, p. 383 defend our opinion.

Yet let it be noted: a) Although from what has been said it follows that there is an obligation of duly declaring the state of one's goods, so that the quantity of direct taxes to be paid by each can be determined, from this it does not follow that all things must be indicated to the line. Generally, as is established from custom concerning the value of buildings to be determined, to depress 1/4 or 1/3 below the value, even with an oath acceding, is not illicit (Lehmkuhl, l. c.).

b) In doubt, whether negative or positive, concerning the justice of a tax, there is no obligation of paying. Nor does the axiom stand in the way here: A commanding Superior must be obeyed in doubt; because the subject here must furnish a thing evidently burdensome and damaging, and these inconveniences, together with doubt concerning the power of commanding, outweigh the possession of the Superior (III, 617, ed. G., II, p. 100). But collectors, in doubt concerning the justice of the tax, are held to exact it (ib.).

2. Regularly. For it can happen that from the mind of the legislator or from usual interpretation, even as regards direct taxes, the matter is judged as merely penal.

In England, with Crolly testifying (*de Rest.*, n. 1032), tax laws universally are thought to oblige in the manner of penal laws. But in France and in Germany our conclusion is rather commonly admitted.

3. They sin, indeed not always gravely. But grave matter must be measured not from the quantity alone of the taxes defrauded, but also from the hope which the State has of recovering its right, and from the gravity of the harm which perhaps comes upon others from non-payment.

From this Schindler (II, p. 803) concludes that for gravity of matter in this case a greater sum is required than if it were a question of damage inflicted on the State in goods already possessed.

4. Against legal justice alone, so that from non-payment no obligation of restitution can be constructed (*Linz. Quart. Schr.*, 1909, p. 484 seqq.). Cf. *Pastor bonus*, 1908-1909, p. 67.

Therefore we depart altogether from the opinion of the distinguished Marres, Waffelaert, Koch, Linsemann, and others, who try to demonstrate that taxes oblige from strict justice (see their argument in Genicot, I, n. 574).

Note. In one case there would be an obligation of paying taxes from commutative justice, if namely a certain and determined quota had been imposed by authority on some group, for example of merchants or notable persons (*Kontingentierte Steuern*). For then, when one does not pay, others of the same category would certainly be held to pay more (Lehmkuhl, I, 1170; Schindler, l. c.).

968. Consequences. I. They sin and are held to restitution:

969. Legislators or inferior ministers who, in the distribution of burdens, for example in municipalities, knowingly are the cause why someone pays more than is due. For each one has a strict right not to bear an unequal burden.

970. Collectors. They are held to restore: a) to private persons, if they exact anything from them beyond the legal tax; b) to the treasury, if they have not employed the diligence due and suitable for exacting the tax; if, without a just cause, they have acted leniently or dissemblingly toward someone, so that he could defraud the whole duty or a respectively notable part of it; if by not imposing fines they knowingly add boldness to those defrauding, and the treasury thence undergoes damages; if they do not exact fines after the sentence, otherwise probably in the case in which no sentence has intervened; or if in any other way whatever they have connived with defrauders. For they must fulfill their office from justice, even if the law were merely penal (IV, 237).

971. Defrauders. These certainly are held to restore to the treasury, or according to others to pious causes: a) if from an express or tacit pact with collectors they have avoided payment of a just tax; b) if, by force employed toward them, they have refused to pay either a tax or a justly imposed fine; c) if by reason of a tax or fines which they justly paid, they have secretly stolen something. For in these cases justice is openly injured.

972. II. They are excused, at least from injustice, and on account of custom or interpretation sufficiently received: 1. All those from whom taxes were not sought. Wherefore, if there is no one present who exacts the duty, a merchant can without fault omit payment of the tax which is accustomed to be sought by reason of passage through a gate or over a bridge. Indeed Sanchez with others thinks it probable that not even those sin, at least against justice, who purposely hide themselves or their merchandise in order to avoid the request of the tax. The reason is "because taxes of this kind have been so received that they are not owed unless sought." 2. Those who, when questioned by collectors what merchandise they are carrying, what merchandise or at what price they have sold it, what is the value of goods accepted by right of succession, etc., weaken the truth. For since the collector could proceed with the greatest rigor and verify the matter, if he does not furnish this, he indicates sufficiently that he wishes to act humanely, and he is presumed not to conduct himself thus without reasonable cause. And this has force especially when the tax is very burdensome or doubtfully just.

973. Those who are so poor that, if they paid taxes, they could not feed themselves and their own, whether because they carry off moderate profit from their commerce, or are burdened by numerous offspring, or because they are oppressed by another's money, etc. "For natural Right demands this, that one first feed himself and his own, and then pay taxes" (III, 616, 617). Cf. Sanchez, *Consil.*, l. 2, c. 4, dub. 10, n. 11, 12.

974. PRACTICAL RULES. Peoples indeed are to be admonished that they pay taxes. But after the fact, they are not to be compelled to restitution "if they probably persuade themselves that in so great a multitude of duties they have paid something unjust, or have contributed competently to public necessities." Thus St. Alphonsus (l. c.) with Lugo and Molina, with whom Billuart, Gousset, and others commonly agree. Nor therefore is it expedient that a confessor inquire from penitents silent about a tax whether they are guilty of some defrauding, lest perhaps, if they are in good faith, he uselessly cast bad faith into them.

N. B. Concerning the mode of restoring on account of damages inflicted on the republic, see n. 1015, q. 3.

5. To What Is One Inflicting Damage by Occasion of Military Service Held?

Things to be noted beforehand. 1. Distinguish between hired soldiers, volunteers, who obligate themselves to serving for pay; conscripted soldiers, who are called to military service by universal or particular conscription; finally soldiers who hire themselves out in place of others.

2. Young men destined for military service can be considered either as to be conscripted, or as staying in camps, or as actually occupied in war.

971. PRINCIPLES. I. Soldiers in war are held concerning all damages which they have inflicted through private action. But in a war which they know to be unjust, each is held, in proportion to his own influence, concerning damages inflicted by the army itself. Thus of itself; but ordinarily they are excused, whether because of ignorance, or because of fear of a graver evil if they refused to obey, or finally because of physical or moral inability of restoring (cf. n. 1017).

II. Princes and commanders are held primarily, and in solidum, concerning the whole damage inflicted by the army. The reason is that they themselves were the true mandators, or at least because they did not impede the damaging action, to which they were held by office (cf. nn. 978, 988). See St. Alphonsus, III, 407, 580; Gousset, I, n. 1003.

972. III. Only hired soldiers are held from strict justice to military service; but it is not certainly established that young men called to military service are obligated in conscience to undertake the duty. The first is clear, because there is a contract. - As regards the second, authors disagree concerning the justice and the nature of the law which is named from conscription.

Some say that it is unjust, at least under this head, that it is opposed to distributive justice, since only families which have sons suitable for military service are compelled to undergo the hard yoke. - Others indeed deny that it is unjust, at least among nations for which soldiers hired by stipend cannot suffice, but affirm that it must be numbered among penal laws, because delinquents are most gravely punished. - Finally, others, and their opinion seems to be the more common, teach that the law of conscription indeed obliges in conscience, but only from legal justice. Cf. Pruner, *de Jure*, P. II, § 72, II; Schindler, II, p. 799.

From these things you will gather: 1. Young men who cleverly avoid military service, for example by lies, exaggerated words, previous mutilation, etc., probably are not held to restore: a) neither to the government, in the case in which others do not supply their places, because it is certainly more probable that the law does not oblige from strict justice; b) nor to others who somewhere supply their places, because it is not established that the aforesaid arts are at once unjust and of themselves efficacious for inflicting damage on them; otherwise he would be held to restore who, by not living rightly, has so weakened his powers that he cannot serve as a soldier. The truly efficacious cause of that damage is the will of the legislator who, when one fails, calls another to arms (cf. n. 949, Condition 2).

2. Young men who by bribes corrupt physicians or magistrates so that they may be declared unfit by them: a) certainly are held to no restitution if all young men fit for military service are assumed, since damage is inflicted on no one; b) but more probably they must restore in the case in which, when one is exempted, another must succeed him; for they are cooperators of formal injustice, for they efficaciously excite public officials to inflict unjust damage on another. For he who by law is not compelled to serve as a soldier has a strict right to preserve liberty. Nor may you say that money is licitly given to redeem an unjust vexation; for here the injustice of the law is not established, and therefore neither the injustice of the vexation, unless the matter is with clerics, or others, who by right are immune from that law. Thus Gousset, I, n. 1002; cf. Bonal, *Tr. de Just. et Jure*, n. 337; Haine, t. II, q. 196; Vermeersch, *de Just.*, n. 129; cf. also *Nouv. Rev. Theol.*, vol. 37, p. 381. Yet others opine that to corrupt officials or physicians is not an induction to an action to which they themselves, namely officials or physicians, would be held from commutative justice. See Lehmkuhl, I, n. 1177. At least the obligation from the title of strict justice is not established.

In practice one must act cautiously, both because most do not advert to the damage and are not guilty of formal injustice, and because very few would obey admonitions.

973. IV. Soldiers who desert the army sin, and are held to return. This is required by obedience or legal justice, and somewhere by the religion of an oath by which they obligated themselves to soldiering for the time prescribed by law; or even by commutative justice, if by a free pact they hired themselves out.

Yet they are excused: 1. if the war is certainly unjust; for then they are held to flee away, if they can (cf. n. 750, Hence, 2); 2. if they would encounter grave danger to salvation, for example if the means of confessing were not available in the article of death, etc.; 3. if, returning, they would be punished with death or other most grave penalties.

It is asked. To what is he held who had hired himself out in place of another, and then deserted military service?

Resp. He is held of himself: 1. to restore the price accepted, because he did not stand by the pact; 2. to repair the foreseen damage, if he for whom he had hired himself out is compelled to undergo military service. But if no damage and no danger of this kind is incurred, restitution does not seem to be urged, because the hirer intended nothing by the pact except his own liberation; if therefore the liberation remains, the hired man does not commit injustice, nor properly break the pact.

6. To What Is One Negligent in Office Held?

He who was negligent or imprudent in fulfilling his office can be held to restitution: 1. from unjust acceptance; 2. from damage inflicted on goods either of fortune or of soul.

974. PRINCIPLES. I. From unjust acceptance all stipendiaries who have not fulfilled the obligations of their duty are held to restitution. Concerning this matter the Roman Catechism speaks thus: "Those also are to be placed in the number of thieves who, when they have been hired for some private or public office, furnishing no or little labor, neglect the duty, and enjoy only the wage and price" (on the 7th Precept).

Hence: 1. A Bishop, canon, pastor, any priest provided with a benefice, or set over the care of souls or some office, if they are lacking to the law of residence, or do not satisfy the obligations imposed by the canons, illicitly and unjustly accept the honoraria assigned to themselves. But if they fulfill part of their duty, they can indeed retain for themselves the part of the honorarium which corresponds to the labor performed, but they are held to confer the rest for the good of the Church (cf. n. 2264, Quaeres, 2248, 2268). - 2. Judges, magistrates, professors, teachers, physicians, etc., who because of negligence, or because of long or frequent absence, neglect to discharge their office either toward the republic or community or toward a private person, are likewise held to restore that part of the stipend which corresponds to their negligence or absence.

975. II. From unjust damaging, whoever, whether on account of a stipend or without a stipend, has undertaken some duty and has inflicted damages on someone through gravely culpable negligence is held to restitution. The reason is that those undertaking some duty, even spontaneously, obligate themselves, at least implicitly and by quasi-contract, to performing it with ordinary diligence (III, 555; *H. Ap.*, X, 41). Recall the things said in n. 949.

Hence: 1. If someone knowingly taught false things and foresaw the damages probably going to happen thence to a pupil or to others, he is held not only to retract his false doctrine, but also to repair all damages which he foresaw would follow from it (cf. n. 513, 928). 2. If some pupil devoted himself to studies for an office to be obtained through the customary tests, and because of the professor's gravely culpable negli-

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gence did not obtain the office, or was compelled to frequent school for a longer time: the professor, and if he fails, the prefect of the school, culpably participant in the professor's negligence, is held to repair all the damages of the pupil or of his parents according to the estimation of prudent persons. Cf. Crolly, *de Rest.*, n. 1252.

ARTICLE III

On the Unjust Cooperator

976. NOTIONS. 1. Cooperator is taken here in a broader sense for every one who, besides the executor, has influenced the damage inflicted on one's neighbor, whether he did this by moving the executor to inflict damage, which we have said is scandal, or by furnishing him aid in the execution, which we have marked as cooperation in the stricter sense.

Cooperators, accepted in this sense, St. Thomas (2. 2, q. 62, a. 7) enumerates in the following little verses:

> Command, counsel, consent, flatterer, recourse,
> Participant, mute, not resisting, not manifesting.

2. Of these cooperators: a) the first six concur positively and directly, insofar as by mandate, counsel, vote, etc., they morally move the executor to inflict damage, or insofar as they physically participate with him; b) the three later are said to concur negatively and indirectly, insofar as they do not impede the damage which they can impede and which they are held from justice to impede.

Note. In France, by occasion of the unjust laws which were trying to overturn the Church and Religious Orders, there was no small labor of experts, so that for the different cooperators the degree of fault and the obligation of restitution might be established. Concerning this matter there exist grave responses of the Sacred Penitentiary, which above, in n. 526, II, we reported.

§ 1. ON THOSE WHO COOPERATE POSITIVELY

977. GENERAL PRINCIPLE. Those who cooperate positively in the damage of another are held to restitution, if their cooperation certainly was: 1. unjust; - 2. an influencing and efficacious cause of the damage; - and 3. theologically culpable. This is established from the things said concerning the unjust damager (n. 949).

Hence: 1. You are not held to restitution if the executor was already determined to inflict the damage by himself or through others, although by command, counsel, consent, etc., you gave scandal to him. On the contrary, you are held to restitution if by your action you truly moved him, even if certainly another would not have been lacking who would have moved him to the same thing (III, 562, 563).

2. If you influenced, not indeed into the very substance of the damage, but into the mode of the damage, for example that the damage would be inflicted more quickly, more spiritedly, or more easily by other means, you are not held to its reparation except insofar as that very mode was damaging, or certainly increased the damage; in which case you are held concerning the excess of damage alone (III, 576).

3. If you cooperated only materially, or physically, in the damage, and the principal agent certainly would still have inflicted the damage without your cooperation, you most probably are not held to restitution. Thus, for example, he is excused from restitution who holds a ladder for a thief climbing up, if the thief would have climbed up even without the aid (III, 563, fin.).

4. If there is doubt concerning cooperation, that is, concerning the influence of your mandate, counsel, consent, recourse ... taciturnity, etc., you are held to nothing (recall the things said in n. 949, it is added 4).

These things having been premised in general, one must speak of the individual cooperators. Cf. Lugo, disp. 19, s. 2; Lessius, l. 2, c. 13.

1. On One Mandating

978. NOTIONS. One mandating or commanding is said to be he who asks or commands something to be done in his own name. A mandate is given either expressly or tacitly, namely by word or by deed, by which someone signifies to another that it will be pleasing to him if he inflicts damage.

PRINCIPLES. I. The one mandating is held to repair unjust damage inflicted on a neighbor by force of the mandate and at least confusedly foreseen. The reason is that he is the efficacious and culpable cause of unjust damage; for he who acts through another is judged to act through himself. - But otherwise, if he afterward only approves damage inflicted in his name or for his favor (III, 558; *H. Ap.*, X, 43).

II. The one mandating is held concerning damages which come upon the mandatary on account of the execution of the mandate, if he drove him by fraud, force, or grave fear, and at least confusedly foresaw the damages going to follow. The reason is that he is the unjust cause of damaging. Otherwise probably, if the mandatary spontaneously, or hired by wage, wished to take upon himself the whole burden and consequences (Croix, l. III, n. 24).

From these things it follows: 1. The one mandating is held to nothing: a) if he revoked the mandate, and the revocation became known to the mandatary before the execution of the mandate;[197] b) if the mandatary, from avoidable error, damaged another, for example if, ordered to kill Peter, he killed Paul; c) if the damage happened from the fact that the mandatary of his own accord exceeded the limits of the mandate. For in these cases, the damage has followed not from the mandate, but from the malice or error of the mandatary.

2. He is held to restitution: a) a Superior who ratified a purpose of inflicting damage and truly influenced it; b) the one mandating, to whom it is established that the revocation of the mandate was not heard or understood by the mandatary, for example because of deafness, distraction, or because the letters were intercepted, etc. (cf. n. 949). See *Ami du Cl.*, 1913, p. 23.

3. If the one mandating had revoked his mandate, and the revocation had reached the mandatary later because of the negligence of the Office of posts, of itself the one mandating would be held to restitution, because his mandate continues to act, so that the action of the servant remains the action of the master; but he himself has recourse to the Office of posts, supposing that it could suspect that the letters to be transmitted contained the revocation of a mandate, and retained them from culpable negligence.

[197] Cf. St. Alphonsus, III, n. 566 with the annotations of Fr. Gaude (II, p. 63). There it is shown that, by the doctrine here proposed, the principles admitted in n. 963 (q. 2) and n. 994 (q. 2) are not overturned.

2. On One Counseling

979. NOTIONS. One counseling is said to be he who by counsel, prayers, promises, and therefore by corrupting, suggestion of a motive, or showing the way of harming, induces another to inflict damage.

He differs from one mandating because the executor of a mandate acts in the name and for the advantage of the mandator, but the executor of counsel acts in his own name, although from the impulse of another's counsel.

Counsel is: 1. by reason of the act, doctrinal, if the one counseling pronounces concerning the justice or injustice of some act; or impulsive, if he moves the executor to the act; 2. by reason of the mode, naked, if he merely states an opinion concerning the justice or injustice of the act, or merely exhorts to it, no motives being added; or clothed, if he brings reasons by which the counsel, whether doctrinal or impulsive, is confirmed.

980. PRINCIPLES. I. The one counseling is held to repair damage inflicted by the executor, if he gave to him unjust, efficacious, and gravely culpable counsel. This is established from the things said (n. 977), and is confirmed from the 39th proposition condemned by Innocent XI: "He who moves another to inflict grave damage on a third party is not held to restitution of that damage inflicted." Therefore the one counseling is held, who has known his own lack of skill and has foreseen that damage at least in a confused way.

It is irrelevant to the matter that, even without his counsel, the damage would have happened otherwise, for example by inundation, or that it would have happened that another would give the same counsel. Indeed the one counseling is held if counsel, of itself not sufficiently efficacious, moved together with the counsel of others (cf. n. 992 seqq.).

From these things you will gather: 1. One persuading a lesser evil to one prepared to inflict a greater evil with respect to the same person is held to restore nothing, because he is not the cause of the damage but the cause of the lessening of the greater evil. But he is held if he persuades this to the prejudice of a third party; for with respect to him reasonably unwilling, the persuasion would be an unjust cause of damage. Except if this third party ought from charity to suffer this lesser evil in order to avert the very grave damage of a neighbor, namely lest the neighbor himself fall into very grave necessity (cf. n. 520). St. Alph., III, 565, 577.

2. He who, to one already determined to damage, persuaded only the mode of inflicting it, is not held to restitution if the mode was merely accidental, as commonly are the circumstances of time, place, and means. Otherwise, if the mode has somehow redounded into the very substance, for example if it increased the damage, if from uncertain it rendered it certain (III, 563, 576).

3. II. The one counseling generally is not held concerning damages which come upon that very person to whom he gave counsel. The reason is that the one counseling, unlike the one mandating, brings no force upon the one executing; besides, he who seeks counsel uses it freely. But injury is not done to one knowing and willing.

Except: 1. if the one counseling, by reason of state or duty, is considered expert, for example an advocate, physician, confessor; - 2. if the counsel was given deceitfully, namely for this purpose, that damage would come upon the one seeking counsel; 3. if the counsel was doctrinal, and the one counseling affected expertise which he lacks. For in these cases there is deception and damaging injury, from which the obligation of restoring arises (III, 564, 578).

982. III. The one counseling who revokes the counsel given before the event of the damage is excused from restitution. The reason is that, although the counsel was even clothed, if the one counseling tries in the better way he can to dissuade the damage, by bringing forward at least the reason of eternal salvation, which for a Christian ought to outweigh all other worldly reasons, the damage no longer happens by force of the counsel, but from the malice alone of the executor. But if he cannot turn the executor away from inflicting damage, he is held from justice to warn the one to be injured, so that he may guard himself (III, 549).

3. On One Consenting

983. NOTIONS. One consenting is here understood as one who, by unjust suffrage, vote, or sentence, is the cause of another's damage. Here come those who decide or do something by common counsel; likewise counselors, deputies, senators, judges, etc., who concur positively in issuing laws or sentences, in distributing offices, etc.

The suffrage of the one consenting is either consultative or decretory, according as it is given by way of counsel only, or by way of sentence by force of which execution must be made. Besides, consent is given not only by positive action, but also by negation, absence, silence, abstinence from suffrage, etc.

PRINCIPLES. I. One consenting by a merely consultative vote is held to restitution just like one counseling, that is, insofar as he certainly and efficaciously has induced a Superior, or another, to inflict unjust damage. But this can become known

to him from circumstances, for example if he knows that the Superior was moved wholly or partly by his vote (cf. n. 980).

984. II. One consenting by a decretory vote is held to restitution like one mandating, that is, whenever and insofar as he knowingly and freely gave efficacious consent into the unjust damage of one's neighbor. For in this case, the damaging decree arises from all efficacious suffrages, or those necessary for the validity of the decree; hence each one is held in proportion and in solidum, as will be explained below.

Hence: 1. The one consenting is not held concerning the damage: a) If in good faith he cast an unjust vote; yet, when the error has been discovered, he is held, if he can, and indeed from justice, to revoke his vote. b) If the suffrage, although unjust and culpable, did not influence the damage; for example because it was given when the number of necessary votes had already been completed, or because it was authentically revoked at an opportune time. - c) If, fraud being excluded, he impeded another by his suffrage from obtaining a good to which the latter did not have a strict right (cf. n. 921).

2. But in truth, he is held concerning unjust damage: a) If he was among the first voters whose suffrages were necessary for defining the matter, even if he foresaw that others who would consent were not going to be lacking. b) If he was indeed among the last or among the superfluous, but gave the unjust suffrage from a prior agreement or conspiracy. - c) If at the same time with others, by way of one, he gave his vote, for example by acclamation (III, 566).

Note. As regards a judge who orders an unjust sentence to execution, see below n. 2292.

It is asked. Whether one doubting whether his suffrage was among the prior and necessary ones is held to restore?

Resp. The true opinion teaches that the one doubting is held like the others, in proportion, and, if others do not restore, to the whole; because at least by his suffrage he worsened the right which the damaged person had of exacting restitution of the damage from another furnishing suffrage, by rendering the matter uncertain. Hence there is by no means doubt that he is in some way a concause of the whole damage1 (Lugo, disp. 19, nn. 22 and 85).

Note. One consenting who is not held to restitution precisely by force of decretory suffrage, for example because he was one of the last voters, can be held by another title, namely: 1. as one counseling, if namely he foresaw that the Superior or prince, or a superior legislative assembly, would be moved by the great number of superfluous suffrages to approve an inequitable law or sentence which otherwise would not have been approved; 2. as one not resisting, if with his contrary vote he could have impeded the damage and ought to have done so from justice. See what is to be said in n. 988.

4. On the Flatterer and the One Receiving

985. I. A flatterer is he who, by praise, adulation, reproach of sloth, or otherwise, impels another to inflicting damage. He is subject to entirely the same obligations as one counseling, provided he knows, and this suffices, that he efficaciously influences the damage (III, 567).

II. One receiving or furnishing recourse is he who furnishes security or protection to an evildoer; from which follows the infliction of damage or the omission of restitution.

Such a one is held to restitution insofar as, with grave fault, he positively and efficaciously influences unjust damage: for example by receiving a thief, hiding the theft or the instruments of theft, and furnishing such things by which the evildoer is encouraged or helped to inflict damages, or not to repair those inflicted (cf. 949).

But he is not held who, after the theft has been perpetrated, helps the evildoer to flee, or who receives him into safety with the theft from friendship, or from office, as an innkeeper; provided by this he does not influence future thefts, by furnishing to thieves the hope of refuge in the future. Nor likewise is he held who receives a thief from fear of grave damage; for this one must generally be regarded as participating in the delict, and therefore as such must be treated as regards the obligation of restitution (III, 568; *H. Ap.*, X, 52).

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5. On the Participant

986. NOTIONS. A participant is twofold: one in the prey, another in the delict or in the damaging action (cf. n. 517).

Concerning a participant in the prey, or in the thing unjustly taken away, since he is the possessor of another's thing, we have already spoken (n. 940 seqq.). - Concerning a participant in the delict, there will be speech here.

A participant in the delict can cooperate in the damage of one's neighbor either formally or materially; if he cooperates materially, he can do this proximately or remotely, immediately or mediately, as we noted above (n. 517).

PRINCIPLES. I. He who formally cooperates with another in a damaging action is always held to restitution. The reason is that the action of such a cooperator is strictly, efficaciously, and formally unjust.

Hence, if damage has followed, he is held to restitution who acted as guard for the greater security of a thief or assassin. Likewise, he who by an intrinsically evil action has cooperated in the damage of another, for example if two consented in this, that they should set fire to buildings.

987. II. He who only materially concurs with another in the infliction of damage can be excused from sin and from restitution, if namely he acts from a just and proportionate cause, without a depraved mind of harming. The reason is that, in such conditions, cooperation is neither illicit nor unjust. 1. It is not illicit, even if it is an aid to a thief or damager, because it is licit from a just cause to cooperate materially in the sin of another (n. 519). 2. It is not unjust, because, in a conflict of rights, the lesser must yield to the greater, as we noted in n. 914. Besides, since each one has the right to preserve his own goods, that action is forbidden to no one which of itself is necessary and direct for averting his own damage, although indirectly and by accident damage may happen to another. Thus a sailor licitly casts another's merchandise into the sea, lest he himself perish (cf. nn. 739, 949, Condition 1). See the holy Doctor (III, 569, 571, 697).

Hence: 1. He who helps a thief, compelled by fear of death or grave infamy, does not sin, nor is he held concerning the damage; because the owner of the thing is held to yield his right of an inferior order, and to consent, even with the loss of his own goods, that another may provide for life or for his own honor. For in an unequal or inferior cause, the condition of the possessor is not better.

2. He who positively and directly, by immediate concurrence, helps a thief to inflict damage on account of fear of similar damage in his own goods, is held to restitution; because no one can cooperate positively and directly in the damage of another in order to preserve himself unharmed in the same genus of goods; for in an equal cause, the condition of the possessor is better. Yet: a) the one cooperating does not sin if he does this with the intention of compensating afterward; b) he does not sin, nor is he held to compensation, if without his cooperation the damage would certainly and equally have been inflicted; for the saying holds: "What profits me and does not harm you, you are held to permit"; c) he does not sin, nor is he held to restitution, who participates indirectly, or only by mediate concurrence, for example by returning a sword to one about to kill, when he does this because of fear of greater or similar damage. Read St. Alphonsus, III, n. 571 (ed. G., II, p. 67), who profoundly and, as he himself acknowledges, with no one preceding him, decides this most intricate question. See also the things said above in n. 520.

§ 2. ON THOSE WHO COOPERATE NEGATIVELY

NOTIONS. Negative cooperators are those who, on account of culpable negligence in their own office, are the cause why damage is unjustly inflicted on one's neighbor. Of this sort are the mute, the one not resisting, the one not manifesting.

The mute is said to be he who before the damaging is silent and does not warn, while he is held to warn. The one not resisting, he who, while damage is being inflicted, does not impede it, although he is held to impede. The one not manifesting, he who after the damage has been inflicted, does not denounce it, although he is held to denounce.

Negative cooperators are called some properly, others improperly. Negative cooperators properly so called are only those who from justice, from an office which has had its origin at least from a quasi-contract, must impede the damage of one's neighbor, and do not satisfy their duty; negative cooperators improperly so called are those who from other motives, for example of charity, legal justice, must avert these damages, and culpably do not avert them.

988. PRINCIPLES. I. Negative cooperators properly so called are held concerning another's damage if they could morally have impeded it and culpably omitted it. This is the conclusion of the principles in n. 949.

It is said 1. Could morally have done so, that is, with efficacy and without excessive inconvenience, respect being had to the gravity of the damage to be impeded, to the stipend accepted, etc., according to the estimation of prudent persons. The reason is that laws and pacts are accustomed to be accepted and observed so benignly (cf. ibid., Condition 3). Hence it happens that negative cooperators are often excused, because of grave fear, from reparation of damage (Lehmkuhl, *Cas. consc.*, n. 737).

2. And culpably omitted; because, without theological fault, there cannot be an obligation of restoring under the title of damaging, as was said in the preceding number. In doubt, the things have force which we noted in the same place, added 4. Cf. St. Alph., II, 40; III, 573; IV, 237.

From these things resolve: 1. A prince, magistrate, commander of war are held to restitution of damages which are given by wild beasts, robbers, soldiers because of their culpable negligence. - Likewise counselors, canons silent, absenting

themselves, not impeding an inequitable constitution or election. Likewise guardians, administrators of goods, etc., not impeding damages coming upon pupils, minors, churches. Likewise guardians of mountains, vineyards, forests, fields, fishponds, who do not impede damages, or do not manifest those done (compare n. 968, 2). Servants guarding the goods of the owner, specially committed to them, if they do not impede damages from outsiders. Likewise princes and owners of territories, if they know that public roads are infested by robbers and, when they can, do not impede, are held to compensate merchants and other travelers for the damages which they receive from those men.

2. A counselor, deputy, senator, etc., who in casting suffrages was the last voter and foresaw that it would happen that the unjust suffrage of others would be invalidated, weakened, or changed, is held to restitution if he omitted the voting. But in doubt whether it would have happened that others would retract themselves, they are presumed going to change counsel if they erred inculpably; otherwise if culpably, because then their depraved will possesses (III, 566).

Note. Not rarely it happens that stipended officials concur in inflicting damages not only by omission, but also by action. In this case, they are held to restitution under a twofold title, namely because of negative and positive cooperation.

989. II. Negative cooperators improperly so called indeed sin if they do not impede the damage of one's neighbor without grave inconvenience; but they are not held to restitution unless they are bound by the sentence of a judge. Thus commonly. Recall the things said in n. 949, Condition 1.

Hence: 1. A father, husband, master is not held concerning damages of subjects, unless he must forestall them from a special and public office; or unless by his silence he seems positively to approve those causing damage; or unless by his negligence he seems to intend the damage. The same must be said of a teacher toward disciples, of a confessor toward penitents, and generally of every Superior not publicly constituted for repelling the temporal damages of inferiors. 2. Nevertheless, positive law, and therefore the judge, deservedly takes notice against some of them, for example against parents, in order to render them more vigilant, as we have already said l. c., Condition 3, note 1 (cf. St. Alph., III, 40; Gousset, I, 963 seqq.).

CHAPTER III

On the Measure and Order of Restitution

St. Alphonsus, III, 579; ed. G., II, p. 71; Laymann, l. 3, s. 5, tr. 2, c. 6; Salmant., tr. 13, c. 1; Noldin, II, n. 498; Aertnys, tr. VII, n. 335, and other cited authors.

Since several damagers can act either separately, each his own thing, or jointly, and some can influence the damage more or less than others, hence from such order and measure of influence, the order and measure of restitution is to be derived. To explain this we shall treat: 1. of the measure of restitution to be assigned to each damager; - 2. of the order to be observed among those who must restore. But the order of those to whom restitution must be made will be described in the following chapter.

ARTICLE I

On the Measure of Restitution

990. Things to be noted beforehand. The measure of restitution, with respect to each damaged person, we already know from the preceding chapter, where it was said that damage must be repaired according to equality. - Here the measure must be determined with respect to each damager, when several have concurred, by diverse influence, in the same damage.

I. There is a threefold genus of cooperators: 1. There are given cooperators of whom one is the principal cause of the damage, while the others are his instruments. 2. There are given cooperators who are concauses of the whole damage, who produce the whole damage equally efficaciously, whether because conspiracy preceded, or because each necessarily needed the help of another, or finally because each sufficiently concurred in the whole damage, for example two counselors. 3. Finally there are given cooperators who separately, independently from others, effect this or that, from which the whole damage arises.

II. The measure of restitution is twofold: for some are said to be obligated in solidum, others simply pro rata.

1. The obligation of restoring in solidum, or solidarity, is the burden lying upon individual cooperators of repairing the whole damage inflicted; and it is subdistinguished. For it is a) either absolute, if someone is held alone to repair the whole damage, without having the right of recompensing himself from the other cooperators; b) or conditioned,

if each one indeed is held, unless others refund their part, to restore the whole, but with the right of recompensing himself from these. Hence such a one is said to be obligated pro rata and in solidum.

2. The obligation of restoring simply pro rata is the burden lying upon each one of repairing only that part of the damage which corresponds to his cooperation.

3. PRINCIPLES. I. Whoever was the principal cause of the whole damage is held to restitution in solidum absolutely. 1. In solidum, because he was the cause of the whole damage. 2. Absolutely, because the other cooperators were only his instruments, and whatever was done by them was done in the name and for the favor of that one. Thus all (III, 580, 4).

Hence, for example, a thief who calls others to carry away stolen things and uses them as instruments is held to restore in solidum absolutely. Say the same of one mandating. See nevertheless n. 995, 3.

992. II. Any one of the equally principal cooperators, concurring efficaciously in the whole damage, is held to restitution in solidum conditionally. 1. In solidum, because the whole damage must be ascribed to his action. 2. Conditionally, because, from the hypothesis, the same damage must also be ascribed to other concauses (III, 579).

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Hence, if two robbers inflict two equally lethal wounds, or despoil another, yet so that one does not suffice for completing the work, each is held in solidum conditionally to restoring (cf. *Ami du Cl.*, 1911, p. 202). - Likewise, he who furnished a suffrage necessary for an unjust sentence. Cf. Gury, I, 695; German Code, 830, 840; Austrian, 1301-1304.

993. III. Those who separately, without conspiracy and without mutual aid, have contributed to inflicting the same damage are held individually for the pro rata part of cooperation. The reason is that none of them was the efficacious cause of the whole damage. - Hence, if several, without mutual help or motion, concur in stealing a treasure, in stripping a vineyard, each of them is held only pro rata (*Praxis Conf.*, 44).

994. Questions. QUAER. 1. To what is an unjust cooperator held, if without conspiracy he concurs in an individual or undivided damage, for example in burning a house?

Resp. 1. If he concurs in the whole damage totally, or with total influence, namely so that without his work the damage would not have happened, he is certainly held to the whole, that is, pro rata and in solidum; even if, if he had failed, another certainly would have furnished the same work. Thus commonly with Lessius; because he was held from justice both not to place a partial cause of damage, and to deny his concurrence for impeding the whole damage.

2. If he concurs partially, or with partial influence, namely so that, if he had failed, the whole effect would still have been placed by other concauses, he is held only for his pro rata part. The reason is that in such a case, although the whole damage proceeded from him and the concauses indivisibly and by one action, nevertheless from individual persons it proceeded only partially; hence the whole damage is by no means to be imputed to individual persons. Thus probably Navarrus, Lugo, and others, against others who think that they are held in solidum conditionally (III, 579; Crolly, III, 1054).

QUAER. 2. Whether one is held in solidum, in doubt whether he was the cause of the whole damage?

Resp. With the common opinion: He is not held except to his part; because a certain burden, namely of restoring the whole, cannot be imposed for an uncertain obligation. - Except, unless by his action he rendered the matter uncertain (cf. n. 963, q. 2).

QUAER. 3. Whether, in the case of conditioned solidarity, he who doubts whether others have restored their part is held to restore the whole?

Resp. Affirmatively; because, in the case, the right of the owner of recovering the whole possesses; and the obligation of rendering him unharmed holds the guilty person until the latter has proved, or has been morally certain, that full payment has been made. Cf. n. 947.

PRACTICAL RULES. "The uneducated, especially those who are of a conscience little fearful, can with difficulty be persuaded to restore what has been accepted by others; and on the contrary, the owners themselves are content with their portion, for this very reason, that if someone were obligated to the whole, he would easily omit restoring, not to say what the others accepted, but even what he himself accepted" (III, 579). Therefore let the confessor exhort each of these to restore what he owes, without explaining the quantity, remitting himself to the dictate of that one's conscience. Cf. *Praxis Conf.*, n. 44; *H. Ap.*, X, 54. See the things already said in n. 929.

ARTICLE II

On the Order of Restitution among Unjust Cooperators

This question is closely connected with the preceding one. For to one knowing in what measure he ought to restore, it immediately comes to be inquired whether another, who cooperated with him in inflicting damage, is held to restore before him, or after him, or equally with him.

995. PRINCIPLES. I. The order of restitution follows the degrees of concurrence, if the cooperators have concurred in the damage in a different degree; for example, if one mandated, another counseled, another executed. Thus commonly (III, 580; cf. Lugo, disp. 19, s. 4).

Now the degrees are the following:

1. The first place is held by the unjust detainer of another's thing; for the thing cries out for the owner. If he consumed the thing in good faith, he is held to nothing, except insofar as he has become richer; if he consumed it in bad or doubtful faith, he is held to restore its whole price, because "he is regarded as possessor who by fraud has ceased to possess" (Rule 36, in the Sext). Here the things determined in nn. 935-948 have force.

2. When the unjust detainer fails, likewise if it is a question of mere damage, the one mandating is held, because he is the principal author of the damage. - The same must be said of one counseling who persuaded another to inflict damage for his favor, or who induced him into invincible error; for he is equated with one mandating.

3. The executor is held, under which name also comes a participant in the crime, for example an adulterer consenting because of fear; the reason is that the executor, as one physically influencing the damage and acting also in his own name, is the principal cause of the damage after the one mandating; therefore he must precede the one counseling properly so called and the others.

4. Other positive causes are held, such as those giving counsel for the favor of another, etc. But among these there is no order, because there is no subordination; for the one counseling does not act through the one consenting, nor the one consenting through the flatterer or receiver. Therefore the whole primary damage cannot be imputed to any one (cf. 996).

5. Negative causes are held, namely in the defect of all those positively cooperating. But among these also no order is to be assigned, because none of these causes is the instrument of another. Yet from contract he is held before the others to whom care of the thing was specially committed. Cf. Lehmkuhl, I, n. 1210.

6. II. Cooperators who have concurred in the same degree must restore indiscriminately, for example two mandating, two consenting. Yet attention must be paid to the measure of influence or efficacy which each contributed to perpetrating the injustice (III, 581).

From these things you will deduce: 1. If the principal cause, or cause of a superior degree, has restored or obtained condonation, the secondary causes which come in an inferior degree are held to nothing.

2. If one of the secondary or subaltern causes has restored or obtained condonation, the superior cause is not for that reason freed; for this cause must make unharmed either the inferior cause which has already restored, or the owner who condoned to the inferior cause.

3. If one of the causes obligated pro rata and in solidum has restored the whole, the others are held to refund their parts to him. If any of them cannot or will not restore, his part must be returned by the rest. - If he has obtained condonation, the other causes of the same degree are not for that reason freed, unless the condonation was altogether full, or can deservedly be presumed such.

It must be noted "that if a creditor promises to one of the debtors equally principal that he will not molest him, he is judged to remit that one's part; for if he were to exact the whole from the others, that one would be compelled by them to restitution, and thus the promise would be vain" (III, 581; cf. Laymann, l. III, tr. 2, c. 6, nn. 3-5).

CHAPTER IV

On Those to Whom Restitution Must Be Made

St. Alphonsus, III, 589; ed. G., II, p. 77; Lessius, l. 2, c. 4, d. 6 and 7; Lugo, disp. 21, n. 102; Lehmkuhl, I, n. 1214; Aertnys, tr. VII, n. 344; Tanquerey, II, 552.

We shall say: 1. to whom in general; - 2. to whom it must be restored first.

ARTICLE I

To Whom Restitution Must Be Made

The injured owner, to whom restitution is owed, is either certain and known, or doubtful among several, or entirely unknown; or finally he cannot be approached.

997. PRINCIPLES. I. If the owner is certain and known, restitution must be made to him, or to his successor. For the thing cries out for the owner.

Yet: 1. If the thing was accepted from the hands of a third just possessor, for example from a lessee, custodian, etc., it must be restored to this third party, and not to the owner, unless it is foreseen that he will probably abuse it, with injury to the owner (*H. Ap.*, X, 64).

2. "Things accepted from a son under paternal power, a pupil, a madman, a wife, a religious, if they are from those goods whose administration does not belong to him, generally must be restored to the father, guardian, husband, prelate" (III, 596, 4). - But since different things are prescribed in different regions, one must ordinarily stand, in this matter, by the very words of the law.

3. If the creditor has been compelled to make a cession of his goods, restitution and payment of debts, generally, must be made to the administrator whom public authority has constituted.

Yet sometimes it is licit to restore even to the creditor himself, if namely he is in such necessity that he absolutely needs that debt for living; because, as is commonly taught, one ceding goods can certainly withdraw those things which are necessary for life for himself and his family (cf. n. 1023).

4. Restitution must be made to the community, if the community has suffered damage. Yet restitution of goods belonging to the republic can also be made to the poor. See what will be said in n. 1015, q. 3.

Restitution must be made to the injured community, even if this society, by reason of its end, were depraved, for example a non-Catholic sect. The case is excepted in which the society would not have the right of existing, for example Freemasons; for then restitution would have to be made to its members (Holy Office, Sept. 21, 1842). Concerning the mode of restoring to an insurance society, see ibid., q. 2.

From these things conclude: a) He who must restore to the heirs of the deceased cannot extinguish the debt by means of Masses paid for the favor of the deceased. Except if the consent of the heirs is truly presumed. *Ami du Cl.*, 1913, p. 23.

b) If someone, with the owner being certain, should restore to the poor by counsel of a confessor, in the rigor of right he would not satisfy. Yet the holy Doctor (III, 704) does not dare to oblige him to restore again to the owner.

Things to be noted from civil law: 1. Payment made in good faith to him who possesses the title of the credit is valid, even if afterward the possessor of the credit suffers eviction.[198] - 2. Payment made to a creditor who is incapable of receiving it, say a minor, one interdicted, etc., is null. Except, unless the debtor knows that the thing which he paid brought utility to the creditor.[199]

998. II. If the injured owner is doubtful among several, according to the number of persons concerning whom there is doubt, it must either be divided among them, or restored to the poor, or to pious causes, or to citizens.

999. If the owner is doubtful among a few, three or four of some place, the thing or price must be divided among them, nor can it be given to the poor; because the owner ought not to be deprived of the hope which he has of recovering part of his thing. There can also be place for composition among all these.

1000. If the owner, or the few owners who certainly have been defrauded, are doubtful among many, for example because they cannot be discerned among the inhabitants of a place, restitution is not necessarily to be made to the inhabitants of that place, but it suffices if it is made to any poor persons, or to pious causes.[200] The reason is that the thing very likely cannot arrive into the hands of its proper owner, or only in a very small portion (III, 589).

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[198] French Code, 1240; Italian, 1242; Spanish, 1164; German, 822, according to which a somewhat different disposition has force.
[199] French Code, 1241; Italian, 1243; Austrian, 1424; Spanish, 1163; German, 107.
[200] See n. 1083, II, what pious causes are.

3. If many uncertain owners of some community have been damaged, restitution absolutely must be made to the citizens of this injured community, or at least to the poor.

a) It must be made to the citizens when this is morally possible, say if a merchant has defrauded many in weight or price, and can thereafter without infamy increase the weight or diminish the price toward ordinary buyers, who are presumed to have been defrauded. b) It must be made to the poor of the place, some reasonable cause acceding, say if someone cannot restore to the citizens without some notable inconvenience, or if the necessity of some who are very needy urges, to whom those citizens are presumed not to be unwilling that restitution be made (*Praxis Conf.*, n. 41, 3).

999. III. If the owner is completely hidden or cannot be approached, another's thing can either be retained, or must be handed over wholly or in part to pious causes according to the diversity of circumstances.

1000. If the thing was accepted in good faith, say if someone from inculpable error accepted more than was owed, it must be regarded as a thing found by chance. Wherefore, if the owner, moral diligence having been made, cannot be found, the thing can be retained, because it is regarded as abandoned (cf. St. Alph., III, 603). See the things said in n. 884 seqq.

1001. If it was accepted in bad faith, or from delict, according to the common opinion it must be spent in alms or in other pious causes, for the salvation of the owner. For: a) such a thing cannot be retained, because no one ought to bring back advantage from his own malice; b) it must be spent on the poor or on pious causes, and not for another use, because such is presumed to be the will of the owner. Concerning this there is certainty from canon Law, as regards usurious and simoniacal gain; and general custom bears so, as regards other cases, which custom rests upon natural Law, as Lugo notes (disp. 21, n. 100). Cf. Lehmkuhl, I, 1216.[201]

1002. If it was accepted in doubtful faith, then, while the doubt perseveres after due inquiry, it must partly be expended on pious causes, and can partly be retained (cf. nn. 945 and 946, 3). See the holy Doctor, III, 588; *H. Ap.*, X, 64-70.

Things to be noted. a) If, the due diligence for finding the owner having been passed over, the thing has been spent on the poor, the damage must be repaired to the owner afterward appearing. Otherwise if, all circumstances being considered, it is prudently judged that it can no longer happen that the owner is found; because, in this case, the poor person acquires absolute ownership of the thing, without any burden of restitution (III, 589, 590).

b) If none of the owners, whether known or doubtful, was gravely injured, restitution must be made to them only under light sin, as is clear; but to the poor or to pious causes, under grave sin, because the whole damage inflicted on the community is grave, as is supposed (III, 534, q. 2).

c) If the thief himself or damager is poor, he can, from prudent estimation, apply to himself or to his family the restitution owed to the poor (*Praxis Conf.*, n. 44, 3).

It is asked. To whom must a simple damager restore, if the owner who suffered the damage is unknown, or cannot be approached?

Resp. By fiction of right, a damager by that very fact becomes richer, because he retains something which because of the damaging he ought to pay. Therefore it seems that the same principles must be applied to him as to a thief who detains the thing of another. Hence, in the case, the damager must restore to the poor. Thus probably Lugo (disp. 21, n. 100) and others. Yet probable also is the opinion of those who say that in the case restitution must be made to no one: for the damager does not retain another's thing; besides, the obligation of restoring to pious causes is not altogether certainly imposed by natural law. See Aertnys, l. III, n. 346, q. 4.

N. B. Concerning composition with the Holy See over uncertain debts, see n. 1029.

ARTICLE II

To Whom Restitution Must Be Made First

1000. If a debtor can satisfy all his creditors, no order necessarily must be observed in restoring. Otherwise, the order of creditors must be observed (III, 684). Cf. Lessius, l. 2, c. 15; Lugo, disp. 20, s. 1-7.

[201]There are not lacking those who, at least for those who before baptism sinned in the aforesaid way, establish the obligation of restoring solely according to the norm of natural Law. Cf. *Linz. Quart. Schr.*, 1908, p. 338.

This order demands two things for itself: 1. one, that satisfaction be made wholly to the prior class of creditors, no account being had of the later class; 2. the other, that, if goods do not suffice for satisfying the creditors of the same class wholly, satisfaction be made to each of them for the pro rata part.

The aforesaid order is prescribed either by natural law or by positive law. But before all, the order which positive law prescribes must be observed, insofar as it is a determination of natural law itself; and it must be noted that the order established by positive law obliges in conscience whenever it is not repugnant to natural Right (III, 689, 6).

§ 1. ORDER OF CREDITORS FROM POSITIVE LAW

1001. The order of creditors varies according to the various kingdoms.

Before all, another's thing existing in the individual with the debtor must be returned to the owner. Cf. n. 995, 1.

As regards creditors, from modern Law the first place is obtained by privileged creditors, according to the order established by law; in the second place come the other hypothecary creditors; finally, in the third place, chirographary or common creditors, who enjoy no prerogative of right (cf. *H. Ap.*, X, 109).

1002. I. Privileged creditors. By privilege here is understood the right which the quality of the credit so grants to a creditor, that this creditor is placed before the other creditors, even hypothecary ones. Privileges of this sort can be over movables, or over immovables, or over each at the same time, according as the creditor has precedence so that payment may first be made to him from the debtor's movable goods only, or from immovable goods, or at the same time from each. - Besides, privileges are general or special, according as they extend to all movables or immovables, or only to certain special ones.

Among privileged credits generally come judicial expenses, funeral expenses, medical expenses for the last illness, stipends of servants, debts for maintenance, wages of architects and workers for constructed buildings, etc. Let the particular law of each place be seen.[202]

Note. The order among the privileged themselves is established not from priority of time, but from the quality of each credit, to which the law itself assigns its own place or degree of precedence.

1003. II. Hypothecary creditors. A hypothec is a real right which a creditor has in some immovable good, so that from it he can obtain payment if the debtor does not otherwise pay. A hypothec is either legal, or judicial, or conventional, according as it is constituted by law, by judgment, or by pact. But in Germany, only the conventional one has force.[203]

A legal hypothec is held: 1. by a wife in the goods of the husband, for recovering the dowry; 2. by a minor or one interdicted in the goods of his guardian; 3. by the government, municipalities, and public institutes in the goods of their administrators, who are subject to rendering an account.

A judicial hypothec, from the decree of a judge, is established in favor of those who have obtained the case; if, for example, a judge condemns someone to repair certain damage, then by force of that sentence all the immovable goods of the condemned person are burdened by hypothec for repairing the damage.

A conventional hypothec is a solemn contract by which, the determined formalities being observed, a person habilitated for contracting obligates specially designated goods to the creditor, in assurance and payment of a determined debt. The goods of minors, interdicted persons, and absentees cannot be burdened by hypothec without the consent of the Council of the family or the sentence of a judge (cf. n. 1174).

From the new laws: 1. Hypothecary privilege has no force except from the day of inscription before the conservator of hypothecs. 2. No order is observed among those who are inscribed on the same day or under the same number; but each has a right for the pro rata part of the debt. But for others, who are inscribed on different days or numbers, the rule has force: "He who is prior in time is stronger in right."[204]

§ 2. ORDER OF COMMON CREDITORS FROM NATURAL LAW

From the law of nature few things are certain, and therefore several are controverted.

[202] French Code, 2095-2113; Italian, 1952-1963; Spanish, 1921-1929; in Austria the law of Dec. 25, 1868 has force (cf. Delama, *de Just.*, n. 365); in Germany the law of May 17, 1898, 261 (cf. Kurschner, *Lexicon des d. R.*, v. Konkursforderungen).

[203] Cf. Barre, *Burgerl. Gesetzbuch und Cod. civ.*, 59 seqq.; Austrian Code, 449.

[204] Cf. French Code, 2114-2203; Italian, 1954-2075; Spanish, 1874-1880, Hypothecary Law, Feb. 8, 1861; German, 879.

1004. PRINCIPLES. I. Another's thing, existing with the debtor, must be returned to the owner, nor can it be given in payment to others. The reason is that the thing cries out for the owner, and debts must be paid from one's own things, not from another's. Therefore the owner of the thing must always be preferred, unless positive law intervenes, as we said in n. 936. Cf. Lugo, disp. 20, S. 2.

II. Debts from an onerous title, whether they have arisen from contract or from delict, must be paid before those which rest only on a gratuitous title. The reason is that in a gratuitous pact the condition is always understood: that it can be done without damage to a third party; or: unless the state of things is notably changed. For the axiom urges: "No one is liberal unless liberated."

Hence the debts of the deceased must be paid before all vows and legacies, even pious ones (III, 684-689).

1005. Less certain, yet probable, are the following:

1006. Certain creditors are probably to be placed before uncertain or unknown creditors. The reason is that uncertain or unknown creditors are presumed to consent to this: both so that the debtor may be freed from certain creditors pressing him, and so that they themselves may preserve their right intact, in the case in which afterward, circumstances having changed, they may be able to recover it. Thus commonly.

But the opposite opinion also is probable, which says that then the poor are equal in their right with certain creditors: "For such is presumed to be the will of creditors, that what cannot be restored to them be restored to the poor for their souls" (III, 687).

2. Poor creditors can probably be preferred to the rich. The reason of St. Thomas (Opusc. 73, c. 18, v. fin.) is that the poor person suffers greater damage.

But others more probably say that restitution must be made pro rata to both the rich and the poor, because commutative justice attends only to right, not to persons.

Except the case in which other creditors would be held, from the precise obligation of alms, to assist such a poor creditor (III, 691; *H. Ap.*, X, 113).

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3. Creditors prior in time can be placed before later ones, according to the more probable and more common opinion. For Rule 45 in the Sext, "He who is prior in time is stronger in right," although it is assigned by civil law only for hypothecary creditors, is nevertheless assigned by canon Law for all, and is founded in the law of nature itself.

But the denying opinion also is probable, because goods are not obligated to chirographary or common creditors, but the person of the debtor himself; and this equally for all, without priority (*H. Ap.*, X, 112).

4. If one of the creditors first seeks payment in court, the whole debt can be paid to him, even if he is later in time than the others; because the sentence of the judge confers privilege upon him. And the same must more probably be said if he seeks outside court; because laws favor the watchful and confer on them a species of privilege (III, 692; *H. Ap.*, X, 114).

Except if the cession of goods has already been publicly declared; because then the debtor already exists stripped of the administration of his goods, and juridic cession confers on all common creditors a right to the rate of each one's part (cf. n. 1021).

1006. From these things you will gather: a) The debtor can wholly satisfy a creditor having a probable right of precedence, but he is not held. But the creditor, when payment of this kind has been made, can retain it. Thus, namely, from the principles of equiprobabilism (cf. n. 74).

b) A debtor unequal to paying all cannot wholly satisfy a creditor having neither a certain nor a probable right of precedence, but only pro rata, just like the other creditors of equal degree. Wherefore, according to the truer opinion, if the creditor has accepted full payment offered to him voluntarily, he cannot retain it, but from it he must restore to the other creditors their due part. "Nor does it profit the creditor that he accepted in good faith; for although by accepting he did not do injury to the other creditors, nevertheless by retaining with their damage he does so, since they had at least an equal right to the goods of the debtor" (III, 693).

Nevertheless, if a creditor who in good faith accepted full payment cannot easily be brought to believe that he is held to restitution, especially when he is not constrained to it by positive Law, restitution does not seem to be urged. - Besides, because we are dealing in a matter of strict right, the unjust acceptance must be altogether established. There are not

lacking authors who with Lugo say that the creditor concerning whom there is speech is not held to restitution. Cf. Lehmkuhl, I, n. 1221.

CHAPTER V

On the Circumstances of Restitution

St. Alphonsus, III, 676; ed. G., II, p. 151; *H. Ap.*, X, 104; Lugo, disp. 20; Billuart, Diss. VIII, art. 14-19; Laymann, l. 3, s. 5, tr. 2, c. 10; Salmanticenses, tr. 13, c. 1, where at length; Lehmkuhl, I, n. 1222.

1007. The things to be treated here are set forth in the following general principle:

Restitution must be made at the time, place, and mode in which the right and utility of the damaged person require it, and in which it can morally be done by the debtor, that is, without grave inconvenience which he would suffer in his own thing beyond the debt (III, 676). - This principle indeed contains all things, but for greater understanding of the matter it must be explained a little more broadly.

1. AT WHAT TIME RESTITUTION MUST BE MADE

1008. PRINCIPLES. I. Restitution which obliges from delict or from possession of another's thing must be made as soon as it can be made. For natural right requires that another's thing not be retained when the owner is reasonably unwilling. Recall the things said in n. 926.

Hence: 1. He who adverts to the obligation of restitution and without just cause defers restitution for a notable time sins gravely, if thence the owner suffers grave damage, or restitution becomes impossible. - Otherwise, if the delay were moderate, for example of 20 days, and the creditor neither suffered grave damage nor was judged gravely unwilling (III, 679).

2. He who defers from a just cause, for example to avoid scandal, infamy, etc., does not sin. But in truth, if the debt is from delict, a thief, although he justly defers, is held to make good the whole damage which the creditor thence suffers, because through the theft previously perpetrated he exists as the cause of the damage. Thus from the common and more probable opinion. Otherwise if the debt is from another title, for example from contract, or from possession of good faith. - Otherwise also if the owner deservedly is judged not to exact this; or if the damage was in no way foreseen (III, 680).

Note. Another opinion, not improbable, says that a thief, if he justly defers, cannot be obligated to compensate damage coming upon the owner from the delay. The reason is that the thief, who is supposed to wish to restore, ceases to be an unjust damager as regards new damages. Besides, the owner is judged to consent to the delay, if the cause of deferring is just.

1009. II. Restitution from contract, or rather payment, must be made at the time concerning which agreement was made. Where the time was not determined, the debtor does not sin gravely if he does not restore until he is admonished by the creditor. The reason is that the presumed will of the creditor so bears.

Except, unless the creditor omits to warn because of fear, forgetfulness, or inability; or unless the debtor obligated himself with an oath, because an oath of itself obliges as soon as possible. Indeed, although the creditor seeks payment, he is not to be condemned of grave fault who defers to pay a debt from contract without grave damage of the creditor; because such delay does not seem gravely injurious, nor therefore is the creditor judged gravely unwilling (III, 678, 680).

Note. A creditor, unless he is driven to this by pact or sentence of a judge, is not held to accept the debt in parts. Thus from civil and natural Law.[205]

2. IN WHAT PLACE RESTITUTION MUST BE MADE

1010. PRINCIPLES. I. A possessor of good faith satisfies if he restores the thing in the place where he possesses it. Hence, he is not held from justice to transmit the thing to the owner if perhaps the owner dwells in another place. The reason is that he is not held to restore to the previous state him whom he did not cast down from it through formal injury (cf. n. 935). Otherwise nevertheless from charity, short of grave inconvenience.

[205] French Code, 1244; Italian, 1246; Austrian, 1415; Spanish, 1169; German, 266.

1011. II. A possessor of bad faith and an unjust damager must restore the thing in the place where the owner would have had it if it had not been taken away, and this at their own expense. The reason is that the owner unjustly damaged must be preserved unharmed (cf. n. 941).

As regards expenses to which the thief is held in order to restore the thing to the owner, some oblige him to any at all; others only to those which are equivalent to the value of the theft. - But the more probable opinion with Lugo (disp. 20, n. 190) says that a thief generally is held to transmit to the owner the thing, or the value of the thing if the thing itself cannot be sent, although the expenses of transmission would be twice greater than the debt. But if the expenses surpass this proportion, restitution can either be deferred, if namely there is hope of later preserving the owner unharmed, or, if such hope is lacking, must be made to the poor, from the presumed will of the owner. It is also probable that a thief can defer restitution which would have to be made with grave damage to himself, provided the owner does not suffer similar detriment from the delay of restitution (III, 598, 697, 702). - Besides, as Aertnys notes (l. III, 353), this question today is superfluous in many cases, since the value of the thing can easily be sent almost everywhere among nations.

Note. Those expenses which the owner would have had to make for preserving or carrying the thing can always be deducted by a possessor of bad faith (III, 677).

1012. III. A debtor from contract must pay in that place concerning which there was agreement between the parties expressly or tacitly. Tacitly, that is, according to the laws which have force for various contracts. Regularly, pacts set aside, payment must be made in the place where the contract was entered upon, and at the expense of him in whose favor the contract was made (III, 678; cf. German Code, 269, 270).

1013. It is asked. Whether a debtor is freed if the debt transmitted through a messenger has perished fortuitously or by fault of the messenger?

Resp. Dist. 1. If he was a possessor of good faith and sent the thing through a faithful messenger, so much the more through a confessor, he is freed from the obligation of restitution. The reason is that, fault, delay, and pact being excluded, the thing perishes for the owner or creditor. Yet he would be held after the sentence of a judge if juridic fault had intervened.

2. If he was a possessor from delict, he is not freed. The reason is that a debtor of this sort is held absolutely to render the creditor unharmed, and therefore to undergo every danger, even fortuitous. And although the creditor is presumed to consent to restitution through another, lest the thief betray himself, nevertheless he is not judged and is not held to remit his right as long as he has not been made unharmed (cf. *Ami du Cl.*, 1910, p. 746).

See nevertheless how St. Alphonsus tempers his opinion (III, 704; ed. G., II, p. 172). For he adds: "Because Lessius and Sporer do not dare to condemn the contrary opinion, which frees the thief from obligation, neither do I dare."

3. If he was a debtor from contract, he is freed in the case in which the creditor has ownership of the thing, as in deposit and commodatum. Otherwise, if ownership of the thing is with the debtor, for example if it is a question of paying the price of a thing bought (III, 704; cf. Gury, I, 711).

Even in this case, there are not lacking those who affirm that the debtor is freed if he transmitted the debt through a confessor. See St. Alphonsus (l. c. at the end). Cf. Lehmkuhl, I, n. 1224.

Note. The debtor, whoever he may be, is exempt from every burden: 1. If the creditor, likewise if the law or judge, has designated the person through whom, or the mode in which, he wishes the thing owed to be sent to him. 2. If he left the liberty of choosing the person whom he wished, provided a prudent and faithful person is chosen. - Therefore a confessor, says Konings n. 794, who has assumed upon himself the burden of restoring for a penitent, will prudently ask the creditor by what reason he wishes the thing to be sent to him (cf. n. 1014, 1). Cf. also the things which Aertnys wisely notes, III, n. 357.

3. HOW RESTITUTION MUST BE MADE

1014. PRINCIPLE. Generally it is required and it suffices that restitution be made in that mode by which violated justice is fully repaired, or repaired according to equality. This is established from the notion of restitution (n. 924).

Hence: 1. It is not necessary that restitution be made through the debtor himself; but it can be made through any other, provided the thing is returned to its owner. It can be made, for example, through a confessor, if necessary; but then great caution is needed, both that the seal of confession remain uninjured and that the penitent know that the creditor truly has received the debt, lest any suspicion ever be able to arise against the probity of the confessor.

2. It is not necessary that restitution be made with the owner adverting; because this is not required so that he be unharmed. Thus, for example, a debtor can restore by increasing weight or measure in selling, or the owed work in

laboring (cf. 998, 3).

3. Restitution made through a simulated donation is valid, more probably, as is commonly taught. Yet if the creditor, moved by gratitude, should repay another gift, this would have to be restored again to him, because an antidoral donation, in this case, would rest upon a false foundation, and therefore would not be valid (*Ami du Cl.*, 1906, p. 249).

4. In place of restitution, a gratuitous donation made to the creditor by the debtor is also valid, although the latter is unmindful of the debt and does not attend to restitution (III, 700, 2). Say the same of alms, if namely someone ought to restore to the poor.

Let it be noted: a) If the creditor is conscious of the injury done to himself, but ignorant of the author, the restitution is prudently to be manifested to him, so that he cease from every inquiry. A fortiori it must be manifested to one knowing the author of the injury, so that he abstain from enmity, from repetition, from occult compensation. b) If someone has publicly offended against justice, he is also held, at least from charity, to repair scandal (cf. n. 514).

1015. Questions. QUAER. 1. How must restitution be made by domestics?

Resp. 1. A wife and children are held to restore from their own goods. But if they do not have goods of their own: the wife is held by thrift and work to repair the damage, or at least after the death of the husband, in the division of common goods, to compute the debt into her own part; likewise the son is held to bring thefts into the division of the inheritance, if the quantity of the thing taken away is very great, and the father has not remitted restitution tacitly or expressly (III, 542, 546). - 2. Servants, if they are unable to restore without great difficulty, are to be ordered to compensate by extraordinary offices and services as much as they can (cf. n. 907).

QUAER. 2. How must restitution be made for damages inflicted on some private society, for example an insurance society against fires, etc.?

It must be noted that here it is not a question of a public insurance society which belongs to the treasury; in the following question there will be speech concerning this.

Resp. Some opine that it is impossible for restitution to arrive certainly to the true owners, and to each one of these for the part due to him, if it must be made to so-called mutual insurance societies, or at least to those of which there are many members, for example for railways; because after damage has been inflicted on the society and before restitution, perhaps very many members have left it, and it is unknown who they are and in what portion they were members. This seems to us to have force only for the case of the dissolution of the society; for to members who leave the society, others succeed with right to the credits and obligation to the debts of the society. Hence of itself restitution must be made to the administrators of the society.

But in the case in which it were established, for example because of the unfaithfulness of officials, that restitution will not be transmitted to the treasury of the society and distributed to individual members according to their own pro rata part, restitution would have to be made to pious causes (Aertnys, l. III, n. 358; Konings, n. 1040).

The same must be said if it is established that the societies are reinsured; for then, if damage comes upon them, it will certainly be compensated for the greater part. But those whom the damager ought to make unharmed remain unknown in very many cases (cf. Gopfert, II, n. 126).

QUAER. 3. How must restitution be made for damages inflicted on the republic?

Resp. 1. Besides the means perhaps assigned by law, a law of this kind exists in Austria; for Belgium, cf. Haine, II, q. 170, an easy and efficacious mode is given, consisting in this, that the one liable to restitution buy and burn obligations of the public treasury, or public seals for freeing letters from tax (*timbres-poste*, *francobolli*), or something else of the same kind. 2. If no apt means is at hand, restitution must be made for pious uses. For such restitution certainly profits the republic, because it will have to spend less on the poor; and besides, in many places, it can be considered as compensation for injuries inflicted on the Church (Konings, 795).

CHAPTER VI

On Causes Excusing from Restitution

St. Alphonsus, III, nn. 696-706; ed. G., II, p. 161; Lugo, disp. 21; Lessius, l. 2, c. 16; Billuart, tr. VIII, art. 20; Carriere, n. 1267; Lehmkuhl, I, 1228; Reuter, P. III, n. 351; Noldin, II, 514; Genicot, I, n. 557; Aertnys, tr. VII, n. 359.

1016. Causes which excuse from restitution are those on account of which an obligation of restoring already contracted is either suspended or entirely taken away.

The general principle can be stated thus: Whenever the creditor reasonably ought to consent that restitution be deferred or omitted, this can be deferred or omitted, even if the creditor were in fact unwilling. The reason is clear: for where the owner is not reasonably unwilling, the detention of another's thing cannot be called unjust. Cf. n. 727.

But to elucidate that principle, we shall treat especially: 1. of causes which suspend the obligation of restoring; - 2. of causes which take it away.

ARTICLE I

On Causes Which Suspend the Obligation of Restoring

Besides invincible ignorance, which as long as it perseveres excuses from restitution, three other causes are numbered, namely: 1. the inability of the debtor; - 2. damage of the creditor or of a third party; - 3. cession of goods.

Whether doubtful payment of a debt excuses, see the things said in n. 947.

1. Inability of the Debtor

There can be a twofold inability of restoring: a) physical or absolute, when the debtor does not have whence he may restore; b) moral, when indeed he absolutely has whence he may restore, but he cannot restore without great difficulty, whether because of present necessity of himself or of his own, that is, of children, father, mother, spouse, or because of damage going to follow from restitution.

1017. PRINCIPLES. I. Physical inability suspends the obligation of restoring. The reason is clear; for no one is held to the impossible (see nevertheless the things said in n. 926).

Physical inability, if it is perpetual, extinguishes the obligation of restoring. Extend this to a religious with perpetual vows, guilty of injustice; who nevertheless, according to some authors, must seek condonation from the Superior; otherwise such a religious would be of better condition than laymen obligated to restitution (*Ami du Cl.*, 1913, p. 1032; 1914, p. 366).

II. Moral inability likewise suspends the same obligation: that is, no one is held to restore immediately if from restitution a notably greater detriment would come upon him than would be the advantage of the creditor. The reason is that, in such a case, the creditor prudently and reasonably ought to permit the suspension of his right, so that the order of charity may be preserved (III, 598). Cf. *Ami du Cl.*, 1912, p. 634.

1018. Therefore the debtor, even from delict, is excused:

1019. If he cannot restore without danger to the salvation of his own soul or of his own; for example, if there is danger lest the wife or daughters prostitute themselves, lest the sons give themselves to robberies.

1020. If he cannot restore without danger of life or reputation, provided the loss of reputation is not least or lowest with respect to the great and notable damage which the creditor would undergo in goods (III, 698).

Thus, for example, a notary is not held to reveal a false instrument composed by himself, in order that with gravest detriment to his reputation and danger of prison he repair damage inflicted on others in goods of fortune. Yet he is held with even graver damage of fortune (cf. above n. 915).

3. If he cannot restore without damage of his own so great that by it twice the value of the thing is exceeded. Likewise more probably, if he cannot restore immediately without grave damage, provided the creditor does not undergo equal damage from the delay of restitution. - Nor indeed can the debtor defer payment because of mere loss of profit, except when from the delay no damage would come upon the creditor (III, 697; *H. Ap.*, X, 117).

4. If by restoring he could not live according to the decency of his justly acquired state. Hence if a nobleman, for example, cannot pay immediately unless he deprive himself of servants, horses, arms, etc.; or a chief citizen, unless he takes up a mechanical art unaccustomed to himself; or a farmer, unless he sells the grain necessary for cultivating the fields; or a merchant, unless with great detriment he sells obligations of credit; or a mechanic, unless he sells his instruments by which he lives: he can defer and restore gradually without loss of his state (III, 698).

We said justly acquired; for if he had acquired his state unjustly, for example by thefts or frauds, he could not preserve it with damage to the creditor, as is commonly taught. And Doctors think the same must be said if the debtor culpably, for example by games, gluttony, has cast himself into the aforesaid necessity. "But, notwithstanding this," says St. Alphonsus

(III, 702; ed. G., II, p. 170), "whenever a debtor, because he has played, etc., would fall from his justly acquired state, it seems hard to me and to other learned men to obligate him to full restitution. St. Antoninus and others rightly advert that, in such a case, the debtor is always held to lessen expenses so that he may restore at least what he can."

1019. Note. a) If the debtor, because of restitution, either alone or with his own, would be cast into extreme necessity, he is not held to restore, although the thing exists in species, and the owner is in the same necessity. The reason is that, in such a case, all things are common, according to the things said in n. 914. But otherwise, if the creditor himself also had been cast into extreme necessity precisely from that particular theft; because to take away from someone a thing necessary to him for life is the same as to kill him; hence, in that case, the condition of the owner possessing first ought to be better.

b) If it is a question only of grave necessity, one must distinguish: either the debtor alone, or the creditor alone, or both are in that necessity. If the first, restitution can be deferred, as is clear from the things said. If the second, the debtor must restore, although he be cast into equal necessity, because in equal necessity the condition of the creditor is better, as one having a right to a thing. If the third, it is probable that restitution can be deferred; because the debtor through restitution would expose himself to much greater damage, since from grave necessity he would be cast into quasi-extreme necessity. Except: if the thing exists in species; or if the creditor is found in equal necessity precisely because of the theft of that thing (cf. n. 1018, 3). See St. Alph., III, 701-703).

2. Damage of the Creditor or of a Third Party

1020. PRINCIPLES. I. If the owner of the thing to be restored would abuse it for sinning, the debtor is not held to restoring. The reason is given by St. Thomas (2. 2, q. 62, a. 5 ad 1): "When the thing to be restored appears to be gravely harmful to him to whom restitution must be made, or to another, it ought not then to be restored to him, because restitution is ordered to the utility of him to whom it is restored. For all things which are possessed fall under the aspect of the useful. Yet he who thus detains another's thing ought not to appropriate it to himself, but either to reserve it so that he may restore it at a fitting time, or even to hand it over to another to be preserved more safely" (III, 697).

Hence, unless grave damage or inconvenience threatens you, you cannot restore: 1. money given to you as a loan to him who wishes to use it for sinning; 2. an altogether depraved book which can be of no utility; because, since you easily can impede the sin of another, by not impeding it you sin against charity (cf. n. 493).

II. If the owner of the thing is foreseen to be about to abuse it to the damage of a third party, the debtor is held to deny it when he can without his own graver or at least equal damage. The reason is clear from the cited words of the Angelic Doctor. - Indeed, in such a case, he would sin not only against charity, but also against justice, as Lugo and others commonly teach; because one's neighbor has a right that you not cooperate in his damage by handing something to another for his ruin (III, 697 and 753; *H. Ap.*, X, 116). Recall the things said in n. 520, 3.

Hence, a debtor, even from delict, who defers restitution because of the true utility of the owner, is not held concerning the lesser damages consequent upon the delay, because he rightly managed the owner's matter (Lugo, disp. 21, n. 31; Croix, III, P. 2, n. 426).

3. Cession of Goods

1021. DEFINITION. Cession of goods is the abandonment of all goods which a debtor, unequal to paying, makes to his creditors in order to preserve his liberty.

DIVISION. Cession is either 1. voluntary, or freely accepted by all creditors; and then it has those effects concerning which the debtor and creditors agree; or 2. judicial, that is, declared through the sentence of a legitimate judge. This is a certain benefit conceded by the law itself to an unfortunate debtor of good faith, so that thus, notwithstanding any other stipulation to the contrary, he may be freed from the annoyances of creditors.

Let it be noted from modern Law: 1. Bankruptcy, the state of a debtor ceasing to pay, is either inculpable or culpable. In the former case, if the bankrupt exercises commerce, his whole matter is handled before the tribunal of commerce, where there exists *faillite*; otherwise, before the ordinary tribunal, *deconfiture*. - In the latter case, bankruptcy

is judged either as a delict (*banqueroute simple*) or as a crime (*banqueroute frauduleuse*), and thence is punished with proportionate penalties.[206]

[206] French Code, 1268; Italian, 2000; Spanish, 1912; Austrian law of 25 Dec. 1868 (cf. Delama, n. 368); German law concerning the concession of goods, 17 May 1898 (cf. Kurschner, l. c.).

2. Creditors cannot refuse a judicial cession, except in the cases excepted by law, namely if the debtor is a foreigner, a prodigal, fraudulently bankrupt, condemned for theft or usury, etc.

3. Judicial cession does not confer on creditors, by the fact itself, ownership of the goods of the bankrupt; but it confers a right by force of which those goods are administered in their name and then sold for their utility.

4. PRINCIPLES. I. By a cession of goods carried out without fraud, the obligation of restoring is indeed suspended, but is not taken away. 1. It is suspended, both in the internal forum, on account of inability; and in the external forum, by the benefit of the creditors or of the law itself. 2. It is not taken away: because, unless the contrary is established somewhere, neither the law, at least in most European States,[207] nor commonly the creditors intend to remit to the debtor that part of the debt which he has not yet been able to pay. Hence, if afterwards the debtor acquires a richer fortune, he is held to full payment; indeed he is held, as far as he can, to labor and to acquire goods, so that he may be able to satisfy full payment (III, 699).

It was said unless the contrary is established somewhere: namely either 1. by the law and its common interpretation; for this, as in prescription, can, with a view to the common good, transfer ownership. This is commonly held in England, according to Crolly (III, n. 1201), and in North America (Konings, n. 861); - or 2. by the creditors, if, for example, they have not sought payment for thirty years.

Indeed there are not lacking authors who probably assert that a composition of the debtor with the creditors is equated with a certain virtual remission. Cf. Aertnys, l. III, n. 365; *Ami du Cl.*, 1910, p. 1069.

1023. II. By a cession of goods, nothing is taken away from the debtor's right to a suitable support of himself and of his own. For the cessor is not of a worse condition than other debtors, for whom grave necessity of family is a just cause of delaying restitution (cf. n. 1008, 2).

Hence, if the debts arise from contract, the cessor is held to pay them if he has acquired more than is required for the decency of his state. But if they arise from delict, for example from theft, usury, he can retain for himself only those things which are necessary for living (H. Ap., X, 117).

From these things you will resolve: 1. A wife and children lawfully receive food from a father burdened by debts, if they do not have support from elsewhere. Indeed, even though the wife could live on her own goods or on those of relatives, she can nevertheless receive food from her husband, even a usurer, who is unable to restore; because the husband is no less held to feed his wife than to pay debts (III, 695).

2. A servant lawfully receives wages from a master burdened by debts, if he is necessary to him, or if he labors for the utility of the creditors. But if he is not necessary, and he notices that by such service the master is rendered unable to satisfy debts, he is held to depart, lest he become the cause of damage to creditors. He can nevertheless lawfully retain what he has already received in good faith (III, 694; H. Ap., X, 115).

3. He who has accepted gifts from a man burdened by debts is held to restitution, if by this ill-timed liberality the faculty of satisfying his creditors is taken away from the debtor; for by such acceptance he becomes the positive cause why the creditors suffer damage (III, 722; H. Ap., X, 128). See nevertheless below n. 1065.

4. He who is burdened by debts cannot without injustice refuse an inheritance by which he can become equal to paying (*Ami du Cl.*, 1910, p. 94).

N. B. Whether one burdened by debts can enter RELIGION, see n. 2139.

ARTICLE II

On Causes Which Take Away the Obligation of Restitution

Three causes are numbered: 1. legitimate compensation; - 2. condonation of the creditor; - 3. authority of public power. On transaction, which is usually joined to these causes, see n. 1160.

1. Legitimate Compensation

1024. Compensation is one thing improper, or extralegal, by which the creditor satisfies himself, by taking a thing of the debtor equivalent to the debt. It is another thing proper, or legal, and is had when two persons are mutually debtors to

[207] French Code, 1270; Italian Commercial Code, 543; Spanish, 1920, Commercial Code, 900 ff.; judicial law, 1130 ff.; Austrian law of 1868, § 5.

each other: for example, I owe you one hundred for grain, and you owe me one hundred for wine. In Law this is called "the contribution of debt and credit with each other."[208]

Each compensation extinguishes the obligation of restoring, because it removes inequality (cf. n. 924).

1025. • IT IS ASKED. Whether he is freed from restitution who pays a debt to the CREDITOR of his own creditor?

Resp. Affirmatively of itself and in the rigor of Law. Thus, for example, I owe you one hundred francs, but you owe one hundred to Titius: I satisfy you by paying your creditor Titius; for by paying to him that which you owe him, I acquire the right which he had of requiring his debt from you; and from this there arises the contribution of debt and credit with each other, or legal compensation. We 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; - 2. in the rigor of Law; because such payment, if it is made without cause, will be illicit on account of the various inconveniences to which it is liable. But there would be a sufficient reason if the creditor of the creditor could not otherwise recover his debt (III, 699, 700). But in the external forum such payment can be impugned.[209]

2. Condonation of the Creditor

NOTION. Condonation, in the matter of justice, is the remission of a debt freely made by a creditor capable of condoning.

1026. PRINCIPLE. To take away the obligation of restitution, express condonation is not always required, but tacit, or even presumed, condonation suffices, provided it is morally certain. The reason is that, for accepting or retaining another's thing without injustice, the positive will of the owner is not required; but it is enough that he not be positively unwilling; namely, this excuses you from fault, at least mortal fault. But if the owner is rightly supposed to be unwilling with respect to the mode, for example the mode of taking secretly, the one omitting restitution indeed does not sin mortally, yet he cannot be excused from venial sin.

Hence: 1. A master who expels a servant, a worker, on account of light thefts, tacitly remits to him every obligation, because he asks nothing. Yet from this it does not follow that condonation is present with respect to gifts which the servant perhaps made to strangers. - Similarly, a master is presumed to remit every obligation if he has caught a servant in manifest grave theft, and expels him or only rebukes him, without demanding restitution. 2. Parents are rightly presumed to remit to their children the obligation of repairing thefts even grave ones, if the things have already been consumed and the coheirs are not gravely harmed.[210] See also n. 907. - 3. With respect to the poor, who have stolen small things from different persons, condonation on the part of the owners is presumed. If they have committed little thefts to the damage of one person, partial condonation can be presumed.

Note. How, in the external forum, condonation or remission of a debt is proved or presumed, see in the various Codes.[211]

3. Authority of Public Power

1027. Prelim. The faculty of transferring ownership belongs both to the civil prince, in order to the temporal public good, and to the Supreme Pontiff, in order to the spiritual public good (cf. n. 841 and 873, note). Thence it follows that the burden of restitution can, when a just cause intervenes, be taken away by either power.

To this are referred the things which above we said at length concerning the finding of treasure, concerning liberative prescription, concerning the fruits of another's thing perceived in good faith. It is useful to add a few things here: 1. concerning the sentence of a judge; - 2. concerning composition with the Supreme Pontiff; - 3. concerning sanation upon goods of the Church unjustly alienated.

1028. I. On the sentence of a judge. Among all it is admitted that the sentence of a judge, relying on truth, takes away the obligation of restitution. For it is supported by the authority of laws, which, by reason of the common good, legitimately transfer ownership of things.

Hence, you are not held to restore: 1. if the judge, as a penalty for some delict committed by your creditor, imposes this fine, that you do not restore to him what you owe him; - 2. if from equity he adjudges to you something which otherwise, in the rigor of justice, would not be owed to you (Viva, *de Rest.*, q. 5, a. 4, III).

[208] French Code, 1289; Italian, 1285; Spanish, 1196; German, 387, 393.
[209] French Code, 1296; Italian, 1291; Austrian, 1441; Spanish, 1162; German, 414.
[210] III, 543; H. Ap., X, 32, 116.
[211] French Code, 1282; Italian, 1280; Spanish, 1187; German, 397.

1029. II. On composition with the Supreme Pontiff. Composition with the Supreme Pontiff is had when the Roman Pontiff, from his supreme power, transacts in such a way that one part of the debt indeed is expended on pious causes, while the other part is condoned to the debtor, while nevertheless supplying from the treasury of the Church the spiritual utility which would come to the owner if the whole debt had been given in alms (cf. H. Ap., X, 117, 2; Lugo, disp. 21, n. 91).

There is no controversy that a legitimate composition frees the debtor in the forum of conscience. The reason is that the Supreme Pontiff orders all things in this way on account of the common good. Nor are the rights of the legitimate owner altogether ignored, since compensation accrues from spiritual goods.

We said: 1. Legitimate compensation. For it is required: a) that the goods be altogether uncertain; for if the owners are known in some way, as in the small thefts of merchants defrauding in weight and measure, they cannot, without injury, directly and without their consent, be despoiled; b) that there be a just cause; otherwise the composition would indeed be valid, but illicit in ecclesiastical things; but in other things, when cause is lacking, it would also be invalid, because, in the first case, the Supreme Pontiff dispenses in his own law, but not so in the second. - 2. It frees the debtor; for a composition once made is not revoked, although the owner appears; because ownership has already been legitimately transferred. Thus Lugo against others, who will that the debtor in that case is held to restore to the owner that in which he has been made richer (III, 592, 593).

Note. a) A priest who is anxious on account of Masses celebrated with doubtful matter can be admonished to obtain a composition. Cf. n. 1620. - b) A composition with respect to uncertain goods is made through the Bull of the CRUSADE, for those to whom it has been granted. It can also be obtained from the SACRED PENITENTIARY, which has power, from the Bull *Pastor bonus*, to remit part of ill-taken or retained goods, if the owner is uncertain, the case occult, and the delinquent poor. But the part which is not remitted is to be expended on the poor or on pious works, and indeed, if it can be done, in those very places where the unjust acquisition of those goods was made (cf. n. 999). c) As concerns Bishops, the truer opinion holds that the faculty of composition does not belong to them, since it is an act of supreme power (III, 696, 2).

1030. • III. On sanation. Sanation upon goods of the Church unjustly alienated is said to be done when the Supreme Pontiff, as supreme administrator of the goods of the Church, on account of a just and most grave cause, convalidates alienations of this kind. Thus he convalidated the alienations which were made in the time of the French disturbance. For Austria, with respect to the tithes taken away, sanation was given through the Concordat, 18 Aug. 1855.

1031. • Points to be noted. 1. A GENERAL SANATION, for a whole kingdom, has often been granted by the Holy See. Such a sanation was made: a) For ENGLAND, after Henry VIII, from the faculty granted by Julius III to Cardinal Pole. b) For FRANCE and BELGIUM, on 15 August 1801 through the Bull *Ecclesiae Christi.*[212] c) For the kingdom of the TWO SICILIES, on 7 March 1818 through the Constitution *In supremo.* d) For PIEDMONT and the duchy of GENOA, on 20 Dec. 1816 through the Brief *Datis ad nos demum.* e) For PRUSSIA, on 16 July 1821 through the Constitution *De salute animarum.*[213] - f) For the whole kingdom of Sardinia, on 14 May 1828 through the Bull *Gravissimae* of Leo XII. g) For SPAIN, a twofold sanation was made: the first through the concordat of 16 March 1851, the second through the additional convention of 25 August 1859 (cf. Gury-Ferreres, I, n. 750; for Latin America see his Appendix to n. 558).

By force of these sanations, as the Sacred Penitentiary declared on 10 March 1818, ecclesiastical goods already exist in the full ownership of the acquirers, so that they may safely and freely retain them, enjoy them, and even alienate them, both in the external and internal forum, provided nevertheless that the acquisition was made according to the laws then in force. Yet the Holy See exhorts those acquirers that, according to their piety and religion, they be willing to satisfy the pious burdens of Masses, alms, and other similar things, which perhaps formerly were fixed to those goods.[214] Similar rescripts came forth for upper Italy in the years 1845 and 1847.[215]

From these things you will gather which ecclesiastical goods are still SUBJECT TO RESTITUTION: a) namely those which were never occupied by the Government, but escaped its hands, because they either remained with private persons, for

[212]For FRANCE, Pius VII declared, 20 Oct. 1821, that the concession made could be applied indiscriminately to all ecclesiastical goods which were occupied by the Government on 15 July 1801. For BELGIUM, Gregory XVI established that anyone could buy ecclesiastical goods still held at that time by the Government (16 Sept. 1833).

[213]On 27 Nov. 1891, it was granted for the archdiocese of Cologne with the dioceses of Trier and Munster that the sanations which had been given through the Brief of Pius VII, from the year 1821, be applied to occupations continued by the French Government up to the end of the year 1814 on the left bank of the Rhine. On 7 Feb. 1824, this was extended to ecclesiastical goods which in the whole kingdom of Prussia were secularized up to the end of the year 1824, whether at present possessed by private persons or to be possessed in the future (*Anal. eccl.*, III, 211).

[214]Bouvier, *de Contr.*, P. II, c. 2, a. 1, § 3. S. I.

[215]Scavini, IV, n. 219.

example the tenants of those goods, or were usurped by private persons themselves by force; b) goods which, after conventions had already been entered upon with the Holy See, for example in France after the concordat, were occupied by the Government; c) goods which, while conventions were being entered upon, were promised by the Government as to be handed over to the Church, and yet afterwards were not handed over. All these things are evident of themselves.

Restitution of these goods is to be made according to the rules to which possessors of good or bad faith are subject, namely as the usurpers, or their heirs, are situated in good or bad faith.[216]

2. NO GENERAL SANATION has been promulgated after the recent unjust spoliation of the Religious Orders or of the Church in France. Only composition is admitted, which is, as the Sacred Penitentiary says, at once equitable and benign. See the decisions of the Secretariat of State, 21 Sept. 1907, and of the Sacred Penitentiary, 16 Jan. 1909.[217] This same thing had already previously been established with respect to goods of the Church usurped and not yet condoned, for example goods usurped in Italy from the year 1860.

Bishops have obtained peculiar faculties by force of which acquirers of ecclesiastical goods can, under certain conditions, be admitted to composition. The faculties are granted for a year according to the norm given by the Sacred Penitentiary, on 15 April 1892.[218]

DISSERTATION IV

ON CONTRACTS

We shall discuss: 1. contracts in general; - 2. gratuitous contracts; - 3. onerous contracts; - 4. aleatory contracts; - 5. subsidiary contracts.

CHAPTER I

On Contracts in General

St. Alphonsus, III, 707; ed. G., II, p. 174; Lugo, disp. 22; Lessius, l. 2, c. 17 ff.; Salmanticenses, *de Contr.*, tr. 14, c. 1; Comitolus, *de Contr. universe*; Vermeersch, *Quaest. de Just.*, q. 7; Marres, l. 3, n. 1-6; Berardi, *Theol. mor.*, III, n. 505; Schwane, *die Vertrage*; Carriere, *de Contr.*; Wernz, *Jus Decret.*, III, tit. 9, p. 228.

We must treat: 1. of the notion of contract; - 2. of the requisites for contracting; - 3. of the effect, or of the obligation, of contract.

ARTICLE I

On the Notion of Contract

1032. DEFINITION. A contract is the consent of two or more persons into the same agreed thing, with the mind of contracting an obligation.[219]

It is said: 1. consent, that is, a practical determination of the will; - 2. of two or more, because there is no obligation of justice or fidelity unless at least between two; - 3. into the same agreed thing, that is, concerning something to be given or done, which must necessarily be understood by all in the same way; - 4. with the mind of contracting an obligation; otherwise it would be a mere purpose.

In every contract three things are distinguished by jurists, namely essence, nature, and accidentals. To the essence belong those things without which the contract cannot exist: as, for example, in sale, the thing, the price, and consent. If one is lacking, there is no contract. If in place of a price, for example, another thing is given, it will not be a contract of sale, but of exchange. To the nature belong those things which, although not expressed, nevertheless from law, or usage, or equity, are understood to be comprehended in the contract, although they are not essential. Thus, for example, in sale, security against eviction can be excluded by a special agreement; but if no condition is expressed, the seller must furnish such security (cf. n. 1125). Finally, accidentals are called those things which can be joined to the contract without being

[216] Cf. *Anal. Jur. Pont.*, ser. V, a. 1861, col. 122.
[217] *Ami du Cl.*, 1907, p. 1134; 1908, p. 403; 1909, p. 235; *Nouv. Rev. Theol.*, 1908, p. 98.
[218] *Monit. eccl.*, vol. VII, P. II, p. 52.
[219] Cf. Dig., l. 2, tit. 14; French Code, 1101-1107; Italian, 1098-1103; Austrian, 863, 864; Spanish, 1254-1259; German, 104, 145 ff.

considered added by law or by the nature of the thing; for example, such a delay in payment of the price and similar things.

1033. There is a twofold SOURCE from which the right of contracting emanates: a) from nature, that is, from the mutual need of men, which drives them to enter upon mutual obligations and grants them the power of entering upon these; b) from human law, which generally so establishes and governs the modes of contracting that citizens are neither impeded from the equitable exercise of right nor permitted gravely to abuse it to the destruction of others. But although the civil law, on account of the public good, can limit the natural right of private persons, as we said above, n. 838, yet it cannot violate it, nor validly establish anything against Ecclesiastical Law (cf. n. 149).

1034. DIVISION. A contract is: 1. Formal or express, or virtual or tacit. The former is that which is made by words, writings, or other signs directly manifesting consent. But the latter is that in which consent into the thing agreed upon indeed exists really, but is manifested only implicitly by some saying or deed.

Thus a physician exercising his art is considered to promise that he will do everything which his profession requires, according to the saying of Law: "you pledge the skill of the art." This contract is commonly called a quasi-contract.

2. Named or unnamed. A named contract has its proper name in Law, as purchase, lease, etc.; an unnamed contract lacks a proper name in Law. All unnamed contracts are reduced to four species, namely, I GIVE THAT YOU MAY GIVE; I GIVE THAT YOU MAY DO; I DO THAT YOU MAY GIVE; I DO THAT YOU MAY DO.

3. Unilateral or bilateral or synallagmatic. The former is made when one or more bind themselves toward one or more who are not bound, as in the contract of promise. The latter is had when one or more bind themselves toward one or more others likewise bound, as in various exchanges. It is a contract strictly taken. - Yet, even some gratuitous contracts are bilateral, for example deposit, loan for use.

A BILATERAL contract is commutatory or aleatory. It is commutatory if each contracting party is considered to give or accept something equivalent and certain, as in sale. It is called aleatory, or of fortune, if what is given or promised depends on an accidental event, as in games of dice.

4. Gratuitous or onerous. Gratuitous is that from which one party alone receives a benefit which the other party grants to him gratis, for example donation, loan for use. Onerous is that from which each party undertakes a burden for a benefit, for example sale, lease.

5. Principal or accessory. Principal is that which does not depend on another contract, as sale, exchange, donation, etc. Accessory or subsidiary is that which depends on another, and is ordered to its fuller security, as suretyship, pledge, and hypothec.

6. Solemn or simple, according as it requires special formalities of law, or is subject only to general dispositions. Simple is subdivided into written and verbal.

7. Naked or clothed. A naked contract is that whose natural obligation is not confirmed by Positive Law. - A clothed contract is that which, besides agreement, has the support of Law. This confers an action for demanding execution before tribunals; to the former also, in NEW Law, favor is generally conceded, provided it can be proved (see Lehmkuhl, I, n. 1241). Thus, for example, the Law protects the retention of what has been received.

8. Real or consensual. Real is that which, in its species, is not perfected except by delivery of the thing agreed upon, as is loan for use, loan for consumption, deposit, etc. Consensual is that which is completed by the consent alone of the contracting parties duly exhibited, as is lease.

9. Pure, or absolute, or non-pure, or conditioned, according as no condition or some condition is appended to it.

10. Firm or rescindable, according as its binding force at once becomes absolute, or can be constituted void by competent authority.

ARTICLE II

On the Requisites for Contracting

Four things are essentially required: 1. apt matter; - 2. a capable person; - 3. legitimate consent; - 4. a fitting form.

§ 1. ON THE MATTER OF CONTRACT[220]

1035. DEFINITION. The matter of a contract is any possible, honest thing or action, estimable by a price, placed in civil commerce, proper to the contracting party, and determined.

1. Possible: for there is no obligation of impossibilities. Yet one can spontaneously promise a heroic action.

If the thing is possible only in part, the contract is valid for this part; because "the useful ought not to be vitiated by the useless" (Reg. 37, in 6). Except unless it was agreed in such a way that either the whole or nothing had to be furnished. But he who by his own fault causes the thing to become impossible is held to repair the damage. Cf. also n. 1057.

2. Honest: namely that it be opposed neither to laws nor to good morals; otherwise it would again be impossible. Yet it is enough that the thing be substantially honest; for a contract can be valid, although, on account of some accidental circumstance or on account of a mere prohibition, it is illicit; otherwise stipulations concerning labor performed on feast days would be invalid.

A difficulty can be moved concerning pacts about a shameful thing, or about things already owed from elsewhere. See below n. 1036.

3. Estimable by a price, that is, useful or reasonably pleasing; for "stipulations are made so that each one may acquire for himself that which is of interest to him."[221] Hence, agreements whose object is altogether useless or ridiculous are null.

a) The thing which becomes the object of a contract is not considered useful, or estimable by a price, if it only brings some advantage to the contracting party, otherwise showing the way, giving a loan for consumption could become the object of stipulation; - but it is considered useful if at the same time it gives advantage to another and imports something of burden on the part of the one furnishing. Thus a physician aiding a poor man from charity can stipulate a fee.

b) The hope of future things is held among all as estimable by a price, whence also things which are already in hope can constitute the object of a contract. Yet exception is made for the hereditary succession of a person still living, concerning which every stipulation or pact, among diverse peoples, is of no force; and this by the best right, lest from it there be an occasion of desiring the death of another.[222]

Note. In German Law, every onerous disposition concerning one's own future goods and the succession of another living person is declared void (§ 310, 312). Notwithstanding this, religious who make profession can draw up a testament concerning future goods.

4. Placed in civil commerce. Outside commerce are public roads, rivers, etc., and, in Roman Law, every sacred thing (n. 852, 4).

As concerns spiritual things or things annexed to the spiritual, see the things said n. 545 and 584 ff.

5. Proper to the contracting party, that is, existing under the ownership of him who hands it over; because no one can transfer more right to another than he himself has.

Hence the buyer of a stolen thing does not acquire ownership of it. See nevertheless what is established by positive law concerning the repeated sale of such an object (n. 939 ff.). A contract can also be made concerning a thing to be furnished by another, in this sense, that the contracting party promises that he will take care that the thing be furnished by another.

6. Determined, either in the individual, or in quantity and quality; otherwise the contract would be illusory: as if I were to promise someone, for example, whatever animal, or grain in general, I would satisfy the promise by giving a gnat, or one grain of wheat; which would be absurd.

7. Questions. QUAER. 1. Whether pacts and contracts ABOUT A SHAMEFUL or ILLICIT THING, for example about bearing an unjust sentence, about committing homicide, fornication, theft, etc., induce an obligation?

Resp. 1. Before the perpetration of the work, it is certain that such pacts are null. For justice cannot oblige to the illicit. Hence, when the work has not yet been perpetrated, the promised price ought not to be paid by the one party, nor can it be accepted or retained by the other (III, 712; H. Ap., X, 123).

[220] Cf. French Code, 1126-1130; Italian, 1116-1118; Austrian, 878; Spanish, 1271-1273; German, 138, 306; Crolly, II, 81 ff.
[221] *Instit.*, l. 3, tit. 20, § 19; French Code, 1131; Italian, 1119.
[222] St. Alph., III, 934; French Code, 1130, 1600; Italian, 1118, 1460; Austrian, 879, 1383; Spanish, 1271; German, 312.

Yet if someone has accepted a gift given by way of allurement, without a pact of perpetrating a bad thing, he can retain it without injustice, even when consent has been denied. For then the donation must be held as wholly liberal, even though it was made from the intention of seducing the donee.

2. After the perpetration of the work, it is certain that prostitutes can, at least from Roman Law (l. 4, ff., *de Condict. ob turp. caus.*), demand and retain their infamous gain without injustice. Thus commonly the authors with St. Thomas (2. 2, q. 62, a. 5, ad 2). Whence the Sacred Penitentiary on 22 April 1822 decided thus for the internal forum: "A penitent woman is not to be compelled, but is to be exhorted, that she expend the price of prostitution, according to the judgment of a prudent confessor, for pious uses."

But for other illicit actions there is controversy. Some, among whom are Adrian, Medina, Collet, Gousset, Lyonnet, Carriere, deny both the obligation of paying the agreed price and the faculty of retaining a price already paid. The reason is that a bad action is not saleable, nor can a contract previously null become valid through the completion of the work. This opinion is probable. Others, with Lessius, Lugo, the Salmanticenses, Sanchez, Lehmkuhl, Vermeersch, hold the affirmative opinion, and hold it the more probable and common one. The reasons are: a) the general Rule presses: "when one of the contracting parties has placed his part, the other is held to place his own"; b) the bad work already placed, although it is not worthy of a price as bad, is nevertheless estimable and useful to one and burdensome to the other. Hence, from the fact that the other places this work, there arises as it were a new unnamed contract: I do that you may give; I do that you may do (cf. Lehmkuhl, I, n. 1249; *Vind. Alph.*, P. III, q. 15).

In practice, because true probability stands on each side, favor must be given to the possessor, unless the sentence of a judge has established otherwise, or a special circumstance has acceded. - Yet by no pact is the stuprator freed from his obligation who, under the promise of marriage, violated a virgin, as we have already said n. 959.

QUAER. 2. Whether the matter of an onerous contract can be a thing ALREADY OWED from elsewhere?

Resp. 1. Negatively, if it is already owed by title of justice. Thus, for example, a pact of doing or giving something for bearing a just sentence, for restoring a thing deposited, loaned for use, found, for abstaining from theft, detraction, etc., is of no force; for the other has a right to those things independently of every burden or price imposed on himself, and therefore a price already paid must be restored to him (IV, 216).

Yet it is probable that the whole price of some work can be accepted from several, if it thus profits each one as if it were being done for the sake of each one. Thus, for example, if Titius has hired you so that you may undertake a journey for the sake of some business, you will also be able to be hired by Peter, for transacting his business, for the same journey, provided the later mandate does not harm the prior one (III, 862).

2. Affirmatively, more probably, if it is owed only from charity, religion, or a similar virtue; for then from the onerous contract there arises a strict right which did not exist previously. Thus a rich man who was held from charity to rent a house to a poor man gratis does not sin against justice, although he injures charity, if he exacts the price of lease. Likewise, if someone accepts money for fasting in the time of Lent, he can retain it without injustice and without other sin. Cf. III, 713; IV, 216; Lehmkuhl, I, n. 1247.

§ 2. ON PERSONS WHO CAN CONTRACT[223]

1037. PRINCIPLES. I. By the law of nature, all those can contract who possess the use of reason and are not prohibited by law. The reason for the first: no one can impose an obligation on himself unless he is actually capable of a human action. See what must be said n. 1044, 4.

Hence, infants and the perpetually insane cannot contract; nor lunatics, the furious, the perfectly drunk and the half-drunk, in the time of failure of reason. But this incapacity is so absolute that, from the very beginning, it renders the contract INVALID, independently of every intervention of legislator or judge (Lugo, disp. 22, n. 281).

The reason for the second: human laws can, on account of the common good, limit the right of a private person and weaken contracts to that end, so that damage from inexperienced persons may be excluded, and provision may be made for the peace of families and the honesty of morals.

This incapacity renders the contract only WEAK or rescindable at the will of the incapable person, whose incapacity nevertheless can never be opposed by the capable party, except in the sole case of deception (cf. n. 1039, III). Moreover, if the conditions required by law, for example the consent of father, tutor, husband, are fulfilled, the contract becomes

[223]Cf. French Code, 1123-1125 and 1304-1314; Italian, 1105-1107 and 1300-1311; Austrian, 865-868; Spanish, 1263 ff.; German, 104-115.

altogether firm; the same happens if the contracting party, after the incapacity has been removed, ratifies the contract, either explicitly or implicitly, namely by not manifesting his will of rescinding within the time established by law.

1038. • II. By positive law, all those are commonly declared incapable of contracting firmly who do not have the free administration of their own goods. Such are: minors, wives, interdicted persons, prodigals, the civilly dead, and foreigners.

Several cases besides have been established of relative incapacity: thus tutors and curators are forbidden to acquire goods of minors committed to their administration; similarly judges and magistrates are forbidden to acquire rights about which litigation is moved before their tribunal, etc. We shall not treat these separately. It is enough to have said that laws of this kind, since they are just, oblige in conscience.

1. On Minors

1039. I. A MINOR can firmly contract in the following cases: 1. if it is a question of accepting a benefit which is granted to him altogether liberally; - 2. if it is a question of things pertaining to the commerce or art which he himself exercises with the consent of father or tutor; - 3. if he is emancipated, he can lease his work and enter upon other contracts which pertain to the mere administration of goods.

II. Apart from the aforesaid cases, a minor cannot alone by himself contract firmly; but in his name, or at least assisting him, father, tutor, judge must act, according to the diversity of circumstances which civilists explain. Hence, if he has contracted with the conditions which the law appended passed over, the contract is rescindable, and the judge can decree restitution in full, which is a replacing in the former state in which the thing was before the lesion (III, 918). But indeed, the disposition of law on this matter is not everywhere the same.

In FRENCH Law (1305) and ENGLISH Law (Crolly, I, 461), rescission is granted to a minor, not at will, but only if he was injured from the contract entered upon without due assistance, from the adage: "A minor is restored not as a minor, but as injured."

In ITALIAN Law (1303), AUSTRIAN Law (863), SPANISH Law (1300), and GERMAN Law (107-113), except nevertheless those indicated above, a minor can contract no civil obligation; and therefore he can rescind the contract without being held to prove that he was injured.

III. Rescission can be sought both by the administrator of the goods of the minor, and by the minor himself, and by his heirs; but by no means by those who contracted with the minor. A minor is excluded from the benefit of rescission if he fraudulently asserted that he was of age; or if, after he became of age, he approved the contract entered upon by himself as a minor.[224] Moreover, he is held to restitution if by contracting he deceived others or inflicted damage on them. Cf. Austrian Code, 866.

In GERMANY nevertheless (n. 108), the other party also, who contracted with the minor, can withdraw from the contract until the necessary consent has been given, if he was ignorant of the defect of consent or minority.

In various places,[225] there is in force the disposition of law that, in the case of rescission, a minor is not held to restore the thing accepted except insofar as the thing still exists in itself or in an equivalent, while the other party is held to restore the whole of what he received.

1040. IT IS ASKED. Whether a MINOR, or those acting for his cause, can, in the forum of conscience, use the benefit of civil law?

Resp. 1. Authors commonly answer affirmatively with respect to simple rescission, since it is an apt remedy against the inexperience of minors; "for the counsel of ages of this sort is fragile and infirm, and subject to many deceits" (l. 1, ff., *de Minoribus*).

2. But there is controversy with respect to the disposition of law which excuses the minor from restitution, if the thing accepted, for example from a loan for consumption, no longer exists, neither in itself nor in an equivalent. For some affirm that the natural obligation of restoring remains. But others say that this obligation has been taken away by law, on account of the common good (Allegre, *Cod. civ.*, in art. 1305; Bucceroni, I, n. 953). - Finally, others think that restitution must be made if the money was spent for useful and necessary uses, for which the father ought to have furnished it (Lehmkuhl, I, n. 1253). Wherefore we judge the condition of the possessor to be better, until it has been decided otherwise by a judge.

[224] French Code, 1310; Italian, 1305; Spanish, 1302; German, 109.
[225] France, 1312; Italian, 1307-1309; Spanish, 1304, 1314.

2. On Wives[226]

1041. 1. In every law provision is made that a WIFE, without the consent of her husband, or, in the case in which the husband has unjustly denied consent, without the consent of the judge, is prohibited from placing several acts. - The general rule is this, that without the consent of her husband she cannot FIRMLY contract.

It is called the general rule; for she is restricted by no special incapacity: a) with respect to a testament; - b) with respect to acts of mere administration concerning paraphernal or separated goods; c) with respect to commerce which, with the consent of her husband, she publicly exercises; d) with respect to the purchase of those things which are necessary for the support of the family. Recall the things said n. 863-871.

2. If the wife goes beyond the faculties conceded to herself, the contract is rescindable. But rescission can be sought both by the husband and by the wife herself, unless she acted fraudulently, and by their heirs. But then there is an obligation of restoring all that in which the wife or those acting for her cause have been made richer, or even in full, according to the diverse disposition of Law.[227]

IT IS ASKED. Whether a wife or those acting for her cause can, in conscience, use the privilege of civil law?

Resp. The husband certainly can do this, or his heirs, since the law was made in his favor for just motives. - Nor are there lacking theologians who affirm that the wife herself can use the same benefit of law. Yet they deservedly add that, if she wishes to rescind the contract, she is held to restitution in full, even if the thing accepted no longer exists, neither in itself nor in an equivalent. For since the law was not made in her favor, it is deservedly concluded that the natural obligation of the wife has not been taken away by Positive Law.

SCHOLIUM

On Interdicted Persons, Prodigals, the Civilly Dead, and Foreigners

1042. 1. INTERDICTED PERSONS[228] are those who by sentence of a judge are held incapable of exercising a civil act, for example on account of imbecility or dementia. For these a TUTOR is constituted, who acts in their name. Hence, all contracts which they enter upon are rescindable, and those acting for their cause, or they themselves restored to their rights, can seek their rescission. Moreover, an interdicted person is restored as interdicted, that is, without being held to prove lesion. But the interdiction is taken away when its cause ceases, not by the fact itself, but through the sentence of a judge.

2. PRODIGALS,[229] juridically denounced, are incapable for certain contracts determined by law. They cannot enter upon these without the assistance of a counselor designated by the judge.

3. The CIVILLY DEAD are called those who, on account of condemnation to a most grave penalty, are despoiled of all civil rights: they cannot dispose of their goods, but, any testament whatever being set aside, legal succession is opened. To these, in Roman Law, religious solemnly professed are to be reckoned (cf. n. 2156).

The penalty of civil death, in several kingdoms of Europe, has already been abrogated, and generally perpetual interdiction is substituted for it.

1043. 4. FOREIGNERS are those who, in the place where they are staying, do not enjoy the rights of citizens. These are governed partly by the laws of their fatherland, partly by the laws of the region where they dwell (cf. n. 208).

a) With respect to the form or solemnities of a contract, they generally must observe the laws of the place, because "the place governs the act." Yet several acts can or even must be completed before legates or consuls of their own nation.

b) With respect to other conditions of acts, they are governed by the personal, but not real, laws of their proper domicile. Thus, for example, a Frenchman can draw up a testament in England according to the form admitted there; but he is governed only by French law with respect to the capacity of his own person and with respect to the quantity of goods disposable. Yet the administration and alienation of immovable goods always depends on the laws of the place in which they are found. Cf. *Nouv. Rev. Theol.* (a. 1883), p. 602; German Code, Introductory Law, art. 7-28.

[226]French Code, 215-226; Italian, 134-135; Spanish, 59-66, 188; German, 1357 and 1363 ff.
[227]French Code, 225, 1312; Italian, 137, 1307; Spanish, 1384-1387, 1441-1444; German, 1396 ff.
[228]Cf. l. 1, ff., *de Curat. furiosi*; French Code, 489-512; Italian, 324-338; Austrian, 21, 270; Spanish, 228-230; German, 114, 115.
[229]L. 1, ff., l. c.; French Code, 513; Italian, 339; Austrian, 21; Spanish, 221-227; German, l. c.

§ 3. ON THE CONSENT OF CONTRACTING PARTIES[230]

The consent of contracting parties is the soul of the contract. We shall treat of it on a twofold point, by establishing: 1. what are the qualities of legitimate consent; - 2. what vices are opposed to it.

1. On the Qualities of Legitimate Consent

1044. PRINCIPLE. The consent of contracting parties must be: 1. internal; - 2. mutual; - 3. externally manifested; - 4. free and deliberate.

1. Internal; because the obligation of contract arises from the will alone of the contracting parties, whether explicit or implicit. Thus commonly, against Vasquez and some others. Cf. Lehmkuhl, I, n. 1256.

Hence: if someone fictitiously consents, that is, without the mind of contracting, he is not held in conscience by reason of the contract, which is null; but by reason of deception he is held to make the other unharmed, and if another means of repairing the injury does not offer itself, he must give true consent and stand by the contract. The same must more probably be said if someone, knowing the obligation of contract, indeed consents with the mind of contracting, but without the mind of binding himself. The reason is that the condition appended, contrary to the substance of the contract, invalidates the contract. But a contract does not become invalid if it is entered upon without the mind of fulfilling it (III, 172, 709, 710; VI, 833; H. Ap., X, 122).

In the external forum, true consent is always supposed until the contrary has been certainly proved; because that which ought to have been done by right is presumed to have been done. Likewise, no one is held to believe him who asserts that he did not consent interiorly, unless it is evident, for example from circumstances, that the consent was jocular.

2. Mutual, even in a gratuitous contract. For, as Lugo says (disp. 23, n. 39): "although someone by his will alone can lose ownership or possession of his own thing, nevertheless by his will alone he cannot make his thing belong to another; for to this is also required the internal consent of him to whom it ought to belong," according to that saying of Law: A benefit is not given to one unwilling (l. 69, ff., *de Reg. Jur.*).

3. Externally manifested, namely in such a way that the consent of one can be known and accepted by the other, and the acceptance, on the part of the second, can become known; for it is an act of human commerce, which cannot be such unless it is externally manifested. Hence, if I offer to you a thing for sale for one hundred lire, and you accept, the contract is perfected, not when you consent internally, but when your acceptance comes forth externally through some sign.

On these things let the following be noted: a) Silence is reputed as consent if the circumstances are such as to admit no reasonable doubt (cf. Austrian Code, 863). This regularly happens if the matter is favorable to the silent person, for example in donation; for then the Rule of Law has force: "He who is silent seems to consent."

b) In a bilateral contract it is not enough if the consent of one becomes known to the other in any manner whatever, but it is required that the offering of consent be manifested by way of denunciation, that is, that it be intimated from the intention and will of the one placing it; otherwise it is considered a mere internal purpose (Vermeersch, n. 316). - Yet it is not required that the consent of both contracting parties be emitted at the same time; but it suffices that the consent of one given is not revoked before the consent of the other is joined to it.

c) If a contract is made through a procurator, the contract is perfected as soon as the procurator accepts, even though the one in whose name he acts has not yet accepted; because the acceptance of the procurator is morally the acceptance of the contracting party.

d) With respect to contracts carried out by letters, it is disputed at what precise time they are perfected, whether namely at that moment at which the other, for example by writing a response or letter, accepts the proposition of the other offering, or rather at that moment at which the offerer knows the other's acceptance. - Considering the law of nature alone, the contract seems to be perfected as soon as the other accepts, unless law or custom, or the express will of the one proposing, has disposed otherwise. For then the consent of two persons into the same agreed thing is present (Lehmkuhl, I, n. 1258; Carriere, I, 34, 4; Crolly, II, 104). Yet the other opinion is more conformable to more recent jurisprudence, especially in FRANCE and in ITALY. Cf. Camillo Re, *Tratt. sulla compra e vendita*, n. 10. In AUSTRIA (n. 862), in SPAIN (n. 1262), in GERMANY (n. 147-156 and Commercial Code, 321), and in several regions, practical rules concerning this matter are had in the Code itself.

[230] French Code, 1109-1122; Italian, 1108-1115; Austrian, 869-877; Spanish, 1262-1270; German, 116 ff.

4. Free and fully deliberate, in such a way that the contracting party, even if it is a question of light matter, not only is master of himself, but acts with that advertence which is required for grave sin. Otherwise it would be only an imperfect will and therefore an imperfect act, which could not produce a perfect obligation. Hence the half-drunk, the half-foolish do not enter a valid contract, so much less because here it is a question of a burden to be imposed on himself. See what we said about vow n. 625.

2. On Vices Opposed to Consent

1045. The vices opposed to consent are: 1. error and deceit; - 2. force and fear. We shall speak of deceit together with error, and of force with fear.

1. On Error and Deceit

Things to be noted beforehand. Error and ignorance here are equated (cf. the things said n. 287).

ERROR is substantial or accidental, according as it is concerned with the substance of the contract or something accidental to it. The substance of a contract is that about which the intention of the contracting party is concerned primarily and principally, and it can be either the very substance of the thing, for example donation or sale, or also its quality, for example if you buy a thing precisely because it was in the use of some celebrated man, or also both at once. Likewise, the person of the contracting party can pertain to the substance of the contract, if consideration of him is the principal motive of your consent, as generally happens in gratuitous contracts (Crolly, II, 121).

DECEIT, in the present matter, is a machination or cunning employed by one contracting party to deceive the other (l. 1, ff., *de Dolo malo*).

1046. PRINCIPLES. I. Error concerning the substance of a contract irritates the contract by the law of nature. And this, even if the error did not give cause to the contract, that is, even if, when the error had been made manifest, the party would still have contracted. It is the common opinion. The reason is that, when cognition of the object is lacking, the required consent is lacking (III, 714; cf. Lugo, disp. 23, s. 6; Spanish Code, 1266).

Hence: 1. A contract is null if you have erred concerning the nature of the agreement, for example if you enter upon a contract which you think is a loan for use, when it is a lease; or concerning the substance of the thing, for example if you sell vinegar for wine, glass for a gem.

2. A contract is null if the error is concerning a quality which redounds into substance, either because you intended that quality solely or primarily, for example if you buy a painting because you judge it the work of a most celebrated painter; or because you openly consented under the condition "if such a circumstance is present"; for, when the appended condition is lacking, the contract does not subsist. But it must be noted that such a condition, which is called *sine qua non*, does not necessarily have to be expressed in a contract of good faith; it is discerned as placed implicitly, either from the disposition of laws, or from the usage of places, or from the estimation of men, or from the nature of the contract, or from the end to which the thing or action about which the contract is made is manifestly deputed, for example if you say that you want wine for a sick person, for the sacrifice of Mass, cloth for a priestly vestment, etc. (Gousset, I, 735).

3. A contract is null if you have erred concerning the person with a view to whom you principally acted. Hence a donation is null which you made to Paul from error, intending to make it to Peter; or which you made to John because you erroneously believed that he was joined to you by consanguinity; or which you made to rich Titus, whom you thought poor. Likewise, a sale is void which you made to Caius, expressly intending to make it to Sylvius, and to him alone (III, 734, 736; cf. Austrian Code, 872, 873; German, 119, 120).

4. II. Accidental error irritates no contract, but renders a gratuitous contract rescindable if it was its cause; and similarly an onerous contract of which it was the cause, if it was caused by the deceit of the other party, or if it gave occasion to enormous lesion. This assertion must be explained by parts.

5. Accidental error irritates no contract: because a contract entered upon from such error is not invalid, neither by Positive Law, which does not admit this cause of nullity, nor by Natural Law, since for validating the contract a voluntary mind with respect to the substance suffices, although it is involuntary with respect to the accidents. Wherefore, if you buy wine which you estimate to be four years old, while it is two years old, the contract is valid; yet, if the wine is not of the same value, the contract must be reduced to equality.

6. It renders a gratuitous contract rescindable if it was its CAUSE. For this contract requires greater spontaneity; indeed there are Doctors who hold such a contract to be altogether void. - Hence, a donation made to a poor man because

he is reputed very upright is valid, although it can be irritated by the donor (III, 737; Lehmkuhl, I, n. 1262; Gopfert, I, n. 95, 3).

7. It renders an onerous contract, of which it was the cause, rescindable if it was caused BY THE DECEIT OF THE OTHER contracting party: because the deceiver is held to remove the deceit, and insofar as he can, to replace the deceived person in that state in which he would be if he had not been deceived. But this demands that the deceived person can, if he wishes, rescind the contract (cf. Spanish Code, 1270). But if the error was caused by the deceit of some third party, the contract does not become rescindable for that reason. Except if the contracting party himself was participant in this third party's deceit (III, 715).

8. It renders an onerous contract rescindable if it gave occasion TO ENORMOUS LESION. Positive Law commonly admits this cause of rescission,[231] provided the lesion is beyond half the value of the thing. But since the law in some places favors the seller, and in other places the buyer, one must stand by the dispositions of Law.[232] But if the lesion was not so great as to grant the faculty of rescinding, the contract must be reduced to equality. See Lehmkuhl, l. c.

2. On Force and Fear

1048. Absolute force takes away every voluntary, and therefore absolutely irritates a contract (cf. n. 286). Force that is not absolute is not distinguished from fear. Hence, only fear must be treated.

FEAR is: 1. grave or light; - 2. induced by an intrinsic or extrinsic cause, necessary or free, just or unjust; - 3. instilled to extort consent, or for other ends (cf. n. 285).

From Natural Law it is plainly the same whether either the one who has suffered fear, or another person most closely joined to him, ought to be affected by the evil with which the one instilling fear threatens.

From Positive Law, this has force only concerning descendants, ascendants, and spouses, who are equated with blood relatives.[233]

1049. PRINCIPLES. I. Fear justly instilled does not invalidate a contract nor render it rescindable. It does not invalidate, because fear not taking away reason, as is supposed here, does not take away but only diminishes the voluntary; it does not render rescindable, because no injury is inflicted on the contracting party. - Hence, he who, from fear lest a crime be brought before the judge, marries the girl whom he deflowered under promise of marriage, contracts validly.

1050. • II. Light fear never invalidates a contract, nor, more probably, renders an onerous contract rescindable, excepting nevertheless betrothals. The reason for the first: such fear does not impede true and free consent into the contract. The reason for the second: relatively light fear is presumed to have given occasion rather than cause to the contract, since the contracting party was only lightly unwilling (III, 718; H. Ap., X, 125). Hence a civil action is never conceded to such a contracting party, according to that saying of Law: "There is no just excuse of vain fear" (l. 184, ff., *de Reg. Jur.*).

It is said 1. It does not render an onerous contract rescindable; for according to the more common opinion it renders a gratuitous contract rescindable, on account of the greatest spontaneity which such a contract requires. - 2. Excepting betrothals, which can be rescinded even when contracted through light fear, from the greatest liberty which betrothals demand for themselves (cf. what must be said n. 1950).

There are nevertheless authors who probably affirm that all contracts, except marriage and religious profession, entered upon from light fear are rescindable at the will of the one who suffered fear (III, 718).

1051. III. Grave fear, unjustly instilled by the other party, does not invalidate a contract, but renders it rescindable at the will of the vexed person. Thus the very common and more probable opinion.

It is said 1. Grave fear, unjustly instilled by the other party, and indeed even if it was not instilled in order to extort consent (Lugo, disp. 22, n. 177).

2. It does not irritate the contract, since this does not obtain either by Natural Law or by Positive Law. "Not by Natural Law, because fear does not simply take away the voluntary; not by Positive Law, since in civil Law judges

[231] French Code, 887, 1674 ff.; Italian, 1529; Austrian, 1060; Spanish, 1266.
[232] German Code, 119, 138; Spanish, 1291.
[233] French Code, 1109 ff.; Italian, 1108 ff.; Austrian, 870; Spanish, 1267.

are commanded to rescind such contracts; therefore, of itself, the law holds them as valid" (III, 716).[234]

There are excepted some contracts, or acts, which CANON Law declares void by the fact itself if they are made from grave fear. Such are: marriage, and probably also betrothals; religious profession; vow; election of a prelate; promise or handing over of ecclesiastical things; absolution from censures; renunciation of benefices (III, l. c., Quaer. 1). - Also excepted is a gratuitous contract, if fear takes away every liberality, and consent is furnished only for avoiding unjust vexation. In which case, there is had rather an unnamed contract, I give that you may do, which is, of itself, void on account of defect of just matter.

3. It renders the contract rescindable. The reason: the one instilling fear is held to repair the injury done to the other; and this cannot be done unless the one who suffered fear is replaced in the former state of liberty. - Hence it is said in Canon Law: "the things which are done by fear and force must be recalled into voidness," and in Roman Law: "sales, donations, which have been extorted by power, we command to be weakened" (l. ult., c. 2, *de his quae vi*).

But rescission can be made by private authority; and this even if the thing has come to a third possessor of good faith. But if the other refuses, the one who suffered fear can secretly compensate himself (III, 717, 719).

Note. A contract entered upon from grave unjust fear is very often invalid from the beginning; because in the one who suffers fear, internal consent is lacking. But if that internal consent was present, let the conclusion which we have stated stand.

1052. IT IS ASKED. What if the fear was instilled not by the other party, but BY A THIRD PARTY?

Resp. If it was not instilled in order to extort consent, the contract is altogether firm; because then fear must be called the occasion rather than the cause of the contract. Wherefore, he who, attacked by a robber, calls others to his aid, is held to pay the promises made to those assisting. If nevertheless the sum were enormous, it would have to be diminished according to the judgment of a prudent man.

But if it was instilled to extort consent, there is controversy. - The first probable opinion holds that the contract is rescindable; because by reason of fear, even that instilled by a third party, perfectly free consent, which is required for firmly contracting, is lacking. Thus various Codes decree.[235] The second opinion, also probable, denies it, because since neither party has made an injury, there is, from the nature of the thing, no reason why the contract be void, and why it can be rescinded at the will of one, with the other unwilling.[236] In practice, favor must be given to the possessor, until the sentence of a judge decrees.

§ 4. ON THE EXTERNAL FORM OF CONTRACT

1053. By EXTERNAL FORM is here understood the external manifestation of mutual consent. By the law of nature indeed, no determined mode and no peculiar conditions are required. But Positive Law commands that certain FORMALITIES sometimes be observed, and of these some are accidental, while others are essential. Accidental formalities are those whose omission does not weaken the contract, but obliges only to paying a penalty, or also deprives the contracting parties of civil action. Essential formalities are those whose omission invalidates the contract in the external forum.

In modern Law, the form required for marriage, testament, donation, and hypothec is commonly held as essential. What is prescribed for the other contracts is held as accidental, required for proof in the external forum. Cf. German Code, 125-129; Austrian, 883-886.

1054. IT IS ASKED. Whether contracts which are declared null by civil laws, when they lack ESSENTIAL formalities, are already invalid also in the forum of conscience before the sentence of a judge, or only rescindable?

Resp. There is controversy. Certain contracts are called invalid by some authors, concerning which the intention of the legislator, thus irritating, seems sufficiently declared from the context of the words.[237] Yet the more common and more probable opinion holds that they must be considered, not invalid by full right before the sentence of a judge, but only rescindable. The reason is that the irritating force of the law is not sufficiently established, as is clear from the various opinions of jurists.[238]

With the controversy standing, favor must be given to the possessor until it is established otherwise by a judge.

[234] French Code, 1111, 1117; German, 123; Austrian, 872. See nevertheless Spanish Code, 1268.
[235] French Code, 1111; Italian, 1111; Spanish, 1268; German, 123; cf. Billuart, *de Contr.*, Diss. 1, a. 4, fin.
[236] Reuter, III, 126; Lugo, disp. 22, n. 117; cf. Austrian Code, 875.
[237] Cf. Marres, *de Just.*, l. 3, n. 21 seq.; Waffelaert, *de Just.*, I, n. 352.
[238] Cf. Aertnys, l. 1, n. 148; Vermeersch, *de Just.*, n. 329; Lehmkuhl, I, 1276.

Note. What we have said concerning defect of form commonly has force for other defects which by Positive Law irritate or weaken some contract licit and valid by its nature. Recall the things said n. 186 and 188. See also n. 1068, 1081, etc.

ARTICLE III

On the Obligation of Contract[239]

1055. DEFINITION. The obligation of contract is the bond by which someone, by force of the contract, is bound to giving, doing, or omitting something.

DIVISION. An obligation is one thing merely natural, another merely civil, and another mixed. - A merely natural obligation is that which indeed binds conscience, but gives no civil action in the external forum; a merely civil obligation is that which gives action in the external forum, but has no force for conscience, except by accident, for example on account of scandal to be avoided. A mixed obligation is that which has force for each forum, as obtains in contracts which are entered upon according to legal form.

1056. PRINCIPLES. I. Any contract produces a true obligation in the forum of conscience, whether in both contracting parties or in either one, according to the nature of the agreement.[240] For the mind

self-binding is of the essence of a contract; for that reason it is held as the likeness of law with respect to the contracting parties (III, 707). - It is always a question, as is clear, of an obligation of justice; the contract of promise alone is excepted (cf. n. 1062).

The contracting parties, or those holding their place, for example heirs, are held not only to those things which are stated in express words, but to all those things which, on account of the nature of the contract, law, or prevailing custom, are considered implicitly agreed upon. Hence, for example, the seller is held concerning eviction, even if nothing has been expressed about this (cf. the things said n. 1032).

1057. • II. In a qualified contract, the obligation must be determined from the nature of the clause added. The principal clauses which are usually added are the following: 1. under mode; - 2. under day; - 3. under demonstration; - 4. under alternation; - 5. under condition.

1058. MODE is a circumstance by which a burden not included in the substance of the contract is imposed on one party.

A contract under mode obliges immediately; nor nevertheless is the obligation extinguished from the mode not having been observed, unless it has been otherwise agreed. Thus, for example, the heirs of one who makes a legacy cannot vindicate for themselves an annual legacy, under the pretext that the mode is not observed, for example that Masses are not celebrated; but they have only the right of compelling the legatee to celebrate the Masses, or to take care that they be celebrated.[241]

2. A contract to a certain day, or to a day certainly coming at some time, for example when the father will die, produces obligation immediately; nevertheless the debtor is not held to fulfill it before the day.[242]

If the obligation is to an uncertain day, for example when the ship has returned from India, the contract is resolved into a conditional one, and follows the laws of this.

3. A contract under demonstration is that in which certain words are added for the sake of designating the thing or person.

If the error is in quantity, it must be distinguished thus: a) If the quantity was designated demonstratively, that is, if the thing is expressed in the first place and afterwards its quantity, for example I leave to Titus my estate, of thirty acres, the whole is owed. - b) If it was designated taxatively, so that in the first place the quantity is expressed, then the thing itself, for example I leave three gold coins in such a little chest, the excess of quantity is not owed, unless from adjuncts something else is established.

4. A contract under alternation is that in which among several things something is designated indeterminately, to be furnished according to the will of one of the contracting parties, for example I promise an ox, or a horse. Cf. D'Annibale, II, 328.

[239] Cf. French Code, 1134 ff.; Italian, 1123; Austrian, 914; Spanish, 1258, 1088 ff.
[240] III, 734; cf. Konings, 891, 3; German Code, 525 ff.; Austrian, 901.
[241] III, 734; cf. Konings, 891, 3; German Code, 525 ff.; Austrian, 901.
[242] Cf. German Code, 271; Austrian, 902-904.

If because of the destruction of one thing election becomes impossible, by the fault of the creditor, the debtor is freed; if it happened by the fault of the debtor, the creditor can seek the surviving thing, or the valuation of the other; if it happened by fortuitous chance, the contract can be called null. See what we said n. 632, Quaer. 1; cf. Austrian Code, 906-907.

5. CONDITION is a circumstance added to a contract, upon whose existence we will the value of that contract to depend. One is suspensive, another resolutive. It is called suspensive when the beginning of the obligation depends on fulfillment of the condition; resolutive, when an obligation already existing is revoked or resolved through the event of the condition, so that it is considered never to have existed (cf. Porpora, tr. XI, n. 72; German Code, 158; Austrian, 696 and 897).

Here in the first place it is a question of a SUSPENSIVE condition, since it properly makes the contract conditioned. It has various effects, according to the diversity of the thing about which there is question (VI, 890).

a) If the condition is concerning the present or the past, and in fact exists, the contract is valid immediately; otherwise, if it does not exist, although this is unknown, it is not valid. Similarly, it is valid if the condition is concerning a necessary future. b) If the condition is concerning a contingent future, there immediately arises an obligation of waiting and of not impeding the event of the condition; but when the condition has been placed, the contract passes into an absolute one, without it being necessary to renew consent: thus more commonly. c) If the condition is impossible or shameful concerning the future, it irritates the contract; because, if it is impossible, it is a sign that serious consent is not present, but rather dissent; but if it is shameful, or illicit, concerning the future, it cannot induce obligation, as one alluring to sin. See the things said n. 1036. Yet in CIVIL Law, donations on account of death, or last wills, are excepted, and in French Law also donations between the living, in which shameful or impossible conditions are held as not added. Thus, for example, if someone leaves you money under the condition that you profess heresy, or that you imbue children with heresy, the legacy is valid, although you are unwilling to fulfill the impious condition. The same is established, in CANON Law, concerning a shameful or impossible condition added to marriage, as we shall see in its place (n. 1973, q. 3).[243]

Yet if it were established that the donor or testator plainly wished his liberal disposition to depend on the express condition, the donation would not be valid.

Note. A condition must be fulfilled in its proper species, nor is it enough that it be fulfilled equivalently, unless it is sufficiently established that the contracting parties wished otherwise. As often as the fulfillment of a condition is impeded by one of the contracting parties, he sins and ought to perceive no benefit on account of the condition not fulfilled. Hence, if it has failed by the deed of him who ought to have fulfilled it, nothing is owed to him; if by the deed of him who ought to have furnished something, he is obligated;[244] if by the deed of neither, the obligation ceases (D'Annibale, II, 309; German Code, 158; cf. ib., § 134, 138, 308).

1058. • III. The nature and quantity of an obligation are to be estimated from the will of the contracting parties. Hence, if the will was clearly expressed, one must altogether stand by it. If it was expressed less clearly, it is to be interpreted from the equitable and good. Generally the rules for the interpretation of laws come to be applied here (III, 707). See D'Annibale, II, 331.

Hence: 1. The intention of the contracting parties, rather than the literal signification of words, must be examined in doubt. 2. If a clause admits a twofold sense, it must be understood in that sense in which it can produce some effect; for the contracting parties are to be presumed to have wished to effect something. 3. Equivocal words are to be accepted in that sense which better squares with the matter of the contract. 4. What is ambiguous must be interpreted according to the custom of the place where the contract was celebrated; because custom is the best interpreter. 5. Clauses customarily appended, if they have been omitted in the contract, are to be held as appended; because each one is presumed to contract according to usage. 6. Clauses must be interpreted one from the others, so that to each is given that sense which is argued from the whole act; for interpretation must be made from the whole context. 7. In doubt, an agreement is to be interpreted in favor of him who contracted the obligation, since any obligation is to be accepted in the more benign sense.[245] Finally, if doubt, all things having been weighed, cannot be taken away, friendly TRANSACTION is to be counseled (cf. n. 1160).

1059. Questions. QUAER. 1. What obligation does a RESCINDABLE contract produce?

[243]Similarly, the condition of perpetual celibacy, which is imposed in a testament, is to be held as not added if the legatee, or heir, has not thus far married; but otherwise if that condition is imposed on a widow (A. S. S., 17, p. 479).

[244]Others say that in this case the contract no longer has force; nevertheless, the damages perhaps coming upon the other are to be repaired by him who impeded fulfillment of the condition (cf. above n. 632).

[245]Porpora, tr. XI, n. 8; German Code, 133, 157; Austrian, 914-916.

Resp. Before rescission has been denounced, it produces the same obligation as an altogether firm contract. Moreover, a contract can be rescinded by that party who has suffered injury, or who lacked sufficient capacity; and unless the matter is doubtful, or unless the law has defined that rescission is to be pronounced by a judge, it can be done by private authority. But if the contract is not rescinded within the useful time defined by law, it becomes altogether firm.[246]

QUAER. 2. Whether a contract weak by law is firmed by an OATH?

Resp. Distinguish. A contract is declared weak or rescindable either on account of the common good of society, or on account of the private good of the contracting parties. In the former case, it is not firmed by an oath, which, since it is not a bond of iniquity, cannot induce the obligation of doing that which is against the common good. In the latter case, it is indeed firmed by an oath, but in modern Law it is firmed only in the internal forum, from the superadded bond of religion, from which there arises only a personal obligation, which does not pass to heirs; and the one swearing can obtain dispensation, because the other does not have strict right. Hence, the oath seems to be valid by which someone freely promises another that he will not revoke a testament or legacy made in his favor; because, in these and similar cases, the one swearing can yield his own right. Thus more commonly and more probably with St. Alphonsus (III, 177, 757).

You will ask whether that can be recovered which, by force of an oath alone extorted through grave and unjust fear, without another title, was paid? Resp. Some deny it, because an oath, on account of the honor of God, is to be understood simply and with effect; but an oath understood only of the momentary handing over of the thing would not be understood simply, and would be a true illusion. But very many others affirm it; both because that which must be restored can be recovered, and because by the payment made the oath has already been satisfied, nor is the reverence owed to the divine name violated by him who exacts reparation of the injury inflicted on himself. Nor was the handing over of the thing altogether illusory, because there is always danger lest the thing handed over to a thief can no longer be recovered (III, 174). Recall the things said n. 617, q. 3.

1060. Points to be noted. 1. The obligation of contracts CEASES in diverse ways, namely: a) by payment, or handing over of the thing owed; b) by novation, or the substitution of a new debt for an old debt: for example, I promised you grain; now I agree with you that in its place I shall pay a sum of money; c) by condonation or remission of the debt; d) by compensation: for example, I owe you one thousand francs, and for the same price I sell you a horse: the debt of each is extinguished; e) by confusion, that is, the conjunction of debt and credit in the same person, as if you become the heir of your creditor; f) by destruction or loss of the thing owed, which sometimes frees the debtor from obligation, as in merely gratuitous contracts, or also in others where the fault of the debtor does not enter; but sometimes it does not free, for example if it happened by the fault of the debtor, or he was in culpable delay; - g) by rescission made either by the consent of each party or by the will of that party which enjoys the faculty of rescinding; h) by prescription, as we said in its place (n. 900).

1061. As concerns DAMAGES which arise from the non-execution of a contract, or from delay of payment, they must be repaired according to the principles explained where we treated the damager (n. 948).

Several authors in this place treat of the proof of obligations or payments in the external forum. These things can be read in the Codes themselves.[247]

CHAPTER II

On Gratuitous Contracts

St. Alphonsus, III, 720; ed. G., II, p. 185; Lugo, disp. 23; Lessius, l. 2, c. 18; Salmanticenses, c. 4, n. 65 ff.; Sporer, tr. 6, c. 2, s. 3; modern authors cited above. With respect to testaments, see Vermeersch, o. c., n. 222 ff.

Among gratuitous contracts are especially numbered: 1. promise; - 2. donation; - 3. testament, by occasion of which we shall speak of the whole hereditary succession; - 4. mandate and management of affairs; - 5. deposit and sequestration; - 6. loan for use and precarium; - 7. loan for consumption. The first three contracts are unilateral, the others bilateral.

ARTICLE I

On Promise

1061. DEFINITION. Promise is a liberal, deliberate, and spontaneous giving of faith, externally made and accepted, concerning a possible and honest thing.

[246] D'Annibale, II, 418; German Code, 143.

[247] French Code, 1315-1369; Italian, 1312-1377; Spanish, 1278-1280; cf. Del Vecchio, t. II, 96.

It is said: liberal, and thus it differs from an onerous contract; deliberate, that is, with full advertence; and spontaneous, that is, immune from error, deceit, and fear; a giving of faith, and thus it is distinguished both from donation, in which the thing itself is immediately handed over, and from a mere purpose, which is the simple will of doing something and imposes no obligation; externally made, that is, such that a man can know it; accepted, otherwise consent would not be mutual. But tacit acceptance suffices; indeed, someone can accept for another whose care he manages. Thus a father accepts for children, a religious for a monastery, a prelate for a church, a husband for a wife, etc.; concerning a possible and honest thing; because there is no obligation of impossibilities, and "faith ought not to be observed in evil promises" (Reg. 69, in 6). But if the promise is prodigal, the thing promised must be reduced to equity, according to common estimation; and if the thing is indivisible, nothing is owed (III, 720, 735).

The object of a promise can be either an action to be done by the promisor, a personal promise, or a thing to be furnished for the utility of the promisee, a real promise.

If a promise is made under a certain formula of words, for example one asking: will you give me the book? and the other responding: I will give it, it is called STIPULATION. He who promises is called the promising one or promisor; but he to whom it is promised is called the promisee.

1062. PRINCIPLE. The obligation of a promise depends on the will of the promisor. If he wished to obligate himself only from fidelity, which ordinarily happens, he is held only under light sin, even in grave matter. If he intended to bind himself from justice, the obligation will be grave or light according to the quantity of the matter. But for constituting grave matter in a promise from justice, there is required a quantity four times greater than in grave theft, because the promisor disposes of his own. - In doubt concerning the intention of the promisor, one must stand for the least part.

Points to be noted. 1. An obligation from fidelity says only a moral debt imposed on the promisor from honesty; an obligation from justice superadds to this debt a right to the thing (cf. n. 839), which is acquired by the promisee (Lugo, l. c., n. 12).

2. A public promise, expressed by a public instrument, is always considered elicited from a motive of justice; for that, in the likeness of law, binds successors. According to some authors, the same must be said if the promise is firmed by oath. Cf. Delama, n. 178; Muller, II, § 110; German Code, 311, 313, 518.

3. Any promise, by accident, obliges from justice, namely if a neighbor would suffer damage from the promise not being observed; for example if you promised him a loan for consumption, and he, relying on your promise, did not provide for himself from elsewhere.

4. The promisee cannot secretly snatch the thing promised, because a promise does not give a right in the thing (cf. n. 917). Except if it is a question of a remuneratory promise (cf. Gopfert, II, n. 99). Yet after the fact, he who in good faith has occupied a thing promised to himself does not seem to be held to restitution. The reason is that it is not established that he retains another's thing with the owner reasonably unwilling. Cf. Aertnys, l. III, n. 404; Lessius, l. c., c. 17, n. 44.

5. The obligation of an accepted promise ceases "if afterwards the promised thing is rendered impossible, or very harmful, or illicit, or useless; and generally speaking, as often as there supervenes a notable change of things, which, if it had been foreseen, the promise would not have been made; because a promise made is always presumed under such a tacit condition" (III, 720). Cf. the things said n. 1060.

IT IS ASKED. Whether a promise obliges if before execution the promisee or the promisor DIES?

1. If the PROMISEE dies, it must be distinguished thus: the promise was made either principally in his favor, or principally or at least equally in favor of his family or heirs. If the former, the obligation of the promise vanishes, because the end intended in the promise ceases. If the latter, the obligation presses toward the family or heirs of the deceased (cf. n. 1068).

2. If the PROMISOR dies, the heirs are held to fulfill his real promise, whether toward the promisee or toward the latter's heirs, in the same mode and by the same title by which the deceased was held. But otherwise if it is established that the promisor wished to obligate only himself personally (Lugo, l. c., n. 98). The Codes also are to be consulted here: for example Austrian Code, 955.

Note. But if the promise was made through a mandatary, the promise will have force after the death of the promisor, so that the heirs of the deceased are obligated, provided the mandatary could not yet know of the death of the deceased (cf. Lehmkuhl, I, n. 1287).

With respect to the promise which an heir ab intestato made to a dying man, see n. 1083, fin.

ARTICLE II

On Donation[248]

1063. DEFINITION. Donation is the bestowal of one's own thing made from liberality, accepted by the donee. - Therefore three things are required for donation: on the part of the donor, liberality, to which no right compels; on the part of the donee, acceptance, which renders the act perfect; on the part of the thing, transfer of ownership.

Transfer of ownership to the donee is not perfected everywhere in the same way. For in some places it is perfected by the delivery of the thing itself, and elsewhere even before delivery.

a) From Roman and German Law it is perfected by the delivery alone of the thing; and if the donor refuses to make this delivery, an action against the donor is conceded to the donee, since he has a right to the thing.[249]

b) From Austrian Law the transfer is perfected either by delivery of the thing or by an authentic document subscribed by a notary (Austrian Code, 943).

c) From French, Italian, Spanish Law it is perfected even before the delivery of the thing. Nevertheless, if movable goods, after a donation has been made, are donated or sold and delivered to another, this latter, provided he is in good faith, can retain them, since law thus disposes on account of the public good. - But the unfaithful donor is held concerning damage toward the donee.[250]

From this you will infer: the donee, as soon as he has acquired ownership of the thing, can use it so that it becomes fruitful, even if, for example, it is a question of money for Masses which were to be said after the death of the donor, provided the possessor furnishes security. *Ami du Cl.*, 1910, p. 111.

The FORM in which donation must be made is accurately indicated by Positive Law.[251] Yet let the things which we said above n. 1054 be recalled. From the law of nature no form is required. Also, no solemnity is required by Positive Law for manual donations, which are perfected by delivery alone.

From this you will conclude: if parents secretly donate to illegitimate children, for example through manual donations, fideicommissum, something not conceded by law, they are not to be troubled, and much less the children accepting, provided such disposition is illicit under no other title (III, 952).

DIVISION. Donation is distinguished: 1. simple, which is made without limitation, and qualified, which is made under condition or mode; 2. purely liberal, which supposes no obligation in the donor, and antidoral or remuneratory, which supposes an obligation of gratitude; 3. donation between the living, by which someone actually and irrevocably transfers the ownership of his thing to another accepting; and donation on account of death, by which ownership is not transferred into the one accepting unless the donor has died (cf. n. 1068, q. 2).

Note. Civil law favors donations as little as it can; for it restricts the donor's capacity, limits the disposable matter, and prescribes a solemn and therefore more difficult form. Yet in Roman Law donation for pious causes, and in modern Law donation on account of marriage, enjoys peculiar privileges (cf. Spanish Code, § 1327 ff.).

1064. PRINCIPLES. I. All can donate who are impeded neither by nature nor by right. Now, by nature those lacking the use of reason are impeded; but by Right[252] minors, wives, interdicted persons, etc., are impeded (cf. n. 1037, 1038). Moreover, in various places relative incapacity is in force, for example of spouses toward each other; concerning this incapacity the Law of one's own region must be consulted.[253]

1065. II. One's own and present goods can be donated, by whose cession neither the rights of creditors nor the legitimate of necessary heirs are injured. Thus from Law partly natural, partly positive.

Therefore it is required: 1. that the goods be one's own; wherefore administrators of communities cannot make donations from the patrimony of these communities, unless they are remuneratory, or unless they are expended in alms; - 2. that the goods be present; for future goods are commonly prohibited by Positive Law from being donated, except in the determined

[248]Cf. for natural and Roman Law: Lugo, disp. 23, s. 9; Lessius, l. 2, c. 18, dub. 2; for modern Law, French Code, 893; Italian, 1050; Austrian, 938; Spanish, 618; German, 516.
[249]Doveri, II, 395; German Code, 929.
[250]French Code, 938; Italian, 1062; Spanish, 623.
[251]French Code, 931; Italian, 1056; Austrian, 943; Spanish, 633; German, 518.
[252]Ib., l. c.; Crolly, II, 325.
[253]French Code, 1096; Italian, 1054; Spanish, 1334.

circumstances described there;[254] - 3. that the rights of creditors not be injured; for goods are not understood unless debt has been deducted, as the axiom bears: "No one is liberal unless liberated." But the donee accepting becomes a participant in the donor's injustice, and is held to restitution, provided he knows that the donor is made unequal to restoring (III, 722); - 4. that the legitimate remain intact, or the portion of goods owed to necessary heirs (cf. below n. 1081).

Yet it must be adverted that remuneratory donations are not computed among donations properly so called, when they are made according to the quantity and quality of merit, according to the estimation of prudent men; nor manual donations, which are usually made among relatives and friends, as little gifts, etc. - Nor does civil law prohibit donations from mere revenues; for the legitimate portion owed to necessary heirs consists only in the patrimony, that is, only in the capital, which parents are held by no right to increase.

1066. III. Donation is always revocable before acceptance, even if it has been firmed by oath; it is sometimes revocable after acceptance. The reason for the former is that no obligation can be contracted without the mutual consent of the parties, and because an oath follows the nature of the act. The reason for the latter is that such a change of circumstances can be given that revocation of the donation becomes licit. See other things n. 1068.

As to the first, note: a) Tacit acceptance suffices, for example if a donation is made to one present and silent; because in favorable things silence is held for consent. Otherwise French Code, 894 and 932. Indeed, a donation made to infants has force before the acceptance of the donee, because the law itself accepts for infants (III, 725).

b) But acceptance is not necessary, at least in Roman Law, if donation is made immediately to God, for example in these words: I promise God to give to such a church, etc.; because, since the intention is borne toward God, the donation has force as a vow. But if it is made immediately to a church, hospital, etc., the acceptance of the prelate, administrator, or at least of some private person who accepts in the name of the church, is more probably required. "In doubt concerning the intention of the donor, he is presumed to have had the mind of vowing, because, in pious causes, when a promise is made in absence, commonly the intention is borne toward God" (III, 726).

c) From several Codes,[255] a donation made in a nuptial pact cannot be impugned on account of defect of acceptance.

As to the second, observe: The causes on account of which a donation, even one accepted, can be revoked are the following: a) If the conditions under which the donation was made are not fulfilled. b) If the donation is inofficious, that is, if it injures children in the legitimate; in which case, it is the common disposition of Law that the donation be reduced to the disposable part. c) If the donee has become enormously ungrateful, for example if he has attempted to bring death on the donor, if he has inflicted grave injuries on him, if he has refused him necessary food. d) If offspring is born to the donor who previously lacked it. But how far the faculty of revoking extends itself in these cases, and what must be observed by the donor, Positive Law recounts, which admits the greatest variety in this matter.[256] Cf. Pruner, *de Jure*, I, § 144.

In GERMAN Law (l. c.), the birth of offspring is not a cause of the revocability of donation; on the other hand, another cause exists, namely, if the donor does not have power to support himself according to his condition, namely to procure support owed to spouse or relatives.

1067. IV. All who are capable of possessing can acquire donations. Wherefore it suffices that the donee at the time of the donation is conceived; but a donation made to one to be born is considered made under the condition that he be born alive and viable (cf. n. 741).

By Positive Law, communities are commonly prohibited from accepting donations without the consent of civil authority; and this disposition, insofar as it is a question of communities subject to ecclesiastical jurisdiction, is plainly unjust (cf. n. 874).

Likewise, by relative incapacity, several are prohibited from accepting donations from determined persons, or in peculiar circumstances. The disposition of laws in this matter is not everywhere the same. Yet rather commonly, incestuous and adulterine children cannot accept from their own parents except food alone, and recognized natural children only the legitimate.[257]

1068. • Questions. QUAER. 1. If before acceptance the donor or donee DIES, what is the right?

Resp. 1. If the donor dies, the matter is doubtful: some deny that the donation can be validly accepted, "because, after the death of the donor, his will cannot be united with the consent of the donee, as is required for acceptance" (III, 729). But

[254] French Code, 943; Italian, 1064; Austrian, 944; Spanish, 635; German, 523.
[255] French Code, 1087; Italian, 1062; Spanish, 1330.
[256] French Code, 953; Italian, 1078; Austrian, 947-954; Spanish, 644; German, 528 ff.
[257] French Code, 906; Italian, 1053; Spanish, 139; German, 1708 ff.

others affirm it, "from the fact that the will of the donor virtually perseveres in the letters, or in the messenger sent, or in the legation given to him of making the donation."

"Supposing that each opinion is probable, I say that if the donee in good faith accepted the donation, and has already accepted the thing donated, he can lawfully retain it." Otherwise if in bad or doubtful faith (H. Ap., X, 130). - But if the donation was made through a messenger, when the messenger and donee were still ignorant of the donor's death, the donation certainly is valid (III, 730).

2. If the donee dies, it is more probable that his heirs cannot accept; "because an heir succeeds in the real rights of the deceased, but not in personal ones, such as is the right of accepting a donation. Yet Lessius concedes that, if the heir is the son of the donee, from equity he could accept, since such a mind of the donor is to be presumed" (III, 731).

QUAER. 2. What must be observed with respect to donations made ON ACCOUNT OF DEATH?

Resp. Donation on account of death has this as proper to itself, that ownership of the thing is transferred to the donee neither immediately nor irrevocably; but only under a double condition, namely that the donor die and that he not revoke the donation. Therefore it differs from donation between the living in that it is revocable; and from testament in that the acceptance of the donee is required (H. Ap., X, 134).

In ROMAN Law, likewise in SPANISH Law,[258] donation on account of death has force, provided it is made concerning the disposable part, between capable persons, and is confirmed by the death of the donor. It is revoked by the fact itself if the donee dies, nor does it pass to his heirs (III, 741).

In FRENCH and ITALIAN Law, donation on account of death is not admitted. Concerning it those things have force which were said of contracts entered upon without due form (n. 1054).

In AUSTRIAN Law, donation on account of death has force as a contract if it is accepted and declared irrevocable; concerning which a public document must be handed over to the donee. But if it has the conditions of a testament, it has force as an inheritance or legacy.[259]

In GERMAN Law,[260] donation on account of death is not admitted; but promise of donation on account of death is recognized, that is, a promise of donation made under this condition, that the donee survive the donor; it has force as a last will.

But here it must carefully be noted that not all donations made by occasion of death are donations on account of death. Thus, for example, a donation made irrevocably, even if under the condition of death, for example I give you this thing, if I die in this danger, is truly a donation between the living, since the condition does not depend on the will of the donor. A fortiori, a disposition is to be held as a donation between the living by which a sick man actually and irrevocably donates a thing, whether movable or immovable, to a friend or relatives.

ARTICLE III

On Hereditary Succession

We shall treat: 1. of hereditary succession in general; - 2. of legal succession; - 3. of testamentary succession.

§ 1. ON HEREDITARY SUCCESSION IN GENERAL

1069. DEFINITION. Hereditary succession is the acquisition of the right which the deceased had at the time of death, or in other words: it is the mode of acquiring ownership of the goods and rights of the deceased.

INHERITANCE, or the hereditary estate, is the whole right, or universality of goods, of the deceased, and comprises all his rights and burdens which are not merely personal. - Heir is called the one to whom belongs the right of entering upon the inheritance.

DIVISION. Hereditary succession is twofold. One is LEGAL, which is also called succession ab intestato; through this the goods and rights of the deceased are acquired from the disposition of law, without a testament. Another is TESTAMENTARY, and through this the goods and rights of the deceased are acquired from his last will, or legitimate testament. Of testamentary heirs, some are necessary: these cannot be excluded by the testator; others are voluntary, namely those who, from the free will of the testator, obtain hereditary right (III, 945).

[258] Spanish Code, 620.
[259] Austrian Code, 956.
[260] Code, 2301.

In certain places, pactual succession is also admitted, through which the goods and rights of the deceased are acquired by a pact which he, while living, entered upon with the heir. To such succession what we are about to say concerning either legal or testamentary succession can easily be accommodated. Cf. German Code, 2274-2300; Austrian, 1217.

1070. PRINCIPLES. I. Hereditary succession is a mode of acquiring ownership which is rooted in Natural Law and is more distinctly defined in Positive Law. Thus the more common and more probable opinion. - The reason for the first is that domestic society cannot consist nor be perpetuated without the right of succession. For the perpetuity and vigor of families requires that children be able to perceive some benefit from the labors of their fathers. Now, when the right of succeeding is taken away, the principal stimulus which compels men to labor is taken away; every zeal for progressing in arts and in sciences is taken away; care for the family estate itself is taken away, since there is no one who would wish to treasure up for unknown persons. Similarly, when the right of making a testament is taken away, the father is reduced to the condition of a mere administrator, and his authority, so very necessary in his own family, decreases. - The reason for the second is that many things pertaining to successions are obscure or litigious, so that they can be defined by supreme authority alone. Likewise, there are many things which, on account of the common good, must be diverse for diverse circumstances of time, place, form of government, etc. But for the ordering of these, supreme power is required.

1071. II. Succession is opened at the very moment of death, in the place of the last domicile of the deceased; and possession of the goods is deferred immediately to the heir.[261] Yet if the testator has appended a condition concerning the future, one must wait until it has been fulfilled, for example if a legacy has been made under this condition, that the legatee enter Religion.

In other places,[262] the heir declaring the acceptance of the inheritance before a judge can immediately enter upon it. In others,[263] judicial immission is required. Let each one consult his own Law.

1072. III. When the inheritance has been opened, the heir is not held to accept it,[264] as the common axiom bears: NO ONE IS HEIR UNLESS HE WISHES. But acceptance, unless judicial immission is required, can also be made tacitly,[265] for example if the heir mixes himself in the affairs of the succession. But to decline the quality of heir, express renunciation is required, since this is never supposed.[266]

So that the heir may be able freely to determine himself to acceptance or renunciation of the inheritance, a twofold benefit is conceded to him by law: 1. The RIGHT OF DELIBERATING for a certain time;[267] and when this has elapsed, from French, Italian, and Spanish Law, he can be compelled judicially by those whose interest it is, so that he may open his mind; but when no one contradicts, the time is prolonged to the years of the longest prescription.[268] From German Law, if the heir, after the six weeks conceded for deliberating, has not repudiated, he is considered to have accepted.[269] And here it must be noted that someone can renounce the quality of legitimate heir, and reserve to himself the quality of instituted heir; likewise, refuse a legacy offered under universal title and accept a legacy conceded under particular title. Renunciation effects that the quality renounced, and therefore the rights and burdens annexed to the same, are held as if they had never existed.[270] - 2. The RIGHT OF INVENTORY, that is, the right of describing all the goods, credits and debts, of the deceased,[271] so that thus the state of the inheritance may be perfectly known. If among several heirs one demands an inventory, the others are held to consent;[272] indeed it must always be completed if the inheritance is deferred to an interdicted person, a minor, an absent person, or a moral body.[273] Likewise, in Germany, it must be done if one of the creditors postulates this.[274] Ordinarily nevertheless, in German law, there is no place for the use of inventory, since the heir can provide for himself in other ways. Cf. also what must be said n. 1084 ff.

1073. IV. The heir by entering upon the inheritance transfers into himself not only the benefits and rights of the deceased, but also his debts and real burdens. We say:

[261] French Code, 718; Italian, 923; Austrian, 536; Spanish, 657.
[262] French Code, 724; Italian, 925; German, 1942, 1960.
[263] Cf. Doveri, II, 1593; Austrian Code, 797; Spanish, judicial civil law, 1001 ff.
[264] French Code, 775; Italian, 929 ff.; Austrian, 805; Spanish, 988 ff.; German, 1942.
[265] French Code, 778; Italian, 934; Spanish, 999; German, 1943.
[266] French Code, 784; Italian, 944; Spanish, 1008; German, 1945.
[267] French Code, 795 ff.; Italian, 951; Spanish, 1004, 1005; German, 1944.
[268] French Code, 789; Italian, 943; Spanish, 1016.
[269] Code, 1942 ff.
[270] French Code, 785; Italian, 945 ff.; Spanish, 1009; German, 1948.
[271] French Code, 774; Italian, 929; Austrian, 800; Spanish, 1010.
[272] French Code, 782; Austrian, 807; Spanish, 1007.
[273] French Code, 776; Italian, 930; Austrian, 805; Spanish, 1992.
[274] Code, 1975 ff.

1074. Benefits and rights, namely real rights; for personal rights, by which the deceased enjoyed, as usufruct, right of habitation, etc., are extinguished with him.

1075. Debts and likewise real burdens, which each of the heirs is held to bear pro rata, unless the testator has determined otherwise.[275] St. Alph., III, 961.

Let it be noted: 1. He who uses the benefit of inventory and duly and without fraud completes it obtains: a) that he is not held to pay debts beyond the powers of the inheritance, and that he can cede all the goods to creditors; b) that his own goods are not confused with the goods of the inheritance, and therefore that he can, like any other creditor, reclaim his credit and the expenses of his administration from the inheritance; c) that he has power to sell the immovables of the inheritance at public auction. The heir, or executor of the testament, is held at the end of his administration to render account to creditors and legatees; but all expenses, even for funerals and for appending seals, belong to the inheritance itself.[276]

2. He who neglects the inventory is considered by Civil Law to enter upon the inheritance purely and absolutely; and therefore he is held, even beyond the powers of the inheritance, to pay debts.[277] But whether he is held to this also in conscience is controverted. The more common and more probable opinion denies it (H. Ap., II, 26; Marres, n. 271). Indeed grave authors add that the heir is not held to this even after the sentence of a judge, because such a sentence is founded on presumption of fact, namely of fraud on the part of the heir, as if he had omitted the inventory in bad faith, so that he might better hide everything. Cf. Lehmkuhl, I, n. 1398. Yet the creditor can use the favor of the law.

3. V. If there are several heirs, partition of the inheritance is made: 1. amicably among those of age, present, and concordant, either through a private act or through an authentic act before a notary; - 2. judicially, if minors, interdicted persons, absent persons, etc., are present, or if litigation concerning the inheritance is moved.

On account of the excessive diversity of Laws it would be too long to explain each thing. We touch lightly on the more common things, referring to the Codes for fuller knowledge.[278]

The principal rule to be observed in partition is EQUALITY among the heirs. But equality would be injured in a threefold case: 1. in the case of anticipated acceptance, namely if one of the heirs had already accepted certain things from the deceased, by which his portion would increase beyond right; 2. in the case of lesion, namely if some object had not been estimated at a just price; 3. in the case of eviction, namely if one of the heirs were disturbed from the goods received in the partition. So that this threefold inequality may be excluded, against the first there is place for collation, against the second for rescission, against the third for assurance (Carriere, II, 535).

a) COLLATION is the act by which individual heirs refer to the sum of goods left to be divided those goods which they received from the deceased through donation between the living.

Hence, if a father has donated fields or a great sum of money to one or several children, for example by occasion of marriage, the other children, enriched by no similar gift, can demand that, in the division of the inheritance, account of donations of this kind be had (III, 954-960). Likewise it must be said if the father redeemed a son from military service, provided he did not do this for his own utility, that is, the father's, or for the family's utility.

Yet from collation are exempted: 1. Those things which the deceased gave by expressly exempting the heir from collation. 2. Ordinary expenses of education, that is, what was spent for food, clothing, instruction, books, academic degrees, benefice, nuptial costs, liberation from the penalty of prison or death, and customary little gifts. For these are considered less gifts than payment of a debt, since parents are held to supply these things to children. 3. Fruits of things to be referred which came to the donee before the death of the donor; for from the civil Code they are not owed except from the day of the opened succession. 4. An immovable good which perished by fortuitous chance without fault of the donee.[279]

b) RESCISSION is the act by which, on account of lesion of some party, a preceding partition is irritated, so that a new one may be instituted.[280] A simple passing over of some object in partition does not give place to rescission, but only to a new partition.

In the forum of conscience, every damage culpably inflicted must be repaired; but in the external forum, only that which is beyond the fourth part, if it is a question of mere lesion, force or deceit being excluded. But if force or deceit was present,

[275]French Code, 724, 870-882; Italian, 1027-1033; Austrian, 547; Spanish, 661; German, 1967.
[276]French Code, 793 ff.; Italian, 955 ff.; Austrian, 802; Spanish, 1023.
[277]Austrian Code, 801; German, 1975, 1993 ff.
[278]French Code, 815 ff.; Italian, 984 ff.; Spanish, judicial law, 1001 ff.; Austrian, 554-561; German, 2032-2063.
[279]French Code, 843-869; Italian, 1001 ff.; Austrian, 787 ff.; Spanish, 1035; German, 2050.
[280]French Code, 887-892; Italian, 1038; Spanish, 1073 ff.; German, 756 ff.

any lesion of some moment suffices for obtaining rescission.

c) ASSURANCE is the obligation which lies upon all the heirs pro rata and in solidum, of making unharmed the coheir who has suffered eviction in the portion obtained. Yet it is required that the cause of eviction existed before the divided inheritance.[281]

§ 2. ON LEGAL SUCCESSION

1075. Things to be noted beforehand. 1. A legitimate heir can succeed either by his own right, that is, on account of the right which the personal degree of consanguinity confers, for example when a son succeeds a father; or by right of representation, that is, on account of the right which he obtains because, substituted in the place of another, he is held as taking the place of that person's person with respect to the succession to be occupied. Thus grandchildren are called in place of a deceased father to the succession of the grandfather.[282]

Commonly, the right of representation is admitted only in favor of descendants, both from the deceased himself and from his brothers.[283] In AUSTRIA, however, it is extended to all heirs;[284] in GERMANY to the first three orders.[285]

2. Succession is either by heads, when namely the inheritance is divided equally according to the number of persons, or by stocks, when the division is made according to the number of stocks, which then happens when someone comes by right of representation; or finally by lines, when the inheritance is divided into two parts, one of which is allotted to the blood relatives of the paternal line, the other to the blood relatives of the maternal line.[286]

3. The RULES of legal succession are chiefly the following:

I. When a valid testament is lacking, the law itself determines the mode of succession, with consideration both of the common good and of the presumed will of the deceased.[287]

II. Commonly the right of succeeding belongs to all who are joined to the deceased by a bond of kinship, not only natural, but also civil, that is, through adoption.[288]

III. Those joined are divided into various orders,[289] of which the prior excludes the later, so that heirs of a subsequent order do not come unless any heir of a preceding order is lacking.

IV. Among heirs of the same order, division is made according to special rules, which among various peoples are established variously, just as the constitution of the orders itself is various.[290]

Here are the more common rules:

1. Descendants[291] constitute the first order; if they are lacking in the first degree, their children come by right of representation. Parents[292] come in the second order, in some places alone, in others together with the brothers of the deceased, or the children of these, by right of representation. - Ascendants in a more remote degree[293] come in some places in the same order with parents, elsewhere in a subsequent order.

2. Brothers[294] are privileged among all collaterals: they come in a special order, and those who descend from them enjoy the right of representation. Full brothers,[295] or bilaterals, have broader privileges than consanguine or uterine brothers, or unilaterals.

3. The surviving spouse[296] is regularly computed among legitimate heirs, not in a determined order, but with heirs of any order, for his or her own part. Thus, for example, in ENGLAND a wife receives the third part of the goods of

[281] French Code, 884-886; Italian, 1035 ff.; Austrian, 820 ff.; Spanish, 1069 ff.; German, 756 ff.
[282] French Code, 739; Italian, 729 ff.; Austrian, 733; Spanish, 924 ff.; German, 1924.
[283] French Code, 740 ff.; Italian, 730; Spanish, 925.
[284] Code, 730 ff.
[285] Code, 1924.
[286] French Code, 733; Italian, 739; Austrian, 735; Spanish, 926; German, l. c.
[287] French Code, 723; Italian, 720; Austrian, 727; Spanish, 912; German, l. c.
[288] French Code, 731; Italian, 721; Austrian, 755; Spanish, 177, 807; German, 1757.
[289] French Code, 745 ff.; Italian, 736 ff.; Austrian, 730 ff.; Spanish, 921 ff.; German, 1924.
[290] Ib.
[291] St. Alph., III, 953; French Code, 745; Italian, 736; Austrian, 730; Spanish, 930; German, l. c.
[292] French Code, 746, 748; Italian, 738, 740; Austrian, 735; Spanish, 935 ff.; German, 1925.
[293] French Code, 750; Italian, 739; Austrian, 738; Spanish, 937; German, 1926.
[294] French Code, ib.; Italian, ib.; Austrian, 736; Spanish, 946.
[295] French Code, 752; Italian, 740; Austrian, 736; Spanish, 949.
[296] Austrian Code, 757; Spanish, 952, 834; French, 767; Italian, 753 ff.; German, 1931.

her intestate husband if he leaves descendants; otherwise half.[297] - In GERMANY she receives in the first case only the fourth part, in the second half.[298] In AUSTRIA a spouse, if there are three or more children, succeeds with them into an equal part, but only with respect to usufruct. If, in defect of descendants, a legitimate heir is present, the spouse receives the fourth part in ownership; if none, he or she succeeds into the whole inheritance.[299]

4. Natural[300] and spurious children do not enjoy the same rights as legitimate or legitimated children. With respect to the father, they are either restricted to food alone or obtain a greater or lesser portion according to the diversity of the order in which heirs come from legitimate kinship. With respect to the mother, natural children succeed as legitimate, and spurious children can probably retain what they accepted from the mother.

5. Everywhere the treasury[301] comes after all, that is, when any other heir is lacking (cf. n. 884).

6. As incapable, he who at the time of the opened succession was not conceived, or was not born viable, is excluded from legitimate succession; similarly he who is civilly dead. Cf. n. 1042, 3. A child whose parents are related in an indispensable degree likewise, by common Law, is not admitted to succession as incapable. Pruner, *Moraltheol.*, p. 634 and 638.

7. As unworthy, he who is proved guilty of an enormous offense against the deceased is excluded.[302]

§ 3. ON TESTAMENTARY SUCCESSION

1077. Things to be noted beforehand. A disposition concerning goods of fortune can be made: by testament, by codicil, by legacy, or finally by substitution.

1. TESTAMENT, from modern Law,[303] is a disposition concerning those things which someone wills to be done concerning all his goods or concerning a certain part of them, for the time following his death.

Formal institution of an heir is not required, but any denomination is admitted, provided it is clearly expressed how the testator intends to dispose of his goods for the time following his death.

2. A CODICIL is a declaration of last will, less solemn, by which someone, without the direct institution of an heir, decrees something concerning his succession.

In modern Law, a codicil is commonly held in the likeness of a new testament, and in it the prescriptions of a holographic testament must be observed. Otherwise, however, in some provinces of Spain: in Catalonia, Aragon, and Vasconia.

3. A LEGACY is a disposition of last will by which the testator, from goods coming universally to the heir, leaves something to another, in words directed to him, to be furnished by the heir.

It is said: in words directed to him, for example I leave to Titus, etc.; for if the words were directed to the heir, in favor of Titus, it would be FIDEICOMMISSUM.

In FRENCH Law[304] there is no distinction between an heir from testament and a legatee. In testamentary dispositions, three species are distinguished which have the same effects, whether they are made under the name of institution of heir or under the denomination of legacy, namely: 1. Universal legacy, by which the testator donates the universality of his goods, either with the burden of furnishing particular legacies or without this burden. 2. Legacy made under universal title, by which the testator donates an aliquot part of the goods, for example a half or third part, all movables or immovables, etc. 3. Legacy made under particular title, by which a determined part of the goods is donated, for example one thousand gold coins, a library, a statue, etc.

In ITALIAN,[305] SPANISH,[306] and GERMAN Law,[307] the first and second species of disposition bestow the quality of heir, the third disposition the quality of legatee.

[297] Cf. Crolly, II, 481 ff.
[298] Code, 1924-1931.
[299] Code, 757-759.
[300] French Code, 756 ff.; Italian, 743; Austrian, 754; Spanish, 939, 840; German, 1705, 1708.
[301] French Code, 768; Italian, 758; Austrian, 760; Spanish, 956; German, 1936.
[302] French Code, 725, 727; Italian, 724 ff.; Austrian, 540 ff.; Spanish, 745, 756; German, 2339.
[303] French Code, 895; Italian, 759; Austrian, 553; Spanish, 667; German, 1937; Crolly, II, 332 ff.
[304] Code, 1002.
[305] Code, 760.
[306] Code, 660.
[307] Code, 2087.

4. SUBSTITUTION is a disposition of last will by which another is subrogated into the place of an heir. It is vulgar or direct, and fideicommissary.

Vulgar substitution is a disposition by which, into the place of an heir who cannot or does not wish to accept the inheritance, another, indeed even a third and fourth, is substituted.

Fideicommissary substitution, or fideicommissum, is a last will by which the testator commits something to the faith of an heir or legatee, to be handed over to another. But the thing committed must either be handed over immediately, or be preserved by the fideicommissary heir for some time, generally until death, and afterwards be handed over to another (cf. 1068, 2).

In modern Law, fideicommissum is either altogether excluded[308] or is subject to peculiar laws.[309] But it must be recalled that fideicommissary substitution for pious causes has force in the forum of conscience; for from Canon Law, by which they are governed, they are held valid.

These things having been set forth, we must treat: 1. of the requisites for the value of a testament; 2. of the execution of a testament.

1. On the Requisites for the Value of a Testament

For the VALUE of a testament, some things are required on the part of the testator, others on the part of the heir, others on the part of the form.

1078. PRINCIPLES. I. On the part of the testator there are required: the power of making a testament and a free will of making a testament once had, and not retracted at the time of death.

We say: 1. The power of making a testament is required. - Now: a) From the law of nature, the faculty of making a testament concerning one's own things belongs to all who enjoy integrity of mind and labor under no vice of body by which they are impeded from declaring what they wish to be done concerning their things after death. Therefore by nature the incapable are infants and the perpetually insane, drunk persons, the furious, and all who actually lack the use of reason (III, 942). - b) From Positive Law, some who would be capable by Natural Law are legitimately prohibited; because it belongs to law to provide for the public good.

From modern Law, minors, interdicted persons, and the guilty of certain crimes enjoy no faculty or a restricted faculty. Wherefore the particular laws of various peoples must be consulted. Here we shall add only a few things about the faculty of minors, as being of more frequent use.

From French Law,[310] one who has not yet been born for sixteen years cannot make a testament. From the seventeenth year to the completed twenty-first year, a minor can, by testament, dispose of half of those goods about which, if he were of age, he would have power to dispose absolutely. From Italian Law,[311] one who has not yet completed eighteen years cannot make a testament. But when this year has been completed, he can be a testator, like all others. - From Austrian Law,[312] the impubes cannot make a testament. But those who have attained the years of puberty, but have not yet been born for eighteen years, can make a testament only orally and before a judge. But from the nineteenth year they enjoy full faculty. From Spanish Law, minors of either sex can make a testament after the completed fourteenth year.[313] From German Law, minors not yet born for sixteen years cannot make a testament; from this age then up to majority they can make a testament orally before a notary.[314] From English Law, minors are altogether prohibited from making a testament (Crolly, II, 334).

2. A free will of making a testament is required, etc. The things which can be opposed to liberty were said above (n. 1045 ff.), where we treated fear and error.

3. Points to be noted. a) Any testator can at will, either in part or in whole, revoke a testament made by himself. "For the will of the deceased is ambulatory up to the supreme end of life."[315] But revocation is made either expressly through a new testament or another authentic act, or tacitly through cession of the thing legated. A testament

[308] French Code, 896; Italian, 899.
[309] Austrian Code, 608, 611 ff.; Spanish, 781; German, 2100; cf. Delama, n. 97.
[310] French Code, 903, 904.
[311] Code, 762, 763.
[312] Code, 569.
[313] Code, 663.
[314] Code, 2229.
[315] L. 4, ff., *De adimendis*, etc.

deleted or torn is held as revoked, unless it is established that the violation of the writing was made contrary to the will of the testator.[316]

b) Several testaments made by the same person can subsist together, insofar as namely the earlier does not contradict the later.[317] Yet this is not admitted in Roman, Austrian,[318] and Spanish Law,[319] unless in the subsequent testament express mention is made of the preceding, and unless it is declared whether, either in part or in whole, one must stand by it.

c) A testament is revoked by the law itself if, after it has been made, a necessary heir appears who was altogether passed over.[320] - Yet French Law and Austrian Law do not admit this disposition, but each Law reduces the testament to the disposable part. From German Law, the testament can be impugned by this necessary heir.[321] From Spanish Law, the testament is revoked, but the legacies remain firm unless they are inofficious.[322] In place of this disposition, in English Law this other disposition is in force, namely that a testament, whether of a man or a woman, is rescinded by subsequent marriage (Crolly, II, 363, 2).

1080. II. On the part of the heir, it is required that an incapable person not be instituted, and that a necessary heir not be injured.

We say: 1. That an incapable person not be instituted. Moreover, the capacity of the heir is not required for the time at which the testament is made, but for the time at which the testator dies. But since no natural incapacity is given, anyone who is not prohibited by Positive Law can be instituted as heir, even if he lacks the use of reason.

From modern Law,[323] commonly, those intervening in the making of the testament are prohibited from being instituted in the goods left through this testament. In Germany, besides those, no other is declared incapable. - From other Codes, rather commonly, those are prohibited to whom it is not conceded to accept donation between the living, namely: those not yet conceived, unless insofar as substitution is permitted, and those not born viable, as abortive fetuses (cf. n. 741); certain guilty persons, as a penalty of delict; illegitimate and spurious children, who can accept nothing beyond the portion determined by law from their own parents. In French[324] and Spanish Law,[325] a special inability is pronounced in a tutor with respect to the goods of the pupil; in a physician and a minister of worship, with respect to the goods of the deceased to whom, in the last illness, they furnished the work of art or ministry, with respect to confession.[326] Likewise,[327] a wife without the consent of her husband, and public institutions without the consent of the government, cannot accept an inheritance deferred to themselves. - From English Law,[328] subjects of a nation which actually moves war against the English nation are prohibited from being instituted; likewise, a cessor of goods whose cession is not approved.

2. That a necessary heir not be injured; that is, that he not be excluded, or be frustrated of his legitimate part. A necessary heir cannot be excluded unless on account of causes stated in the law. In this case, the one excluded has a right to food alone, if he does not have this from elsewhere; otherwise, to a determined part of the goods, which is called reservation or legitimate portion.

3. a) Necessary heirs, from both Roman and modern Law, commonly are legitimate or legitimated descendants; and when these are lacking, ascendants, whether paternal or maternal, but only in the nearer degree.[329]

From Italian, Spanish, and German Law, the surviving spouse is also computed among necessary heirs.[330] In English Law, necessary heirs are not given, and, unless it is a question of the transmission of lands, the testator enjoys full liberty.

b) Causes of exheredation are the most grave offenses of children against parents, for example if a son attempts to kill his parents, acts against them in criminal causes of death, perpetual exile, etc.

[316] French Code, 1035 ff.; Italian, 888; Austrian, 713-719; Spanish, 737; German, 2253 ff.
[317] Italian Code, 774; German, 2258.
[318] Code, 713.
[319] Code, 739.
[320] Italian Code, 888.
[321] Code, 2079.
[322] Code, 814 ff.
[323] French Code, 906 ff.; Italian, 971 ff.; Austrian, 540 ff.; German, 2234 ff.
[324] Code, 907, 909.
[325] Code, 781 ff.
[326] Of the physician, nothing in Spanish Law. As concerns the priest, the law regards only testaments made in the last illness. Cf. Allegre, in art. 909.
[327] Articles 217 and 910.
[328] Holdsworth, c. 4.
[329] St. Alph., III, 945; French Code, 915; Italian, 805; Austrian, 762; Spanish, 930, 935; German, 2303.
[330] Italian Code, 812; Spanish, 807-834; German, l. c.

The same causes are not everywhere admitted; let each see them in his own Law.[331] In French and Italian Law, a son cannot be exheredated except on account of unworthiness declared by the sentence of a judge; by which law jurists advert that paternal authority has been not a little injured. But in German Law, for exheredation it suffices that at the time the testament was made the cause existed and is expressed in the testament.[332]

c) The legitimate part owed to necessary heirs is that portion of goods which supplies the faculty of living honorably according to one's proper state. The matter is more accurately defined in various Laws.

From French Law:[333] the portion reserved to legitimate children, if there is one, is half of the goods; if there are two, two-thirds; if three or more, three-fourths. - To ascendants in defect of descendants, if they are present in each line, half; if in one line only, a fourth. To recognized illegitimate children is owed the part which is allotted to them by law in succession ab intestato.

From Italian Law:[334] to legitimate descendants is owed half the part, whatever be their number. To illegitimate children is owed the part which the law assigns to them in succession ab intestato. Ascendants, without distinction of lines, have right to the third part. The surviving spouse, if he or she comes with legitimate children, is computed in their number and obtains his or her portion not indeed in ownership, but only in usufruct; if he or she comes with others, he or she obtains in the same mode, that is, in usufruct, a third part.

From Austrian Law:[335] half the part is owed to descendants, and a third part to ascendants. Natural children have a definite reservation in the goods of the mother alone. To the surviving spouse, although he or she is not a necessary heir, if poor, suitable support is owed, as long as he or she has not flown to second nuptials.

From German Law:[336] heirs have right to half of the portion assigned to them in legal succession, whatever be their number.

From Spanish Law:[337] parents are conceded power to dispose at will concerning a third part of their goods; a third part is owed to descendants; the remaining part is owed to the family, yet in such a way that, with the right of the wife preserved, they can assign it at will to one or more children, the others being set aside. To ascendants, if descendants are lacking, half the part from the goods of children is owed.

1082. III. On the part of form, nothing determined is had by Natural Law; but by Positive Law various formulas are prescribed according to the diversity of testaments.

By reason of form, a testament is: 1. Common or privileged, according as the ordinary form is observed, or by privilege one is dispensed from it. Privileged are testaments of soldiers waging war, of those laboring under plague, of those sailing, etc.[338] But when the circumstance which was the cause of the privilege ceases, a certain time is conceded for making a common testament, and the privileged one falls. 2. Solemn or private, according as it is made with determined solemnities, for example with a notary or judge and witnesses, or without them. But a solemn one is public, or mystic or closed.

We shall say nothing about the form of a solemn testament. For in modern Law, commonly, a public minister is required, who intervenes in the name of society; but he will have care for the dispositions of law to be observed.

A private form, and indeed the simplest, is had by a holographic testament: namely that which is written entirely by the hand of the testator, with indication of year, month, day, in Germany also place,[339] and with the apposition of the name, in the form of a chirograph. As these three conditions are required for its validity, so they also suffice. - You will note besides: 1. the addition of day, month, and year can be made by arithmetical notes, and placed in any part of the testament; yet it is safer to write these in whole letters at the end of the testament; 2. the inscription of the place where the testament is made is considered by no means necessary, except in Germany; for the testament has force wherever it has been drawn up; 3. any paper, even if not sealed, suffices.

In FRENCH, ITALIAN, SPANISH, GERMAN, and AUSTRIAN Law, a holographic testament is admitted.[340] And in AUSTRIAN Law, an allographic testament, written by another, and a nuncupative testament are also admitted; see their form

[331] Austrian Code, 768 ff.; Spanish, 848-857, 840-846; German, 2333.
[332] Code, 2336.
[333] Art. 913.
[334] Art. 805.
[335] Code, 765 ff.
[336] Code, 2303, 2310.
[337] 808-848, 930-955.
[338] French Code, 981 ff.; Italian, 789; Austrian, 597; Spanish, 716; German, 2249.
[339] Code, 2231; Austrian Code, 578, only counsels the indication of place or time.
[340] French Code, 970; Italian, 774; Austrian, 578; Spanish, 688; German, 2231.

in the Code itself.[341] - In ENGLISH Law it is required that the name of the testator be appended to the written testament, or be recognized as duly appended, in the presence of two witnesses, who themselves also must subscribe their names (Crolly, n. 338).

1083. • Questions. The various questions which can be posed regard either the licit and illicit in making testaments, or informal testaments. Hence there are questions of diverse genus.

QUAER. 1. Whether parents sin by injuring the legitimate of children?

Resp. Affirmatively, of itself; and indeed against legal justice alone.

For it belongs to civil society to determine the order of successions, according to the mode which the common good requires. - They do not sin more probably against commutative justice, because they dispose concerning their own thing. For a necessary heir acquires strict right in the goods only after the death of the testator. St. Thomas, 2. 2, q. 57, a. 4; Genicot, I, n. 677.

We said of itself; because: 1. Parents do not seem to sin in any way who, for a just cause, partially injure the legitimate of children in some particular case. For the end of the law ceases when a disposition in itself inofficious, by reason of circumstances, profits the family and is not opposed to the common good: for example, if a father should allot certain remuneratory goods to an upright son, whence less would come to a dissipating son; - or even if he should allot more to one of his children, so that he could more safely continue the paternal commerce, etc.

And this ought to be admitted the more easily, the more modern laws restrict paternal authority. - 2. Parents also do not seem to sin who would spend their goods on pious works, even if they injure the legitimate of children, provided these do not lack honorable support (III, 740, 750). This opinion was already held probably by the ancient Doctors (cf. Genicot, I, n. 677, note; Lehmkuhl, I, n. 1392).

From these things conclude: a) After the fact, children who have received a greater part than owed are not to be troubled when, from the adjuncts of things, it can be conjectured that the parents favored them for a just cause. This has force especially if they are in good faith, and it can deservedly be feared lest they refuse to yield anything.

b) Heirs whose legitimate part has been injured use their own right if before tribunals they attack dispositions harmful to themselves, even if it is a question of dispositions for pious causes. Cf. Genicot, l. c.

c) Parents can secretly make legacies to illegitimate children, even those not legally recognized, although these have no right to them, with the rights of legitimate children nevertheless preserved and scandal excluded (Genicot, I, n. 679).

d) The following question is more difficult: in the case in which a testator, while the first wife was living, entered upon a new civil marriage, can the possible children born from this adulterine concubinage accept the legitimate part assigned to them as also to legitimate children; - or, if nothing was assigned, claim the legitimate part?

Resp. To the first, affirmatively, because according to the path of Positive Law this part has been left to them; nor does Natural Law stand in the way, because the testator, disposing all things in this way, did not injure the strict right of the legitimate children, as was said above.

To the second, negatively, namely if the last will of the deceased is clearly expressed in the testament. Reason: the children born from the first marriage, in the case, immediately after the death of the testator obtained strict ownership of the part assigned to them. Moreover, it is against piety to impugn the expressed will of the father. Civil law indeed receives the second marriage into an equal condition of right with the first, but it cannot in the case favor the illegitimate children, since it is evidently inequitable.

We said: if it is expressed in the testament, etc.; for in doubt concerning the will of the testator, impugnation could licitly be made. Similarly, if the deceased did not make a testament; for then he is considered to have wished that all things be distributed according to the norm of Positive Law. Cf. Genicot, II, 562, IV, against Lehmkuhl (I, n. 1396), who expresses himself rather doubtfully.

QUAER. 2. To what is the testator held toward blood relatives who are not necessary?

Resp. 1. Toward brothers and sisters, and likewise toward the spouse, if he or she is not a necessary heir, the testator is held under grave sin to leave by legacy that which is necessary for relieving their grave want. Yet this obligation presses from charity alone.

[341] Austrian Code, 579 ff.

2. Toward remote blood relatives, even if they are constituted in grave necessity, and toward brothers, sisters, or spouse who are not situated in grave necessity, the testator is held only under light sin (III, 946; H. Ap., X, 237; l. El. qq. ref., n. 39). Cf. what we said n. 702.

QUAER. 3. Whether a testament or legacy lacking legal forms has force in conscience?

Resp. 1. If it is a question of profane causes, for example of legacies directed to blood relatives or friends, the question must be solved according to the principles explained above (n. 1054).

Hence for practice: a) The heir ab intestato can, with safe conscience, use the benefit of the law by seeking the rescission of an informal testament; and similarly a legatee from an informal testament can licitly claim the goods legated to himself, if the heir does not wish to use his right, or even if he is ignorant of the vices of the testament. b) Before the sentence of a judge, neither is the heir held from justice to pay merely liberal and profane legacies, unless by force or fraud he impeded the validity of the testament, or unless with an oath he promised to pay them; nor is the legatee held to restore goods which he has already accepted or which he already possessed by the right itself. But after the sentence of a judge, they cannot either accept the thing or retain the thing accepted (III, 927).

2. "With respect to pious dispositions, it is certain that, if the will of the testator is established to the heir, whether by words, or by nod, or by writing, the heir is held in conscience either to yield the inheritance to the pious place, or to pay the legacies" (III, 923).

A PIOUS CAUSE is called every work which of itself, from the end of the work, or from the intention of the faithful, is ordered to a supernatural end. That supernatural end can regard not only the worship of God or the glory of the Saints, but also the spiritual or temporal utility of one's neighbor. In this last case nevertheless, there must be present the motive of exercising charity, as befits a Christian, and a merely philanthropic motive does not suffice.

Therefore pious causes are: the sacrifice of Mass, churches, monasteries, confraternities, works of mercy, schools, orphanages, even secularized ones, associations of young men for promoting in them love of the faith and good morals. Cf. Aichner, § 143. - Pious causes are not theaters, societies instituted solely for performing gymnastic exercises; indeed hospitals, orphanages, schools which evidently were founded from a merely philanthropic end are not pious causes, whence also their administration was totally withdrawn from the ministers of the Church.

In doubt concerning the nature of the work, one must attend to the end of the one operating.

Pious causes are subject exclusively to ecclesiastical laws. This is clearly demonstrated by positive monuments; nor is D'Annibale, II, n. 339, to be heard, who almost alone among the moderns teaches the contrary opinion. Cf. Genicot, I, n. 675. - The opinion is confirmed by the Rescript of the Sacred Penitentiary, 19 Jan. 1901 (A. S. S., 34, p. 384), where it is said: "The practice of this Sacred Tribunal is … that generally pious legacies be held as valid and obligatory in the forum of conscience. Yet heirs are easily admitted to composition with the Church or the pious cause to which the legacy was made." Cf. also the Response of the same Congregation, 23 July 1844 (ap. Gury, *Casus*, I, n. 861) and 23 June 1884 (ap. Genicot, l. c.).

Yet it must be noted: a) If the will of the testator is not established through his undoubted writing, or through words heard from him, or in another similar way, the heir is not held to believe one witness alone, although most approved, for example the pastor or confessor; because there must be at least two witnesses, from Canon Law itself and by reason of the common good, so that frauds may be avoided (III, 924). - b) If someone, as frequently happens in places where civil law is opposed to Canon Law, is completely ignorant of his obligation, and it is feared that he will not obey the admonition of the confessor, he will have to be left in his good faith, as we have already often warned. c) If the matter is entangled with difficulties, let it be referred to the judgment of the Bishop, to whom, from the Council of Trent (Sess. 22, c. 8, *de Ref.*), the care of the execution of pious dispositions has been entrusted, and who, for this end, has also been instructed by the Holy See with peculiar faculties.

Corollary. An heir ab intestato who PROMISED the deceased that he would certainly fulfill his last wills is held to this, sometimes from justice, sometimes from fidelity alone.

1. From justice, if the deceased abstained from making a testament on account of this promise. For if, in making the promise, the heir intended not to fulfill it, he committed deceit, and thus unjustly impeded a third party from obtaining a good, and therefore he is held to reparation. But if he promised sincerely, he would commit fault by changing his purpose; because he would infer true damage on him who otherwise would have been instituted legatee (Crolly, II, 394).

2. From fidelity alone, if the deceased did not abstain from making a testament on account of this promise. The last manifestation of will then is a testament lacking legal form, and the things noted in the preceding question have force. But there will be an obligation under grave sin from religion if the promise was firmed by oath (cf. n. 1059, Quaer. 2 and 1062).

2. On the Execution of a Testament[342]

1084. I. The execution of a testament is committed of itself to the heir, unless the testator or judge, or the heirs themselves, have constituted an executor. This office belongs to him alone who was designated, and therefore does not pass to his heirs.

But so that this office can be undertaken, it is required that the one undertaking it possess the faculty of obligating himself. Hence minors cannot undertake it, even if the license of the tutor accedes; nor a wife, unless the husband consents, which also has force for a wife legitimately separated from her husband. As concerns religious, they can be executors, provided the consent of the Superior accedes and the rule does not stand in the way (III, 936).

1085. • II. The executor must be held as the mandatary of the deceased, and is held to fulfill gratis the office which he has accepted, otherwise in Germany,[343] while nevertheless his expenses are compensated.

But he must watch: 1. that judicial seals be appended, if among the heirs there are minors, interdicted persons, or absent persons; - 2. that an inventory be made, with the nearest heir present or duly summoned; - 3. that movable goods be sold, if money is lacking for payment of legacies; - 4. that he urge the execution of the testament, especially with respect to pious legacies, which must be paid immediately or at least within six months if a time was not determined by the testator (III, 941).

1086. III. In the execution of a testament, the expressed will of the deceased, where it is had, must be religiously observed; or the will deservedly presumed, where the expressed will is lacking.

Hence: 1. If the words admit a manifold sense, let the mind of the testator be attended to, according to the nature and object of his last will. 2. If any added condition appears either unintelligible, or impossible, or contrary to good morals or laws, let it be held as not appended. 3. If some disposition of the testator rests on a final motive either false or contrary to laws or good morals, let it be held as null (cf. n. 1057, toward the end).

1087. • Questions. QUAER. 1. Who has power to INTERPRET the will of the testator concerning legacies to be made from a testament?

Resp. Any prudent person can make this interpretation, with due account had of the circumstances.

1. A legacy left to virgins is owed even to a corrupted one, if her corruption is occult. 2. A legacy left to virgins originating from a place is not to be given to virgins born there by chance. 3. Legacies left for dowering determined girls so that they may marry can be given to the same ones already married or about to enter or having entered Religion; otherwise, if they are indeterminate. For in the former case the testator is considered to have wished to benefit such persons; in the latter, to free poor girls from the danger of seduction. 4. Things left to the poor, under which name pious causes also are understood, must be distributed according to the order of charity, as was said n. 484. 5. Things left to poor orphans can be given to wretched persons having useless parents, where orphans properly so called are lacking; otherwise in the concurrence of these (III, 930, 938). 6. Things left to a Religious Order can be given also to a Congregation with simple and perpetual vows.

QUAER. 2. Who can CHANGE legacies?

Resp. Civil authority, for a just cause, can commute a profane legacy into another profane legacy; a fortiori, into a pious one. But only the Supreme Pontiff, when a just cause intervenes, will be able to commute a pious legacy into another pious use.

But Bishops, as Laymann and others probably say, can only then interpret the will of the testator and apply legacies to another pious use, when such a cause supervenes which, if it had been known, certainly would have induced the testator to dispose otherwise concerning his things (III, 931; Lucidi, *Visit. sacr. lim.*, c. VII, a. 4).

QUAER. 3. When does the lapse of a testament OBTAIN?

[342] French Code, 1028; Italian, 903; Austrian, 816; Spanish, 892 ff.; German, 2197-2228.
[343] Code, 2221.

Resp. A testament becomes lapsed when, although valid from the beginning, it cannot attain execution on account of certain circumstances.[344]

This happens if the thing legated perishes while the testator is living, or if an heir or legatee is lacking. But a legatee is lacking if he dies before the testator, or before the condition has been fulfilled on which the execution of the testament depends; likewise, if the legatee does not wish or is unable to accept the legacy. If the legacy was left to several conjointly, then when one is lacking, his part accrues to the others.

ARTICLE IV

On Mandate and Management of Another's Affair

1088. - I. Mandate is a contract by which someone commits to another accepting a matter to be managed in his name. - He who undertakes the office of managing the matter is called mandatary; the one mandating, he who commits it.[345]

It belongs to the essence of this contract that the mandatary act the person of the one mandating, so that the things which he does by force of the mandate are held as done by the one mandating. But gratuitousness belongs only to the nature of this contract (cf. n. 1032). Therefore a mandate is considered undertaken gratis, unless a price is sanctioned either expressly or tacitly, for example by reason of the office which the mandatary exercises. Nor does a mandate, on account of an added stipend, pass into a hiring of work, since its essence is not destroyed by such a disposition. Cf. nevertheless what we shall say n. 1141.

Mandate is TWOFOLD: 1. special, if it comprises only one business, or certain determined businesses; 2. general, if it extends itself to all the businesses of the one mandating which are of pure administration.

Among MANDATARIES are numbered the vicars of merchants, who buy and sell wares; those placed over factories, who hire craftsmen and complete agreements; representatives of commerce, brokers (cf. n. 1140), procurators, syndics in cession of goods, etc., etc.2

1089. The one MANDATING is held: 1. to furnish the things necessary for the execution of the mandate, and to pay expenses made; 2. to fulfill obligations contracted by the mandatary and consonant with the mandate; 3. to preserve the mandatary unharmed concerning damages.

1090. The obligations of the MANDATARY are: 1. not to exceed the limits of the mandate; - 2. to manage the business diligently; - 3. to render an account to the one mandating concerning the matter managed, and to restore to him whatever he perceived by force of the mandate, whether by title of gain or by title of gift; because he does not acquire for himself.

A mandate is extinguished: a) when the business committed is finished; b) by revocation of the mandate, which the one mandating can make at will; c) by renunciation of the mandatary notified at the due time; d) by natural or civil death, or interdiction, either of the one mandating or of the mandatary; but in Germany, only by the death of the mandatary.[346]

1091. • II. Management of an affair is a certain quasi-contract by which someone undertakes the useful management of the affair of an absent person, without an express or tacit mandate, but from his reasonably presumed commission. It is a presumed mandate.[347]

1092. The manager of the affair IS HELD to administer diligently the matter of another until the owner has provided; to repair damages inflicted from his own fault. Yet in many circumstances the obligation of compensating damages can be tempered, especially when these proceed from the unskillfulness of a benevolent manager, in defect of a more skilled one. - More probably, he has a right to a fitting wage; otherwise few would be found who would wish to manage the affairs of absent persons. Cf. *Ami du Cl.*, 1912, p. 927.

1093. The absent person whose business is managed well IS HELD to observe agreements duly made by the manager, and to repay to him expenses and damages arising from such management, even if, notwithstanding the good management, the matter had an evil success.[348] See the things said above n. 885.

[344]French Code, 1039; Italian, 890; Austrian, 726; Spanish, 743; Crolly, II, 373.

[345]Doveri, II, p. 215; French Code, 1984-2010; Italian, 1737-1763; Austrian, 1002-1026; Spanish, 1709-1739; German, 662 ff.; cf. Bouvier, *de Contr.*, P. II, c. 1, art. 3, 2; Gury, I, n. 746, 747. - Cf. Mouilart, *Tr. du Droit franc.*, p. 394.

[346]Code, 673.

[347]Cf. Bouvier and Gury, l. c.; French Code, 1371 ff.; Italian, 1140 ff.; Austrian, 1036 ff.; Spanish, 1888 ff.; German, 677 ff.

[348]Cf. Gury, I, n. 846-849.

ARTICLE V

On Deposit and Sequestration

1092. - Deposit is a contract by which a movable thing is handed over to be kept, so that it may be restored whole. - He who deposits the thing is called the one depositing or depositor; but he with whom it is deposited is the depositary.[349]

It is a real contract, which is perfected only by the handing over of the thing. It is, by its nature, gratuitous; but if a price is sanctioned for the keeping of the thing, the rules of deposit nevertheless have force.

Deposit is TWOFOLD: 1. voluntary, which is perfected by the spontaneous will of the contracting parties; and this can be express or tacit; - 2. necessary, called in ancient Law "miserable," which is made when some necessity urges, for example in the case of shipwreck, fire, etc. In modern Law, things deposited with innkeepers and drivers are considered as a necessary deposit.[350]

1093. PRINCIPLES. I. The depositary is held to keep the thing deposited, and to restore it at the judgment of the one depositing. Thus all Laws.

1094. He is held to keep the thing diligently;[351] indeed, he is held to special diligence if he promised it, or if he spontaneously offered himself, or if he sought a wage for the care of the thing, or if he accepted the thing solely for his own benefit, or finally if an express stipulation intervened concerning avoiding any fault whatever. His carelessness induces the obligation of restitution (cf. n. 920). - The depositary cannot watch what sort of thing has been deposited when he accepted it enclosed in a chest or sealed.[352] Similarly, he cannot without sin use the thing deposited, without at least the presumed consent of the owner; yet the sin will not be grave unless there is grave damage of the one depositing or danger of damage. But if he negotiates with the thing deposited, for example a pastor with the money of confraternities, the fruits belong to the negotiator, unless it has been otherwise established (*Ami du Cl.*, 1910, p. 111; Lehmkuhl, *Cas. consc.*, I, n. 854).

1095. He is held to restore the deposit immediately to the one asking for it; and indeed with the fruits perceived from it; otherwise he would retain another's thing. Except unless he certainly knows that the thing is stolen, or unless he would have a certain cause of compensation, or unless he prudently fears lest the owner is going to abuse it (III, 753). Cf. the things said n. 1020.

1096. • II. The one depositing is held to preserve the depositary unharmed. For the axiom bears: "His own office ought to be damaging to no one." Hence, he must warn the depositary of a vice of the thing from which damage could arise to him, and repair all necessary or useful expenses made for keeping the thing (Porpora, tr. I, n. 529).

Let it be noted FROM NEW LAW:[353] 1. Deposit regularly cannot be made except by the owner of the thing deposited, capable of contracting; or by his express or tacit consent. - 2. Proof of deposit must be made in writing if the thing exceeds the value determined by law, unless it is a question of necessary deposit. - 3. Innkeepers are held concerning the theft or detriment of things deposited, whether the theft or detriment is done by servants or by strangers; but not if it is done with arms or by greater force. But see the things said n. 988.

1095. • II. Sequestration is a species of deposit by which a disputed thing is handed over to another third person to be kept, so that afterwards it may be returned to him to whom it has been adjudged by the judge or by arbitration. It is conventional when it is made by the mutual agreement of the contestants; judicial when it is decreed by the sentence of a judge.

Sequestration is governed by the same principles as deposit. But its object can be not only a movable thing, but also an immovable. It is not dissolved except by the sentence of a judge or by the mutual consent of the parties (Austrian Code, 968).

[349] French Code, 1915-1963; Italian, 1835-1877; Austrian, 957-970; Spanish, 1758-1789; German, 688-700.
[350] Austrian Code, 970; German, 700-704.
[351] We already said above (n. 920) what a depositary must do in the case in which the thing deposited is endangered with him.
[352] St. Alph., III, 748, 749, 752; cf. German Code, n. 698; Austrian, 966.
[353] Cf. the Codes, l. c.

ARTICLE VI

On Loan for Use and Precarium

1096. Loan for use (*pret a usage*) is a contract by which some movable or immovable thing is conceded gratis for use alone, under this law, that at the determined time it be restored in the individual. He who concedes the thing is called the lender for use; but he to whom it is conceded, the borrower for use.[354]

If the use of the thing is not conceded for a certain time, but at the will of the lender for use, the contract is called PRECARIUM (III, 745).

Loan for use is a real contract, which is perfected by the handing over of the thing; and it is essentially gratuitous; for when the stipulation of a price accedes, it passes into a lease of the thing. Its object can be any thing whatever placed in human commerce, provided it is not consumed by that use for which it is conceded, for example gold coins which are conceded for a time for display alone.

1097. • PRINCIPLES. I. The lender for use is held to permit the use of the thing and to undergo the peril of it. The reason for the first is clear from the definition itself. The reason for the second is that the lender for use always remains the owner of the thing. But a thing perishes for its owner (III, 747).

1098. He is held to permit the use of the thing; whence he cannot reclaim it before the determined time or before the end has been obtained. Yet if he himself, from an unforeseen case, needed his thing immediately, he could reclaim it, even with equal damage of the borrower for use; because the condition is always considered tacitly to underlie: "unless meanwhile the thing is necessary to me." Austrian Code, n. 976, dissents.

1099. He is held to undergo the peril of the thing; and therefore he must of himself sustain detriments arising from fortuitous chance. Likewise, he is held to extraordinary expenses which the preservation of the thing requires, and to disclosing its harmful vices.

1100. II. The borrower for use has a right to the determined use, and is held to preserve the thing diligently. The first is of the essence itself of the contract; the reason for the second is that he who has the benefit ought to have also the intrinsic inconvenience of the thing.

1101. He has a right to the determined use, and therefore cannot use the thing for something other than that for which it was conceded. See nevertheless what we noted n. 1093. But he must restore the thing at the established time.

1102. He is held to preserve the thing diligently, as a good father of a family; to undergo expenses joined with the ordinary use of the thing; likewise, to make extraordinary expenses which do not suffer delay; but, in this case, the expenses must be refunded to him by the owner, for example if he takes care of a horse laboring under a grave disease without his fault. If the thing, by his fault, has perished or been made worse, he is held to repair the damages; but not if these have arisen from the necessary use itself. He is not held concerning a merely fortuitous case, unless he is in culpable delay, or by a peculiar pact undertook the peril of the thing upon himself (cf. n. 920). See St. Alphonsus (III, 752; H. Ap., X, 137; Delama, n. 192; Austrian Code, 978 and 1311; Lehmkuhl, *Cas. consc.*, I, n. 851).

ARTICLE VII

On Loan for Consumption

We must treat: 1. of the nature of loan for consumption; - 2. of profit not to be perceived from loan for consumption, or of usury; - 3. of titles excusing from usury, or of loan for consumption with stipulation of interest; - 4. of certain loans for consumption in species.

§ 1. ON THE NATURE OF LOAN FOR CONSUMPTION

1099. - NOTIONS. Loan for consumption (*pret de consommation ou simple pret*) is a contract by which a thing consumptible by the first use is handed over to another, with the obligation of returning a similar thing, in its own time and in the same species and goodness.[355]

It is a real contract, which is perfected only by the handing over of the thing. - He who gives the loan for consumption is called the lender; he who receives it, the borrower; what is given is called the principal.

[354]St. Alph., III, 744; see the Codes: French, 1875; Italian, 1805; Austrian, 971; Spanish, 1740 ff.; German, 59 ff.

[355]Cf., for ancient Law, Lugo, disp. 25; Lessius, l. 2, c. 20; for modern Law, Crolly, *de Contr.*, P. II, disp. 9, and the various Codes: French, 1892; Italian, 1819; Austrian, 983; Spanish, 1753-1757, and Commercial Code, 388 ff.; German, 607-610.

The profit which is licitly perceived from a loan for consumption is called interest or increment, commonly *interesse*; but what is illicitly perceived is called usury. Interest is either legal, indicated by law, or vulgar, commonly received among men, or conventional, established from contract.

1100. The object of loan for consumption is not, as in lease and loan for use, things which can be preserved, whose use therefore can be distinguished from the thing, but things consumptible by the first use, which therefore are destroyed by the use of consumption to which they are naturally ordered, for example grain, wine, etc. In these, use cannot be separated from ownership; wherefore the thing lent for consumption necessarily passes into the ownership of the borrower, as St. Thomas says (2. 2, q. 78, a. 1). Money can be computed among things consumptible by the first use, because money of itself is ordered to making exchanges; whence it is alienated by the one using it, and perishes for him, and is morally consumed by the first use (III, 754).

1101. PRINCIPLE. There is given a precept of charity of conceding a loan for consumption to those who are situated in necessity and will have whence to restore. For charity obliges one to assist a neighbor constituted in necessity, by conceding to him either the thing itself which he needs, or at least the use of the thing. Hence, a loan must be made even to the rich who, on account of a peculiar circumstance, for example to avoid litigation, need a loan; but not to those who ask the same in order to increase riches. The words of the Lord make for this (Matt., 5:42): From him who wishes to borrow from you, do not turn away. - The reason for the limitation is that it belongs to the nature of loan for consumption that a similar thing be returned; wherefore the contract of loan for consumption cannot have place with those who do not even have in hope whence they may return. Therefore these must be assisted by alms (see n. 488).

The precept of furnishing a loan rarely presses, on account of the very grave annoyances of recovering what was conceded by loan.

VARIOUS OBLIGATIONS arise from the contract of loan for consumption entered upon:

1. The lender is held to warn about a vice of the thing; otherwise he must repair damage. Likewise, he is held not to reclaim the thing before the time, unless he himself is in equal necessity. But if the time was not prefixed, it must be defined by the judgment of prudent men; otherwise, the loan would harm rather than profit the borrower (III, 754 ff.).

2. The borrower is held to furnish for fortuitous chance, and to return the thing in the same quantity and quality at its own time or when the lender has asked. Indeed, restitution must be made to one not asking, if it is not asked on account of forgetfulness, reverence, or distance. Yet the lender who does not ask, when he easily can, is considered to indulge a delay (III, 755).

§ 2. ON PROFIT NOT TO BE PERCEIVED FROM LOAN FOR CONSUMPTION, OR ON USURY[356]

1102. - DEFINITION. In the broader sense, usury is called every profit which someone perceives from money handed over to another in any way whatever, for example for constituting a census, for entering upon partnership, etc. In the strict sense, as it is taken here, usury is profit immediately proceeding from loan for consumption (III, 758), that is, precisely by force of the loan, another title being excluded, or, to use the words of the Fifth Lateran Council: Usury is the profit which one endeavors to acquire by no labor, no expense, no peril (Sess. X, Bull *Inter multiplices*).

DIVISION. Usury is twofold: 1. real, which is expressed by pact; - 2. mental, which is intended in the mind, without express stipulation.

Usury is called palliated or implicit when it lies hidden under another contract, for example purchase, lease, etc. (III, 761).

1103. • PRINCIPLES. I. Usury, or profit precisely by force of loan for consumption, is altogether illicit. In other words: Loan for consumption is an essentially gratuitous contract, and both Positive and Natural Law prohibit that one endeavor to acquire profit from a loan for consumption by force of the loan. The first is established from the Encyclical of Benedict XIV, *Vix pervenit* (1 Nov. 1745), by which the Supreme Pontiff confirms all laws previously enacted, especially those of the Council of Vienne (1313), the Fifth Lateran Council (1515). Cf. Lehmkuhl, I, n. 1301; Bucceroni, *Ench. mor.*, p. 97. - The reason for the second is that it is unlawful to exact profit for the use of a thing not one's own. There is indeed no injustice if, for the utility which the lender loses, he exacts compensation, likewise for the burden which perhaps he undertakes, or which is included in his action (cf. n. 1035); but to exact profit solely because of the utility which the borrower perceives is nothing

[356] St. Alphonsus, III, 758, ed. G., II, p. 203; Carriere, III, p. 226, where there is a copious catalogue of authors; Zech (ap. Migne, *Curs. Theol.*, XVI, p. 763); Funk, *Zins u. Wucher*; Van Roey, *de Justo Auctario*; Biederlack, *Der Darlehenszins*; Vermeersch, *De Just.*, n. 357, where the question is very well explained.

other than to exact the profit of a thing which has already passed into the ownership of another through handing over, indeed which in many cases already does not exist, since through its use it has already been consumed (III, 759).

Do not say: To furnish another the occasion of acquiring something, or to lack some thing which profits another, are estimable by price. We deny both assertions, on account of the reason given n. 1035, namely that only that is estimable by price which contains some burden in itself. Besides, how could the lack of a plainly useless thing, as is supposed, which immediately passes into the ownership of the borrower, and the imposition of the burden of returning a similar thing at its own time, be called estimable by price?

Therefore usury does not consist in the oppression of the poor alone; even when made toward the rich, it is bad. Read the words of the Bull of Benedict XIV.

Note. The things just said have force for real usury and for mental usury, namely if the loan for consumption were made principally on account of hope of gain, although hoped for from mere benevolence, so that without such hope the loan would not be given. And hence it is why this 42nd proposition was condemned by Innocent XI: "It is not usury when something beyond the principal is exacted as owed from benevolence and gratitude." The reason for the condemnation is that benevolence can never oblige to furnishing gain, since it can be shown in many other ways (III, 762; H. Ap., X, 143).

1104. • II. Usurers and their cooperators are held concerning usuries exacted as concerning a stolen thing. The reason is that a usurious contract is null by every law; but the naked handing over of a thing does not transfer ownership of it (III, 783). See the things said concerning the possessor of bad faith (n. 940 ff.).

Yet the lender can retain what the borrower gave beyond the principal merely gratis, or so that he might show himself grateful, or so that he might prepare for himself a new loan (III, 763).

In the case in which the lender doubts whether the borrower gave gratis or as the price of the loan, one must distinguish: when the lender received in good faith and afterwards, when doubt supervenes, cannot become certain, then he can licitly retain it for himself. But otherwise, if he already received in doubt, whatever others say; because with doubt no one can legitimately begin possession. For the rest, if the borrower was not poor, nor illiberal, nor gave moved by some demand or threats of the lender, then it can be presumed that he gave gratis (H. Ap., X, 144).

1105. PRACTICAL RULE. For discerning what pacts in a loan for consumption are licit and what are illicit, when no extrinsic title accedes, one must attend to the rule which St. Thomas hands down: "Every burden estimable by price, imposed in a loan for consumption as a debt from justice, is true usury" (2. 2, q. 78, a. 2).

Hence: 1. If what is exacted is not measured by money, as benevolence, friendship, it is not usury; provided that in sign of benevolence some benefit in particular is not exacted, as is clear from the 42nd proposition mentioned above.

2. It is not usury to exact something already otherwise owed from justice, for example that the borrower cease from vengeance, from unjust vexation, etc.; because a new burden is not imposed. But it would be usury to exact a debt which is owed from charity alone, for example that the borrower buy from oneself or from one's relatives; because, when such a pact has been placed, a burden of justice is added, which is estimable by price (cf. above n. 1036, Quaer. 2, n. 2). See St. Alphonsus, III, 774, 780, 781; H. Ap., X, 158-160.

3. IT IS ASKED. What can the lender recover when THE VALUE OF THE THING grew or decreased during the time of the loan?

Resp. 1. If in good faith attention is not given to the increase or decrease which will supervene upon the thing lent, a pact can be made in such a way that the thing be returned in the same quantity. Likewise, if it is equally doubtful whether the value of the thing is to be increased or diminished. The reason is that, since the peril is equal on each side, equality by this very fact is already preserved in the contract.

2. If it is certainly or more probably foreseen that the value of the thing is going to be increased, it is not licit to agree that it be returned in the same quantity: for example, if a bushel of wheat is now worth three lire, and is going to be worth four at the time of restitution, it is not licit to agree that just as many be paid, or that a whole bushel be returned. The reason is that, in this way, more would be accepted than was given.

Except unless the lender had determined to preserve the thing until the time of increased price; because then he can exact more by reason of profit ceasing. Yet the valuation of peril, or of expenses for preserving the thing, must be deducted.

3. If certainly or probably the thing at the time of restitution is considered going to be of less value, the lender will be able to seek a greater measure, so that he may preserve himself unharmed (III, 782; H. Ap., X, 160).

As concerns money, it suffices that it be restored according to the same value, "because in money one does not think of the bodies, but of the quantity." Yet a pact is licit that it be returned in the same species and in the same number of coins, at least if the peril of increase or decrease is common (Sacred Penitentiary, 21 Jan. 1873; A. S. S., vol. 7, p. 221).

§ 3. ON TITLES EXCUSING FROM USURY, OR ON INTEREST TO BE PERCEIVED FROM A LOAN FOR CONSUMPTION

TITLE, as it is taken here, is a certain circumstance extrinsic to the loan for consumption, with regard to which it is licit to exact something beyond the principal. Several titles are commonly admitted by theologians, namely: 1. damage emerging; - 2. profit ceasing; - 3. peril of the principal; - 4. conventional penalty. To these today the title of civil law has acceded.

1107. PRINCIPLES. I. Damage emerging and profit ceasing are legitimate titles of perceiving something beyond the principal. For no one is held, at least from justice, to undergo some detriment for the favor of another, without due compensation. If damage emerging or profit ceasing is not certain, but only probable, something beyond the principal can still be exacted, according to the estimation of the peril of damage or of the hope of gain (III, 768, 770).

Hence, it is probably licit to exact something beyond the principal if the loan for consumption is made for a long time, for example for three years. For it is morally impossible that the lender, on account of prolonged waiting, should not suffer some peril, damage, or inconvenience, or at least that he should not be impeded from exercising some act of liberality or of another becoming operation.

Note. To exact interest of this kind, three things are required: a) that the loan for consumption truly be the cause of damage or of profit ceasing; b) that no more be exacted than is the gain which is hoped for from another licit contract, according to the estimation of hope and peril, and after expenses have been deducted; c) that the interest be drawn into pact from the beginning (III, 760, 769; H. Ap., X, 149 ff.).

1108. II. Extraordinary peril of losing the principal is a just title of exacting something beyond the principal. The reason is that to expose oneself to such peril is truly estimable by price. Whence St. Thomas says thus (opusc. 73, c. 6, fin.): "Things which are possessed outside peril are valued more than the same things existing in peril." It is confirmed from the words of the Fifth Lateran Council already cited: "Usury is the profit which one endeavors to acquire by no labor, no expense, no peril"; and from the declaration of the Sacred Congregation de Propaganda Fide, of the year 1645, where peril of the principal is numbered among the titles excusing from usury (Bull. S. Congr. de Prop. Fide, I, 124, 131).

But it is required: a) that the peril be extraordinary, and this by reason of the loan alone: for example, if the borrower is of slight fortune, a prodigal, etc.; for nothing can be exacted on account of common peril, for example of fire, to which any sublunary thing is exposed; b) that it not stand by the lender why the principal is not secured, for example through pledge or suretyship (III, 765).

1109. • III. Conventional penalty is similarly a just title of exacting something beyond the principal. Reason: an accessory pact is licit, by which provision is made for the firmness of the contract, and the negligence of the other party is averted. But conventional penalty consists in this, that the borrower obligates himself to paying something beyond the principal if he does not restore within the predefined time.

Now it is required: a) that the delay of the debtor be notable and culpable; - b) that the mind of gaining through the appended penalty be absent; which mind is presumed if the time is constituted at which the debtor is known not to be able to pay; c) that the penalty be moderate and proportionate to the fault. But the penalty is to be paid before the sentence of a judge, because it is a pact rather than a mere penalty (III, 766, 767).

1110. • On the title of civil law, or of custom.

I. EXISTENCE OF THE TITLE. Today's laws, through a formal disposition, commonly attribute to lenders the right of accepting some increment from a loan for consumption; and where such law is lacking, CUSTOM, everywhere, concedes the same faculty. Nor nevertheless is the disposition of the law everywhere the same. For in some places, a legal rate has been established, beyond which nothing can be exacted; while in other places, the stipulations of the parties are circumscribed by no limits. But a certain vulgar increment is observed almost everywhere, not otherwise than as a price for other wares. For determining this, what is transacted in the mercantile forum (*bourse*; stock exchange), which is published daily in public sheets, especially makes.

In France,[357] the legal rate is five percent in civil matter, and this cannot be exceeded; only in commercial matter is a

[357] Law of 12 Jan. 1886.

conventional rate admitted.

In BELGIUM the French law has been abrogated; liberty of perceiving whatever increment is conceded.

In AUSTRIA,[358] a rate of five percent can be constituted if in the contract the increment was stipulated without determination, or if interest is owed by force of law.

In SPAIN,[359] a conventional rate is admitted, in defect of which nothing can be exacted. Yet by reason of culpable delay, the legal rate of six percent is in force.

In GERMANY,[360] the legal rate, in defect of a conventional one, is four percent. A conventional rate is also admitted, which, if it exceeds six percent, the borrower can free himself after six months by restoring the principal, nor can any pact take away this right.

In ITALY, besides the legal rate which, in defect of agreement, can be exacted, that is, five percent in civil matter, six percent in commercial, a conventional rate is admitted, which civil law indeed (art. 1831) leaves free to each one to define; but natural law always forbids an immoderate or usurious rate.

1111. II. LEGITIMACY OF THE TITLE. Whether civil law, or prevailing custom, is a just title of perceiving something beyond the principal?

1112. The mind of theologians. On this question, theologians go into diverse ways. There are those who deny it; because civil law can never permit what divine and natural law forbids.[361] There are those who more rightly affirm it; but the patrons of this opinion by no means agree in alleging reasons.

Some explain the matter from the end of lending, which on the part of the lender can be either gratuitous or gainful.[362] - Others say that the furnishing of consumptible things, such as is had in loan for consumption, can become the matter of an onerous contract, if this is pleasing to the contracting parties; whence, when the nature of the contract has been changed, nothing now stands in the way of perceiving a price from such furnishing, that is, from the leasing of money.[363] Others opine that to the supreme legislator, by force of high ownership, or by reason of the public good, belongs the right of transferring ownership of the increment from the borrower to the lender, the more so because subjects spontaneously consent, on account of the benefit coming thence to the whole society. For the nerve of commerce, they say, is loan for consumption, under its multiple form, by which it comes in a purchase-sale made, money not having been counted out. Therefore, once the aforesaid right of the legislator is admitted, the conclusion is now in the open: namely, that by force of civil law what is conceded beyond the principal can licitly be perceived.[364]

Others flee to the triple contract, which they contend is in loan for consumption, at least when the borrower enters upon it for making gain.[365] Cf. n. 1159, note.

Finally, others, with whom we agree, teach that the present-day title of civil law or custom is not diverse from the other titles commonly received from ancient times, but rests altogether on them and exhibits their index and summary, attending especially to profit ceasing and to peril of the principal. And indeed, in our times, the conditions either of the state or of the economic value of money are altogether changed, insofar as money today is valued from the hope of fruitful consumption and the trust which it wins. From this it has happened that lenders not only generally intend that they make gain for themselves in whatever licit mode, but also require compensation for this hope, or profit ceasing, through interest. Add that in the handing over of a loan, peril of the principal is by no means fictitious, as is demonstrated from daily experience. Therefore the law, or custom, furnishes only one thing: namely, it indicates the value of money, according to common estimation, determines the interest which today corresponds to this value and can licitly be perceived.

Nor does it stand in the way that in some particular case no title is present from the commonly received titles; for that defect is compensated abundantly by a greater good, that is, by the common good, which, by the observation of some universal norm, is more efficaciously promoted, the more so because through it oppressive usuries are eliminated. Whence, the law remains just, although, not otherwise than was said about prescription, the presumption on which it rests fails in a particular case.

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[358] Law of 15 May 1885.

[359] Art. 1755, 1108.

[360] Art. 246 ff.

[361] Lugo, disp. 25, n. 13; Lessius, l. 2, c. 20, n. 32; Jules Morel, *Du pret a interet*, p. 188; Pages, *Diss. sur le pret a interet*, § 11; Lyonnet, *de Mutuo*, Schol., n. 9.

[362] Claudio-Jannet, *Le Capit., la Specul., la Finance au XIXe siecle*, c. 3, II, III; Funk, *Maffi u. das Zinsverbot* (*Tubing. Quart.-Schr.*, 1875).

[363] Engel, *Jus canon.*, l. 5, tit. 19, n. 9 and 36; Ballerini, *Opus mor.*, t. 3, P. 3, c. 2, n. 280-348.

[364] Gury, I, 863. - De la Luzerne, in t. III.

[365] Cf. Lehmkuhl, I, 1309; Noldin, II, 586, fin.; Crolly, II, 438; Vermeersch, o. c., n. 375; Van Roey, o. c.; Weiss, *Die soz. Frage*, II, p. 694. - We judge that the aforesaid authors, although they use a different formula, nevertheless hold the same doctrine in essentials.

1112. 2. The mind of the Holy See. What the Church taught in ancient times, "that nothing can be perceived by the lender by force of the loan for consumption," this it firmly holds even now. Yet by reason of circumstances, especially from the fact that those titles which formerly were annexed to this contract only rarely are universally connected with loan for consumption, the Holy See today generally permits moderate interest to be stipulated and perceived. But in the decrees there is added the most weighty clause: "(It is permitted to perceive an increment) until the Holy See has issued a definitive decision."

Here is the sum of the Responses which have been published up to now:

a) The faithful who in good faith perceive interest according to the legal rate without another title are not to be troubled (Sacred Penitentiary, 16 Sept. 1830). - Similarly, those are not to be troubled who follow the practice introduced of accepting eight percent of annual gain from moneys given in loan (Holy Office, 18 Dec. 1872). The Bishop in individual cases, when it is a question of an increment surpassing the legal rate, is to decide the matter according to the practice of the timorous (Sacred Penitentiary, 18 Apr. 1889). But those who in bad or doubtful faith used the benefit of the law sinned, acting against conscience, but they are not held to restitution (Sacred Penitentiary, 17 Jan. 1838).

b) Priests are not to be troubled who contend that the law of the prince is a sufficient title of perceiving something beyond the principal, without another title (Sacred Penitentiary, 16 Sept. 1830). Priests conduct themselves more harshly and severely toward the faithful if they deny absolution to those who perceive an increment according to the norm of the law (Sacred Penitentiary, 11 Nov. 1831). Cf., with respect to the aforesaid Responses: Lehmkuhl, I, 1316, note; Gaude, ed. op. mor. St. Alph., II, p. 221 ff.; Schindler, II, p. 636; Bucceroni, *Enchir. mor.*, n. 858; Crolly, II, 458.

From the things said you will resolve: 1. It is licit to perceive the legal increment, unless this is evidently unjust; for presumption stands for it. When the legal rate is lacking, one must stand by the vulgar: for the prevailing custom of upright persons has the force of law, and

common estimation is a sufficient argument of justice in the affairs of this age (Crolly, II, n. 465 ff.).

2. It is licit, in a loan for consumption, to exceed the legal or vulgar rate, if this is less than that which would be permitted to be perceived on account of common titles. Justice of itself does not seem to prohibit this, provided titles for the excess of increment are evidently present, and the borrower is forewarned. For such excess is not perceived except by title of compensation for the inconvenience by which the lender is burdened. But compensation of itself can be made to equality (Crolly, II, 465).

It is said: a) justice ... does not seem to prohibit this; for often charity forbids it, namely if the borrower is easily oppressed by such an increment and cast into misery; b) of itself; for by accident this can be prohibited, even by reason of justice, for example when the sentence of a judge accedes reducing the increment to the legal rate; c) provided titles are evidently present; for the danger of hallucination is very great, since greed of possessing easily invents for itself titles which are plainly lacking; - d) provided the borrower is forewarned; otherwise he does not seem to consent to the excess.

BEFORE THE FACT, therefore, it must with the greatest difficulty be indulged that someone exceed the legal or vulgar increment. AFTER THE FACT, this doctrine must be used prudently, lest restitution be imposed to which the lender is not held.

Note. On the conventional rate, D'Annibale, II, 535, writes these things: "I would say that interest of seven percent is not immoderate; above ten percent, immoderate; but what stands between these must be judged from peculiar adjuncts, but cautiously and soberly."

3. Anatocism is licit, that is, the perception of interest from interest itself not yet paid. This is permitted from civil law,[366] but not in Germany, unless it is a question of savings banks, credit banks, and banks.[367] And more probably it also has force for the forum of conscience, provided the new interest is liquid. For that which has not been paid obtains the aspect of principal. Yet for this it is required that either a pact concerning interest of this kind has preceded, or damage comes to the creditor from delay of payment, or it is decreed by law as a penalty against borrowers culpably in delay (Gousset, in French Civil Code, art. 1154).

[366] French Code, 1154; Italian, 1232; Austrian, 998; Spanish, 1109.
[367] Code, 248.

§ 4. ON CERTAIN LOANS FOR CONSUMPTION IN SPECIES

Under this title we shall briefly discuss: 1. Mounts of piety; - 2. savings banks; - 3. banks.

1113. I. On Mounts of piety. A Mount of piety can be defined: an accumulation of moneys 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.[368]

The conditions of Mounts are the following: 1. Whatever is given by loan from them must be given for a certain time, for example for a year; but nothing for an indeterminate time. 2. It is licit to furnish loan to the poor only, unless the Mount is so abundant that, without damage of the poor, others also can be satisfied. 3. The borrower must hand over an equivalent of the thing or money lent; and this, unless he returns the thing or money at the established time, must be sold at auction. Then, when the price which is owed to the Mount has been retained, the remainder is restored to the owner of the pledge, if he can be found, or to other poor persons, or even to the Mount itself, if it is poor (III, 765; H. Ap., X, 135).

It is useful to note: a) The Fifth Lateran Council approved the Mounts of piety first erected at Perugia, and the Council of Trent (Sess. 22, c. 8) committed them to the care and visitation of Bishops. It is more probable that they can also be instituted by private persons, unless civil law stands in the way, for example in France, art. 411. b) In them some increment is licitly exacted by title of the expenses and burdens which are sustained by them. Indeed, from the concession of the Holy See, from time to time something more is perceived for other pious uses; yet in such a way that this perception made from another title be made clear to borrowers, and be distinguished from usury from the loan (A. S. S., IV, p. 27-32; *Can. Cont.*, 32, p. 592).

1114. • II. On Savings Banks. A savings bank is called a certain chest instituted in most cities, into which craftsmen, servants, and others contribute money, about to perceive thence some modest gain.

Money collected in this way is expended by a group of men who have bought shares or entered upon a society, a hypothec having been accepted on immovable goods, so that they may seek greater gain. Thus, for example, six coins for a hundred come to the curators of the Bank who give the money credited to them by loan; four are given to depositors; two being retained for expenses and any damages (Kenrick, tr. XI, n. 116).

The placements of money which are made in Banks of this kind are licit. For the societies to which those moneys are committed sell to the depositors a right to an annual redeemable pension, and sometimes also a right to be shared in indeterminate gains; therefore, under the name of loan, there is a true sale and purchase of a census. Hence, when the Sacred Penitentiary was asked about this matter, on 25 Feb. 1836, it responded: "As already at other times, nothing stands in the way."

1115. III. On Banks. Public banks of bankers exist by force of a contract of society entered upon among several persons contributing money, which they do not have power to reclaim, but from which they expect an uncertain annual census; namely that part of the fruits of the money which the directors of the Bank shall have adjudged to them every six months. - The part of the money contributed by individuals is called a share. Individuals indeed can alienate this, but the society is not for that reason taken away; for he to whom the share has been transferred occupies in the society the place of the other who withdrew. From competent authority power is given to the society of issuing chirographs (Crolly, II, 604; Bouvier, *de Contr.*, c. 3, a. 3, § 1 and 2).

The ends of Banks are: 1. that the money of merchants and of others be deposited with them, either for the sake of security or even of a modest increment, which afterwards can be withdrawn according to the rules either of deposit or of loan for consumption; - 2. that money can be accepted from them by loan, at legal interest; 3. that exchanges be moderated.

1116. The directors of Banks (*banquiers*) and those cooperating with them sin: a) 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 them. b) If they issue chirographs beyond the limits designated in the charter of incorporation; for thus they seek gain from monetary paper issued without legitimate authority, and cause it to become cheapened. c) If they exact excessive increment, or from bills of exchange a gain greater than that which the general consensus of money-changers bears. d) If they use deposited money for promoting their own utilities, whether because from it they buy shares in another Bank, or because they use it in any other way against the laws of the Bank; for thus they abuse the confidence of the creditors or partners of the Bank, and perhaps expose the money to risk (Konings, 931-956).

You will ask: what can BANKERS receive by occasion of loan?

[368] Cf. Ferraris, v. *Montes pietatis*; Benedict XIV, *de Synodo*, l. 10, c. 5; Holzapfel, *die Anfange d. Mont. piet.* (1902).

Resp. They can receive at least six percent, according to the rate established for merchants; for they exercise the commerce of money. - Indeed, in several places, seven percent is legitimately conceded to them, on account of the various perils and labors which they must undergo for securing the money or transferring it elsewhere (Gury, I, 930).

CHAPTER III

On Onerous Contracts

St. Thomas, 2. 2, q. 77; St. Alphonsus, III, n. 793; ed. G., II, p. 232; H. Ap., tr. X, n. 165; Lugo, disp. 26; Lessius, l. 2, c. 21; Vermeersch, o. c., n. 338; Aertnys, l. VII, n. 469; Gopfert, vol. II, § 82; Schindler, II, p. 645 ff.; *Ami du Cl.*, *Tabl. gener.*, v. *Vente*, *Restitution*; and other modern authors.

1117. Things to be noted beforehand. All onerous contracts are divided into commutative contracts, of which some are principal, others accessory; and into aleatory contracts. All those contracts are bilateral, and for their validity equality of burden from each side is altogether required if they are commutative, equality of hope or fortune if they are aleatory. Concerning these in three chapters.

Commutative or strictly onerous contracts are: 1. purchase-sale; - 2. exchange and exchange of money; - 3. census; - 4. lease-hiring; - 5. emphyteusis and fief; - 6. partnership; - 7. transaction. Concerning each briefly.

ARTICLE I

On Purchase-Sale

We must treat: 1. of sale in general; - 2. of certain sales in species.

§ 1. ON SALE IN GENERAL

1118. DEFINITION. Purchase-sale is an onerous contract by which it is agreed that one party, the seller, hand over some thing for a price to be paid by the other party, the buyer.[369]

For the substance of this contract three things are required: 1. mutual consent of buyer and seller; 2. some thing as merchandise; 3. money as price.

If a thing were given for a thing, this would be exchange; money for money, it would be exchange of money. If a thing were bought so that it might be sold with profit, there would be negotiation.

1. On the Consent of the Parties

We treated above of the conditions of legitimate consent, and of the vices opposed to it (n. 1044 ff.); a few things which are proper to sale must be added here.

1119. PRINCIPLES. I. From the law of nature, purchase-sale is perfected by consent alone. For not the handing over of the thing itself, but the obligation of handing it over, belongs to the essence of this contract. - Hence, sale is perfected as soon as it has been agreed between the parties about the thing to be handed over and the price to be paid. Yet the parties can stipulate that the contract is not perfected unless solemnities are employed, for example writing or handing over made. For the external forum, an instrument is required for proof in many cases where another proof is not admitted (III, 795).

But the EFFECTS of consent alone, when the handing over of the thing has not followed, are not the same in all laws. In AUSTRIAN[370] and GERMAN[371] Law, ownership of the thing is transferred to the buyer by handing over alone; but meanwhile, with certain cases excepted, peril and utility remain with the seller. If it is a question of land, its registration in the land book is required in German Law for transferring ownership.

In FRENCH,[372] ITALIAN,[373] SPANISH,[374] and ENGLISH[375] Law, ownership of the thing and its peril and benefit pass, by the consent alone of the parties, to the buyer, who therefore has a real action for obtaining possession of it. Yet if things

[369] French Code, 1582 ff.; Italian, 1447 ff.; Austrian, 1053 ff.; Spanish, 1445 ff.; German, 433 ff.
[370] Code, 1053.
[371] Code, 446.
[372] Art. 1583.
[373] Art. 1448.
[374] Art. 1452, 1468.
[375] Crolly, II, 496 ff.

are usually tasted beforehand, for example wine, or if they are handed over for trial, for example a horse, the sale is not perfected before the thing has been tasted or tried (cf. n. 1122, 3).

1120. II. Those alone can sell or buy who have power to furnish consent, and are not declared incapable by law. Now, apart from the general incapacities concerning which above (n. 1038), the following are proper to purchase-sale:

From Law universally in force,[376] all those upon whom it falls to protect the rights of others are declared incapable in part, such as parents, tutors, curators, administrators of communities. The reason for the incapacity is danger of prevarication to the detriment of pupils. Likewise, magistrates and other officials of the court are prohibited from buying litigious rights which must be defined before their own tribunal.

For the same reason, those who have ceded their goods are commonly prohibited from selling; and their sale is invalid by full right, unless it is a question of those things which, from n. 1023, are left to their discretion, and therefore the buyer is held to restitution. - Similarly, from FRENCH and SPANISH Law,[377] purchase-sale between spouses is prohibited, with a few cases excepted.

1121. III. Consent given earlier impedes later consent from being valid. The reason is that earlier in time is stronger in right. Hence it is not licit to sell a thing successively to two persons (*Ami du Cl.*, 1910, p. 680; 1911, p. 346). - Yet if the thing has been handed over to the second buyer, it belongs to him, provided he bought in good faith and the purchase was made in a place where ownership of the thing is transferred by its handing over alone; and this has force both for movable and immovable things, because handing over confers right in the thing. On Germany, see n. 1119.

But in places where consent alone transfers ownership (cf. Spanish Code, 1743), it has force for movables alone, but on account of another reason, namely because, with respect to movable goods possessed in good faith, possession is to be held as title (cf. n. 936). Yet St. Alphonsus adds (III, 827): The second buyer, although he is of bad faith, is not held before the sentence to restore the thing to the first buyer, unless perhaps he himself induced the seller to sell the thing to him second. - As concerns the deceived buyer, he, in every Law, has an action against the seller for obtaining reparation of the damage inflicted on himself.

IT IS ASKED. What are the effects of EARNEST MONEY which are appended to the contract?

Resp. Earnest monies are defined as that money which sometimes the buyer, or tenant of a house, hands over to the seller, or lessor, as though by way of pledge for securing the contract. - Earnest monies are appended either to a promise of sale, or to the sale itself. If the former, each of the contracting parties can withdraw, namely he who gave the earnest monies by renouncing them, and he who accepted them by restoring double. - If the latter, earnest monies are generally an argument of sale, not indeed conditional, but already contracted; for they are usually given for part of the price, or as security of payment. Whence, none of the contracting parties can, with the other unwilling, withdraw from the agreement. Except if custom or a special agreement has established otherwise (III, 794; H. Ap., X, 166; Spanish Code, 1454; German Code, 336; *Linz. Quart. Schr.*, 1905, p. 127).

Note. Conventional penalty, which is often annexed to a promise of sale, differs altogether from earnest monies. On this see 1955, where more abundantly on this question. Accommodate to our argument the principles established there for betrothals. Cf. Austrian Code, 609; German, 359.

2. On the Thing Saleable, or Merchandise

The principles to be established refer to the thing to be sold, to be handed over, and to be secured.

1122. PRINCIPLES. I. So that there may be a valid and just contract of sale, its object must be a thing placed in human commerce, proper to the seller, determined, and physically or morally that which is sought.

1. It is required that it be placed in human commerce. Therefore any thing estimable by price can be sold, whether corporeal or incorporeal, as rights from a chirograph, credits, etc. (n. 852).

By special laws the sale of poison, of writing provoking to sedition, etc., is not licit. Such a sale, when the required circumstances are lacking, is illicit, as is clear. Recall the things said n. 1035, 2.

[376] French Code, 1594 ff.; 1456 ff.; Spanish, 1457 ff.; German, 181.
[377] French Code, 1595; Spanish, 1458.

2. That it be proper to the seller. For the sale of another's thing is invalid with respect to transfer of ownership; yet with respect to a buyer of good faith it produces various juridical effects: for example, when the thing has been handed over, it confers on him possession apt for prescribing, and other benefits of a possessor of good faith (cf. n. 849, 937).

3. That it be determined, at least from the circumstances, so that the thing sold is truly individual and distinct from every other.

Hence, if wares are sold according to their weight, number, and measure, the sale is not perfected unless the quantity in weight, number, or measure has been determined. Therefore the thing stands at the peril of the seller. But if the sale is made by aversion, *en bloc*, when namely the whole merchandise effects as it were one determined body and is sold for a certain and defined price, the sale is perfected from the agreement itself, and from that point of time it stands at the peril of the buyer.

4. That it be physically or morally that which is sought. Otherwise there would be a substantial error, or at least such an error as would furnish a right to rescission. Recall the things said n. 1045.

The thing remains morally the same as that concerning which agreement was made if it is equally good, equally useful to the buyer. Then the contract is not made invalid, because the buyer is not frustrated of the end intended by himself.

1123. The obligations of the seller and the diligence of the buyer chiefly refer to THIS FOURTH CONDITION of the saleable thing. For the thing to be sold will then be physically or morally the object of a just contract if, with respect to substance, quantity, and quality, no fraud, no error, no vice, at least appreciable, intervenes.

Therefore let the following rules be given, for a more subtle explanation of the matter:

FIRST RULE. If the vice is concerning SUBSTANCE, for example if tin is sold for silver, water for wine, etc., the contract certainly is null, and the seller is held, at the will of the buyer, either to rescind the contract or to restore the excess of the price; and moreover to compensate the damages following from his deception, provided they were in some measure foreseen. Likewise, if quality has passed into substance, for example if the buyer expressly said: "I do not want wine, if it is not old" (III, 819).

Advert that here it is a question of a thing substantially vitiated relatively to human use and to the end for which it is bought. Whence it is probably not unjust to sell *quid pro quo*, as apothecaries are accustomed to do, provided that what is handed over is certainly of equal utility and the price is diminished; - likewise, to sell at the common price a thing which in itself is more perfect, but has another thing of worse condition mixed in; suppose better wine, which after mixture with water does not become worse than common wine; provided the buyer does not buy it for preserving, because wine mixed with water is easily corrupted (III, 820; H. Ap., X, 185).

SECOND RULE. If the vice is concerning QUANTITY, that is, concerning number, weight, or measure, the damage must be repaired; but the contract has force, except in the case in which deceit gave cause to it (cf. above n. 1047, 3).

Yet if the seller could not obtain the just price, for example on account of an unjust legal rate or an unjust monopoly of buyers, it is not improbable that the seller can diminish from the measure only so much as is required so that he may perceive the lowest just price; for thus he justly frees himself from unjust vexation. Yet hallucination in this matter is to be guarded against (III, 822; H. Ap., X, 186).

THIRD RULE. If the vice is concerning QUALITY, for example if wine is corrupted, cloth burned, one must distinguish, with account had of the circumstances. For the seller is either questioned in species or in general, or is not questioned. 1. When questioned in species whether the thing has a certain defect, the seller is held to manifest whatever vice; otherwise the sale is null, on account of error which, by reason of the circumstances, easily becomes substantial; or at least the sale is rescindable at the will of the buyer, on account of the deceit which the seller used. 2. When not questioned, or questioned only in general, he is held unequally according as the vice is patent or occult, notable or light (III, 823).

a) 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, he is not held from justice to manifest the defect; for then the thing itself speaks. Therefore he can leave the buyer, with the peril of erring, to his own judgment.

Except if the ignorance of the buyer is manifest, for example because he is inept, a child, etc.; for then, in relation to him, the vice is truly occult (H. Ap., X, 187).

b) If the vice is occult and at the same time notable, that is, if the vice, not knowable by common diligence, renders the saleable thing harmful, useless, or notably less useful for the end for which, in present circumstances, it is commonly accustomed to be bought, - the seller is held from justice to disclose it; for otherwise the buyer is not considered to

consent to the purchase, or at least to the price of the purchase. Wherefore, either the contract is rescindable at his will, or at least it must be reduced to equality.

But when a vice is to be held as notable must be determined from various circumstances of time and place, from custom, and from the Law itself, which recounts various vices of this kind.[378] But if the seller protests that he does not wish to render account of any defect, but wishes to sell the thing as it is, he is held to nothing; for then the contract is considered aleatory. Hence, deservedly tolerated is "the custom which prevails somewhere, especially in great markets, that animals be sold in this way, even if the vices are most occult. The reason is that, for taking away lawsuits, on account of the common good, this can be sufficiently rendered honorable by custom; provided, it must be understood, that the thing is not sold beyond at least the highest just price for which the thing is worth, with account had of that occult vice" (III, 823; Spanish Code, 1493).

c) If the occult vice is light and of small moment, the seller is not held from justice spontaneously to declare it, provided he preserves a proportioned price. For then buyers are not reasonably unwilling, because otherwise negotiation would become too difficult, with detriment of society.

For the rest, no buyer is for that reason induced into error, since an artful manner of acting of this kind is sufficiently known to all; as it is known to all that merchants are accustomed somewhat to paint their wares and to expose the better ones exteriorly (*Linz. Quart. Schr.*, 1885, p. 101).

Note. Sometimes, when an obligation of justice does not exist, there can be an obligation of charity of warning the buyer, lest by carelessness or ignorance he be the author of damage to himself or to others, for example that wine not be preserved long if it is not apt for this, etc.

1124. II. The seller is held to hand over the thing sold; that is, to remit it into the power and discretion of the buyer. But this obligation can cease from a legitimate cause, for example because the buyer does not pay the price to be paid before handing over, or because there supervenes a reason of doubting whether he can pay.[379] But the obligation of handing over imports the obligation of preserving the thing well meanwhile.

Moreover, the seller is held to hand over to the buyer the thing and its accessories: 1. in the place and manner concerning which agreement was made in the contract; 2. at the prefixed time; otherwise the buyer has a right to rescission of the contract and to reparation of damages, unless the delay proceeded from the deed of the buyer, or from fortuitous chance, or greater force; 3. in the state in which it was at the time of sale; otherwise what was agreed upon would not altogether be handed over; 4. according to the measure expressed in the contract.[380]

The fruits of the thing sold and not handed over belong to him who is held to bear its peril (III, 798). Cf. the things said n. 1119 and the things to be said n. 1131.

How the matter must be arranged if one or another of the aforesaid conditions is lacking must be taken from civil Law.

1125. • III. The seller is held to furnish the buyer security of the thing, that is, to make him secure concerning peaceful possession of the thing and concerning its utility.[381] The reason is that, from the very nature of the contract, the seller does not acquire a right in the price unless he has placed the merchandise in the power and discretion of the buyer. But this is not done, at least perfectly, when the buyer, on account of causes existing before the sale, is disturbed in possession of the thing through eviction; or when, on account of occult vices, he finds it inept for its natural end, or the end expressly declared to the seller; which vices in Law are called redhibitory vices (III, 800). These things must be explained more fully.

1126. Questions. QUAER. 1. What is EVICTION, when and how is the seller held concerning it?

Eviction is the legitimate disturbance of the buyer in possession of the thing bought, which either totally or partially is vindicated by the true owner, or by another having right in it. Thus, for example, Paul sells his field to Peter; James proves that this field is his own, or is burdened by a hypothec, and the judge decrees that the said field must be returned to James: in this case eviction is had with respect to the buyer, who is despoiled of the thing bought by himself.

The seller is held concerning eviction if the cause of eviction, existing at the time of sale, was not declared to the buyer. But the seller can stipulate that he not be held concerning it. Yet this is not admitted in favor of a seller of bad faith,

[378] Cf. French Code, 1641, and the law of 2 Aug. 1884; Austrian, 923; Spanish, 1484; German, 459-490. A certain author rightly notes (ap. *Linz. Quart. Schr.*, 1900, p. 593) that a certain manner of acting of many merchants of our time, who commend their wares in public sheets, induces the obligation of restitution.

[379] St. Alph., III, 796; Spanish Code, 1466, 1467.

[380] French Code, 1604 ff.; Italian, 1463 ff.; Austrian, 1047 ff.; Spanish, 1468 ff. and 1096, 1182; German, 433.

[381] French Code, 1625 ff.; Italian, 1481 ff.; Austrian, 923 ff.; Spanish, 1475; German, 434 ff.

because "pacts which contain a shameful cause are not to be observed."[382] But if "by the malice or fault of the judge, or by the force of another, or by negligence of the buyer, the thing is evicted, the seller is held to nothing; for fortuitous peril belongs to the buyer" (III, 800, fin.).

By the law of nature, a seller of good faith is held to return the price accepted, insofar as he has been made richer. A seller of bad faith is held to preserve the buyer altogether unharmed.

By Positive Law, a seller of bad faith is always held to render the buyer unharmed. The same obligation also lies on a seller of good faith, except nevertheless the case in which the contrary was agreed. But no reparation of damages is owed to a buyer of bad faith.

QUAER. 2. What are REDHIBITORY VICES, and how is the seller held concerning them?

Redhibitory vices are called occult defects, not known to the buyer, existing at the time of sale, which wholly impede the natural use of the thing, or the use declared to the seller, or so diminish it that the buyer would not have bought it, or would have bought it for less, if he had had knowledge of them. Of this kind are, for example, mange of sheep, asthma of horses, rancidity of pigs, etc.

The seller is held concerning redhibitory vices, even if he was ignorant of them. He is obligated, at the will of the buyer, either to rescind the contract or to restore part of the price, according to the estimation of experts. Yet there is a great distinction between a seller of good faith and a seller of bad faith, as you will easily gather from the things said n. 936 and n. 941.

Note. The obligations of the buyer, with respect to merchandise, we shall explain below (n. 1131).

3. On Price

1127. NOTIONS. I. On price in general. The price of a thing is the expression of its saleable value through a certain sum of money. It is said: of saleable value, that is, of the aptitude which the thing has for being exchanged with others in human commerce.

Price, in general, ought to have three conditions: 1. that it consist in money; otherwise it would be exchange; - 2. that it be serious, that is, not simulated, nor derisory; otherwise it would be donation; - 3. that it be determined by the contracting parties, at least radically, or by someone to whom determination has been committed (III, 794).

II. On just price. A just price is that which is rightly estimated to equal the value of the saleable thing. - One is legal, which is taxed by law or by a magistrate. Another is vulgar or natural, or here and now current, which, the circumstances having been considered, is determined by common estimation. Another is conventional, which is determined by the free pact of the contracting parties.

Now: 1. A legal price excludes every variety, because it is defined by law. But the law itself can cease, or a just reason here and now excusing can be given.

2. But a vulgar price admits variety, because the judgments of men vary concerning the value of the same thing. Thus the price is accustomed to grow by reason of the abundance of buyers, or abundance of moneys, and scarcity of wares; on the contrary, it is accustomed to decrease by reason of scarcity of buyers or moneys, and by reason of abundance of wares. Hence, a vulgar price, within the limits of the just, is distinguished in such a way that it is: a) highest or rigorous, above which the thing is not accustomed to be estimated; b) lowest or pious, below which the thing is generally not estimated; c) middle or moderate, which stands between each.

How great that breadth of vulgar price is can scarcely be defined. - Yet commonly it is admitted that the price of cheap and necessary things has less breadth than that of precious and superfluous things. Thus, for example, wine or something similar which is worth five lire can be sold for six or bought for four; or if it is worth ten, it can be sold for twelve and bought for eight; if it is worth one hundred, it can be sold for one hundred five and bought for ninety-five. But a house or villa which was sold for 20,000 can after a year be bought for 12,000, and conversely (III, 803, 804).

3. Conventional price has for its object precious things, paintings, gems, horses, etc.; extraordinary things, singing, music, etc.; or things whose value is commonly unknown. Whence it too can admit variety, according as fluctuation of estimation happens on the part of experts or lovers.

[382] L. *Si unus*, 27, 24, ff., *de Pactis*. - French Code, 1635; Italian, 1502; Austrian, 932; Spanish, 1476 ff.; German, 459.

4. PRINCIPLES. I. One must stand of itself from commutative justice by the legal price. For to civil authority belongs the right of establishing whatever regards public commerce. Individual sellers besides, since the rate is determined in their favor, acquire strict right that another not entice buyers by selling the thing for a lesser price (III, 803).

Yet sometimes it is licit to exceed the legal price, namely: a) if it is not observed by the greater part of the people, with the prince knowing and not punishing; - b) if, circumstances having changed, the rate becomes unjust; c) if an excellent thing is sold, because the prince, in taxing the price, regards only the value of ordinary merchandise. Indeed, it is licit to sell for a lesser price if the rate was established lest things be sold more dearly.

Note. A magistrate who knows that the legal price is going to be increased can indeed provide for himself without evident injustice, but cannot warn others (Lehmkuhl, I, 1328).

II. When legal price is lacking, one must stand by the vulgar price, so that to sell above the highest and to buy below the lowest is unjust. The reason is that that is the just price at which the thing is commonly estimated among men; but if this is not preserved, equality is lacking, which pertains to the nature of commutative justice (cf. Salmant., c. 2, n. 94).

Lesion, in the external forum, does not give place to rescission of sale: in France, unless the deception is beyond half of the just price; in Spain, unless it is beyond the fourth part,1 and only in a double case: when namely the contract was entered upon either by a tutor or by a mandatary who represents an absent person; elsewhere, for example in Germany,[383] otherwise. Yet in the internal forum, any notable lesion obliges to restitution. If the lesion happened in good faith, the one injuring is held at least to restore that in which he has been made richer, that is, in which he spared his own goods, lest he become rich from another's goods (cf. n. 935).

From these things conclude: Since the just vulgar price rests on common estimation, those do not act unjustly who, for gold or ivory which are offered by barbarians, give glass or cloth, or other things common among us. For these cheaper things have great value for barbarians.

III. Conventional price, according to diverse adjuncts, will be just or unjust. And indeed:

1. If each of the contracting parties is ignorant of the true value of the thing, for example judges a precious gem to be glass, the contract is invalid, as resting on substantial error; whence the price must be restored.

2. If each doubts concerning the true price, the purchase will be just, so that, if the buyer afterwards resold the thing more dearly, nothing is to be allotted to the former seller. For both, by agreeing about the price, expose themselves to equal peril.

3. If only one knows the true price of the thing, the purchase will be unjust if experts would commonly easily recognize the value of the thing: for then, with respect to this thing, there is present a price quasi-vulgar among experts. - Except if recognition of the value of this thing is to be attributed to the singular expertise, and therefore industry, of the buyer.

4. Corollaries. I. It is licit to use industry for selling at the highest vulgar price or buying at the lowest. But it is never licit to use fraud or deceit (*Ami du Cl.*, 1904, p. 476; 1906, p. 765): for anyone has a strict right not to be positively deceived. But once the price within the limits of the just has been determined by agreement, neither can recede from it, since each has assumed the peril upon himself (Lehmkuhl, I, 1327).

Hence: 1. The seller sins against justice if, before the agreement has been made, he deceitfully induces the buyer to pay a greater price than otherwise he would justly have given;3 likewise if, after the agreement has been made concerning the lowest or middle price, he secretly obtains for himself the highest, by deceiving the buyer in the counting of money, in weight, or in measure (Konings, n. 964).

2. The buyer similarly sins against justice if he knowingly buys below the lowest price, by asking the ignorant seller to condone what it is worth beyond this; because such condonation, since it proceeds from ignorance, is null. - But otherwise if, when questioned concerning the value of the thing, he simply remains silent and pays the lowest price; because thus he uses neither force nor deceit (III, 819).

[383] A certain mercantile operation which is called RELATION (*report*) bears a species of selling back. It consists in this, that someone buys incorporeal rights, for example public censuses, with the price indeed paid at present, but with the pact that the same rights be sold back on credit to the seller, but for a greater price. The difference between the price of buying and the price of selling is had as the fruit of money. If this fruit does not exceed the legal rate or the rate received by custom, the contract certainly is licit. But the customary rate, introduced, as they say, by the necessities of commerce, suffers a great breadth in this matter. Yet it would savor of usury and reek of mohatra unless it were confined within just limits (Carriere, n. 1258).

3. The practice of certain merchants is to be reproved, who expose their wares for sale at a very cheap price so that they may turn buyers away from other merchants, but afterwards diminish the weight or measure, etc. Indeed such sellers become guilty of injustice toward other merchants, and are held to restitution for damage inflicted on them; because each has a right not to be impeded by deceit or fraud from hoped-for gain or from gain to be made legitimately (Lugo, disp. 26, n. 135).

But advert for practice: a) Commonly faith is not given to the lies of sellers affirming and swearing that they obtained the saleable thing for themselves at such a price, or sold it to others at such a price, so that thus they may draw the buyer to the highest price; nor to the lies or perjuries of buyers affirming that they bought the thing for so much from others, or that others offered it to them for so much, so that thus they may bring the seller to the lowest price. b) Yet if it were established to someone that faith is given to his lies, etc., and that these truly are the cause of a greater or lesser price, then he would not be excused from the fault of deception and injustice (III, 805). - Cf. *Linz. Quart. Schr.*, 1910, p. 593; Gopfert, II, n. 115, *Reclamewesen.*

II. He who privately knows that the price of merchandise is going to be increased or diminished soon can sell or buy it at the current price, after the example of blessed patriarch Jacob, provided fraud and lesion of charity are absent. For the future value is not to be regarded, but the present value, which indeed is not varied from some particular knowledge, but from common estimation. Cf. St. Thomas, 2. 2, q. 77, a. 3, ad 4.

We said: a) Provided fraud is absent; for a sale or purchase would be unjust if someone, for example, through public journals, were to spread false rumors about the price soon to be diminished or increased, etc., as is frequently in use today, especially concerning public censuses. - b) Let lesion of charity be absent; for sale or purchase would be illicit if the other contracting party would be cast into grave necessity; or also, if the thing which could easily be sold to several, or bought by several, is sold to one only, or bought by one, who therefore is going to suffer the whole damage alone; or if, when it can be sold to him who is going to consume it immediately, it were sold to another who is going to preserve it. Therefore, excepting cases of this kind, charity does not seem to press. For strictly speaking, he does not injure charity who uses his right, justly taking counsel for his own affairs, although another by accident suffers damage from this (III, 824; H. Ap., X, 188).

III. When an extrinsic title stands, it is licit to sell above the highest price or buy below the lowest. The reason is that that extrinsic title, which is joined to the thing to be sold or bought, causes the accustomed value of the thing to increase or decrease.

1. The extrinsic titles on account of which it is licit to SELL above the highest price are the following:

a) Profit certainly or probably ceasing from alienation of the thing, or damage emerging, or any other inconvenience of the SELLER estimable by price; for a seller of this kind sells not only his bare thing, but also his benefit, or the damage which he suffers. - But advert that the buyer must be forewarned concerning these titles, as also concerning the following, so that he can, if he wishes, provide otherwise for himself.

b) Special affection which the seller reasonably experiences toward his own thing; for from this arises, in selling, an inconvenience estimable by price. But here advert that the special affection of the buyer is not, as the affection of the seller is, a title of selling for more; because, as is commonly taught with St. Thomas (2. 2, q. 77, a. 1), no one can sell what is not his own (cf. Lehmkuhl, I, 1330). Yet several moderns contradict, on account of the received custom, they say, of increasing the price of a thing which is going to bring special benefit to the buyer (Scavini, II, 393; Gousset, I, 840).

c) The mode of selling; for if things are sold in small quantity and by retail, a greater price can be exacted, on account of the greater cares and expenses which then are usually expended for preserving them. Besides, if they are sold at auction, with public power approving this, whatever price is determined by the bidders without fraud is considered just (III, 807-809). Cf. below n. 1134.

2. The titles on account of which it is licit to BUY below the lowest price are numbered as three:

a) Damage emerging from the present purchase, or profit ceasing, or any other inconvenience of the BUYER estimable by price. Whence, with right preserved, you can buy more cheaply a thing from which little utility will come to you. But the seller is to be warned of this from charity.

b) Voluntary offer; hence you can buy for less wares voluntarily offered by sellers running through streets and houses. For the adage bears: Voluntary wares become cheap; and this more probably, says St. Alphonsus, by a third part; and the reason is that this voluntary offer commonly argues either fewness of buyers and abundance of wares, or danger of a hidden defect, etc. But if things become saleable and are offered on account of poverty, it is probable

that, also in this case, not otherwise than voluntary wares, they become cheap; and therefore can be bought more cheaply, provided it is not a question of things which are commonly bought and offered, as grain, oil, and similar things. Yet he who buys more cheaply from a poor man pressed by necessity easily sins against charity, if he buys the thing for his own utility, not for the favor of the poor man.

c) The mode of buying; for wares can be bought for less: if they are bought together in great quantity, since the seller by this mode is freed from many cares, expenses, and inconveniences; - or if they are sold at auction, on account of the reason stated above; - or finally if they are exposed for sale among dealers in old things; because things of this kind, even if perhaps precious, are considered to have lost their original price, and to receive another from custom or the agreement of the contracting parties; or at least they suffer the greatest breadth of price, as we already noted (n. 1127). See with respect to these things the Holy Doctor (III, 801, 802; H. Ap., X, 174).

1130. Questions. QUAER. 1. Whether DELAYED or ANTICIPATED payment of the price is a legitimate cause of selling for more, or buying for less?

Resp. Affirmatively, if there intervenes a title excusing from usury, as profit ceasing, damage emerging, peril in exacting the price. Thus it is certain that a thing can be sold more dearly if the price is to be handed over at the time when the thing is going to be worth more, provided it would have been preserved by the seller until that time. On the contrary, it can be bought more cheaply if it is to be handed over at a time when it is going to be worth less (III, 810; H. Ap., X, 178).

Indeed, today this seems to be admitted simply, without inquiry being made about other titles. The reason is both because common estimation thus bears, and because, while the use prevails, not reproved by the Church, of perceiving the legal or vulgar rate from a loan, anticipation or delay of payment is truly estimable by price. And on account of this same reason, chirographs and credits can be bought more cheaply if they are paid by anticipation (III, 829). Public censuses and other titles, concerning which great negotiation takes place today in the mercantile forum (*a la bourse*), can similarly be bought and sold at the current price, even if that price does not correspond to the inscribed price. For from common estimation, titles of this kind are equated with ordinary wares, whose price grows or decreases according to the diversity of circumstances.

QUAER. 2. Whether chirographs and credits, on account of difficulty of OBTAINING payment, can be bought for less?

St. Alphonsus responds (l. c.): "He who is not the cause of that difficulty licitly buys for less, according as the difficulty or uncertainty of payment is lesser or greater; because with such peril and difficulty they are worth less. - Likewise, a credit uncertain or of difficult exaction can licitly be bought for less, even if it is easy for the buyer to exact it entirely: because price is taken from common estimation, not from the particular circumstance of the buyer."

SCHOLIUM

On the Obligations of the Buyer

1131. The obligations of the buyer, once the price has been established, refer both to the price and to the merchandise itself.

1132. WITH RESPECT TO THE PRICE. a) He is held to pay the price in that place and time at which the thing is handed over to him, unless it was otherwise agreed, or unless, no caution having been furnished by the seller, there is reason to fear lest he himself be cast down from possession of the thing. b) He must pay interest of the price if by pact it must be paid, or if the thing sold and already handed over is fruitful, or if he himself was in culpable delay. c) He is held to pay also all the expenses of sale and carrying away, except the case of a contrary pact.[384]

1133. WITH RESPECT TO THE MERCHANDISE. a) He is held to assume it into his own power at the established time, or according to the nature of the thing or the custom of the place by determining the time; otherwise, as we have just hinted, he is held toward the seller concerning all expenses made for the sake of preserving the thing, as well as concerning the damage which thence comes to him. b) Indeed, sometimes he is held, at the will of the seller, to rescind the contract (cf. n. 1047).

§ 2. ON CERTAIN SALES IN SPECIES

We shall treat: 1. of sale with an accessory pact; - 2. of sale at auction; - 3. of monopolies; - 4. of sale through brokers.

[384]French Code, 1650 ff.; Italian, 1507 ff.; Austrian, 1062; Spanish, 1500 ff.; German, 452.

1. On Sale with an Accessory Pact

1132. Several pacts can be added to sale. The more frequent are:

1. Addiction to a day, or a suspensive or even resolutive condition, by force of which it is licit for the seller, up to the lapse of the term established, to sell the thing to another who has offered a better condition, unless the buyer offers the same.[385]

2. Pact of trial, or condition of experiment, by force of which the contract is not entered upon except after trial made by the buyer. Cf. Berardi, *Theol. mor.*, II, n. 599; Schindler, II, 650.[386] - 3. Pact of preemption, or concerning the reserved right of preference, by which the buyer assumes the obligation of offering the thing bought back to the seller to be redeemed, if afterwards he wishes to alienate it.[387] - 4. Pact of selling back or redemption, by which the right is established that, when the price has been restored and improvement compensated, the thing returns to the first seller. It can be established in favor either of the seller or of the buyer, according as the execution of the pact is remitted to the discretion of one or the other, or of the one first asking.[388]

Concerning this last pact it is enough to NOTE these few things: Since in this pact a burden is imposed on him who is held to rescind the contract at the discretion of the other, equity demands that this burden be compensated. Hence: a) if the pact is added in favor of the seller, the price must be diminished by reason of the burden which is imposed on the buyer; b) if it is added in favor of the buyer, the price must, with proportion preserved, be increased (III, 812). See also the Codes, l. c.

1133. Note. 1. Ancient authors speak much of another contract which is named MOHATRA. This contract is perfected if someone sells on credit, with an explicit or implicit pact that the thing be sold back to himself for less, counted money: for example, Peter sells on credit his house to John for 12,000 francs to be paid after two years, under this pact, that John immediately sell the house back to him for 10,000 to be counted out at present. - It is illicit because it includes palliated usury, as is established from the 40th proposition condemned by Innocent XI. Cf. St. Alphonsus (III, 813).

2. On Sale at Auction[389]

NOTION. Sale at auction, or by public auction (*vente aux encheres*), is that which is made through a herald, and in which the thing is adjudicated to the one offering the last greater price. - One is judicial, another voluntary, which is also called BIDDING.

1134. - PRINCIPLE. The just price in sale at auction is that which, without fraud, is constituted from the bidding itself. For it is determined by the free concurrence of buyers; wherefore, the thing becomes more estimable if many buyers concur, less estimable if few. The seller himself has tacitly accepted this estimation. Whence, from common sense, with public authority also approving, that is held as the just price which is offered by the last bidder, whether it is above the highest price or below the lowest; and the seller of himself does not have the right of withdrawing the thing, when bidding has begun, if a lesser price is offered.[390] But the required equality is situated in this, that from each side, the same hope of gain and the same peril of damage are had.

We said without fraud; but fraud can be inferred both by the seller and by the buyer.

1. Fraud is inferred BY THE SELLER if he conceals an occult vice of the thing, or if he sends in fictitious bidders. Yet a seller would not be condemned who suborns fictitious bidders for redeeming himself from unjust vexation, for example because buyers agreed among themselves about not bidding. Likewise, in judicial sale, the inequity of conditions can easily excuse the seller if he sends fictitious bidders, namely lest things be sold below the middle price which, those adverse conditions being excluded, they would have.

2. Fraud is inferred BY THE BUYER if by deceit or threats he impedes others from bidding, or from offering more. But fraud will not be present if he asks others not to bid; for thus liberty of bidding is not taken away, provided the requests are not importunate.

[385] Austrian Code, 1083.
[386] Italian Code, 1453; Austrian, 1080; German, 495.
[387] Austrian Code, 1072; German, 504.
[388] French Code, 1659 ff.; Italian, 1515; Austrian, 1068, 1071; Spanish, 1507 ff.; German, 497.
[389] French Code, 1686; Italian, 987; Austrian, 935; Spanish, judicial civil law, 2048 ff.; German, 156.
[390] St. Alph., III, 808, *Notandum*; H. Ap., X, 175; Billuart, *de Contr.*, Diss. 3, art. 4, 24. - If nevertheless somewhere custom prevails of withdrawing the thing, sellers following it are not to be condemned. For universal practice in some region effects that this condition is annexed to sales at auction and sufficiently intimated to buyers.

3. IT IS ASKED. Whether a buyer can ENTER A PACT with others, that they not bid, or not offer more?

Resp. Negatively, of itself. For the seller "has a right not to be deprived of the hope of obtaining a greater price, if several offerers intervene who, led by emulation, increase the price; for the right and nature of bidding seem to require this, so that equality be preserved. This has force at least in the case in which, by the sentence of a judge, the thing is exposed for auction; because then the owner of the thing is altogether held to hand over the thing to the one offering more, with danger of selling below the lowest price" (III, 808, dub. 2).

It is said of itself, because by accident this is sometimes licit. Thus buyers joined by society or friendship seem to be excused if they agree among themselves that only one of them will bid; because they make as it were one moral person, nor can it be exacted that they bid against each other.[391] Similarly buyers are excused in the case in which, from prevailing custom, the seller can withdraw his thing if a lower price is offered; because if he himself can impede the price from decreasing too much, equity demands that buyers also can impede it from increasing too much (Scavini, II, 405).

Note. Heralds to whom the sale of a thing is committed certainly sin against justice if they institute an auction at that time at which they know that few buyers are going to be present, namely so that they may favor friends; if they adjudicate the thing sooner or later than is usually and fittingly done; or employ other things of this kind, by which either damage is inferred on the seller, or favor is shown to one of the bidders, to the detriment of the others.

3. On Monopolies

1136. NOTION. Monopoly, or sale by one, can be defined: the exclusive power of selling, existing in the possession of one or of a few only.[392]

DIVISION. This power can be of right or of fact; whence a twofold monopoly is given: monopoly of right, if this power is sanctioned by public authority; and monopoly of fact, if it is exercised apart from or against right. Besides, monopoly of fact and of right is either public or private, according as it is exercised by the Government or by private persons.

Private monopoly of fact is either strictly so called, or monopoly of merchandise, which can be had in a double way: a) if someone impedes the importation of other wares, so that he alone may sell his own; but today, on account of innumerable railways, this impediment will rarely be possible. b) If at an opportune time, for example harvest, one or a few buy all, or almost all, wares, so that then they may sell again at a great price; - or it is broadly so called, or monopoly of price, and exists when sellers conspire among themselves not to sell or not to buy except at a certain price.

1137. PRINCIPLES. I. Private monopoly of right is licit. For the Government can, on account of a just cause of the public good, concede such a privilege to merchants.

Thus, in some regions, the privilege of selling tobacco or salt is conceded to a few, so that the tax necessary to the republic may thence be increased. But lest civil society be burdened by monopolies of this kind, it belongs to the prince or magistrate to tax fittingly the price of the things to be sold (III, 814). - With respect to typographers, or authors, recall the things said n. 856.

Note. A fortiori, a public monopoly is licit, provided it does not extend to almost all businesses (cf. Vermeersch, o. c., n. 183, 2, b).

1138. • II. Private monopoly of fact is sometimes unjust, sometimes illicit, and sometimes just and licit.

1139. It is unjust: a) If a merchant impedes by fraud or lie that other wares be brought in, so that he may sell his own wares more dearly with damage to citizens. b) If merchants conspire among themselves so that they may sell above the highest price, or buy below the lowest; for it does not belong to private persons to change the common and legitimate taxation of price. c) If one or a few buy all or almost all things necessary for support, so that they may sell them for more than they would be sold in the market, monopoly being removed.

We said necessary things; for it would not be unjust if wares not necessary for the support of life or for the common state of the republic were bought, such as precious gems, noble horses, ornaments of women, and similar things.

2. It is illicit, but not unjust, if merchants, without force and lie, so agree about the price of wares that, with the just price preserved, they neither sell for less nor buy for more than what was agreed among them.

[391] See nevertheless Lehmkuhl (I, n. 1337, 2), who thinks these pacts are licit not only among friends, but also among strangers, coercion always being excluded.

[392] St. Alph., III, 815; H. Ap., X, 183; cf. Lugo, disp. 26, s. 12; Lessius, l. 2, c. 21, dub. 21; Vermeersch, *Quaest. de Just.*, n. 354.

These indeed sin against charity, although it is not always mortal; for charity, although it does not oblige one to sell below the highest price, nevertheless seems to oblige one not to dissuade others from selling for a lesser price. - But they do not sin against justice, because the highest price is still just.

3. It is licit and just if one or several buy wares so that they may sell them again with moderate gain.

Indeed, although they were to sell again at the highest price, they would not sin against justice, because anyone has a right to sell his own thing at the rigorous price; nor against charity, because no one is held to neglect his own benefit so that he may avoid another's damage, which he is not held to avert (III, 816, 838).

IT IS ASKED. Whether, after a monopoly has been made by merchants concerning a price beyond the highest, it is licit for OTHER merchants to sell at the same price?

Resp. St. Alphonsus denies it with the truer opinion; because that estimation, as arising from injustice, cannot be just, nor can it be called common estimation, but deception and fraud (III, 817; H. Ap., X, 184; l. El. qq. ref., n. 34).

1139. Note. The things which we have said about a conspiracy of sellers also have force for masters who hire craftsmen to work at a lesser price from mutual machination; as for craftsmen who, as in today's time is accustomed to be done, especially by members of the worst association, commonly called *internationale*, by mutual agreement promise themselves that they will not do or not perfect such work unless they receive such a price. But what is to be said concerning mutual agreement to cease from one's work, see below n. 1154.

4. On Sale through Brokers

1140. - DEFINITION. Sale through brokers is that which is not made immediately by him to whom the thing to be sold belongs, but from his mandate or commission by others, who are called brokers, that is, intermediate negotiators.

Some are legally created (*agents de change*, *courtiers*), others simple mandataries, for example traveling agents (*commis voyageurs*), and others finally act as broker by way of a transient act, as children of the family selling or buying for parents, servants for masters.

From the definition it is clear that their obligations are to be taken from the things said above (n. 1088). But if they have agreed concerning a wage to be accepted, they are to be held as lessors of work (cf. n. 1154).

PRINCIPLE. A broker, as such, has a right to the price of the labor of industry only, but not to a part of the benefit. The reason is that he acts not in his own name, but in the name of the owner (III, 825 ff.). - Hence, speaking of itself, a broker cannot retain gain for himself if he sells above the determined price, nor the excess of the price if he buys below such a price.

Yet by accident, he can retain the excess of price: a) If by his industry, or by labor not owed, the thing became better; but if he sold for a greater price, for example because in a place very distant from that which the owner designated, he cannot retain except the price of labor. The same has force if gain was made by occasion of purchase. b) If he tacitly agreed with the owner that he would give him nothing beyond the price designated. Likewise, if the owner's consent can easily be presumed, as commonly happens when the gain is of small moment. c) If to his mere favor the buyer offered a greater sum, or the seller diminished the price: for example, if a merchant remits something of the price to a tailor buying cloth, so that he may entice him to frequent his workshop. Yet let the confessor cautiously give faith to brokers asserting that such donations were made to themselves, especially if it is a question of servants or children of the family (*Praxis*, n. 60).

1141. • Questions. QUAER. 1. Whether a broker can BUY FOR HIMSELF a thing to be sold at a determined price, and afterwards sell the same thing, as his own, for a greater price?

Resp. Affirmatively, from Natural Law, but under these conditions: a) that, with moral diligence employed, he did not find a buyer who would offer more; b) that he buy the thing for himself not fictitiously, but truly, so that he undergo its peril, and if perhaps he does not sell it for so much, nevertheless he returns the determined price to the owner. - Likewise, if someone commits to you the purchase of some thing at such a price, and you find it at a lower price, you will be able in this case to buy the thing for yourself, and afterwards sell it to that other at a greater price (H. Ap., tr. ult., 35).

We said: from Natural Law, for, as Marres notes, this manner of acting is today reproved by law or at least by received custom, on account of the frauds which would easily arise (*de Just.*, l. 4, n. 286).

QUAER. 2. Whether a broker who offered himself GRATIS for selling or buying can retain the price of his labor?

Resp. More probably he can, if he did not have the mind of donating, and the owner had already previously determined to sell the thing, and there was no one else who would furnish this gratis. For thus he was indeed mendacious, but not unjust; because his labor was worthy of a price (III, 825, in fine, with Roncaglia, Sporer).

ARTICLE II

On Exchange and Money Exchange

1142. I. Exchange (*echange*) is a contract by which two or more persons bind themselves mutually to giving one thing for another.

It differs from sale in this, that its price consists in a thing, since merchandise is constituted as the price of another merchandise. For the rest, it is generally subject to the same rules as sale. Several special things must be read in civil Law.[393]

1143. II. Money exchange (*change*) is an exchange of money for money with profit of the one exchanging. He from whom the exchange is sought is called the money-changer; he who seeks it, the exchange-seeker.

It differs from loan for consumption, because it is of the nature of loan that money be given immediately for use and yield to the good of the one receiving; but in money exchange, money is primarily handed over for exchange and yields to the good of the one giving.

Money exchange is twofold: manual, or small, or trajectitious, according as moneys of diverse account are exchanged from hand to hand, or present money is commuted with absent, through bills of exchange (*lettres de change*).

Trajectitious exchange is called: a) local or by letters, if the money-changer here, for example at Rome, first accepts moneys, which afterwards, when letters have been given, he refunds elsewhere, for example at Paris, through his factors; b) real or also temporal, to markets, Frankfort, etc., if the money-changer first gives moneys under this law, that he receive them after a certain time elsewhere with profit; c) dry, or fictitious, when the money must be restored indeed in the same place in which it was given, but a diverse place is feigned, which may be a title for the money-changer of perceiving greater gain. This contract is a true loan for consumption, and therefore the same things must be held about it as about loan for consumption (III, 850). For the rest, such a manner of acting is no longer had recourse to.

1144. PRINCIPLE. True money exchange is licit, provided equality is preserved, or the profit does not exceed the just price determined by law or custom. The reason is that there are various titles from which the money-changer can perceive profit, namely: 1. securing of money up to the place of transmission; 2. hiring of work for counting and transmitting money; 3. damage emerging from misfortunes of debtors; 4. expenses and cares in holding the exchange-office (III, 851).

1145. • Questions. QUAER. 1. Whether money exchange is licit for those who do not have a public office of exchange?

Resp. Affirmatively, unless laws stand in the way, for example if it is a question of clerics (III, 831 ff.; H. Ap., X, 192). For anyone has a right to profit to be perceived from his labor and industry.

Hence, a servant receiving from his master a gold coin so that he may satisfy his creditors can exchange it with other coins of equal value, retaining for himself the profit of exchange. Except unless the master wished or ought to have satisfied with a gold coin (III, 856).

QUAER. 2. Whether one accepting an adulterine coin can expend it?

Resp. "If the coin is not materially false, namely if it has been impressed with the sign of the prince, and the material is good and of the same weight, you will be able to expend it, since you infer no damage on another" (III, 855). - But he who would make such a coin would act against the penal law of the State.

"But if an adulterine coin is also materially false, then certainly you will not be able to use it." And if you have expended it in good faith, you are held to restitution, according to the truer opinion: because you are held to pay the just price for the thing bought, which you do not do by paying, for example, tin money for silver (III, l. c.). - Say the same of him who would expend a coin which was outside use. Yet the injustice is less than if he were to give one materially false (*Ami du Cl.*, 1908, p. 347; 1911, p. 637 and 829).

[393] French Code, 1702 ff.; Italian, 1549 ff.; Austrian, 1045 ff.; Spanish, 1538 ff.; German, 515.

ARTICLE III

On Census

1146. - DEFINITION. Census (*rente*) is a right of perceiving an annual pension from a thing or person.

It differs essentially from loan for consumption in this, that in the contract of census, even a temporary one, the price or capital is alienated in perpetuity, while in the contract of loan for consumption restitution of the principal after a determined time is established as to be made. And census can be constituted both by onerous title and by gratuitous title (III, 839). Cf. Ferraris, v. *Census*.

He who acquires the right of perceiving a pension is called the censualist, censitor, buyer, creditor. But he who assumes the obligation of paying it is called the censuary, seller, debtor. The pension to be paid is called canon, revenue, or rent, because it itself returns or is returned each year.

DIVISION. 1. By reason of the price by which it is bought, census is reservative or consignative.

Reservative census is bought by the handing over of an immovable thing: for example, I cede my field to you under the condition that you pay annually to me five bushels of wheat, or fifty francs. - Consignative census, or simply so called, is bought by money: for example, I hand over to you one thousand francs so that you may pay me fifty francs each year.

2. By reason of the thing in which it is founded, census is real or personal.

Real census, or ground-rent, is that which is constituted in some fruitful thing, so that the obligation of paying passes to any possessor whatever of this thing; and when the thing perishes, the census perishes. - Personal census is that which is founded, directly and immediately, in the labor or industry of some person, who obligates himself and his successors to paying without order to some thing from which the pension must be paid (III, 847; H. Ap., X, 201). Cf. n. 839.

3. By reason of the thing which is owed, census is pecuniary or fructuary, according as it must be paid in counted money or in fruits.

4. By reason of the time during which the pension must be paid, census is temporary, or life-long, or perpetual.

a) It is temporary if it is constituted for a determined time, for example for twenty years; b) life-long, if for the life of the censuary or censualist, or even of another person; c) perpetual, if without any term of time, so that it must pass to the heirs both of the censuary and of the censualist.

4. By reason of the mode joined, census is redeemable or irredeemable, according as the obligation of paying can be extinguished, the price being restored, or not.

But it can be redeemable at the will of the censuary, or of the censualist, or of each, according as the faculty of demanding that the contract be resolved through restitution of the capital, without deduction of pensions which meanwhile came, belongs to one or the other, or to each. Redeemable simply is understood as at the will of the censuary. To one considering it, it is clear that restitution of the principal here is obtained, not by force of census, but by force of the joined pact, namely of selling back.

1147. PRINCIPLES. I. Census is licit, provided the due conditions are preserved. It is established: 1. from the Bulls of the Supreme Pontiffs, who approved census under certain conditions, and from the unanimous consent at least of theologians of today; 2. from reason, for census is nothing other than a contract of sale or exchange, in which the pension to be paid is the merchandise, whose price is the capital, thing or money, which is handed over. Wherefore, the rules of sale also have force in the present matter (III, 839-849; H. Ap., X, 196 ff.).

1148. II. From Natural Law, the condition required in the first place is equality between the census and the price. But that price is determined either by law or by common estimation; which estimation, in these times, is found described in public sheets. Therefore without doubt it is licit to buy and sell, at the current price, annual censuses founded in the Government.

From CIVIL Law:[394] 1. Perpetual census is essentially redeemable on the part of the censuary. Yet it is licit to agree that it cannot be redeemed before a certain time, which cannot be prolonged beyond the limits constituted by law. The faculty of seeking back the principal and extinguishing the census is not conceded to the censualist except in the defined cases, namely if the censuary has omitted to pay the census for two years, or if he has not constituted the due securities, or has been compelled to cede goods. 2. Life-long census, since it is for an uncertain time, is necessarily aleatory; but it must be

[394]French Code, 1909 ff.; Italian, 1778 ff.; Spanish, 1604 ff.; German, 1199 ff.

constituted according to the probability of length of life, with account had of age, health, and complexion of the person to whom the annual pension must be paid.[395]

From CANON Law: 1. Personal consignative census is forbidden through the Bull of St. Pius V *Cum onus*, on account of danger of usury. The Bull nevertheless, according to St. Alphonsus (III, 849), has not been received in many places. 2. In the case of enfranchisement of land, namely when the land is freed from the burden of furnishing census to the Church or to a pious place, "a new investment cannot be made in banks, public or savings chests, nor in notes of public debt; because it is not held as a canonical and stable investment; but it must be made in stable, safe, and fruitful goods... Yet, in these times, it is customary for the Sacred Congregation of the COUNCIL to concede that investment be made also in nominative bonds of public debt, when it cannot be done otherwise." Cf. A. S. S., I, p. 537, 569.

ARTICLE IV

On Leasing and Hiring

1149. DEFINITION. Leasing is a contract by which someone gives his work or thing to another for use, for a certain wage. Hiring is the same contract on the part of the one accepting.

He who furnishes the use of the thing or his own work is called the lessor; but he who hands over the price, the lessee or hirer.

DIVISION. There is distinguished: 1. leasing of things, which is threefold, namely of buildings, of fields, and of animals; - 2. hiring of the work of a person, that is, of labor or service.

To this is referred, and is called hiring of work, the hiring of workers, artisans, carriers, guards, etc.; likewise the hiring of architects and of those who, after public denunciation, promised a work to be perfected, with determination of time, matter, form, and price.[396]

1. On Leasing of Things

1150. - PRINCIPLES. I. The obligations of the lessor are the same as those of the seller. Therefore the lessor is especially held concerning the following:

1. To preserve equity in the price of the lease and to hand over to the lessee a truly useful thing.

Therefore he must hand over the thing at the established time, and in such a state that it is apt for the end for which it was leased; likewise, to effect that the hirer can use or enjoy the thing through the whole time of the hiring, and therefore to sustain all expenses necessary for this, for example for roofs to be repaired, for taxes and public burdens, etc.

2. To render the hirer secure, both from vices of the thing and from juridic disturbance in the use of the thing during the time of lease.

We say from juridic disturbance, namely which could be inferred by a third party having right, but not that which would be made through violence. But if the use of the thing, on account of necessary repairs, is impeded for a notable time, for example beyond forty days, indemnity is owed to the hirer (III, 857).

1151. II. The lessee ought reasonably to use the thing leased and faithfully to pay the price. These things are clear of themselves.

1152. He ought to use the thing leased as a good father of a family, that is, for the end alone of the lease.

Whence, if he consumes the thing for other uses, the lessor will be able to seek reparation of damage or rescission of the contract. Yet, a contrary pact being excluded or positive law not prohibiting,[397] he can sublease the thing to another who is equally suitable. To him it pertains to pay those modest and daily expenses which must be made for the preservation of the thing. - He must restore the thing in the state in which he received it, with the change arisen from age or greater force excepted. If it is not established by writing in what state the thing was at the time of the lease, it is presumed to have been in good state, unless the contrary is proved.

2. The lessee must pay the wage of the lease, or pension, and indeed at the established times.

[395] French Code, 1968 ff.; Italian, 1789 ff.; Austrian, 1284 ff.; Spanish, 1802; German, l. c.
[396] French Code, 1708 ff. and 1800 ff.; Italian, 1568 ff. and 1647; Austrian, 1090 ff.; Spanish, 1542 ff.; German, 535-597.
[397] German Code, 549.

But in the case of misfortune, for example of sterility on account of hail, it has been introduced from equity of right that something be remitted from the price of the lease of a field, and that the damage be undergone equally by lessor and lessee, unless an equitable compensation is given from the fruits perceived in other years.[398]

Note. 1. The contract of lease is DISSOLVED: a) when the time of hiring has been completed. If the time was in no way determined, the lease will be able to cease at the discretion of one contracting party, provided the other is warned at an opportune time. b) By the destruction of the thing leased. c) By non-execution of the agreements. d) By mutual consent, with the right of a third party preserved, for example of a subhirer.

2. But a lease entered upon by an authentic act is not dissolved by the death of the contracting parties, but passes to heirs. If the lessor has donated or sold the thing leased, or wishes to occupy it himself, he cannot, from new Law, expel the lessee; but the constituted term must be awaited.[399] Otherwise in Roman Law.

2. On Hiring of Work

Encyclical *Rerum novarum* (middle version); Vermeersch, *de Just.*, n. 386; Lehmkuhl, I, 1344; Noldin, II, 609; Genicot, I, 645; Schindler, II, p. 663; Tanquerey, II, 786; Garriguet, *Contr. du travail*; H. Pesch, *Lehrb. der Nationaloeconomie*, III, p. 207-219; Godts, *de Salario familiali*; Schrijwers, *Man. d'Econ. pol.*, P. IV; De Gryse, Biederlack, Pottier, and others.

1152. - DEFINITION. Hiring of work, or hiring of workers, is a contract in which a just price is paid for certain labor.

It is said 1. For certain labor. For the object of this contract is not the thing produced, but the labor to be furnished, therefore the operative force itself, the very strength of the worker: therefore something which cannot be separated from the worker, and which always remains clothed with human dignity.

Hence you will deduce: a) The contract of labor is not a mere purchase-sale, because for establishing equality between the work furnished and the just price, for taxing human labor, we cannot use the same norms as for common wares and things merely negotiatory.

b) The contract of labor is not a contract of partnership, as if the master contributes his capital, but the worker his work, to a work to be perfected commonly, the profit afterwards to be divided.

2. A just price is paid: namely such a price as truly responds both to the work furnished on the part of the worker and to the end which the worker necessarily intends in leasing his strength.

ORDER OF THINGS TO BE SAID. In establishing rules concerning JUST PRICE, authors go into diverse opinions. Therefore fitting distinctions must be premised, and afterwards principles established, whether with respect to hirers of workers or with respect to the workers themselves.

How many kinds of wage are given? There is given 1. Individual wage, namely that which suffices for feeding one man on that day, and furnishes him the necessities for suitable support, provided he is frugal and well-moraled.

Individual wage can be subdistinguished into the lowest, commonly sufficient for feeding one man; and the highest, which furnishes to a man not only necessities and conveniences, but also as it were restores the expenses which he had for learning the art, and forestalls future damages.

There is given 2. Family wage, namely that which suffices for feeding a family,[400] as it is ordinarily constituted.

It is subdistinguished into absolute and relative family wage.

a) Absolute is present if, in ordinary adjuncts, the same sufficient family wage is paid to the father of a family.

b) Relative is had if that wage which of itself commonly suffices is increased according to the number of children and the weight of necessities.

1153. PRINCIPLES. I. The hirer of workers is held from justice to allot to them the lowest individual wage. The reason is that only the lowest individual wage procures equality between labor and wage. For the labor of the worker is: 1. labor of a human person, whence a thing much nobler than merely negotiatory things; 2. labor necessary for a life suitable to a man, labor therefore which cannot be estimated below a wage sufficient for the necessities of life; 3.

[398] St. Alph., III, 860; H. Ap., X, 207; Austrian Code, 1104 ff.

[399] Austrian Code, 1112; German, 595 ff.

[400] Family wage ought not to be understood thus, as if it alone ought to furnish relief for all things. Other means of support are present for the worker: the industry of the wife, the labor of children who have already grown, and especially prudence and frugality in administering the domestic matter.

finally labor by which the strengths of the worker are consumed for the utility of the master, whence there arises a right to a wage which is apt for restoring the strengths of a well-moraled man.

From these things conclude: a) The same labor standing, whether considered in itself or in adjuncts, the same lowest individual wage is owed both to men and to women (cf. Rosler, *Frauenfrage*, p. 113). So that it may be just, it must suffice also to

the needs of the seventh day. Ordinarily, however, feminine labor is less, on account of weakness of body, necessary interruptions, etc.; whence it is diminished without injustice (Noldin, II, 612).

b) This wage is owed to workers antecedently to an express agreement, according to common estimation; it will be able to be exacted by any worker at all.

c) Indeed, without injustice the highest individual wage will be able to be exacted; for no more is exacted than is expended for the advantage of the master. If special dangers of the work are present, special expenses for acquiring skill in the work, that must be paid to the worker.

d) The system of those is to be rejected who think that any wage whatever is just into which the worker has consented; for often, conquered by necessity alone, the worker consents to a payment below the just one.

A great question is: Whether the hirer of workers is bound from justice to pay to the worker who is called to marriage an absolute family wage. The affirmative opinion pleases us much. The reason is that (as Leo XIII says in the cited Encyclical) it is a most holy law of nature that the father of a family protect, by food and by every cultivation, those whom he himself has procreated; and the same is derived thither from nature, that he should wish to acquire and prepare for his children those things by which they may be able, in the doubtful course of life, to defend themselves from miserable fortune.

Therefore the labor of the married worker, which is the truly ordinary means for fulfilling this office and as it were the one capital through which he is rendered apt for satisfying this duty imposed by nature itself, this labor, we say, obtains in common estimation a price which can be compensated only by the payment of an absolute family wage. Cf., besides the authors already cited, Manning, *La quest. ouvr.*; *Collat. Brug.*, IV, 1901; Nicotra, *Quest. du Salaire*; Liberatore, *Economie politique*, p. 246; Marres, Perin, etc.

Nevertheless, the contrary opinion, which denies, we cannot reject. Thus it argues. Does the equality which commutative justice intends to establish truly require that more be owed to a married worker? The necessity of feeding and providing for oneself is intrinsic and absolute to labor; but the necessity of feeding a family is rather extrinsic and hypothetical to labor, if namely a man is joined in marriage. From this it follows that the price of labor, which indeed ought rather to be considered according to itself, does not vary in itself and does not confer other rights if the worker is married. This seems to be admitted the less because, if extrinsic and hypothetical elements had to be considered in the estimation of labor, even a relative family wage would have to be paid from justice, if the family became more numerous (cf. Genicot, I, 647; De Gryse, *Contr. cond.*, p. 45).

Whence some say that the absolute family wage is owed from charity alone; but others have recourse to legal or social justice, in order to impose on masters the obligation of paying such a wage to married workers (cf., besides those just cited, Antoine, p. 611). But they add that the absolute family wage, although of itself and initially owed from legal justice only, obliges from strict justice always and in such a region when it has truly been brought into use. For then, as regards the estimation of the labor of workers, it becomes a vulgar price.

II. The hirer of workers sometimes does not act unjustly if he pays a wage lower than the aforesaid. The reason is that the general norm, according to which the price of labor is estimated, often admits change by reason of circumstances.

Therefore the wage would justly be diminished: 1. If the worker were not yet apt for ordinary labor, or had been accepted from mercy alone, unequal to ordinary labor. 2. If in such a region labor commonly produced fruits less than just; a fortiori, if labor, prolonged with hope of better fortune, actually turned only to the detriment of the master.

Note. Yet from this do not conclude that the master acts justly who, about to begin some industry, meanwhile would give small wages until he himself has paid the capital taken from others.

III. The hirer of workers assumes other obligations upon himself. And indeed: 1. before the completed time of hiring he cannot withdraw from the contract without a legitimate cause; 2. he must take care that in workshops the workers do not suffer grave dangers against good morals or against life and the health of the body; whence he should faithfully apply the precautions prescribed by law; 3. for the rest of the body and sanctification of the soul necessary time should be conceded. Cf. the cited Encyclical; Vermeersch, o. c., n. 460; Riviere, *Vingt ans de vie*

sociale, p. 78; Harmel, *Catechisme du Patron*; Kurschner, *Lex. d. deutsch. R.*, v. *Arbeit*; Gopfert, *Arbeiter-aussperung* (ap. *Linz. Quart. Schr.*, 1908, p. 334).

IV. The worker, from justice, must fulfill the obligations of the contract.[401] The same is valid for the lessor of works.

Therefore the worker is held: 1. to furnish labor faithfully according to the agreement, so that, if from lack of skill, or negligence, or his own fault he has not performed what he promised, he is held proportionately to remit the wage, or to restore what has already been accepted; 2. not to depart, without a just cause, from service before the time of hiring is finished (but see n. 1154); and if from such departure or in another way, for example by completing the work faultily, he has brought damage upon the master, to compensate it. Recall the things said n. 708, 1140, concerning servants, and n. 1036, Question 2, concerning drivers, etc.

Note. a) From the natural law. Workers act illicitly who give some sum of money to inspectors, to corrupt them, so that a faulty completion of the work or cheaper material may be approved by them. But they would not act illicitly if they gave money for turning aside their unjust vexation. See also n. 1135.

b) From natural equity. Equity demands that, in the case of an unusual misfortune, compensation be conceded to architects or others who have taken upon themselves a work to be completed. Yet this compensation is not owed if the redeemer of the work erred in computing the expenses (Aertnys, l. III, 506; Genicot, I, 650).

c) From Positive Law.[402] No one can promise his work except for a determined time or for a determined work. An artisan, if he has not finished the work, is held concerning a greater or lesser fault, according as he furnished both material and labor, or labor alone.

Scholium

On Cessation of Labor by Agreement

(*operistitium, sciopero, greve, huelga, Streick, strike*).

On account of the importance of the question, it is useful here to note what must be held concerning *operistitium*.

1154. PRINCIPLE. *Operistitium* theoretically is licit, if the due conditions are present. The conditions are: 1. that it be opposed to justice neither in the matter nor in the mode; 2. that there be a just and grave cause; 3. that no other way be available for obtaining the end.

It is said 1. That it not be opposed to justice, neither in the matter nor in the mode. But a) IN THE MATTER a cessation of labor is unjust if there has preceded a valid contract concerning work to be furnished for a stated time and it has not been rendered void, as is plain from the things said n. 1056.

Now, the contract can be invalid either from defect of free consent, for example if the workers are morally compelled to lease their work below the just price; or from a dishonorable condition added, for example if they undertook work not necessary to be furnished on Sundays. The contract can also become void, namely in the case in which the master does not observe the conditions concerning which agreement was made. Then there is no obligation of contract, and therefore the workers have the right, with the other conditions observed, of ceasing from work by agreement. Yet charity demands that beforehand they warn the patron, to avoid his very great damage.

But if no contract preceded concerning work to be furnished for a determined time, or if the time has elapsed, the right belongs to the workers of ceasing from labor at their pleasure, and this even by agreement; but to induce others unwilling to this is often against charity both toward workmen and toward masters, unless a grave cause excuses.

b) IN THE MODE, the cessation of labor would be unjust if seditions were moved, if force or threats were applied either against the masters themselves for extorting the things sought, or against other workers, by prohibiting them from labor through fraud, threats, or strictly harmful means; likewise if the workers harmed other citizens by disturbing the city.

It is said 2. That there be a just and grave cause. a) Just; therefore *operistitia* made for extorting a wage beyond the highest price or any inequitable conditions are illicit. But if, while obtaining an equitable pay, they intend an increase of the same, yet not above the highest price, they do not sin against justice, unless they apply unjust means, for example lies.

[401] French Code, 1779 ff.; Italian, 1627; Austrian, 1151-1174; Spanish, 1583 ff.; German, 611-651.
[402] Cf. Codes, l. c.

But agreeing among themselves in this way about not leasing their work at a lower price, they seem to harm charity[403] (cf. n. 1138, 2).

b) Grave; for since from *operistitia* very evil consequences commonly arise, a cause of great moment is required, such as will be, with the circumstances considered, a diminution of excessive labor, or a cessation of vexations.

It is said 3. That no other way be available; and this also on account of the innumerable evils which a cessation from labor by agreement carries with itself. From this last condition it is clear that there is required in addition a true probability of obtaining the good end intended, if not immediately, at least in the near future.

We have said: theoretically it is licit. But IN PRACTICE, *operistitium* very often is illicit, because it cannot always be established concerning the conditions mentioned above, and many inconveniences accede which Leo XIII best declares thus: "This kind of cessation affects with damage not only masters and the workmen themselves, but harms commerce and the utilities of the state; and since it is accustomed not to be far from violence and disturbances, very often it brings public tranquillity into danger."

Nevertheless they are not to be blamed who, only on account of grave fear struck into them by associates, cease from labor while bearing themselves passively. Cf. Lehmkuhl, I, 1349; Genicot, II, n. 22; Gopfert, II, 122; Biederlack, *Innsbr. Quart. Schr.*, 1912 and *Theolog. Fragen*; Vermeersch, o. c., n. 470.

Article V

On Emphyteusis and Fief

1155. I. Emphyteusis is a contract, similar to leasing, by which, under the burden of an annual pension, the useful ownership of an immovable thing is transferred, the direct ownership being retained.

Emphyteusis differs from leasing, because it is only concerning an immovable thing, and also transfers the whole useful ownership for a long time, at least for ten years; and the annual canon to be paid is accustomed to be moderate, nor is it given for fruits, but in recognition of direct ownership.

In this contract what the right is depends on the custom of places and on the agreement itself of the contracting parties, which must be confirmed by a written instrument (III, 865; cf. Ferraris, v. *Emphyteusis*).

Note. A libellatic contract is when the emphyteuta or feudatory hands over the same estate to a third party under the same conditions. This contract is also called subemphyteusis or subinfeudation. See the civilists and canonists.[404]

1156. II. A fief (named from faith or fidelity) is a contract by which the useful ownership of an immovable thing is transferred to another, the direct ownership being retained, under the burden of fidelity and personal service.

He who hands over is called the infeudator; he who accepts, a vassal or feudatory. But these things almost everywhere among nations are now obsolete. Yet see n. 852.

Article VI

On Society[405]

1157. DEFINITION. The contract of society is an agreement of two or more by which they contribute some thing, whether movable or immovable, or work, that is, labor or industry, for pursuing a common gain (or other intended thing) (H. Ap., X, 222).

Associates can contribute a thing and work together, or either one only. Anyone can, without the consent of the others, join another to himself as regards his own portion, but not admit him into the society. Hence that saying: "The associate of my associate is not my associate" (l. XX, ff., *Pro socio*).

[403] We have said: they seem to harm; because in these matters we cannot proceed with every sort of certainty and establish a norm. Certainly, on the one side, damage comes to the master; but, on the other side, from the workers, if they remain of the same mind, great advantage is expected. But charity does not oblige with so great an inconvenience. Cf. Italian Code, 1556 ff.; Spanish, 1628 ff.; Austrian, 1123 and also 1122, 1125 where it treats of hereditary leasing and of *solarium* (which contracts are similar to emphyteusis).

[404] [OCR/source uncertain: the printed source has a note marker after "canonists" on source page 727, but no corresponding footnote is visible before the next page resets the footnote numbering.]

[405] French Code, 1832 ff.; Italian, 1697 ff.; Spanish, 1665 ff.; Austrian, 1175 ff.; German, 705-740; Crolly, II, n. 572 ff.

DIVISION. Society is called: 1. universal, if it embraces all present goods, or future goods to be acquired from industry; 2. particular, if it embraces only determined things or works. This is civil or commercial, according as it regards the civil acts of private persons, or acts of commerce.

1158. PRINCIPLE. The contract of society, if the required conditions are present, is a legitimate mode of carrying on negotiation. It is established: 1. from the natural Law; for it is not less licit for several together than for individuals separately to make gain from their own things, provided due equality is observed; 2. from the civil laws of all nations; 3. from universal use.

The conditions of a licit society are the following:

1. The matter must be honorable; for that is not licit to a society which is prohibited to a private person.

If the society has an illicit end, for example for publishing a bad newspaper, the rules about cooperation and about a base contract must be observed (n. 517 and 1036); but if it has an unjust end, the rules about restitution *in solidum* toward those damaged must be applied (n. 991 ff.). See *Ami du Cl.*, 1911, p. 462.

2. The capital, or thing contributed, remains in the ownership of him who contributed it, and is conceded to the society only as regards use and convenience. Wherefore the peril of the capital belongs to the owner alone.

Nor is it licit to add a pact about securing the capital in the case of fortuitous chance: for thus gain only, and not damage, would be common, and there would be had a leonine contract, which is also called *ad caput salvum*, if it is a question of a society in cattle.

When the society is finished, the capital must before all things be restored to the owner.

3. Gain, or that which, after damages and expenses have been deducted, remains beyond the capital, must be divided among the individual associates, in proportion to the capital contributed or the work furnished.

4. Damage which occurs by the sole view of the society (for example if wares are snatched away) must be borne by the individual associates in the same proportion in which, in the contrary case, the gain would have been divided (III, 905).

If one contributes money, but another labor, "it can sometimes happen that the value of the industry so exceeds the value of the use of the money that a pact is rendered just (which of itself would be unjust), namely that even the capital be divided. And conversely, in some places the value of the industry is so slight, on account of the custom of the place or on account of the frequency of workers, that the worker is rightly subjected also, as regards a part, to the peril of the capital, although the whole peril ought per se to belong to the owner alone" (III, 907; H. Ap., X, 224).

Hence associates are held to restitution: a) Using common things for private use, when the others are unwilling. b) Pursuing private gain, while they ought to be occupied with the common one. c) Squandering common things. d) Not contributing into the common treasury whatever they have acquired by negotiation. e) Neglecting to fulfill their parts. f) Rashly implicating themselves in businesses which scarcely are going to have a happy outcome, with the associates ignorant or unwilling (Konings, n. 1014).

1159. IT IS ASKED. In what way is a society ENDED?

Resp. It is ended: 1. by the completion of the time constituted for the society, or by the negotiation being finished; 2. through the consent of the associates, even tacit consent, namely if one of the associates begins to negotiate separately. For the rest, neither of the associates can withdraw from the contract, unless this is necessary for the public good, or unless the other would be a damage to the society, or would not stand by the pacts. But one withdrawing unjustly is held concerning the damage toward the associate; 3. through the death of either associate, because the society does not pass to heirs, except as regards businesses already begun (or unless there were present a pact confirmed by oath with the deceased associate); 4. through exile or the religious profession of either associate (likewise from the new Law through interdiction or bankruptcy, that is, the overthrow of his goods); 5. through impossibility of satisfying his part, for example on account of sickness; 6. through the destruction of the money contributed; 7. through such a change of things that the society becomes inept for the end (III, 907, q. 6; H. Ap., X, 230).

Note. Concerning the contract of society which they call threefold, we shall say a few things; for today it has gone into disuse. It is licit, according to grave Authors (cf. III, 908).

The threefold contract is entered in the following way: Lucius contributes a thousand gold pieces into society with Titius, so that they may be expended in negotiation: behold the first contract of society, from which gain is hoped, for example fifteen for each hundred. But since hope of gain is not without peril of the capital, Lucius yields to Titius five from the

fifteen hoped for, so that he may secure the capital for him: behold the second contract, by which the capital is secured. Moreover, having judged that a small certain thing is better than a greater uncertain thing, again from the ten hoped for he yields five to the same Titius, so that Titius, whatever may happen, may certainly pay five to him: behold the third contract, by which the gain is secured.

Article VII

On Transaction

1160. Transaction is an onerous agreement by which a litigated and uncertain matter is settled between the parties. It is a most apt means for ending quarrels; for "a lean transaction is better than a rich sentence."[406]

Let it be noted: 1. Transaction can be made both in judgment and outside it; but for its essence a doubtful matter, or an uncertain lawsuit, is required. Hence a transaction does not have force if it is made by those ignorant that the matter has already been judged, or if it is admitted concerning a lawsuit which was brought only by calumny.

2. Concerning his own things anyone can transact who is capable of contracting; but for it are required those conditions which in Law are found established for alienation (cf. the things said n. 871, II).

3. A transaction duly concluded has great force: it cannot be attacked further, neither on account of lesion nor on account of ignorance of Law, even if by chance documents are found from which it would be established that the matter had certainly belonged to one party which transacted.

But if an error has happened in calculation, the error indeed is corrected, but the transaction subsists.

4. Sometimes, however, a transaction can be rescinded if the error is either in the person or in the controverted object, or if deceit or force has intervened. Moreover, it is null if it was based on false documents.

Chapter IV

On Aleatory Contracts

St. Alphonsus, III, 869-917; ed. G., II, p. 236; H. Ap., tr. X, n. 214; Lugo, disp. 31; Lehmkuhl, I, 1354; Aertnys, tr. VII, n. 511; Huppert, *Lebensversicherungsvertrag*; Tanquerey, II, p. 527; Genicot, I, n. 656; Pruner, n. 762; Schindler, II, p. 686.

Those contracts are called aleatory whose effects, both as regards gain and as regards loss, depend on an uncertain event. Contracts of this kind are (besides life census, concerning which n. 1146, 3) insurance, betting, lottery, and game.

1. On Insurance

1161. DEFINITION. Insurance is a contract by which someone takes upon himself the peril of another's thing or person, obliging himself, for a certain price (*prime*), to compensate it if it perishes or suffers damage.

DIVISION. Insurance, by reason of the different peril, can become manifold. Thus there are given insurances against shipwrecks, fire, hail; indeed there is given insurance of life, that is, for support to be paid to children or heirs, if such a person dies beforehand.

Note. 1. In our times, by the help of statistical art, the likelihood of peril could be determined much more accurately, from which it has happened that insurance has become less aleatory. 2. Although this contract is of itself consensual, nevertheless it is not rendered altogether firm except after the acceptance of the written document subscribed by the society (*police*). 3. The insurer in no way intends to compensate that damage which the insured (or his family) has brought upon the thing.

1162. PRINCIPLES. I. The contract of insurance is null and unjust if, on the part of the insured thing, probable peril is lacking. This is plain from the definition (III, 911).

Hence: 1. If the insurer is certain that the thing is safe, for example a ship in port, he asks a price inequitably, and he is held to restore what has been accepted. 2. If someone has sold an insured thing, and before the fire it has already been handed over to the buyer, the insured cannot receive the whole compensation (Lehmkuhl, I, 1356). See also the civil laws.[407]

[406] French Code, 2044 ff.; Italian, 1764 ff.; Spanish, 1809; Austrian, 1380 ff.; German, 779; Scavini, II, 425; Gousset, I, 903; Ferraris, v. *Transactio.*

[407] Cf. Austrian Code, 1288; Spanish, 1791 ff. As regards Germany, see various articles in Kurschner, *Lexicon d. deutsch. R.*, v. *Versicherung.* For France, see Maire and Gellie, *Man. theor. et prat. de l'Assurance.*

II. The contract of insurance is unjust if, on the part of the insured manifesting the perils, there is present an efficaciously damaging error. The reason is that it belongs to the essence of insurance that the price be proportioned to the peril. For the price and compensation are determined in proportion to the peril. Therefore sincerity in declaring the peril belongs to the essence of the contract.

We have said: 1. If an error is present. Error, although admitted in good faith, does not confer validity on the contract; error committed in bad faith (provided, as we shall soon say, that it is concerning a notable thing) obliges also to repairing damages.

2. An efficaciously damaging error, that is, having for its object a notable defect, from which it happens that the peril of the thing or person is truly increased.

But it is the same whether this defect already existed at that time when the contract was perfected, or only supervened afterward.

As regards errors concerning defects of lesser moment, we do not judge that the contract by that very fact becomes null if the insured was silent about them, provided the proportion between peril, price, and compensation, notwithstanding malicious reticence, still morally endures.[408] This is to be affirmed the more because Authors are not lacking who think that even then the contract is valid and just if in good faith a notable defect was not manifested (provided the insured of himself increases what he owes, or accepts less); and that to insurers there is conferred only the faculty of not paying the premiums (Lehmkuhl, I, 1355). When the insurer protests, certainly one must stand by the sentence of the judge.

III. The contract of insurance is unjust if the insurer is unequal to paying the promised compensation. This is required from the nature of the contract. Therefore the insuring society cannot retain prices if the number of the insured becomes so great that, if the peril suddenly rushes in, it cannot pay.

But if it is able to compensate only part of the damage, some say the contract is invalid by that very fact; others think that the society can retain the part of the price which corresponds to the quantity of security which in reality it furnished.

IV. Officials of an insuring society are subject to the same laws to which mandataries are subject (cf. 1090). It is plain of itself, whatever some insuring societies may say. Therefore those things which officials do bind the society itself, provided they have acted within the limits of their mandate.

Note. An insuring society of itself, by force of the statutes, is held to compensate damages which proceed from the malice of outsiders. From this it follows that unjust damaging persons must repair this compensation to the society, because the society succeeds into the rights of the insured when it pays the compensation. Concerning the mode of restoring, see n. 1015.

For practice it must be noted that in certain regions the insuring society, foreseeing that it will suffer damages maliciously from many insured persons, increases the prices to be paid by all so much that, in the better way in which it can be done, it renders itself unharmed. Some think that in these circumstances malevolent damaging persons are held to no restitution. Yet this does not seem proven to us. For, granted that the contract is firm from the beginning, the damaging person is always held toward the society, yet with those things subtracted in which the society has been made richer beyond what is equitable, by demanding greater prices.

2. On Betting

DEFINITION. Betting (*pari*) is a contract by which two or more, contending concerning the truth or concerning the event of some thing, mutually pledge something to themselves, so that it may belong to him who shall have attained the truth.[409]

1163. PRINCIPLES. I. Betting is, per se, licit. For by reason of itself it is an indifferent thing. It is illicit if it is made under sinful conditions, for example if someone bets that he will commit some sin, or that he will drink wine in the greatest quantity; otherwise, if someone bets that he will not sin.

In practice, bets rarely can be excused from venial sin, on account of defect of an honorable motive in the bettors, who generally are led rather by an end of vanity and prodigality. Yet an illicit bet does not impose the burden of restitution, unless it was also unjust (III, 869 ff.).

[408] In reality many things which an insuring society exacts, especially if it is a question of life to be insured, savor of too much rigor; from which it happens that the contract is no longer perfected in a fitting mode. Therefore it is consonant with reason that the obligations of the insured be determined according to the norm of natural equity. See how the same case is solved differently by different persons, in *Ami du Cl.*, 1909, p. 300 and *Linz. Quart. Schr.*, 1910, p. 852; 1911, p. 383.

[409] French Code, 1964; Italian, 1802; Austrian, 1270; Spanish, 1798; German, 762; Crolly, II, 662.

1164. II. That betting may be just, equality must be observed. It is required namely that the prize which is pledged be equal (unless the other party consents to inequality), and that the event be doubtful to both.

IT IS ASKED. Whether a bet has force if someone manifests that he knows the matter certainly, and notwithstanding this, the other perseveres in the bet?

Resp. The first opinion affirms that it has force, because the other ought to impute the detriment to his own pertinacity. The second, much more probable opinion denies, because the other does not bet except from the erroneous persuasion that the one asserting that he knows the matter does not have the certainty which he says (Lugo, disp. 31, n. 81). Yet the contract would have force if he who from the beginning seemed certain about some matter afterward, with the other contradicting and wishing to bet, began to doubt; because thus equality returns; or if the other already begins to give faith to the one asserting that he knows the matter certainly, because then he yields to his right (Lugo, l. c., n. 79). Cf. St. Alph., III, 878.

3. On Lottery

1165. DEFINITION. Lottery, or gainful sortition, is a contract by which several place a certain sum of money in common, and then draw by lot who is to receive the object of the lottery.

PRINCIPLE. Lottery is a licit contract, provided the due conditions are present. For it can be considered either as a simple game, or as the purchase of an uncertain thing; but each contract is altogether licit.

The required conditions are: 1. that there be no fraud in drawing out the tickets, nor in paying the prize which has fallen by lot; 2. that the owner of the lottery not exceed in gain, nor morally gain more than if by another licit contract he expended his money, or distributed his wares.

To some Authors this rule appears more severe than equitable; because, even in a game, he to whom chance favors justly gains more than he could have gained by negotiation. But all agree in this, that the gain can be greater if the lottery has been instituted for a good work or for public utility; for those participating in the lottery are judged to consent to this. See Gury, I, 943; Genicot, I, 663; Scavini, II, 583, where he treats of the dangers of royal Sortition, commonly *regio Lotto*.

4. On Game

1166. DEFINITION. Game, insofar as it regards justice, is a contract by which the players agree among themselves that what each has deposited should yield to the victor.[410]

DIVISION. Game is threefold: 1. industrial, which is ruled by industry alone, as a ball game; 2. aleatory, which chiefly depends on chance, as a game of dice; 3. mixed, in which industry concurs with chance, as a game of cards, at least for the most part.

1167. PRINCIPLES. I. Game is, per se, honorable and licit. For it is a delight ordered to repairing the powers of the soul (cf. n. 834). Nor can it become illicit on account of the prize constituted; "because, just as anyone who is owner of his own thing can donate it to another absolutely, so also under some condition, whether it is fortuitous or depends on industry" (III, 871).

It is said: it is licit per se; for, per accidens, it can become illicit in various ways, and indeed: 1. by reason of excessive affection, if the player explicitly proposes to himself rather to sin than to leave the game; 2. by reason of the danger of sinning, if the game would be an occasion of quarrels, or of uttering blasphemies, dishonorable words, etc.; 3. by reason of the sum of money exposed,[411] if it is not proportioned to the powers of the players, so that children, creditors, the poor, etc., suffer detriment; 4. by reason of circumstances of time, place, person, etc., if they are not fitting; 5. by reason of positive prohibition: thus, for example, games of dice are forbidden to clerics (cf. n. 2231).

1168. II. For the validity of game, diverse conditions are required. When these are lacking, justice is injured. And indeed:

1169. The things exposed to the game must be proper to the players, and in their ownership, and in their free faculty of disposing.

Hence: a) If someone plays (even in a licit game) with a minor, a wife, or others who do not have free administration of goods, he cannot retain the gain, unless it is a question of moderate sums which are judged to be altogether permitted to their disposition. b) If someone plays with another's money, probably he must restore the gain. For the contract was

[410] Cf. French Code, 1965 ff.; Italian, 1802; Austrian, 1272; Spanish, 1798; German, 762; cf. Lehmkuhl, *Das burgerliche Gesetzbuch*, in § 764.

[411] St. Francis de Sales (*Philoth.*, P. 3, c. 29) regards this as unjust, but it seems rather to be per se a sin of prodigality (Genicot, I, 661).

null from the beginning, from the fact that money was exposed which neither of the players could acquire (III, 875; Lugo, disp. 31, n. 17). Except if the money of a deposit had been exposed, with at least the presumed consent of the depositor. Nevertheless, the contrary opinion is also probable, which attributes gain of this kind, as the fruit of his industry, to the victor, provided that, in case he is conquered, he can return from his own goods.

2. The players must consent freely to the game.

Whence if someone from among the players is not master of himself, so that he cannot furnish full consent, the contract is not valid and the gain must be restored. Nevertheless, if someone injuriously compels another to play, the contract per se becomes valid, but rescindable at the judgment of him who suffered fear (III, 880).

3. The players must not use unjust frauds.

Therefore the player who marks or changes cards, or appoints someone by whom he may be warned, is held to restore the gain, and also as much as the hope of gaining was worth to the other. But each one licitly uses the stratagems which the rules of the game and custom bear, for example he looks at the cards which the other does not hide well, or distinguishes cards from some accidental sign, or simulates fear so that the other may become bolder, etc.

4. Among fellow players there must be moral equality as regards the hope of gaining and as regards the peril of losing; otherwise justice would be injured (III, 882; H. Ap., X, 216). This equality in practice would be injured especially when someone deceitfully hid his skill (III, 881).

Note. a) Since it is licit, on the occasion of a profane business, to exchange spiritual things, it is licit to place prayers for the price of a game, as the use of pious persons proves. Otherwise, if one were to play with money, but the other with prayers; for that would be simony. b) Restitution of unjust gain is not to be urged if condonation on the part of the conquered can be supposed; which is easily supposed if it is a question of a matter of lesser moment.

IT IS ASKED. What must be observed from POSITIVE LAW as regards game?

Resp. The dispositions of Law are various: 1. Some games are positively approved, for example those which are ordered to exercise of the body; as regards these the law concedes action to the victor, so that he can seek the gain. Yet judges can refuse action if it is a question of a prize of excessive value.

2. Others are neither approved nor prohibited, and the law concedes no action, either to the victor for seeking the gain, or to the conquered for demanding back what he has already paid; unless fraud or deceit intervened on the part of the victor. Therefore one must stand by the natural obligation.

3. Others are prohibited, yet nevertheless they are not made void by that very fact: the law concedes no action to the victor; on the other hand it concedes to the conquered an action for demanding back the prize already paid. From the common and more probable opinion, the conquered, in such a game, is not held to pay; but if he has paid, he can with a safe conscience demand back what was paid. If the players from the beginning renounced the benefit of the law, the renunciation does not have force, which the law declares invalid on account of the common good; yet if the cession (which per se is concerning a licit thing) had been confirmed by oath, it would be wrong to withdraw from it, on account of reverence for religion (Lugo and Lessius, ap. St. Alphonsus, l. c.).

4. Others are prohibited and altogether made void, so that the gain cannot be retained by title of victory, but only by title of gratuitous donation, if it pleased the conquered to make it (III, 887-894; see Code, l. c.).

Note. Game, if one indulges in it immoderately, imports many and grave evils. Wherefore parish priests and confessors should attend to this, that they turn subjects and penitents away from the custom of playing, insofar as this can be done (cf. n. 410, 7). Cf. the things which Koch wisely warns, *Moraltheol.*, § 149.

Scholium

On Games or Speculations of the Stock Exchange

1169. We certainly do not wish, even by a brief enumeration, to touch upon the various modes by which the so-called operations of the Stock Exchange are accustomed to be made. It will be enough if we note the following.

1. The more common operations are either *ad terminum* or *ad praemium.*

a) A purchase-sale is made *ad terminum* if wares (values) are bought to be paid after a certain time, and indeed at the price which then will prevail on the Stock Exchange. But it can happen that on the day of payment (*liquidation*) the seller neither ought nor intends to hand over to the buyer the wares themselves, but only, if the change of fortune is

adverse to him, to pay the difference; the difference, we say, between the foreseen value of the wares and the actual real value. The same can happen to the buyer. Therefore the speculation of both consists in this, that, trusting in good fortune, they hope either to sell for more, or to buy at a small price. b) A purchase-sale is made *ad praemium* if an accessory pact of reservation is attached to the contract. The buyer namely reserves to himself the right, before the day stated for payment, of rescinding the contract: in which case he pays a premium to the seller.

From these things it seems that operations of the Stock Exchange can be reduced either to purchase-sale, or to betting about the increase or decrease of money.

2. If the intrinsic morality of those operations is considered, provided that the due conditions for the liceity of sale or betting are duly observed, theoretically speaking, they are not to be condemned.

But, practically, otherwise must be said, if the innumerable evils which the custom of being occupied with games of the Stock Exchange ordinarily carries with itself are considered: a) since it is not rarely a question of an enormous amount of money, one undergoes the danger of bringing the whole family into ruin; b) so that the value of various titles may grow or be diminished, false reports are published everywhere, for example concerning danger of war, concerning scarcity of a certain merchandise, etc.; and deceived by this lie, many are induced to most pernicious contracts; c) it happens that values are heaped together in a great number, so that by the help of a certain monopoly the just price is either depressed or increased beyond what is equitable, and thus the fortune of others perishes.

Wherefore it is certainly to be desired that by those in whose hands legislative power is placed, this ulcer of domestic and civil society be cut away.

In ITALY[412] and GERMANY,[413] games of the Stock Exchange strictly so called (*Differenzgeschaft*) are to be assimilated to other games in which, namely, no action is given to the victor; in FRANCE[414] and SPAIN,[415] that action is not denied. As regards Austria, cf. the laws of 1 Apr. 1875 and 4 Jan. 1903.

Note. To clerics who have been initiated into sacred orders, negotiation properly so called (cf. n. 2227), whence also speculation of the Stock Exchange, is altogether forbidden. Yet it must be noted that operations *ad terminum* cannot always be equated with speculation, as experts have affirmed to us (against Tanquerey, III, Suppl. pro Gallia, XXVII, n. 5).

Chapter V

On Subsidiary Contracts

St. Alphonsus, III, 912; ed. G., II, p. 317, where he simply reports the things which Busenbaum wrote; Lehmkuhl, I, 1351; Pruner, n. 750.

Those contracts are called SUBSIDIARY, or accessory, which are employed for the greater security of a promise made. They are suretyship, pledge, antichresis, and hypothec.

1. On Suretyship

1170. DEFINITION. Suretyship or caution (*cautionnement*) is a contract by which someone takes upon himself another's obligation to be fulfilled, if the principal debtor has not paid.[416]

For suretyship it is always licit to accept a price, even if peril is absent; because the assumption of such an obligation of itself is estimable by price. But the obligation which arises from suretyship is real; whence it passes to heirs (H. Ap., X, 232).

PRINCIPLES. I. No one can be a surety unless he has free administration of goods sufficient for this. Whence those who cannot be principally obligated cannot give surety (cf. 1038).

II. The surety is obligated as a secondary debtor. Whence: 1. he is held toward the creditors concerning the obligations of the principal debtor, but only in his default or impotence, and indeed juridically proved; 2. if he has paid for the debtor, he is subrogated to all the rights of the creditor; and therefore he has recourse against this debtor, so that from him he may demand back those things which he was compelled to pay in his place.

[412] Code, 1803; cf. Bruno, *Cod. civ.*, in art. 1802.
[413] Code, 764; cf. Pelt, *Le Code civil allemand*, p. 74. See the law of 22 Jun. 1896.
[414] Law of 28 March 1885.
[415] Commercial Code, 75.
[416] Cf. French Code, 2011 ff.; Italian, 1898; Austrian, 1344 ff.; Spanish, 1822; German, 765 ff.

III. The debtor is held toward the surety concerning the payment made by him. And indeed, if by his fault he did not pay, he is held to compensate to the surety, who paid for him, not only the debt itself, but also damages and all expenses. But if without fault, for example on account of impotence, he did not pay, he seems to be held only to the debt (III, 912).

1171. From these things you resolve: a) Those who constitute themselves sureties when they are incapable of paying, especially if they doubt whether the principal debtor can pay, sin gravely; and therefore, if the creditor suffers some damage from that fraud, they are held to repair it.

b) Those who have constituted themselves sureties for public officials cannot render themselves immune by compensation from the public treasury, even if by the fraud of the officials they undergo great damage.

2. On Pledge and Antichresis

1172. Pledge is a contract by which a debtor hands over some movable thing to the creditor, for the securing of payment to be furnished.[417] The thing handed over is called pledge (*gage*).

1. The DEBTOR, handing over the pledge, is held: a) to hand over to the creditor a suitable thing; b) to refund necessary and useful expenses which the creditor has made in preserving the thing; c) not to demand back the pledge before he has paid the whole debt, unless the creditor abuses it.

2. The CREDITOR, accepting the pledge, ought: a) not to use the thing entrusted to him, unless with at least the presumed consent of the debtor; because it is another's thing handed over only for security. But the owner is presumed to consent if no damage arises to him from it; b) to guard the pledge as a good father of a family; c) to compute the fruits perceived from the pledge, and the value of the use, in compensation both of the returns which are owed to him on account of the sum handed over, and of the capital itself, if the fruits are sufficient, so that equality may be preserved; d) not to sell the pledge by his own authority, nor to demand that it be sold by sentence of the judge, unless the debtor is in culpable delay and has first been warned.

Note. From CANON LAW, sacred things, as chalices, chasubles, etc., cannot be pledged, unless for assisting the poor or churches (H. Ap., X, 233).

1173. Antichresis is a contract by which a debtor hands over an immovable thing to the creditor in pledge and in usufruct, with this law, that the fruits be computed first for the payment of the returns, and then, if anything remains, for the payment of the capital.[418]

The pact of antichresis is not permitted everywhere, on account of the danger of usury.[419] Yet it is licit if equity is preserved in it. Now: a) The creditor has only a right of perceiving the fruits, but no right into the ownership itself, as in hypothec. b) But he himself is held to guard that good diligently as his own; to pay the annual taxes inhering in it, unless otherwise agreement was made; to make other useful and necessary expenses, but with a right of compensation from the fruits of the thing. St. Alph., III, 916.

3. On Hypothec

1174. Hypothec, insofar as it is a contract, is an agreement by which a debtor obliges an immovable thing to the creditor, for security of the credit.[420]

Hypothec confers on the creditor a real right in the thing, into whatever hands this thing may have come, so that from it, before the other chirographic creditors, he can seek payment of the debt for himself (H. Ap., X, 233).

1. Hypothec is a SOLEMN contract, demanding that various dispositions of law be observed. He who cannot freely dispose concerning his own things cannot enter it.

Besides conventional hypothec, there is given another, legal, which is conceded by the law itself, for example to wards in the goods of a guardian; and another, judicial, which proceeds from a sentence of the tribunal, in favor of him who has obtained the sentence (cf. 1003).

2. That hypothec may attain its effect: a) it must be constituted upon a determined immovable thing; b) it must be made public; which happens through inscription in a public book, by an official destined for this. Hypothec immediately

[417] H. Ap., X, 233; cf. French Code, 2073 ff.; Italian, 1878 ff.; Austrian, 1368 and 447; Spanish, 1857, 1863 ff.; German, 1204 ff.
[418] French Code, 2085; Italian, 1891; Spanish, 1881; German, 1213.
[419] Cf. Austrian Code, 1371.
[420] French Code, 2144 ff.; Italian, 1964 ff.; Austrian, 449 ff.; Spanish, 1874-1880; German, 1113 ff. In England the Law differs: see Crolly, II, n. 639-644.

from inscription obtains its right, so that the one inscribed earlier is stronger in right. Hence care must be taken that judicial hypothec be inscribed as soon as possible.

Note. The inscription must be renewed within a certain term stated by law, for example in France within 10 years, in BELGIUM (from the law of 1851) within 15 years, in ITALY within 30 years, in SPAIN (from the hypothecary law, 4 Feb. 1861) within 20 years. In GERMANY the inscription need not be renewed.

General Warning

"It remains," says St. Alphonsus (*Praxis Conf.*, n. 44, fin.), "that here it be warned that, if there are found some contracts received by use through a long time in some region (where especially missions have been made), the confessor ought not to condemn them unless first, all the circumstances having been inspected; since at first sight many contracts appear usurious or unjust, but afterward, the matters having been weighed better, they are not to be held as such."

Tractate VIII

On the Eighth Precept of the Decalogue

Thou shalt not speak false testimony against thy neighbor.

(Exod., 20, 16).

1175. The EIGHTH precept prohibits generally that we harm our neighbor by words; and since the harm which is inflicted by words injures him in the goods of reputation and honor, this precept explicitly prohibits that we ever speak false testimony against him; but it implicitly commands that, "simulation and deceits having been removed, we measure our words and deeds by simple truth" (*Catech. Rom.*, P. III, c. 9, n. 2). Therefore the aforesaid precept is concerned with the offices which we have toward our neighbor, both as regards truth and as regards reputation and honor. Wherefore, in a threefold chapter, we shall treat: 1. of the injury of truth; 2. of the injury of reputation; 3. of the injury of honor.

Chapter I

On the Injury of Truth

St. Thomas, 2. 2, q. 110 and 111; St. Alphonsus, III, 151; ed. G., I, p. 467; Lugo, disp. 14 and 15; Lessius, l. 2, c. II and 15; Salmanticenses, tr. 13, c. 4, and tr. 27; J. Malderus, *Tr. de Restr. mentali*; Thomassin, *Traite de la Verite et du Mensonge*; Raynauldus, *de Aequivocatione et Restrictione ment.* (opp., t. 14); Waffelaert, *Dissertation morale sur le Mensonge et l'emploi des Restrictions mentales*; Berardi, *Theol. mor.*, II, n. 961.

1176. To injure truth by a lie is always wrong. Yet truth itself is not to be manifested inopportunely, lest we harm ourselves or others. Therefore, with discretion persuading, sometimes we can permit the error of our neighbor by using mental restriction. Moreover, truth often must be altogether kept silent, as often namely as it has become known to us under the law of secrecy. Hence we shall speak: 1. of lying; 2. of mental restriction; 3. of violation of secrecy.

Article I

On Lying

1177. DEFINITION. A lie is a locution against the mind with the intention of deceiving.

Here, whatever per se has the force of manifesting that which is false is called locution, whether it is done formally through words, or equivalently through gestures, nods, deeds. Locution is made against the mind when the external word is dissonant or discordant from the internal word or judgment. The intention of deceiving imports the will of so enunciating the false that it may prudently be believed by the hearer. Whence, if the intention of deceiving or of saying the false is absent, either there is no lie, or it is not imputable. Thus he does not lie who, joking, utters the false in such a way that the hearers cannot be deceived; nor he who affirms the false which he believes true. On the contrary, he lies who says the true which he thinks to be false.

Note. Some today think and intend to prove that the definition of a lie handed down by all up to now is defective, and that a lie must be defined: a locution against the mind with the intention of deceiving him who has a right of knowing

the truth.1 There is no one who does not see that these Authors stand apart from the common opinion, which considers the relation of lying to be essentially toward the true or toward illuminating the intellect of another, but not toward the rights of the subject. Cf. *Ami du Cl.*, 1912, p. 358. Yet it must be confessed with St. Augustine that this is "a most difficult and most hidden question" (*Enchir.*, c. 18).

DIVISION. A lie is threefold: officious, jocose, pernicious.

OFFICIOUS is that which is made on account of one's own or another's utility. JOCOSE, that which is made for the sake of one's own or another's delight. PERNICIOUS, that which is made with unjust harm of neighbor.

To lying is referred: SIMULATION, "by which someone intends through an external deed to signify something other than he has in mind": whence it is called a lie of deed; likewise HYPOCRISY, which is the fiction of a sinner simulating himself as just (III, 171).

1178. PRINCIPLES. I. Every lie is intrinsically evil. For it is against the natural institution and end of locution, which has been given by God to men so that it may be expressive of the mind and conformable to it. Whence it is said (Levit., 19, 11): Do not lie, nor shall each one deceive his neighbor. And (Coloss., 3, 9): Do not lie to one another.

II. A lie, whether officious or jocose, nevertheless does not exceed venial fault. It is opposed only to truthfulness, which virtue, per se, does not oblige under grave matter (cf. n. 402).

III. A pernicious lie is, per se, a grave sin. It is opposed not only to truthfulness, but also to justice and charity, or even to other virtues which per se oblige under grave matter (2. 2, q. 110, a. 4). Whence it is said (Prov., 12, 22): Lying lips are an abomination to the Lord. And (Wis., 1, 11): The mouth that lies kills the soul. And it must be noted that he who has injured justice through a lie is held to restitution.

Article II

On Mental Restriction

1179. DEFINITION. Mental restriction is an act of the mind twisting or restricting the words of some proposition to a sense other than the natural and obvious one.

DIVISION. Mental restriction is one kind purely mental, which can in no way be perceived by others; another is not purely mental, which can become known from the adjacent circumstances (III, 152).

To mental restriction are recalled EQUIVOCATIONS or amphibologies, which are ambiguous locutions, having a double sense: either one less obvious, the other more common; or one literal, the other spiritual or mystical. Some are determinable, whose sense intended by the one uttering can be known from circumstances; others are indeterminable, whose sense intended by the one uttering can by no means be detected (III, 151; H. Ap., V). Cf. Berardi, II, n. 973.

To this likewise is recalled dissimulation, by which someone neither by word nor deed signifies that which he has in mind, but as it were cuts himself off or abstracts from it: as if someone, asked whether he has money, begins to speak about another matter.

1180. PRINCIPLES. I. It is never licit to use purely mental restriction or indeterminable equivocation. The reason is: 1. because they per se tend to the deception of neighbor, and therefore are true lies; 2. the use of them would be pernicious to human society, and from it human commerce would collapse; 3. it is established from Sacred Scripture (Eccli., 37, 23): He who speaks sophistically is hateful; and from propositions 26, 27, and 28 condemned by Innocent XI. Hence, a fortiori, it is never licit to swear with the same (cf. n. 608, q. 2).

1181. II. It is licit, from a just cause, to use a restriction not purely mental or a determinable equivocation. It is proved: 1. From the nature of the matter: for to use a restriction of this kind is not to lie, because then we do not deceive our neighbor, but from a just cause permit that he deceive himself; and moreover the sense of the speaker can be sufficiently perceived from the adjuncts; whence it is only a prudent concealment of truth. 2. From the example of Christ the Lord, who, when asked whether he would ascend to the feast day, responded: I will not ascend (John, 7, 8), and yet afterward he ascended. But he had said: "I will not ascend," namely manifestly, because the disciples wished that he ascend to manifest his divinity.

To the matter the Angelic Doctor speaks thus (2. 2, q. 110, a. 3, ad 4): "It is not licit to tell a lie for this, that someone may free another from any danger whatever; nevertheless it is licit to conceal the truth prudently, under some dissimulation." And this same thing, almost unanimously, all theologians teach, St. Alphonsus being witness (III, 152). Cf. Panzuti, II, n. 134; Junglas, *Der rechtsgeschichtliche Hintergrund fur Liguori's Lehre vom Gerichtseid.*

1182. Corollaries. 1. A just cause, so that we may licitly use restriction, is, in general, the necessity of preserving a secret; for this is required for the good of society, and sometimes by no other means can the secret be preserved.

Yet for permitting the use of restrictions not purely mental, sometimes a reasonable cause suffices, say for freeing oneself from the importunate and unjust interrogation of another, and any other honorable end. But it must be noted: a) that the greater cause is required, the more the words furnish an occasion of erring. Whence, if they furnish almost none, as are words equivocal per se, which have a double sense per se, the slightest cause excuses. b) A greater cause is required for equivocating with an oath than without it (III, l. c.).

2. But a just cause is not given when a SPECIAL LAW requires manifestation of the truth. Then it is not licit to use equivocation, but the truth is sincerely to be made manifest. The reason is plain of itself. But such a law is present in the following cases: a) When the precept of professing the faith externally urges. b) When the judge legitimately interrogates; because then the just precept of the Superior obliges, to which one must submit. c) The same obtains when a Superior legitimately interrogates concerning those things which regard the government of subjects; or a confessor concerning those things which he ought to know for rightly judging the penitent. d) Finally in onerous contracts, where strict justice requires that no injury be brought upon the other (H. Ap., V, 15).

3. For practice, you conclude: 1. All public persons, interrogated concerning matters committed to their faith, can use mental restriction: such as ministers and legates of princes, secretaries, leaders of armies, magistrates, advocates, physicians, etc. For if secrets committed to persons of this kind were violated, most grave inconveniences would follow, as no one fails to know.

4. As often as someone is held to conceal the infamy of another, he licitly says: I do not know, namely with communicable knowledge. A fortiori, the confessor can do this, indeed is held to this, as is plain (III, 153).

5. The accused or a witness, not legitimately interrogated by the judge, can respond that he did not commit or does not know the crime, understanding, concerning which inquiry can be made, or which he is held to confess. Otherwise, if the interrogation is legitimate and juridical, as will be explained in the treatise on the Lay State (cf. n. 2315).

6. An adulteress interrogated by her husband can equivocally assert that she has not broken the marriage, which truly persists. And if she has confessed the adultery sacramentally, she can respond: "I am innocent of this crime"; because through confession it has now been taken away (III, 162).

7. He who has promised marriage, to which from some excusing cause he is not held, can deny the promise, namely that by which he is obligated. Likewise, he who was compelled to marriage can assert to the judge, even with an oath, that he did not contract, namely freely, as was proper (III, 159).

8. One asked to lend money can licitly say: Would that I had it! or: I do not have it, although he has it, understanding that he does not have it for lending, if the matter is thus (III, 163).

9. He who must cede his goods, needing hidden goods for support, can respond to the judge that he has nothing, namely which he is held to cede. Likewise an heir who without an inventory has hidden goods, if he is not held to satisfy creditors from those goods, can respond to the judge that he has hidden nothing, understanding: from the goods from which he is held to satisfy (III, 158).

10. A servant can, by command of the master, deny that he is at home, although he is present; because such a locution is generally received by use for signifying that he is not at home, insofar as he can be seen. Likewise he can respond: He has gone out, understanding: at a past time. Attend, in these matters, to the custom of places.

11. A seller before a notary can assert that he has accepted money which he has not yet received, but which he will receive shortly. For common use concedes this (III, 167).

12. A debtor who has satisfied the creditor, although nevertheless he cannot legally prove the satisfaction, can deny that he contracted any debt, understanding: so that I ought to pay (III, 159).

13. One coming from a place which is falsely thought to be infected by disease can deny that he comes from it, namely as infected by pestilence; because this is the mind of the guards. Likewise, he who is not held to taxes can say that he carries nothing, that is, from which he is held to pay.

14. One invited to a table, and asked whether the food is good, can respond that it is good, although in reality it is tasteless, understanding, for mortification and penance, etc., etc. (III, 160).

Article III

On Violation of Secrecy

1184. DEFINITION. Secret or hidden matter in general is called whatever is occult. But here is understood whatever, either from its nature or from a special contract, must be preserved occult.

DIVISION. Besides sacramental secrecy, concerning which we shall treat later, a threefold secrecy is distinguished: 1. NATURAL or simple, which arises from the nature itself of things, from the fact namely that a thing known by chance cannot be manifested without damage or displeasure of neighbor; 2. PROMISED, which namely someone promised to preserve after accepting knowledge of the matter; 3. COMMITTED or rigorous, embracing namely those things which have not been revealed to someone except under an express or tacit pact of preserving silence.

A tacit pact is judged to be present when from the fact itself it is established that the matter is committed under secrecy, for example if recourse is had to a physician or to an advocate for remedy or counsel. To committed secrecy is reduced that which is revealed to a priest outside confession under quasi-sacramental secrecy.

It comes to be said: 1. of revelation; 2. of inquiry into and use of another's secret. For anyone has a right that his secret not be explored, manifested, and finally that no illegitimate use be made of it.

1. *Etude sur la malice intrins. du Mens.*, by a professor of Theology (Paris, 1899); cf. Berardi, *Theol. mor.* (1905), II, n. 976.

§ 1. On Revelation of a Secret

It is easily understood that another's secret cannot be revealed without a proportionate cause; and that the sin of one revealing is more or less grave, according to the nature of the secret, or the gravity of the damage inflicted.

1185. PRINCIPLES. I. The obligation of preserving a natural secret is in general under grave matter. The matter is plain of itself, since this obligation arises either from charity or from justice.

Whence he who knowingly and unjustly manifests a secret is held to reparation of the damage. But a just cause of revealing it would be the necessity of avoiding damage threatening oneself or neighbor, which from the law of charity he is not held to undergo (IV, 49). See the things to be said n. 1198.

1186. II. The obligation of preserving a promised secret is diverse according to the diversity of the intention of those promising. Therefore it will be either grave or light, according to the intention of the one promising, who is not judged to have contracted a grave obligation unless this is established. The reason is that a mere promise of secrecy is a gratuitous contract, which therefore is subjected to the rules of a contract of this kind (cf. n. 1062).

Wherefore: a) A simple promise of silence does not oblige, per se, with grave damage of the one promising. b) Likewise, a promise of silence, even sworn, does not oblige against the common good and justice; where namely silence would yield to grave detriment of the community, to the condemnation of an innocent person, to grave sin of the one to whom the promise was made (for example if there were concealed a diriment impediment of a marriage to be contracted by the one to whom the promise was made); where finally the one promising is legitimately interrogated in judgment under the faith of an oath. c) He who seriously promised silence even with the loss of life, and can preserve it with the common good uninjured, very probably is held to stand by the promise. Yet the opposite opinion is also sufficiently probable, because it is licit for no one to squander life (III, 971; H. Ap., V, 18).

1187. III. The obligation of a committed secret is grave from its genus. Thus especially if the secret was committed from necessity or utility, as happens with physicians, notaries, advocates, or theologians consulted. For such a secret has the nature of an onerous contract, and it is of concern to the whole of society that it be guarded inviolably.

Hence, by reason of office and of the public good, men of this kind are often held to silence even with danger of grave proper damage. Nor are they released from silence by the authority of a judge legitimately interrogating, unless the matter is already known in another way, or unless there is present from elsewhere a just cause of revealing: for the judge cannot abrogate the right of nature (III, 970, 2).

IT IS ASKED. When does the obligation of preserving a secret CEASE?

Resp. 1. The obligation of a secret, even committed, ceases where revelation is necessary for the common good, for the safety of an innocent person, for the good of the one committing it himself.

Hence, a physician licitly warns some bride about the contagious disease of the bridegroom, if he, having been warned, would not desist from marriage. You licitly are silent about the true favorer of some crime, although another were accused, unless the guilty person unjustly strives to accuse the innocent.

2. The obligation of a secret, even committed, also ordinarily ceases if it is a question of avoiding grave proper damage. The reason is that your right prevails, and charity does not oblige with so great an inconvenience (see n. 1182).

Therefore you licitly reveal the author of a homicide if you have been suspected, provided another means is not present for freeing yourself.

In all these things, however, account must be had of the common good, which in some cases must prevail over one's own good and over the good of the one committing the secret. Thus, for example, an advocate, knowing the fortune of his client to be unstable, cannot warn his own brother, the creditor of the client. A physician, an advocate, to whom impediments of marriage are revealed for taking counsel, cannot reveal them to the parish priest, as we shall say n. 2065. An official to whom secrets of State are committed is not freed from the obligation of secrecy even by fear of death.

3. Revelation of a secret is likewise excused from sin, at least grave sin, where the consent of the one committing it is reasonably presumed; where the secret is (or is certainly believed to be) of slight moment; where finally it has been notably made common. Nor is it grave, probably, if the revelation is made to one upright person; provided that this person truly preserves the secret, and provided he is not such a one from whom the one committing it specially wished the matter to be hidden (III, 971).

§ 2. On Inquiry into and Use of Another's Secret

1188. PRINCIPLES. I. He who unjustly inquires into another's secrets, or extorts them, sins against justice, and cannot use a secret so acquired. The reason of the first is that he does injury to him who possesses a right to the secret. The reason of the second is that no one can licitly continue and perfect an unjust action. Whence you cannot use a secret unjustly acquired even for avoiding your own damage (III, 969; V, 70, 5).

1. He sins more gravely who extorts secrets with the mind of using them for the damage of neighbor. He sins only venially who in exploring secrets is led by curiosity.

2. The gravity of the sin must be judged according to the object of the secret, that is, according to the utility which the secrets have for the possessor, insofar as the privation of them brings harm to him, whether in goods of fortune or in his reputation. Nevertheless, the gravity of the sin cannot, for every inquiry, be stated from this rule. For sometimes this inquiry can be assimilated to revelation which is made to one discreet and taciturn man (cf. n. 1200, Question 4).

From these things you conclude: a) He sins who without cause (or without at least the presumed permission of the owner) opens and reads letters (or other private writings) which the owner hides, or has lost by chance, or has torn in such a way that the will of concealing their argument became known.

b) Postal officials of themselves always sin gravely by opening and reading letters. The common good, which from contract they promised to preserve, and the very strict civil law impose this grave burden on them. Cf. *Linz. Quart. Schr.*, 1903, p. 42.

c) They sin gravely who deliberately take pains to hear an accusation of sins made in the confessional (*Ami du Cl.*, 1905, p. 971; *Linz. Quart. Schr.*, 1906, p. 353, 829). Nevertheless, if they use knowledge acquired in this way, so that, for example, they accuse a thief more securely before a judge, they do not by that very fact become the efficacious cause of the damage which the thief suffers from the sentence of the judge. *Linz. Quart. Schr.*, l. c.

1189. II. It is licit, with a just cause or the permission of the owner, at least presumed, to inquire into another's secrets, and to use those acquired in this way. The reason is that no injury is given where the owner consents or reasonably ought to consent. But then he ought to consent when, on the part of the one inquiring, there is present a certain and stronger right: namely a just cause. Finally, it is plain that the use of a thing justly acquired cannot constitute injury.

But a just cause is the necessity of averting grave damage impending to the community, or to you or yours.

Hence, they can licitly open and read another's letters: 1. Public ministers, as often as the public good requires it, for example in time of war. 2. A Superior of a community, from legitimate custom, or from probable suspicion of evil, or even by force of the rule; excepted nevertheless are letters which are sent to Superiors of a higher order, or are received from them. 3. All, insofar as is necessary for protecting themselves or their own from unjust vexation of the writer. We say:

from unjust vexation of the writer; for, as St. Alphonsus warns, "it is not licit for you to open the letters of another, for procuring your good, or for avoiding some evil, because this would be against the common good of human commerce; for authors permit this only for protecting oneself from unjust vexation of an enemy" (III, 969; V, 70). 4. All to whom the care of a minor subject is committed, for example parents, tutors, Superiors of a school. Except, as regards matters pertaining to the inmost conscience.

But husbands illicitly read letters sent to a wife. Say the same concerning masters as regards letters which are sent to their servants. Always except if they truly suspect something evil.

Note. a) Friends of friends, sisters of sisters, often do not sin by reading letters, because there is present a tacit consent of the other party to these things. b) If you have justly accepted knowledge of someone's secret, nevertheless you must preserve silence from charity, as often as damage of someone could proceed from revelation. Indeed, by revealing a secret of this kind, you will sin against justice if you understand that the hearers are going to use that knowledge for inflicting damage unjustly (V, 70, 6). Cf. the things said n. 948.

Chapter II

On Injury of Reputation

St. Thomas, 2. 2, q. 60, a. 3; q. 73; St. Alphonsus, III, 962; ed. G., II, p. 354; Lugo, disp. 14, n. 10-134; Mazzotta, tr. 4, disp. 2, q. 2; Soto, l. 5, q. 10; Elbel, IV, n. 343; Lancicius, opusc. 19: *de vitand. Judic. temer.*; Berardi, *Theol. mor.*, III, n. 460, Appendix.

1190. Things to be noted beforehand. REPUTATION is public opinion or estimation concerning someone's excellence. More commonly it is defined: the good estimation of many concerning the life and morals of someone.

The RIGHT TO REPUTATION can be either absolute, or conditioned or limited. The absolute belongs to him who has perpetrated no deed worthy of blame; for he possesses full ownership of his reputation. But he retains a limited right, or only possession of reputation, who indeed has committed crimes, but only occult ones. A right must be attributed to him not by reason of the person, but by reason of society, of which he is a member and ought to remain a useful member (Lugo, disp. 14, n. 97; Noldin, II, 643).

1. Both the living and the dead possess a right to reputation. As regards the living, it is plain. As regards the dead, this cannot be denied, for: a) the reputation which they had among the living endures, and they desire that its duration never cease; b) this reputation does not lack a juridical subject which holds it, because the rational soul does not lose existence. Yet reputation profits the dead less than the living.

2. The right to reputation is lost if someone's crime becomes notorious. Namely a crime can be NOTORIOUS by a threefold publicity: a) by publicity of law, if it is established concerning it either through the sentence of a judge, or through confession of the matter itself; b) by publicity of fact, if it was committed in a public place and before witnesses; c) by publicity of reputation, if it has become known to so many persons that it can no longer happen that it not be divulged among all. Now, behold the NORM which St. Alphonsus hands down concerning this matter (III, 976): "Doctors commonly judge it sufficient if in some COMMUNITY of 8 persons, four know it; or if of 100 persons, fifteen know it; or if of 1000 persons, about twenty know it, of more than two different families; but that it is public in some NEIGHBORHOOD of 40 persons if eight from different families know it; likewise, if in a TOWN of 5000 citizens forty scattered through it know it. Doctors add that a crime is called famous if the reputation of it wanders through the greater part of the town, community, neighborhood, or parish; likewise one is said to be defamed in a kingdom who has now been defamed in a court or in another illustrious place, from which reputation easily flows into the kingdom."

Further, concerning the reputation of neighbor there is given: 1. A NEGATIVE precept, namely of not injuring reputation; but it is injured interiorly, at least as it were inchoatively, through rash judgment, but exteriorly and strictly speaking, through detraction. 2. An AFFIRMATIVE precept, namely of defending the reputation of another when attacked and of restoring it when taken away.

Hence there is a fourfold article: 1. concerning rash judgment; 2. concerning detraction; 3. concerning the obligation of defending reputation; 4. concerning the obligation of restoring reputation.

Article I

On Rash Judgment

1191. DEFINITION. Rash judgment is a firm assent, arising from slight indications, by which some sin or defect is attributed to neighbor.

Other internal acts approach rash judgment: 1. rash SUSPICION, which is a less firm assent and with fear concerning the opposite; 2. DOUBT, which is a suspension of the soul determining itself to neither part. Yet these grades are not rarely used promiscuously.

"Rashness in judgments, suspicions, and doubts has place when we consider that which is against, and not that which is for; and when we give to indications or reasons contrary to our neighbor more weight than they really have; whence either we judge probable what is only possible; or certain what is doubtful; or grave what is light; or continuous what perhaps was committed once; or finally malicious what perhaps was done inadvertently or even reasonably" (Berardi, *Theol. mor.*, III, n. 499).

1192. PRINCIPLES. I. Rash judgment concerning a grave evil of neighbor is a mortal sin from its genus. The reason is that a grave injury is done to neighbor when, without cause, he is held to be wicked; since each one has a right that a false crime not be imputed to him (III, 973). Whence it is said (Matt., 7, 1): Judge not, that you may not be judged. And (1 Cor., 4): Judge not before the time (that is, of judgment). - "In confession, however, it is not necessary to explain the species of the evil judged, since all (rash judgments) are opposed to one commutative justice, in the lowest species" (III, 962).

Rash judgment is VENIAL: a) if someone has great probability for judging sinisterly about neighbor; b) if the evil which is attributed to neighbor is not gravely injurious, for example that a soldier blasphemed; c) if the judgment is made concerning someone unknown or indetermined among several, for example if he is a member of a certain group; d) if someone judges from involuntary subreption, as often happens, not perfectly adverting either to the gravity of the object or to the insufficiency of the reasons from which he judges (III, l. c.).

1193. II. Rash suspicion and doubt per se are sins only venial. Commonly all these are only a certain incitement to assent; for in some way a good estimation of neighbor remains in the mind: therefore no grave injury is done to him, since he is not totally disturbed from possession of good reputation.

Yet per accidens the sin is more probably grave, "if without indications a suspicion were made concerning the gravest sins, as it would be to suspect concerning a pious religious that he is a heretic, or that he has committed incest with his mother; or concerning a man commonly held as Catholic, that he is Jewish or atheist. The reason is that perhaps greater injury

is inflicted upon them by suspecting such things than if a certain judgment were had concerning ordinary grave crimes of theirs." Likewise, suspicions put on GRAVE guilt if they proceed from contempt or gravely sinful hatred, or if they are manifested to someone with grave damage of neighbor (III, 963, 965). Cf. the things to be said n. 1195.

1194. III. He who has rashly suspected or judged is held from justice to reform his suspicion and his judgment. This is plain from the things said: for every injury of justice must be repaired, insofar as can be done (cf. n. 726).

Note. 1. "If sinister suspicions are going to have practical consequences to the great burden of neighbor (for example if it were a question of a Superior who, without such suspicion, would be about to confer a benefice on such a priest; or of a master who on account of the suspicion would be about to cast a servant out from his own service with the servant's greatest damage); then it does not suffice to take care that those indications which are against not be increased by the imagination, and that those which present themselves spontaneously in favor not be voluntarily rejected; but it is moreover necessary that, according to the gravity and possibility of the matters, inquiries be made, so that the truth may be discerned."

2. "Suspicions and judgments against neighbor can in some way be sins, although they are not rash; and this happens when someone willingly thinks about the defects and vices of others (especially if he studiously inquires about them) without any reason and excusable motive; for thoughts of this kind are against charity (charity does not think evil: 1 Cor., 13), they beget aversions, and they have nourishment from some passion" (Berardi, l. c., n. 500, 503).

For practice St. Alphonsus warns: "In this matter let the confessor advert that many rude persons accuse themselves that they have judged rashly. It is necessary to make it so that they know: a) When sufficient moments are present for thus judging about some action, the judgment is not rash, but just, and therefore is not culpable. b) These, for the most part, are not judgments, but suspicions, which masters and fathers of families are sometimes held to have, so that they may

impede some sin: for example lest servants steal, lest daughters sin by conversing with men, and other things of this kind. Only let it be adverted that they not communicate suspicions of this kind to others without necessity" (H. Ap., IX, 2).

Article II

On Detraction

1195. DEFINITION. Detraction is the occult and unjust blackening of another's reputation. It is said 1. Occult, namely brought upon one absent, at least from the intention of the detractor: by which part it is distinguished from CONTUMELY, which takes honor away from one present. 2. Unjust: for if it were a just blackening of another's reputation, it would not be formal detraction (Polman, 2. 2, n. 489).

DIVISION. Detraction is called: 1. simply such, or defamation, when a true vice of neighbor is manifested without a just cause; if the manifestation is made for dissolving friendship and sowing discord among friends, it is called whispering; 2. calumny, or infamation, when a false crime is imposed on neighbor.

DETRACTION can be done directly or indirectly, according as namely it either is positively intended, or is foreseen as going to follow from an action or from some locution. But it is committed in various modes, which are customarily expressed in these verses:

Imposing, increasing, manifesting, turning to evil;

He who denies or is silent, diminishes, or praises tepidly.

The first four modes detract directly, the others indirectly. But all are, per se, of the same species, because all regard the same good of reputation. Yet not rarely other things are injured also through detraction, whether religion, piety, or chastity in words, or justice in goods of fortune.

CALUMNY differs in species from simple detraction, because it adds lying to detraction, and moreover is against the right which each one has that a false crime not be imputed to him.

Likewise a special malice is in WHISPERING. It agrees with detraction on the part of the matter, but differs on the part of the end; and therefore it is diverse in species and graver than detraction.

1196. PRINCIPLES. I. Detraction (whether it is infamation or defamation) is a mortal sin from its genus. From its nature it is graver than theft, which is mortal, since it injures the reputation of neighbor, which is a greater good than riches: according to that saying (Prov., 22, 1): A good name is better than many riches.

We have said: 1. Whether it is infamation, which is intrinsically evil, and therefore always illicit, as is established from proposition 44 condemned by Innocent XI: "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."

2. Or defamation, which is namely unjust as often as neighbor possesses his good estimation either totally or partially, and can reasonably require silence. For then he has a right that a good useful for many things and, as is supposed, by no means harmful to others, not be taken away from him (see n. 1200, Question 1).

3. II. The gravity of detraction is taken rather from the gravity of the injury in reputation, or in goods of fortune. The reason is plain from the unshaken principle which St. Thomas expresses: "Sins which are committed against neighbor must be weighed per se according to the harms which are brought upon neighbor: because from this they have the nature of fault" (2.2, q. 73, a. 3). To the gravity of the defect revealed one must attend only afterward.

Therefore to know whether detraction is a GRAVE or LIGHT sin, it must first be distinguished whether it carries with itself PUBLIC infamy, or is restricted to a FEW PERSONS. Then the gravity of detraction is taken: 1. from the nature of the defect which is narrated; 2. from the quality of the person detracting, whether he is grave, light, talkative; 3. from the quality of the person injured, whether he is of good or bad reputation, whether he is of such a condition that the defect revealed brings peculiar infamy; 4. from the quality of the hearers, whether they are discreet or talkative, etc. (Berardi, l. c., n. 482).

The number of hearers certainly makes for the greater gravity of detraction. Yet probably it does not multiply detraction, although it multiplies the sin of scandal. See the things said in the treatise on Sins (n. 332, Question 2).

1198. III. Sometimes it is licit to manifest the true crime of another. For the right of reputation founded in ignorance of a true crime can be elided by a stronger right, when namely a just or proportionate cause requires revelation of the crime; nor can the one defamed reasonably be unwilling (III, 968).

Therefore it is licit to manifest a defect of neighbor: 1. On account of a just cause. But the just causes are the following: a) The spiritual good of the delinquent, when namely for his amendment it is necessary that the matter be manifested to a judge, prelate, master, parent, etc. b) A notable good of the one revealing, for example for taking help or counsel in a grave matter, or for averting grave damage. c) The public good, for example for impeding evils threatening the Church, or the republic, or some community. d) The private good of the hearers and of others, for example that they may be freed from threatening damages; thus, if you know a thief to dwell with another ignorant of it, you can make him more certain, so that he may beware for himself.

"Whence, when it is a question of conferring an office, of contracting marriage, of receiving into Religion, of taking on a physician, preceptor, servant, associate, etc., it is licit to manifest (indeed sometimes one must manifest) the occult impediments, incapacity, crimes of another, whence notable inconvenience would deservedly be feared.

2. Under the due conditions. For it is required: a) That you not intend to defame neighbor, but to avert your own or another's damage; whence, if you can avoid the damage without diminution of the reputation of another, you are held to this. b) That the damage to be averted be sufficiently proportioned to the loss of reputation. It suffices indeed that the damage to be avoided be grave, although somewhat greater damage threatens the one defamed. Indeed, it suffices if you doubt about the gravity of your damage; because, in such doubt, favor must be given to the innocent. Yet except if you know the matter under a committed secret; because in that case a graver and more certain cause is required, as we have said (n. 1187). c) That you proceed cautiously, manifesting the matter neither more nor to more persons than is necessary, and exacting secrecy from him to whom you manifest it. d) That you did not accept knowledge of the crime through force or fraud, for example by opening letters, unless you would also have had a right to this (III, 969; 1. El. qq. ref., 40). Cf. the things said above n. 1188.

Note. The things which we establish here must be developed through those things which are said n. 494 concerning fraternal correction. In communities living under a rule, if it is a question of a matter of great moment, for the most part it is expedient that correction be made by the way of denunciation to the Superior as father. In religious Orders, this is especially valid for the time of visitation. This indeed, from its nature, is a paternal, not a judicial, inquiry. Nevertheless subjects are held to manifest those things which could yield to the damage of observance, or of the community, or of a private third party. Cf. Bouix, *de Jure Reg.*, II, p. 478.

1199. IV. Detraction is not present when the crime of neighbor is notorious either by law, or by fact, or by reputation. The reason is that in these cases neighbor can no longer be said to be in possession of his reputation. Yet charity can persuade many things, indeed impose some things, as regards these.

a) If the crime of neighbor is notorious by publicity of LAW, it is licit to speak about it and to manifest it to others; because, in this case, the guilty person has lost the right to reputation through public authority; nor is charity injured, because the public good demands this, that bridles be thrown upon the wicked through divulgation of the sentence of the judge, and that others may be able to beware for themselves of evil-doers: provided the manifestation is not made from hatred nor from revenge. b) Likewise, it is licit to manifest if it is NOTORIOUS by publicity of FACT or REPUTATION; for such a manifestation is neither against justice, since reputation has now been lost; nor is it against charity (at least gravely), because the delinquent cannot reasonably be saddened from it. c) Similarly, it is not mortal to manifest a crime or offense which is not yet public (or is not public in such a place), but concerning which moral certainty is had that it is going to become public shortly (whether through evidence of fact, or through sentence of the judge); because it harms little, unless nevertheless from such anticipation grave damages would follow (III, 974).

We have said: it is not mortal, but it can be venial. To the matter the distinguished Berardi speaks thus (l. c., n. 481): "The poor," he says, "do not have a right to the substances of a rich man; and nevertheless the rich man from charity ought to assist the poor asking alms, as much as he can. Something similar happens in the case of a wretched man subjected to public infamy. He indeed does not have a right that we be silent; yet he asks in his heart, and perhaps earnestly begs, that we consult for his reputation as much as we can. Therefore silence and compassion are certain alms, which often we can furnish without any sacrifice, and from which therefore we are not easily excused… Further, to these we are held from charity, although ordinarily under light matter."

1200. Questions. QUAER. 1. Whether he sins GRAVELY who manifests in ANOTHER PLACE, to which divulgation has not yet come and is not shortly going to come, a crime public in one place?

Resp. If the crime is public by notoriety of law, it can be published anywhere without injustice; because the guilty person has been legitimately stripped of reputation by public authority, and indeed in punishment of his crime (H. Ap., XI, 13).

But if the crime is public only by notoriety of fact or reputation, there are three opinions. The first says that the manifestation is a grave sin against justice, because the delinquent still possesses his reputation elsewhere. The second holds that it is mortal against charity; for, although the guilty person has lost the right to reputation, nevertheless he would be greatly saddened knowing that his crime (of itself occult) is made public where it is still unknown. The third, more common opinion teaches that this is not grave, neither against justice nor against charity, because it conduces to the common good that evil-doers be known. This reason is very probable, provided it is limited to crimes which render a man pernicious and to be avoided by others, such as robbery, treacherous homicide, scandalous impurity, heresy, and similar things. And then, if the crime is public by notoriety of fact, because namely it was publicly committed, it is freely licit to speak about it; if by notoriety only of reputation it is public, great discretion is required (III, 974; 2. El. qq. ref., n. 12). "For this public reputation is easily feigned. But advert that an offense published in only one family or monastery cannot be called absolutely public; whence it cannot be manifested elsewhere, and not even in another monastery of the same Order which would have frequent communication with it" (H. Ap., XI, 12; Croix, 1, 3, p. 2, n. 1221).

QUAER. 2. Whether he sins MORTALLY who manifests an offense formerly public and now occult?

Resp. Per se, he sins mortally, at least against charity. Except if the offense had formerly been public by notoriety of law, or if it belonged to history.

As Noldin rightly observes (II, n. 653): To historiographers, from the general end of history, greater liberty is accustomed to be conceded, insofar as, without a peculiar reason of good, they can commit to writings the occult crimes of private persons of a past time. Yet it is necessary that they attend to two things: a) If descendants of some very ancient family still live, the principles established as regards detraction are to be strictly observed. b) The offenses of some state in species, for example the clerical, are to be recounted in such a way that the good which is hoped from the narration, by reason of greater scandal going to arise, does not become empty.

QUAER. 3. Whether it is MORTAL only to report the occult sins of another, as heard from others?

Resp. Negatively, "if you report in such a way that it is not probable to you that any infamy will arise from it, because the others are not going to believe."

"But if you report things heard before those who probably are going to believe from their own levity or malice alone, you indeed do not sin against justice, because you are not the efficacious cause of the damage, but you sin against charity, because each one is held to impede grave damage of neighbor, insofar as he conveniently can."

"Finally, if you report in such a way that the hearers probably and deservedly are going to believe (say if you assert that you have heard from a person worthy of faith), then you sin also against justice, because you give a sufficient cause of believing the evil… But if you report some very enormous crime of someone, say heresy, rebellion, sodomy, then you sin gravely, even if you say it doubtfully, because this suspicion alone greatly defames a man" (III, 977; H. Ap., XI, 15).

QUAER. 4. Whether it is a MORTAL sin to reveal the OCCULT crime of neighbor to one or another prudent and taciturn man?

Resp. Distinguish. Either the revelation is made for easing the pain of an offense, or without cause. If the FIRST, Doctors most commonly hold that such a revelation made without the intention of detracting is not sinful, at least gravely; and in this way servants disclosing injuries inflicted by a master, wives by husbands, sons by a father, etc., can probably be excused. If the SECOND, some with Busenbaum judge that it is mortal, because the injury of reputation before one person is judged grave, as is plain from rash judgment. Yet others sufficiently probably deny this: provided the one revealing does not act from malice, nor on the part of the hearer is further manifestation feared. The reason is,

because, since reputation consists in the common estimation of men, he is not judged absolutely defamed who has lost his reputation only before one or another.

Nor does the parity of rash judgment stand in the way; because the malice of rash judgment is not taken from the damage of infamy, but from contempt, malevolence, or injury, which is brought upon neighbor through imputation of a false crime (III, 973).

QUAER. 5. Whether it is a mortal sin to REVEAL the crime of a neighbor who is already defamed from another crime?

Resp. It is not grave if a crime very closely related to that on account of which he has already been marked with infamy is revealed; because from such revelation the infamy is not notably increased: as if you say of a public thief that he is

perjured; of a notorious player, that he does not have care for his family.

Otherwise, if another diverse sin is revealed: because one infamous in one genus of vice has not lost the right of reputation in other virtues. Thus it is also grave, concerning a woman defamed in one adultery, to narrate another occult one (III, 976; H. Ap., XI, 14).

QUAER. 6. Whether it is licit to defame ONESELF?

Resp. Distinguish. 1. To defame oneself through the imposition of a false crime is never licit, because it is not licit to lie. If death or grave spiritual or temporal damage of another would follow from such infamation, the one defaming himself would sin mortally, because he would cooperate positively with death or damage.

But what if the guilty person were to confess a false crime for this end, that, the penalty of death being inflicted, he might avoid grave torments? Some deny that he sins gravely, because no one is held to preserve life with so great a torture, which would seem harsher than death itself; but they say that he sins lightly by reason of the lie. But others more probably affirm that he sins gravely, because the false confession would still be an illicit cooperation with his own unjust death (IV, 275).

2. "To defame oneself through revelation of a true crime regularly is not mortal; because it is not against justice, since a man is owner of his own reputation; nor against charity, because this does not oblige to conserving external goods, except insofar as one's own safety or that of neighbor requires this. Yet per accidens it can be mortal, as, for example, if your reputation is necessary for an office, or if damage of life to you, or of infamy to others, would follow from the same" (III, 983).

3. From the things said you resolve: a) It is not mortal per se to reveal NATURAL DEFECTS of soul, body, or birth; because such defects are not moral; nor is it regarded as infamy among prudent persons that someone, for example, is stupid, illegitimate, one-eyed. But per accidens it can be grave, if namely great temporal damage would follow from it; or if you say concerning an honorable man that he was illegitimately born, or exercised a most vile office, etc. (III, 967; V, 72; 1. El. qq. ref., 54).

b) "It is not mortal to report mortal sins which, ON ACCOUNT OF THE CONDITION OF THE PERSON, do not notably injure his reputation: for example, if you say that a soldier thinks about revenge; that an adolescent is prodigal, given to loves, etc." (ib.).

c) It is not grave to speak ill of someone UNKNOWN or indetermined, for example that in such a place there are many wicked, drunk, impure persons; because thus grave infamy is brought upon no one in species.

d) "But they sin most gravely who detract from some Order or state of religious in common, or from a MONASTERY, by saying, for example, that life is bad in it, that regular observance is not kept, etc. (unless this is plainly notorious), because they do very grave harm; and they are held under mortal sin to restitution to the whole community, from which the remission of the Superior does not excuse" (III, 978).

e) "Similarly it is mortal, the person being kept silent, to name the monastery from which someone has committed a grave occult sin, for example adultery or fornication." The reason is that the religious of the same community are so conjoined among themselves that before outsiders they are judged as it were solidary, one for the others. Hence, the whole community is accustomed to be stained before the imprudent and simple.

Article III

On the Obligation of Defending the Reputation of Neighbor

We are held, from the precept of charity, to defend neighbor if he, with us present, is injured in his reputation. And since we can be lacking to this office in a threefold mode, namely by bearing ourselves negatively toward detractors, by rejoicing concerning detraction, and by cooperating with detraction, the following things must be established.

1202. PRINCIPLES. I. He who hears detraction, and does not impede it when he conveniently can, sins against charity. Nevertheless, he who is not the Superior of the one detracting is excused from mortal sin by many, and grave, Doctors, if on account of shame or fear he omits correction; provided that, beyond infamy, no other grave damage comes to neighbor from the detraction, and provided it is not established that the correction will be useful (H. Ap., XI, 17). "But this can be established with difficulty; indeed there is danger that the correction may rather increase or confirm the detraction." Yet he is not without fault who, when he easily can, omits efficacious correction (cf. n. 493).

But they are excused even from VENIAL sin who, adverting to the detraction, either depart, or turn away the conversation, show a sad face, according to that saying (Prov., 25, 23): A sad face dissipates the detracting tongue. The reason is that

those actions are true corrections (III, 981).

But a SUPERIOR, both of the one infaming and of the one infamed, sins gravely by hearing detraction if he does not avert it when he conveniently can; because a special obligation lies upon him of correcting the detractor and of meeting the damage of the one infamed.

Nevertheless, more probably he does not sin against justice, neither the Superior of the one detracting, since he is not held to watch over the good of another not subject to him; nor the Superior of the one defamed, since it does not lie upon him from justice to attend to the temporal good of the subject. Except: a) if the Superior of the one detracting is a Bishop or parish priest (because these are held from justice to correcting subjects); b) if the one infaming and the one infamed are subjects of the same Superior, and the one infamed has recourse to him so that reputation may be restored to him: in which case he is held from justice, provided he can without fear of a graver evil (III, 979, 980).

1203. II. He who rejoices concerning grave detraction sins gravely against charity. The reason is that he is delighted concerning the grave damage of neighbor. But if he does not rejoice concerning the infamy of neighbor, nor concerning the detraction, but concerning the hearing of a new matter, or concerning the curious knowledge of the crimes of others, he does not sin gravely.

"Indeed, they say (the Doctors), that he does not sin gravely even if he is delighted in the detraction itself, not because of hatred or joy concerning another's damage, but from curiosity or vanity; and they deduce this from St. Thomas (2. 2, q. 73, a. 4), who teaches that it is grave only then when the detraction pleases him on account of hatred of him from whom detraction is made" (III, 979, Resp. 2).

1204. III. He who hears a detractor and cooperates efficaciously with him sins gravely both against charity and against justice. For he furnishes the one infaming an occasion of sinning, and is a true cause of the damage which is brought upon neighbor through detraction.

Nevertheless, "it is not a sin against justice, at least mortal, to ask the cause of someone's captivity, or to speak about it; for just as the captivity is public, so also the cause seems to have been made public" (III, 974, 9). Nor is it grave, if, having suspected something light about someone, you interrogate another, and beyond intention induce him to grave detraction (Sporer, tr. V, c. 4, n. 105).

Article IV

On Restitution of Reputation

1205. PRINCIPLES. I. The detractor is held both to restore reputation unjustly injured, and to repair other temporal damages following from the detraction and foreseen at least in a confused way. The reason is that he is the efficacious and formally unjust cause of all these (cf. n. 948 ff.).

We have said: 1. Reputation unjustly injured; otherwise, namely, if charity alone had been injured. Further, according to the truer opinion, he is held to restitution of reputation not only before immediate hearers, but also before mediate hearers (insofar as this is morally possible): if namely such divulgation, because it was known that the immediate hearers were talkative, was foreseen, and if the immediate hearers are judged likely to be lacking to the office of restitution.

2. Other temporal damages, say if the one defamed has been deprived of his office; if he is impeded from being able to provide for himself, etc. And it must be noted that the obligation of restoring reputation is personal; but the obligation of repairing damages which have arisen from defamation is real, and therefore it passes to heirs (III, 991, 996).

Note. a) Manifestation of another's offense, made with only material injury, because, for example, the detractor thought the offense was public, or because he did not advert to the malice of detraction, does not induce the burden of restitution, from defect of theological fault. Yet the one manifesting is held, as much as he conveniently can, to impede that another damage follow from his inculpable manifestation (III, 994). b) The defamer is not held to compensate with money the reputation which he cannot restore; because money is not equivalent to the reputation taken away (III, 1000). Cf. the things said n. 928. c) In defect of the first defamer, all those who cooperated efficaciously with the defamation are held to the same restitution (n. 977). d) It can happen that with respect to reputation to be restored the obligation is light, but with respect to damage to be repaired, the obligation is grave.

1206. II. Restitution of reputation must be made in one way by a calumniator, in another by a detractor. For this one narrated the true; but the other affirmed the false.

Therefore the CALUMNIATOR is held to retract the things said, even with an oath, if it is necessary; indeed, with the loss of his own reputation, if otherwise reparation cannot be made; for the condition of the innocent is better than that of the guilty, and the calumniator must impute to his own malice whatever he will suffer in his own reputation on account of the retraction. He who detracted from another through an infamous libel is held, so that restitution may 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 whom it has reached (III, 991, 995; H. Ap., XI, 22).

But the simple DETRACTOR cannot indeed afterward deny the offense which he inequitably manifested, because he would lie; nevertheless, he is held to provide for the reputation of the one infamed through other means, for example by speaking of him honorably, by excusing his errors and vices, by praising his good qualities; by saying that he himself had spoken evil inconsiderately, that he had erred. For not only those err who depart from truth, but also those who depart from rectitude, according to that saying (Prov., 14, 22): They err who work evil. "I," says St. Alphonsus (*Praxis*, n. 45), "am accustomed to give this counsel, that they say: I drew this out of my head, equivocating; because all words proceed from the mind (for which head is taken)."

1207. III. A just cause can excuse from the obligation of restoring reputation. The reason is that this obligation is affirmative and must be fulfilled through a positive act. But an affirmative obligation ceases on account of a just and proportioned cause; therefore…

But the just causes which excuse from restitution of reputation are the following:

1. Impossibility of restitution, when namely the occult evil unjustly revealed has come to public knowledge by another way; likewise, when the detractor cannot offer reparation without danger of a much graver damage threatening himself, as would be danger of life, liberty, or reputation much more necessary to himself or his own; likewise, on account of distance of places or some other impediment which renders reparation physically or morally impossible.

2. Uselessness, when, for example, it is judged that faith was not added to the detraction. Likewise, if the infamation has been destroyed by the sentence of the judge or by the common judgment of sound-minded persons; or if the detraction has so been handed over to oblivion that its reparation or re-

calling would be judged injurious; always preserved is the obligation of repairing other damages arisen from infamation, if there were any.

3. Just compensation; if namely the infamation was mutual and equivalent, when one of the detractors refuses reparation, the other more probably can, not indeed in revenge, but as a pledge of the reparation owed to himself, defer restitution until the other is at last prepared to satisfy; for the general principle is: "You are not compelled to render to another his right, if he refuses to render yours to you."

4. Presumed condonation of the one infamed, who can yield his right; as often namely as the infamation touched him alone, and reparation is not required either for avoiding scandal or for fulfilling his office. Otherwise, if the infamation redounds into others, or yields to the spiritual or temporal damage of neighbor (cf. n. 1200, Question 6). St. Alph., III, 997 ff.; H. Ap., XI, 19.

5. IT IS ASKED. What must be done IN DOUBT whether oblivion of the offense exists or not?

Resp. 1. If it is a question of a true offense, it is not easily to be recalled into memory, since generally attention is given rather to the offense than to the detraction. Except unless there is evident danger lest that infamy return into the memory of men in another way.

2. If a false saying has been imposed, the infamation must always be revoked unless oblivion is established; for since the matter is not true, the revocation can import no properly so-called infamy. Except if a greater good of the one infamed persuades otherwise; or if certain damage threatens the detractor from the retraction (III, 998).

3. PRACTICAL RULES. 1. Let the confessor ask the penitent: "whether he has infamed someone; and if he has done this, whether by imposing a false offense on him, or by making known a true one? And when the offense is true, whether it was occult, or public in some place, by reputation or by sentence of a judge? Likewise let him ask whether he infamed before one or several, and (by reason of scandal) before how many? Likewise, whether he divulged the fact as known by himself, or as heard from others?

4. Let the confessor take care that restitution of reputation, when it can conveniently be made, be made before absolution; because the matter will be fulfilled with difficulty afterward, although it is of lesser difficulty than restitution of money.

5. Let restitution not be exacted if the damage was doubtfully inflicted, or the retraction is doubtfully going to be useful, according to those things which we have just said (n. 1207, 2): "Namely, if restitution of reputation is probably judged going to bring greater damage than utility to the one infamed, then it is better to seize occasions of praising the one marked with infamy in some virtue of his, so that he may place him in the good opinion of others, than to recall past matters into memory by this restitution of reputation" (*Praxis*, n. 45).

Chapter III

On Injury of Honor

St. Thomas, 2. 2, q. 72; St. Alphonsus, III, 984; ed. G., II, p. 372; Lugo, disp. 14, n. 189; Soto, l. 5, q. 9; Lehmkuhl, 1, n. 1415; Berardi, *Theol. mor.*, II, n. 128.

1210. Reputation and honor differ from one another. REPUTATION, as we have seen, is the estimation of many concerning someone's excellence; but honor is the testimony of this estimation. Hence, just as concerning the reputation of neighbor, so also concerning his honor there is a twofold obligation: one negative, namely the obligation of not injuring it, which is done through contumely; the other affirmative, namely the obligation of restoring it, if it has been unjustly taken away. Therefore we shall speak: 1. concerning contumely; 2. concerning restitution of honor.

1. On Contumely

1211. DEFINITION. Contumely is the unjust violation of honor brought upon one present and knowing. But someone can be present either personally or physically, or morally through an image or another thing in which he is represented. For constituting contumely, it is not required that there be present formally an intention of injuring neighbor.

Contumely can be brought: 1. BY WORD: Namely by reproach, by which a crime is objected to someone; by upbraiding, by which poverty or any other defect with disgrace is reproached to someone; by malediction, by which evil is wished to someone. 2. BY DEED: to which looks mockery, by which someone is contemned by laughter; illusion, by which someone is handed over to derision or deception; derision, by which he is mocked by ridiculous gestures; an infamous libel, a derisive picture (caricature), trampling of an image, etc. 3. BY OMISSION, if, for example, honor owed to a Superior is denied, provided it is done from contempt; otherwise, mere defect of observance would be present, whence a sin against the fourth precept.

Yet all contumelies, since they are against the same good of honor, are of the same species; although one can be graver than another, and have another malice joined to itself, for example of sin against piety, if the contumely is made against a Superior, or against charity, if imprecation is added.

1212. PRINCIPLES. I. Contumely is a mortal sin from its genus. It is established from the words of Christ (Matt., 5, 22): He who shall say to his brother: raca, shall be liable to the council; but he who shall say: fool, shall be liable to the gehenna of fire. Under the word *raca* is understood a light man, blameworthy, worthy of spittle; and one uttering it is said to be liable to the council, to which only grave crimes were brought. By the word *fool* are signified reproaches bringing grave injury; but one uttering it is said to be liable to the gehenna of fire. The reason is that contumely of this kind brings grave harm in goods of great moment, which per se are esteemed more than goods of fortune (III, 966).

Yet not rarely contumely is only venial fault from the circumstances of the person, of inadvertence, or of a soul unwilling to injure gravely. Thus parents are often excused from mortal sin when they call children donkeys, beasts, etc. Likewise women, boys, and men of lowest lot loading themselves with reproaches; because, since faith is not applied to them, honor is not gravely injured (V, 81; *Praxis*, 37).

Indeed, there is no sin: a) If reproach is made for due correction, in which way the Lord called the disciples foolish, and the Apostle called the Galatians senseless. b) If a light reproach is uttered for the sake of joke and recreation: "for to object light defects for the sake of recreation is urbanity," says St. Thomas (2. 2, q. 72, a. 2), provided the other is not saddened, nor moved to anger.

1213. II. We ought patiently to tolerate contumelies. The reason, because vengeance is the Lord's. "Yet sometimes (by the example of Christ saying: 'Why do you strike me?') it will be expedient to repel contumelies, namely when tolerance is foreseen to be ascribed to inability to resist or to stupidity, or if it can harm the common good, as if a prelate, by tolerating, would be rendered contemptible, and thus the petulance of subjects would be increased" (III, 966). See also the things said above n. 737.

2. On Restitution of Honor

1214. PRINCIPLES. I. He who has brought contumely upon someone is held to restore honor to him, and to repair other damages thence following and foreseen at least in a confused way. This is plain from the notion of justice.

Yet the one dishonoring is excused from restitution of honor: a) if the one offended is prudently presumed to have now remitted the offense; b) if he refuses public satisfaction, lest he be suffused with new shame: in which case it suffices to honor him in another mode; c) if he has already avenged the injury brought upon him; likewise, if sufficient penalty for repairing honor has already publicly been inflicted by a judge on the offender (III, 988 ff.; H. Ap., XI, 4).

1215. II. But the mode of restoring honor depends both on the character of the injury and on the condition of the one injuring and the one injured.

1216. Honor taken away publicly must also be repaired publicly, for example by asking pardon from him before others who were witnesses of the contumely, or at least in such a way that the satisfaction becomes known to others. Yet it suffices if satisfaction is made through another person, who in the name of the one dishonoring asks pardon.

Honor injured through occult contumely must also be repaired according to the common and true opinion; but it can, or even must, be repaired occultly (III, 985; 1. El. qq. ref., 41).

2. That restitution of honor is required "which is judged sufficient for manifesting esteem, according to the condition of the person offended. For if the one dishonoring was a Superior, it will suffice if he honorably greets the dishonored one, invites him to the house, shows benevolence, etc.; otherwise, if he was equal or inferior: then greater satisfaction is required, namely that he anticipate in greeting, yield place, ask pardon, etc.," if he cannot satisfy sufficiently in another way.

And when the injury was very grave toward a Superior, it does not suffice if the subject simply asks pardon; but he is held to ask it with bent knees, or to show another similar humiliation: "which opinion indeed," says St. Alphonsus, "is more probable" (III, 986, 987).

1216. Note. In practice it is often expedient that the confessor omit to warn a penitent existing in good faith concerning the obligation of repairing honor, namely: 1. if he foresees that the warning is not going to be useful, indeed rather harmful (because many promise, and afterward do not fulfill); 2. if he probably thinks that the dishonored one more refuses than desires that public reparation, lest the memory of the injury return among others, or lest he himself be more affected with shame; 3. if it is probably to be feared that in the act of satisfaction hatreds between the offended and the offender be renewed; 4. if from signs remission made by the one offended plainly appears, namely if he of his own accord approaches the offender and treats with him very familiarly and jocularly. But otherwise, if he acts familiarly for avoiding disgrace, or another damage (III, 988).

Section Third

On Ecclesiastical Precepts and Penalties

Tractate I

On the Precepts of the Church

1217. There are FIVE precepts of the Church which are proposed to be observed by all the Christian people, namely: 1. To be present at the sacred rite, on Sundays and feast days of precept. 2. To fast in Lent, on vigils, and on the Four Times. 3. To abstain from meats on Friday and Saturday. 4. To confess, at least once in the year, and to communicate at Easter. 5. Not to celebrate nuptials at forbidden times.[421]

Concerning the obligation of assisting at the sacred rite and sanctifying feasts, we have already treated in the treatise on the third Precept. Concerning annual confession, concerning paschal communion, and concerning the forbidden time of nuptials we shall more suitably deal in the treatises on Penance, on the Eucharist, on Matrimony.

Therefore it remains to be treated: 1. concerning ecclesiastical fast; 2. concerning abstinence from meats.

[421] Supreme Pontiff Pius X, in the new Catechism (1913), explains the precepts of the Church thus: 1. To hear Mass on Sundays and feast days of precept. 2. Not to eat meat on Friday and other prohibited days, and to fast on the prescribed days. 3. To go to penance at least once in the year, to communicate at least in Easter time. 4. To assist the necessities of the Church, according to laws or customs. 5. Not to celebrate nuptials solemnly at prohibited times.

Chapter I

On Ecclesiastical Fast

St. Thomas, 2. 2, q. 147; St. Alphonsus, III, 1004; ed. G., II, p. 384; Billuart, *de Jejunio*; Fagundez, *Quaest. in quinque Eccl. praec.*; Righetti, *Del digiuno eccl.*; Ferraris, v. *Jejunium*; Villien, *Histoire des commandements de l'Eglise*, c. VII; Wernz, *Jus Decr.*, III, n. 408.

To be treated: 1. concerning the obligation of fast; 2. concerning the form of fast prescribed by the Church; 3. concerning causes excusing from fast.

Article I

On the Obligation of Fast

1218. FAST, in general, imports abstinence from food.

A threefold fast is distinguished: 1. natural, or abstinence from every food and drink absolutely, such as is required for receiving the Holy Eucharist; 2. moral (the fast of virtue), or abstinence from food taken immoderately; 3. ecclesiastical, which is abstinence from food, defined by the precepts of the Church.

1219. The days of ecclesiastical fast are: 1. LENTEN TIME, which was instituted by the Apostles themselves, for imitating the fast of our Lord, so that the faithful may thus duly prepare themselves for the paschal solemnity. It commonly begins from Ash Wednesday, endures up to the feast of Easter, exclusively; although the Milanese church retains the use of beginning only from the first Sunday of Lent exclusively. Yet Sundays are excepted, on which only abstinence is prescribed, although fast, at least from present discipline, is not prohibited if it is observed for the sake of mortification (cf. St. Thom., 2. 2, q. 147, a. 5, ad 3).

1220. THE FOUR TIMES, which likewise are said to have taken beginning from the Apostles (Eusebius being witness, *Hist. Eccl.*, l. 5, c. 23) and were instituted for this end, both that the Christian faithful at every time of the year expiate their crimes and demand graces for themselves, and that they obtain good ministers from God. But the Four Times are celebrated on Wednesday and Friday and Saturday, after the third Sunday of Advent, after the first Sunday of Lent, after Pentecost Sunday, and finally after the feast of the Exaltation of the Holy Cross.

1221. Certain VIGILS, namely of the Nativity of the Lord, Pentecost, Assumption, St. John the Baptist, of the individual Apostles (excepted the vigils of Sts. Philip and James, and also St. John the Evangelist) and of All Saints. The end of these fasts is that the coming feasts may be celebrated worthily and devoutly.

1222. PRINCIPLES. I. Moral fast is prescribed by the natural law itself. For thus St. Thomas teaches: "It has been said that fast is useful for the deletion and restraint of fault and for the elevation of the mind into spiritual things. But each one from natural reason is held to use fasts so much as is necessary for himself for the aforesaid things. And therefore fast in common falls under the precept of the law of nature" (2. 2, q. 147, a. 3).

1223. II. The precept of ecclesiastical fast obliges, under grave matter, all baptized persons having use of reason, unless they are totally or partly exempted. It is established from the practice of the Church and the common opinion of Doctors (III, 1035; cf. Billuart, a. 3). See n. 194.

We have said: 1. Under grave matter; because the law regards matter grave per se, inasmuch as it conduces notably to the salvation of souls. Hence this proposition 23 was condemned by Alexander VII: "One breaking the fast of the Church, to which he is held, does not sin mortally, unless from contempt

or disobedience he does this." Yet smallness of matter is admitted (cf. n. 1225 and 1226).

2. Baptized persons having use of reason, namely in the sense explained in the treatise on Laws, n. 195 ff.

3. Unless they are exempted; but legitimate custom exempts, or at least excuses; for since the law is of positive and human Right, just as it is confirmed by the consent of those using it, so by contrary custom it is weakened and taken away. Wherefore, at diverse times and in diverse regions, the form of ecclesiastical fast is diverse (III, 1025). b) A special cause, for example impotence, labor, piety, etc., as will be explained below (n. 1232 ff.).

4. Totally or partly; for the obligation of fast is divisible, and he who is excused or dispensed from one part, for example from abstinence from meat, is not for that reason freed from the other conditions of fast, as is established from definitions of the Apostolic See (III, 1005). Cf. n. 1242.

Note. a) The fasts of vigils have almost everywhere by pontifical indult been reduced, or transferred (as in the dear City the fasts for vigils of the Apostles, the vigil of Sts. Peter and Paul excepted) to Fridays and Saturdays of Advent. In France, by Decree of Card. Caprara, 9 Apr. 1802, the obligation of fasting on the vigils of suppressed feasts was taken away, even of those whose solemnity is transferred. In Belgium, from the year 1896, the same law has force. From a declaration of the S. C. C. it is established that vigils of suppressed feasts must be observed if up to now they have been observed from precept or vow. Cf. Decrees of 18 Sept. 1911 and 25 Feb. 1912 (*A. A. S.*, III, p. 480; IV, p. 142).

b) The fast on the day before the consecration of a church, prescribed in the Roman Pontifical, is of strict obligation for the Bishop consecrating, and only for those who ask that the church be consecrated for them; therefore also for the rector of the church, but for him alone, if he alone presented the suppliant petition for asking the consecration. S. R. C., n. 2519.

Article II

On the Form of Fast Prescribed by the Church

1222. There are three CONDITIONS which ecclesiastical fast requires: 1. abstinence from certain foods (the law of quality); 2. one meal in the day (the law of quantity); 3. the suitable hour of this meal. Each must be treated.

To be noted. a) Essentially, ecclesiastical fast consists in one meal. This is gathered from the Constitution *Non ambigimus* of Benedict XIV. For thus the primary end of fast is efficaciously reached, namely mortification of the flesh and diminution of the fervor of passions. Thus St. Alphonsus (III, 1030, q. 1) with St. Thomas.

b) The precept of abstinence from meats or other foods is the necessary complement of the things said above.

c) Determination of the hour of the meal is a less principal part of the whole precept.

§ 1. On Abstinence to Be Observed on Days of Fast

1223. PRINCIPLES. I. The Church, on each day of fast, forbids the use of meat. It is established from universal custom, whose fittingness St. Thomas thus expresses (2. 2, q. 147, a. 8): "Fast was instituted by the Church for repressing the concupiscences of the flesh; and therefore the Church forbade to those fasting those foods which in eating especially provoke man to venereal things. Of this kind are the meats of animals born on the earth and breathing…"

1. By the name MEAT, understand not only the substance of animals, but also blood, fat, and lard, extract of meat, indeed even broth expressed from meat.[422] But they are not to be disturbed, as the S. Poenit. declared, 17 Nov. 1897, who on days of abstinence use oil in which meat has already been cooked.

Animal fat, although it is to be reduced to the notion of meat, is nevertheless permitted under the notion of condiment (S. Off., 1 May 1889). Little pieces of lard similarly can be eaten if they continue to be part of a condiment (S. Poenit., 17 Nov. 1897); but they are prohibited if they are taken separately (*Ami du Cl.*, 1914, p. 281).

Peptones, which are nothing other than the nutritive parts of nitrogenous foods (especially meats), made digestible by chemical process, seem, if they proceed from meats, to be comprehended under the name of meat (cf. Antonelli, II, 868, against Genicot, I, 442). As regards the condiment of broth invented by Maggi, it is not established that it is made from meat.

2. But by the name of meat which is forbidden, do not understand the substance of animals which are rather recalled to the genus of FISHES (H. Ap., XII, 2).

For discerning whether animals are to be recalled to the genus of fishes, "more attention must be given to the common estimation of the faithful and the judgment of physicians, if they regard them as meats or fishes" (III, 1011). But common estimation in our times establishes a GENERAL RULE: animals of warm blood are prohibited, but animals of cold blood are permitted on days of abstinence and fast. Yet experts add that, if in some region commonly certain animals of warm blood are recalled to the genus of fishes, one must stand by this estimation, although per se the eating of them would be prohibited.

In doubt whether the food set before you is meat or not, you can eat from it; because the law of abstinence is a prohibiting law, and until the prohibition is established, it does not bind your liberty (H. Ap., XII, 2). Cf. n. 46 and 55.

[422] Custom alone equates with this broth, expressed from meat, the broth commonly called *bouillon*. For that differs by the whole heaven from the former as regards nutritive force, as experts concede (cf. *Ami du Cl.*, 1912, p. 237; 1913, p. 144).

From these things you conclude: a) Prohibited animals (because they have warm blood) are: mammals, or mammifers, oxen, sheep, goats, etc. Likewise beavers or castors, otters, seals, walruses; yet these, if custom is present, can be permitted. All birds, even coots, wild ducks, aquatic or sea crows. But with custom and common estimation standing in some region, those birds are not prohibited. The eating of coots is read to have been conceded to the Fathers Minims by grace.

b) Animals conceded (because their blood is cold) are: all fishes; other animals, as reptiles, frogs, tortoises, snails, shells, oysters, crabs, lobsters, etc. Cf. Antonelli, II, n. 867 ff.

1224. II. In the time of Lent, besides meat, eggs and milk-foods are prohibited (even under grave matter). By the name milk-foods are understood milk, butter, cheese: namely all those things which draw their origin from flesh. It is established from the practice of the Church, and from proposition 32 condemned by Alexander VII: "It is not evident that the custom of not eating eggs and milk-foods in Lent obliges." Except Germany and northern regions, in which, by force of custom or of an always renewed dispensation, that law has become obsolete (III, 1029, 3).

It was said: in the time of Lent, namely on account of the greater solemnity of the fast. Whence: 1. This obligation does not comprehend other days of fast through the year; because it cannot be proved by common Right. Yet if somewhere (as at Rome) such a custom or special law has force, it must be observed under grave matter, since the matter is grave per se. 2. By common Right, it comprehends all Lenten days, even Sundays, because they are not exempted from the law of abstinence (III, 1007 and 1009, dub. 3). But see the things to be said n. 1242.

Note. a) In Italy abstinence from all those things which draw origin from flesh (namely milk, butter, cheese, eggs, and condiments from any animal fat whatever) is to be observed only on Friday of the Four Times in Lent, on Friday in Parasceve, on the vigils of the Assumption of the B. V. M. and of the Nativity of Our Lord Jesus Christ (S. Off., 7 Sept. 1906, n. 2). See below n. 1247.

b) But if meats, eggs, and milk-foods are considered in relation to one another, it must be said that eggs and milk-foods are equated, so that one dispensed in one is also dispensed in the other; but meats and milk-foods are not equated, but stand as greater to lesser, as will be plain below n. 1242.

c) The use of margarine is licit when butter is permitted (S. Off., 6 Sept. 1899).

1225. Questions. QUAER. 1. Whether, in Lent, it is licit to eat breads made with EGGS, or any food seasoned with EGGS?

Resp. Negatively, because the substance of eggs is not lost from the fact that they are mixed with flour or applied as condiment. The Response of S. Poenit., 17 Nov. 1897, agrees, where it was declared that condiment from eggs, when eggs are prohibited, is not licit.

QUAER. 2. What matter is judged grave in violation of fast or abstinence?

Resp. 1. As regards MEATS. St. Alphonsus with the Salmanticenses thinks the eighth part of an ounce (3 1/2 gr.) is grave matter. More recent Authors generally state that he commits grave sin who would exceed two ounces (60 gr.). The reason is that in this matter only that is called grave which notably nourishes. Indeed they say that a greater quantity is required if not meat properly so called, but something which proceeds from meat, is eaten.

2. As regards EGGS and MILK-FOODS. Authors always required, for grave matter, a greater quantity than for meat. More recent authors think grave matter is present if someone eats 3-4 ounces (90-120 gr.). Cf. St. Alph., III, 1029 and 1009, fin.; H. Ap., XII, 20; Lehmkuhl, I, 1450, 1466; Noldin, II, 674, 677; Berardi, *Theol. mor.* (1905), IV, n. 45.

3. As regards ESURIAL FOODS. Berardi says (l. c.) that four ounces constitute grave matter; because those foods nourish less than the aforesaid.

Note. The Roman ounce (about which it is here a question) is equivalent to 29 grams and 20 hundredths of the new weight; but the pound (of 12 ounces) to 350 grams. The German ounce exceeds the Roman ounce in weight.

§ 2. On One Meal

1226. PRINCIPLES. I. "By the moderation of the Church it has been established that those fasting eat once in the day." Thus St. Thomas (2. 2, q. 147, a. 6). In this, as we noted above, consists the essence of fast.

Hence: 1. He who SEVERAL TIMES eats some little thing outside the meal sins mortally when he has come to a notable quantity. It is established from proposition 29 condemned by Alexander VII: "On a day of fast, he who several times eats some little thing, even if at the end he has eaten a notable quantity, does not break the fast."

But it is permitted to take a little food, for example an ounce, for driving away weakness, as is commonly taught. Some permit this as often as one must drink, lest the drink harm; but this, as others rightly say, scarcely can be permitted once and again in the day (H. Ap., XII, 11).

2. He who without cause INTERRUPTS the meal for a notable time, for example for an hour, no longer preserves the form of fast.

Nevertheless: a) With cause, it is licit to interrupt the meal for an hour; indeed, some concede up to two hours: but this is licit by right and deservedly, says Holzmann, only when someone has not been refreshed by sufficient food, and cannot tolerate the fast without grave inconvenience: then he can resume the meal, because the Church never intended to oblige someone to pass the day without sufficient refreshment. b) Without cause, and although someone had finished the meal, he can eat again if the table-companions continue to dine, or if other dishes which were not expected are brought to the table; because the same meal is still morally judged to endure. Indeed it is generally conceded that another food can be taken after one and a half quarters of an hour (III, 1020; H. Ap., XII, 10).

3. He who PROTRACTS the meal immoderately likewise offends the law of fast.

Probably, however, it is licit to protract it up to two hours; others, with Elbel, admit up to three or four hours, at least for Germans, with attention to

their custom, which St. Alphonsus neither approves nor disapproves (III, 1020, q. 5). But he adds with Cuniliati: "To protract the meal to several hours, if it is not done in fraud of fast, is not mortal" (*Istruz.*, XII, 10, fin.).

1227. II. The law of fast permits several times taking those things which have the nature of true drink or medicine. The axiom is known: "Liquid does not break the fast." It is said: several times, that is, indeterminately, both outside the meal and the double little refreshment; nor do those things which are taken coalesce. But by liquid is understood only that which, from common sense, is taken by the mode of drink only, for quenching thirst or by the mode of medicine; but not that which is taken by the mode of food, for quenching hunger and nourishing the body, as milk, juice of fruits, broth, etc. (III, 1021).

Hence: 1. Wine is not prohibited; although the faithful, in the first times of the Church, abstained from it. If it nourishes someone, this is per accidens and therefore it does not break the fast, although it is drunk for quenching hunger; for intention does not change the nature of the act, nor does it fall under the precept (H. Ap., XII, 13). Wine to which soluble principles of meat would be mixed is without doubt permitted, since it is a true medicine.

2. Beer is not prohibited, nor drink of coffee or tea, or even water mixed with sugar, or made from the juices of oranges or lemons; unless too much milk, sugar, etc., is mixed in; because, with the restriction posited, these and similar things do not have the nature of food, but of drink or medicine. Nor does it matter if they have been frozen: for freezing does not change the nature of the thing (ib., 14).

3. Whey is not prohibited; for it is held as drink or medicine (Muller, *Theol. mor.*, II, § 165, 7).

4. Electuaries or confections made from choice things (for example from sugar and juniper) are not prohibited if they are taken in moderate quantity on account of a reasonable cause, for example for helping digestion, for preserving the voice, for taking away odor of the mouth, and other things of this kind. Thus commonly with St. Thomas (2. 2, q. 147, a. 6, ad 3). See St. Alph., III, 1019; 1. El. qq. ref., n. 42.

5. Whether the drinking of chocolate is prohibited is more disputed. St. Alphonsus indeed denies that chocolate can be regarded as drink, because it truly nourishes; but nevertheless he permits drinking it, by reason of custom, once in the day, and in moderate quantity, if namely one ounce and a half (44 gr.) of chocolate with water is placed in ordinary cups.[423] But milk cannot be mixed in, unless this is conceded through dispensation concerning milk-foods: in which case account of it must be had in the weight of the food.

It must be observed: a) If someone uses drink immoderately, he sins against the end of the precept, and easily loses the merit of the fast, as St. Thomas warns (2. 2, q. 147, a. 6, ad 2). b) If someone can, by applying the aid of a drink of coffee, chocolate, etc., tolerate a fast which he otherwise would not tolerate, he is held, by the law itself of fast, to apply that aid, even if such a custom has not yet prevailed in his province (Croix, III, P. 2, n. 1325).

1228. III. It is licit to take, on days of fast, in the morning a little refreshment, and, toward evening, a little supper. The first is established from the Response of S. Poenit., 21 Nov. 1843, and from almost universal use. The second was similarly introduced by custom. "There is no doubt for anyone," says St. Alphonsus (H. Ap., XII, 16),

[423] III, 1023; H. Ap., XII, 15; cf. 1. El. qq. ref., n. 43. The moderns agree with the Holy Doctor. Cf. Olfers, *Pastoralmed.* (ed. 3), p. 99.

"that in antiquity fast was observed more rigorously; but, according to modern discipline, the little evening refreshment is admitted by all."

In these matters attention must be given to what custom permits, both concerning the quantity and concerning the quality of foods.

Further: 1. Concerning the QUANTITY conceded in the little refreshment, use teaches that only two ounces are licit. As regards the little supper, "the opinion commonly accepted today permits indiscriminately to all (even to those who need little food)... the quantity of eight ounces (233 gr.); and something else (namely two other ounces, which is small matter) to him who would have need of greater nourishment.

On the vigil of the Nativity of the Lord, a little collation twice as great, namely of 16 ounces, is commonly admitted, by reason of the solemnity" (III, 1025; H. Ap., XII, 16). Yet see the things to be said at once n. 1229.

2. Concerning the QUALITY of foods, again both custom and dispensation must be considered: for those things which are permitted in some regions, these same things are forbidden in others.

Generally in the little refreshment only milk, coffee, tea, chocolate, and bread are conceded (*Ami du Cl.*, 1912, p. 464). For the little supper, only lighter foods with bread are permitted, for example fruits, vegetables, small fishes, or even two or three ounces of a larger fish (III, 1028). Eggs and milk-foods are not permitted, unless somewhere a custom has force, for example of taking some cheese or butter, or unless an express dispensation has been given. But neither to those dispensed for meats, but not from fast, is another food permitted in the little collation, except that which is permitted to those not dispensed. See n. 1242, Rule 4.

1229. Let it be noted: a) From chemical analysis it is established that milk in a thousand parts contains almost 130 grams of elements which nourish. Yet from this it does not follow that, in the little supper, for example, it is licit if someone drinks two liters of milk, under the pretext that only 260 grams of principles which truly nourish are taken. Attention must also be given to the satiating force of the food. Thus therefore Authors permit for the supper 500-700 gr. of milk, if this alone is drunk. But for breakfast it certainly would not be licit to take 1/2 liter of milk (*Ami du Cl.*, 1911, p. 252).

b) Eight ounces of bread cooked in water with oil may not licitly be taken in the little supper. The reason is not that through cooking a diverse substance arises, but because all these things satiate more. Thus custom interprets the law. Some indeed contradict, leaning on the general principle that for foods which contain much watery humor, the assigned quantity can be increased. Cf. Berardi, l. c., n. 23; Antonelli, II, 878. This principle indeed is not to be rejected absolutely, and can be applied for some foods; yet in our case, attention must primarily be given to custom. Cf. Lehmkuhl, I, 1462.

1230. Questions. QUAER. 1. How many sins does one commit who breaks fast through meals CULPABLY repeated?

Resp. 1. If he breaks the fast through eating non-esurial foods, as often as he eats, so often he sins, and therefore the number of acts must be declared in confession: because the precept of abstinence is negative, which obliges always and for always, as the Doctors say (III, 1029, 3).

Yet the sin would be venial if, once in the day, a small quantity were eaten (cf. n. 1225, q. 2).

2. If he breaks the fast by eating esurial foods several times in the forbidden quantity, from the common and more probable opinion, he commits only one grave sin against the precept of the Church; and the stronger reason is that the essence of fast consists in one eating: wherefore, the essence of fast having been destroyed through the second meal, the precept ceases in the third or fourth meal.

But they most commonly say that in these last meals venial sin is committed, because they are against the end of the law, which is mortification of the flesh; and indeed more probably, because to go against the end of the law is a certain inordination, which does not seem excused from every fault (III, 1030, Question 1).

QUAER. 2. Whether he who INCULPABLY refreshed himself twice in the day is held to abstain from a third meal?

Resp. It is controverted. Yet the affirmative opinion pleases the Holy Doctor more (H. Ap., XII, 20; *Conf. dir.*, XII, 6; cf. note of Gaude, II, p. 415). The reason which he brings forward is the following: He who materially violated the fast by refreshing himself twice is held to abstain from a third meal, lest he seem to approve the material violation of fast. Yet this reason does not settle the controversy.

QUAER. 3. What ought he to do who on a day of fast inadvertently breakfasted in the morning in the accustomed way?

Resp. 1. If the breakfast was moderate, not morally exceeding the quantity of a little refreshment, he is held to observe the fast, as also others.

2. If the quantity of the breakfast is equated with the little supper, he is held (short of grave inconvenience) either to remit the meal to evening, or rather to take a lesser quantity of food in the evening. The reason is that the substance of fast can still be preserved, although attention can no longer be given to something accidental.

3. If finally the quantity must be almost assimilated to a meal, in the best way in which it can be done, the other prescriptions of fast should be observed. Yet the little supper can be more abundant, indeed it could be anticipated. Cf. St. Alph., III, 1030.

§ 3. On the Hour of the Meal

1231. In antiquity the hour of the meal was in the evening, after sunset (at least in Lent). Then in the lapse of time it was anticipated to the hour of None, and finally from the fourteenth century to the hour of Sext, namely to midday (H. Ap., XII, 21; cf. St. Thom., 2. 2, q. 147, a. 7).

Questions. QUAER. 1. Whether notably anticipating the HOUR OF THE MEAL is a grave sin?

Resp. Authors are not lacking who hold the negative opinion probable; but to St. Alphonsus only the affirmative opinion seems to be held, and this is proved both from Canon Law (Can. *Solent*, 50. D. 1, *de Consecr.*), where those anticipating "are by no means to be believed to fast"; and from St. Thomas (4. D. 15, q. 3, a. 4, ad 3), who says: "He who too notably anticipates dissolves the fast"; and from reason, since delay of the meal pertains much to mortification of the body, which the Church intends. It is confirmed by a Response of Benedict XIV (Brief *Si Fraternitas*, Enc. *Libentissime*): We declare that the prescribed hour is to be observed by those fasting (n. 8, ad 4). Cf. ed. G., II, p. 395. Therefore from this opinion, he who notably, that is, by one whole hour, anticipates the meal without cause violates the law of fast and sins mortally. Yet a light cause excuses a brief anticipation, a grave cause a notable anticipation.

Note. Recent Authors commonly teach that sin is not committed if the hour of the meal is notably anticipated. Nevertheless, as Aertnys rightly notes (l. IV, n. 11), until it is proved that today's custom has derogated from the ancient grave precept and ancient custom, those without doubt prevail. St. Alphonsus states the same (III, 1016).

QUAER. 2. Whether the fast is dissolved if the LITTLE SUPPER is taken toward midday, but the MEAL in the evening?

Resp. It is not dissolved as regards essence; and therefore, from a just cause, for example by reason of weakness, affairs, studies, hunting, or even custom, it is licit to order the time of eating in this way (III, 1024).

Indeed, to the question: "Whether, on days of fast, the time of eating can be inverted, by taking the evening little refreshment within the tenth and eleventh morning hour, but deferring the meal to the fourth or fifth evening hour," S. Poenit., on 19 January 1834, judged that it must be responded: "If some reasonable cause of the aforesaid inversion exists, penitents who use this custom are not to be disturbed." Cf. Gaude, II, p. 415.

QUAER. 3. Whether it is licit to invert the order of meals so that in the morning collation is taken, at midday the meal, in the evening the little refreshment?

Resp. Of itself, negatively; because thus in some way the law of fast would be eluded; yet the fault is not grave. Whence from a reasonable cause dispensation can easily be had. Cf. Lehmkuhl, I, 1468; *Ami du Cl.*, 1909, p. 944.

Article III

On Causes Excusing from Fast

1232. Besides causes which totally exempt from fast, as insanity and age less than seven years, there are four excusing causes, namely: 1. impotence; 2. labor; 3. piety; 4. dispensation.

Let it be noted: a) The first three causes exempt per se, if they are morally certain; but if they are doubtful, dispensation is required. Hence exemption is said to come from Right; but dispensation from man (III, 1032, fin.).

b) "If someone did not have a sufficient cause by which he could be excused from Lenten fast; but on the contrary he himself in good faith thought that he had a just cause of satisfying the precept by fasting only three or four times in the week, the confessor ought not oblige him to fast daily, when there is danger lest afterward he omit the fast daily" (III, 1049; H. Ap., XII, 34). Recall the things said n. 217 ff.

c) Several causes, insufficient in themselves, can coalesce, so that they suffice for exempting from the law.

d) Pilgrims are held by the laws of fast or are dispensed from them, according as in the case it is a question of a universal or particular law. Recall the things which we said in the treatise on Laws n. 204 ff.

1. Impotence

1233. Impotence exempts, whether physical or moral.

1. On account of PHYSICAL impotence all those are exempted by whom fast cannot be observed by reason of defect of strength.

Hence they are excused: a) The sick, to whom fast can be of notable harm; and so likewise the convalescent and weak: for example those who labor under tertian or quartan fever, and others who cannot refresh themselves with sufficient nourishment in one meal.

b) Pregnant or nursing women, to whom it is not even licit to fast (unless once or twice, if the woman is robust); likewise, according to Capellmann, women during the time of menstruation (*Past. Med.*, ed. 16, p. 169).

c) The poor, "who cannot have at once what suffices for their sustenance," as St. Thomas has it (2. 2, q. 147, a. 4, ad 4). Whence it is very probable to St. Alphonsus that those who have nothing other than bread and herbs or legumes are not held to one meal; for although they are accustomed to these relishes, nevertheless they sustain themselves sufficiently by this alone because they are accustomed to eat them several times in the day and in great quantity (III, 1033; H. Ap., XII, 23).

1234. 2. On account of MORAL impotence all are exempted who cannot fast without grave inconvenience, or without great extrinsic difficulty.

Hence they are excused: a) Those to whom fast brings grave headache, or notable privation of sleep. b) Soldiers, whether they remain in camps or in stations. Otherwise, if they live in the paternal house or at their own expenses, unless they can protect themselves by dispensation or legitimate custom (as exists in France). c) Wives and children of a family who by fasting would suffer grave indignation of husbands or parents; provided contempt of the Church or of religion is absent. d) Men (if ever they are found) who, on account of fast, would not be able to render the conjugal debt to be rendered from justice or even from charity alone. e) Adolescents who have not yet completed the twenty-first year of age: for these need more abundant and more frequent food, both for the increase of nature and for solidifying the powers of the body. f) Sexagenarian old men (the 60th year having begun) are excused from universal custom; both on account of weakness of strength, and on account of defect of heat, from which they cannot take and digest sufficient food at one time. But if some seem more robust, their robustness is inconstant and often only apparent. Except religious or others who have vowed to fast until death. g) Women of fifty years, provided some weakness or infirmity concurs; for it is doubtful whether they are exempted on account of age alone (III, 1034 ff.; H. Ap., XII, 24).

2. Labor

1235. 1. All labor of the body, all arts which cannot be exercised without great weariness of the body, excuse from fast.

By this title are excused: diggers, farmers, stone-cutters, potters, weavers, wool-workers, fullers, porters, drivers, sailors, rowers, runners, iron-smiths, wood-workers, masons, leather-workers, shoemakers who make shoes with thread smeared with pitch; bakers, oven-workers, cooks who in preparing several dishes for many persons are occupied through almost the whole day. Likewise typographers turning the press; servants addicted to greater labors, letter-carriers and others traversing the city to distribute letters, to sell wares; those adorning temples by carrying ladders around, etc., etc. But all these are understood to be excused only then if they are detained for the greater part of the day, not if only two or three hours, in laborious works of this kind (III, 1041; H. Ap., XII, 26).

Further TO BE NOTED: a) It is not licit deliberately to choose the aforesaid labors so that fast may be avoided (Lehmkuhl, I, 1471). See the things which we said in the treatise on Laws, n. 225. b) Rich artisans are not held to interrupt labors for observing fast; for this would turn to the detriment of the public good; nor is it the mind of the Church to impede the faithful from their ordinary occupations. c) More robust artisans, who can fast without grave inconvenience, nevertheless are excused, both from common use and from legitimate presumption of diminution of strength going to follow from the fast; for in practice scarcely one will be found who is not gravely relaxed from labor of this kind. d) Those ceasing from labor for one or another day, even for the sake of extraordinary recreation, are excused by necessity of refreshing their powers, or preserving them for the morrow, unless they manifestly are able to fast without grave inconvenience (III, 1042 ff.; H. Ap., XII, 31; *Praxis*, 47).

1236. 2. Labor of the mind, or the liberal arts, do not excuse, nor offices which are exercised with light labor. To this looks proposition 30 condemned by Alexander VII, as too general: "All officials who labor corporally in the republic are excused from the obligation of fast; nor ought they to certify themselves whether the labor is compatible with fast."

Hence: a) Per se barbers are not excused; tailors; shoemakers who only cut or prepare hides; cooks preparing a few dishes; maids twisting wool or flax with a spindle or exercising similar things; merchants remaining in their shops, typographers composing types; painters, notaries, scribes; those making small watches; millers, bankers, sculptors, etc. Except (but per accidens), if any of these, on account of weakness, or singular labor, or another circumstance, cannot fast without grave inconvenience (III, 1041; H. Ap., XII, 27).

b) Lecturers of sciences per se are not exempted from fast, but only then if they need great study and labor. As regards teachers of grammar who teach for several hours in the day, their labor seems per se to exempt from fast. Cf. III, 1049. Scholastics similarly are not exempted for this reason that they devote themselves to studies; but they are exempted if through the greater part of the day they give work to necessary and serious studies (Noldin, II, 687, 4; Konings, n. 579, 4).[424]

Note. In doubt whether labor is incompatible with fast, this twofold rule must be held: If the labor, with the circumstances seen and generally for all, is of itself grave, presumption stands for exemption from fast. But if the labor is grave per accidens, namely on account of some circumstance of weakness of the person, or of fatigue greater than usual, presumption, in this doubt, stands for the obligation of fast; and therefore dispensation is needed (III, 1049, 7). Cf. the things said n. 248.

1237. IT IS ASKED. What sort of JOURNEY, undertaken for a just cause, suffices for excusing from fast?

Resp. 1. If it is made on foot, the common opinion teaches that a journey of 4 or 5 leagues (or 12 or 15 miles, or 25 kilometers) is required and suffices. Yet if the way were difficult and rough, or the traveler were weak, not accustomed to a journey, etc., a journey of two leagues (that is, six miles) could already excuse. But this depends on circumstances either of persons or of weather, etc.

2. If the journey is made by horse, carriage, or railroad, it does not excuse per se, as is established from proposition 31 condemned by Alexander VII: "All those are excused absolutely from the precept of fast who travel by riding, however they may travel; even if the journey is not necessary, and even if they make a journey of one day." Per accidens, nevertheless, anyone is excused who is not able, without grave inconvenience, to carry out a journey, even of one day (III, 1047, dub. 1 and 2; H. Ap., XII, 29, 30).

Note. He who begins a journey very early in the morning always has a right to refresh himself, nor is he held afterward to remain without refreshment. But he who beforehand, the order of fast having been observed, made the journey after midday, does not have the same right of injuring the fast, unless a reason accedes. Lehmkuhl, I, 1471, 3.

3. Piety

1238. Piety excuses from fast insofar as, either from office or obedience, or even from mere devotion, works of charity or religion are licitly undertaken, although from this there follows impossibility of fasting.

The reason is that, from the order of charity, one good work ought not impede another work more noble and better. Whence St. Thomas (2. 2, q. 147, a. 4, ad 3): "It does not seem to have been the intention of the Church establishing fasts that through these it would impede other pious and more necessary causes."

Note. Piety only then excuses when the work undertaken from a just cause is judged to be of GREATER MERIT than fast, and when it cannot be deferred to another time, and requires labor incompatible with fast. Thus also from St. Thomas (l. c.), who says: "If a pilgrimage and the labor of a work can conveniently be deferred, or diminished without detriment of bodily health..., or of spiritual life, the fasts of the Church are not to be omitted on account of this."

1239. Therefore by the title of piety are EXCUSED: 1. Those serving the sick, if they are much fatigued, for example in hospitals. 2. Those making pilgrimage to holy places, if the pilgrimage is going to yield to the great honor of God, or edification of neighbor, or to the spiritual and great utility of the pilgrim himself; or if the pilgrimage, when the time of fast arrives, has already been begun. 3. Singers in church who, by fasting, would lose the voice and could not fulfill their office. 4. Preachers, if they preach daily or frequently, for example five times in the week, or with vehement agitation, as in Missions. 5. Confessors, if they undergo extraordinary labor and are at the same time so

[424]We have said: serious studies. But the gravity of study is to be weighed rather from the application of the mind than from the long duration of the labor. One hour of serious study exhausts the powers as much as eight hours of bodily labor. Thus a learned physician ap. Berardi, *Theol. mor.*, IV, n. 56, 5, p. 39.

weak that with fast they cannot satisfy the frequency of penitents. In the same way, that is, per accidens, not per se, physicians, advocates, and others whose labor is useful to neighbor, or even necessary, will be able to be excused (III, 1049; H. Ap., XII, 34). See the twofold rule handed down n. 1236, note.

4. Dispensation

1240. I. They can dispense in fast: 1. The Supreme Pontiff in the whole Church, for example through indults conceded to Bishops, and indeed validly even without cause; although in this case he would sin, at least venially, "because this would be against the common good, to which laws are ordered" (III, 1032). 2. Bishops, and their vicars expressly delegated. Yet of themselves they cannot dispense with the whole diocese, nor with some parish, nor with a whole community or family, except in an urgent case. Thus from the Constitution of Benedict XIV: *Libentissime.* 3. Prelates and their vicars, but with their subjects taken individually. 4. Parish priests, where custom has force, and their vicars, provided they exercise parochial acts, and the parish priest is not opposed. But all these can dispense only with their own subjects, and indeed in a particular case, with private persons taken individually and from a just cause; otherwise the dispensation would be void (cf. the things already said n. 237).

Confessors cannot dispense, unless they are expressly delegated. Yet they can DECLARE whether someone is legitimately exempted or not. Physicians can do the same, as also Superioresses of nuns (III, 1032; H. Ap., XII, 22).

1. Dispensation concerning abstinence and fast has generally been conceded by the Supreme Pontiff for feast days recently established; likewise for feast days which, in some region, at the petition of Bishops, have been observed; finally for feasts of Patrons, if they are celebrated with the concurrence of the people. Indeed, dispensation can be conceded by a Bishop if some expunged feast day (on which abstinence or fast would have to be observed) is accustomed to be celebrated with the concurrence of the people (*A. A. S.*, III, p. 351; IV, p. 341). Always firm remains the prohibition of not mixing dishes (cf. n. 1242, Rule 2).

2. Moreover, from the Decree of S. Off., 5 Dec. 1894 (*A. S. S.*, 27, p. 512), and its authentic interpretation of 11 Dec. 1909 (*A. A. S.*, p. 58), Bishops and other local Ordinaries have the faculty of anticipating to a day pleasing to themselves (which assigning the Ordinary can commit to parish priests from a reasonable cause) and for very grave causes even of dispensing concerning the law of abstinence, when, on Friday or Saturday through the year, with a great concurrence of peoples, either any Catholic solemnity whatever is celebrated, for example of centenaries, of pilgrimages, or extraordinary fairs are held. Further, among the very grave causes of dispensing, there can be assigned grave general danger that the abstinence to be anticipated will not be observed. From these faculties are excepted the time of Lent, the Four Times, vigils through the year consecrated to fast, or the time of Advent where (as in Spain) the fast of vigils has been transferred to each Friday and Saturday of Advent. In Italy only the time of Lent and Advent is excepted (S. Off., 7 Sept. 1909, n. 5). Wherefore on these days Bishops can neither dispense nor anticipate.

As regards indults which have lately been conceded to diverse peoples and regions, see below n. 1247, 1248.

1241. Let it be noted: a) Dispensation through pontifical indult is not accustomed to be given concerning the law of one eating (for in this an excuse from right suffices); but it is given concerning abstinence, which it always restricts by certain limits (cf. n. 243 and 1223).

b) Dispensation which, on account of peculiar reasons, is conceded to private persons, can comprehend either one or the other, or both parts of the law.

In the Bull *Non ambigimus* of Benedict XIV, it is prescribed that dispensation with a particular person, in eating meats, eggs, and milk-foods, be made from the counsel of both physicians, that is, both the spiritual, namely the confessor or parish priest, and the physical, or physician of bodies. Thus indeed practice bears in the dear City; elsewhere however it has gone into disuse.

c) Bishops, when they dispense from pontifical indult, generally enjoin upon the faithful some prayers or alms.

But whether under grave matter is controverted. Some affirm, because it is judged to be a commutation; but others deny with Gury: because it is more probable that Bishops intend principally to dispense, and accessorily to impose some pious work as a certain light satisfaction. Except if the Bishop by express words wishes to oblige strictly.

1242. II. The rules for those dispensed from INDULT are the following:

RULE 1. Those dispensed for meats are by that very fact dispensed for milk-foods; but those dispensed for milk-foods are judged by that very fact to be dispensed for eggs, unless the contrary is expressed.

To those dispensed for meats, pork is not prohibited, nor in general unhealthful meat, unless a special prohibition has been made (such as was made by Clement XI, through Edict of 24 February 1702 for the Roman State). Cf. H. Ap., XII, 8.

RULE 2. Those dispensed for meats are obligated under grave matter to abstain from fishes in the same meal. This precept embraces the whole of Lent, even Sundays, and moreover each and every day of fast through the year. It is established from three Constitutions of Benedict XIV, *Non ambigimus* (1741), *In suprema* (1741), *Libentissime* (1745); and from several decisions of the S. Penitentiary. Not even a Bishop can dispense in this law. Cf. *A. A. S.*, II, p. 953; there the Benedictine prohibition is very well illustrated.

Under the name of fishes come also little fishes dried with salt, likewise caviar, or marine shellfish, as crabs (*ecrevisses*), oysters (*huitres*), and other things similar to these, as is established from Responses of S. Poenit., on 10 and 16 Jan. 1834.

Therefore all, even children after the seventh year (S. Poenit., 15 Mar. 1837), who, FROM INDULT, eat meats, although they are not held to fast, nevertheless are obligated not to mix dishes, as S. Off. responded, 23 Jun. 1875. Yet broth of meat together with fishes can be used by them, from a declaration of S. C. C., on 7 Aug. 1910 (*A. A. S.*, II, p. 959).

But those who, not by force of indult, but FROM RIGHT, say by reason of grave sickness, become immune from the law of abstinence, can use meats and fishes together, from the opinion which S. Poenit., 9 Jan. 1899, declared could safely be followed (*Nouv. Rev. Theol.*, 32, p. 64). Likewise, the faithful dispensed from the law of abstinence on Fridays and Saturdays, during the year, when the obligation of fast does not urge, can eat fishes together with meats (S. Poenit., 15 Feb. 1834).

RULE 3. To those dispensed for meats and milk-foods, it is licit to eat milk-foods together with fishes. And to the same it is similarly licit to eat fishes together with soup cooked with meat juice.

The first is established from the Constitution *Libentissime*; the other from a Response of the Holy See. For to the QUESTION: "Whether one dispensed for eating meats on days of fast can in the same eating eat, for consulting his health, soup cooked with meat juice, and for the rest eat fishes, so that as much as he can, he may preserve the observance of fast?" S. Poenit., on 23 Feb. 1826, responded: "Affirmatively."

Nor is it prohibited to those dispensed to eat, together with meat, other foods seasoned with fish juice. S. Poenit., 14 Jun. 1880 (*Coll. S. C. de P. F.*, n. 2077).

RULE 4. Those dispensed for meats, but constrained by the law of fast, are obligated, just as other fasting persons, to one meal at the fixed time; and these, in the evening collation, must use the same food which other fasting persons use, and in the same restricted measure. It is established from the Constitution *Libentissime* of Benedict XIV. But see n. 1228.

RULE 5. Those who by reason of age, or labor, or infirmity, are not held to fast, on days of fast, when the eating of meat and milk-foods is permitted to all for one meal, can licitly eat meat and milk-foods several times in the day, or as often as they eat through the day; unless the Bishop, dispensing by apostolic authority, has added a restriction. It is established from decisions of S. Poenit., on 24 Feb. 1819, 27 May 1863, 16 Mar. 1882.

RULE 6. When permission of using a condiment of fat has been conceded through an apostolic indult, it is licit to use both the fat of any animal (S. Off., 1 May 1889) and butter (S. Off., 15 May 1896), but by no means meat broth (S. Poenit., 15 Apr. 1836 and 20 Mar. 1847), unless custom is present, in which case the Bishop should be silent (S. Off., 20 Jan. 1885).

As often as it is licit to use butter, it is also licit to use margarine (S. Off., 6 Sept. 1899). But when butter has been conceded, condiment of fat is not by that very fact conceded. Further, condiment conceded through indult can be used even in the evening refreshment, provided no restriction has been placed in the indult. Moreover, when condiment of lard fat is permitted, he who uses the lard itself for seasoning foods can without scruple eat the fragments of lard which, the fat having been extracted, remain, provided they continue to be part of the condiment (S. Poenit., 17 Nov. 1897).

1243. Questions. QUAER. 1. Whether Religious can use dispensations which are conceded universally to the faithful as regards fast? From the Decree of 1 Sept. 1912 (*A. A. S.*, IV, p. 627), one must respond: Affirmatively, if it is a question of dispensation concerning the general law of the Church and Religious are not excluded in the apostolic indult. But negatively if abstinence or fast are prescribed by the rule, unless in the indult account is had of this dispensation. Those not observing abstinence or fast of this kind do not transgress the law of the Church, but only the rule. Religious dwelling in Latin America must stand by the Response from the Secretary of State, 1 Jan. 1910 (cf. n. 1247).

QUAER. 2. Whether fathers of families, when in the family there is found some person dispensed concerning the use of meats, can indiscriminately extend the dispensation to all persons of the same family. S. Poenit. (19 Jan. 1834) judged

that it must be responded: "Infirmity and any other impediment whatever, from the counsel of both physicians, but not gluttony, avarice, or generally saving of expenses, can exempt from the precept of abstinence on esurial days."

QUAER. 3. Whether in Lent, when a father of a family has the faculty of eating meats, and the same either cannot or will not prepare two meals, one of meats and the other of esurial foods, the children of the family and the others addicted to his service can eat meats? S. Poenit. (19 Jan. 1834), responded: "Persons who are in the power of the father of the family, to whom legitimate faculty of eating meats has been granted, can be permitted to use foods granted by indult to the father of the family; with the condition added of not mixing permitted and forbidden dishes, and of one eating in the day for those who are held to fast." Further, "the reason of the permission about which in the question is not the indult of the father of the family; but the impotence in which the children of the family find themselves of observing the precept." Therefore it is a mere direction for confessors. It is established from various Responses of S. Poenit., edited 27 May 1863 and 20 Apr. 1865 (*A. S. S.*, I, 424 ff.).

Chapter II

On Abstinence Outside Fast

Besides the Authors cited at the beginning of chapter I, cf. Berthelet, *Traite historique et moral de l'abstinence*; Villien, op. laud., c. VIII; Lehmkuhl, I, n. 1455.

1244. PRINCIPLES. I. The ecclesiastical precept of abstaining from meats urges, besides days of fast, on Friday of any week and on Saturday. The first part of the proposition enunciates the common law, which must be observed even on Sundays of Lent. The second part, as regards Saturday, states the customary law by which most places of the Latin Church are governed (Can. *Quia dies*, 31, *de Consecr.*, D. 5). If a feast falls on Friday or Saturday, the law of abstinence ceases, as we noted above n. 1240, 1.

From the law of abstinence on Saturday are immune, besides Greece, the kingdoms of the Spains and Italy (S. Off., 7 Sept. 1906, n. 4). Likewise, in certain dioceses of France and Belgium, the Saturdays occurring between the Nativity of the Lord and the Purification of the B. V. M. are excepted (Benedict XIV, *Synod.*, l. XI, c. 5).

But in some places abstinence must be observed also on Rogation days and on the vigil of St. Mark; in this matter the custom of the place must be held.

1245. II. The precept of abstinence obliges under grave matter all baptized persons having use of reason, at least if they have completed the seventh year. Under grave matter: because the law is concerning a matter grave per se; yet smallness of matter is admitted (cf. n. 1225, Question 2). All baptized persons having use of reason, on account of the arguments explained above n. 194 and 195. Yet there excuses: 1. impotence whether physical or moral; 2. dispensation of a Superior.

1246. Corollaries. 1. They are legitimately EXCUSED from the law of abstinence:

a) Begging poor persons, who can eat whatever they receive in alms. Likewise, poor workers who, since they cannot buy butter or oil, licitly use a little piece of grease or lard for seasoning porridge or lettuces (III, 1008, 1033).

b) The sick and those weak in stomach, who namely cannot eat esurial foods without grave inconvenience.

By which title certain workers also are excused, for example in mines or workshops of glass or iron, on account of the extraordinary harshness of the labor. Likewise pregnant or nursing women, if the offspring is sick, or the mother is very weak.

c) Wives and children of a family, who would suffer grave indignation of husbands or parents; provided the eating of meats is not commanded in contempt of the law or of religion. Cf. nevertheless the things said n. 154, 3, v. fin.

Likewise servants and workers to whom licit foods are not furnished, if they cannot leave the master or seek another without grave inconvenience; yet they ought to contradict, insofar as prudence permits this.

d) Soldiers living in camps or messes who are nourished in common at the expense of the government.

But leaders are not excused who refresh themselves privately and at their own expenses; nor soldiers traveling privately, or dwelling in the paternal house, although for a brief time, unless they are excused by indult or custom (as exists in France). Cf. n. 1234; *Ami du Cl.*, 1905, p. 1031.

Note. To American soldiers and sailors (but not to those who are absent with permission from camps, ships, garrisons) only six days of abstinence are assigned: Ash Wednesday, the last three days of Holy Week, the vigil of the Assumption

of the B. V. M. and of the Nativity of the Lord (*Coll. Lac.*, III, App. ad Conc. pl. Baltim., II, col. 573).

e) Travelers who find nothing in inns besides forbidden foods, and cannot easily turn aside elsewhere.

Yet they are held seriously and insistently to ask for licit foods; nor are they ever excused on account of fear of displeasing others or provoking mockeries (cf. n. 522).

f) Those invited to a meal, if, contrary to expectation, they find the meal prepared from forbidden dishes.

Understand: Unless this was done in hatred of religion; or unless the one invited is a priest, or such a one who, by eating, brings in grave scandal; or unless on account of confidence other dishes can be asked for. Further, to depart, or to attend the whole meal eating nothing or only bread, on one side would require almost heroic virtue, on the other would provoke great disturbance, indeed, for the most part, enmity. Thus Berardi (*Theol. mor.*, IV, n. 12, p. 15).

Note. As regards innkeepers see n. 522.

2. Catholics who, on days of abstinence, furnish meats to their non-Catholic guests are not to be blamed if either a) this is permitted to them by force of an apostolic indult, which many Bishops are accustomed to obtain and communicate to confessors; or b) some just cause concurs; provided nevertheless, in either case, scandal and contempt of ecclesiastical law are absent; or c) because for non-Catholics the Church is judged not to urge those positive laws which directly turn to the sanctification of souls, lest sins be multiplied (cf. n. 198).

3. Those same can dispense from the law of abstinence who can dispense from the law of fast, and in the same cases (cf. n. 1240).

Scholium I

On the Law of Fast and Abstinence in Diverse Regions

1247. Italy. On 7 Sept. 1906 (*A. S. S.*, 39, p. 455) the law of abstinence and fast was reformed, for this end that local customs (even immemorial ones) be taken away and uniformity (except the case of vow) be found everywhere.

I. The OBLIGATION OF FAST will be present for those not excused: in Lent; in Advent (on Fridays and Saturdays); in the Four Times; on the vigils of the Nativity of the Lord, Pentecost, Sts. Peter and Paul, the Assumption of the B. V. M., and All Saints.

Note: 1. Promiscuity of meat and fishes on these days and in the same meal is forbidden to all, even on Sundays of Lent.

2. On Sundays of Lent, there is neither fast nor abstinence.

II. The OBLIGATION OF ABSTINENCE suffers four distinctions:

1. Most rigorous abstinence. In all meals even eggs and milk-foods are prohibited, indeed also condiments of fat, lard, butter, margarine, etc. Even those not fasting are held by this prohibition. This prohibition urges on Fridays of the Four Times in Lent and of Holy Week, on the vigils of the Nativity of the Lord and of the Assumption of the B. V. M.

2. Rigorous abstinence. Eggs and milk-foods, condiments of fat, butter, etc. are permitted. Yet in the little supper, those fasting (by reason of fast) cannot use them. This abstinence has force: on the first day of Lent, on Fridays and Saturdays of Lent and Advent (excepted the Fridays concerning which above), on the vigils of Pentecost, Sts. Peter and Paul, and All Saints.

3. Mitigated abstinence. Meats and meat broth are also permitted, but only in the meal, for those fasting. This abstinence obliges on ordinary days of Lent which were not mentioned above.

4. Ordinary abstinence. Use of meat is forbidden; in any licit eating all other things are licit. This is the abstinence of Friday of each week through the year.

Note. In the year 1911 (*A. A. S.*, III, 361) the indult for Italy was extended to the regions of Dalmatia, with a few things changed.

Latin America, the Philippine Islands, and the Antilles. On the first day of January 1910, the Supreme Pontiff, the privileges and indults of the Bull of the Crusade and of the Summaries which were attached to this being abrogated, promulgated a new indult for ten years.

1. Fast without abstinence is to be observed on Fridays of Advent and Wednesdays of Lent.

2. Fast with abstinence is to be observed on Ash Wednesday, Fridays of Lent, and Thursday of Holy Week.

3. Abstinence without fast is to be observed on the vigils of the Nativity of the Lord, Pentecost, Sts. Peter and Paul, the Assumption of the B. V. M.

Note. a) No tax, or alms, for the use of the indult can be imposed; nor is it required that individual faithful or heads of families express a petition for the use of the indult.

b) This indult, with the consent of Superiors, Religious of either sex can use, not bound by special vow, although they are from the family of the Order of Minors, even as regards abstinences and fasts prescribed in their own statutes.

c) On days of fast, even regulars can, in the evening collation, use eggs and milk-foods. But in the morning little refreshment, only milk-foods are permitted.

d) The privileges conceded to Blacks and Indians, through the Constitution *Trans Oceanum*, 18 Apr. 1897, remain firm, and they can use the privileges of the new indult. Whence they are held to fast only on Fridays of Lent, nor can they be obligated to fast on Holy Saturday and on the vigil of the Nativity of the Lord (13 Dec. 1911).

e) The prohibition of mixing meats with fishes remains firm. The State of Chile is excepted, for which, on account of grave reasons, in the year 1911 the prohibition was abolished. Cf. for all these things *A. A. S.*, p. 215, 272; III, 184; IV, p. 730.

East India. 1. There are only nine days of fast: namely Fridays in Lent, the vigils of the Nativity of the Lord and of Holy Saturday. 2. The days of abstinence are, besides days of fast, all Fridays through the year and Wednesdays in Lent (*Kalend. archid. Bombay*).

Scotland. On 27 Jan. 1911 the Supreme Pontiff conceded for the faithful of the kingdom of Scotland a partial relaxation of fast, so that (Lent excluded), on Saturdays of the Four Times and on vigils which are followed or preceded by a Friday or another day of abstinence, they can freely eat meat (*A. A. S.*, III, p. 58).

Scholium II

On the Peculiar Law of Spain

1248. The peculiar law by which the kingdoms and colonies of the Spains are governed as regards the present matter must be stated partly independently, partly dependently on the celebrated Bull of the CRUSADE.

A. Independently of the Bull of the Crusade, general dispositions and particular indults must be cited.

I. GENERAL DISPOSITIONS. 1. By legitimate custom abstinence from meats on Saturday (besides days of fast) has been abrogated. 2. From the year 1867, the fasts on vigils of St. John the Baptist and also of the Holy Apostles have been transferred to Fridays and Saturdays of Advent, excepted nevertheless two vigils of the Holy Apostles Peter and Paul and also of St. James the Greater, which remain consecrated to fast on the very days to which they are affixed. 3. The law of fast and abstinence on the day of the Commemoration of St. Joseph (as one numbered among the feasts restored), by force of the Motu Proprio *Supremi disciplinae*, has been dispensed, the prohibition remaining firm lest mixed foods be set down in the same eating (S. C. C., 21 Nov. 1912).

II. PARTICULAR INDULTS. 1. Common soldiers and their decurions (*cabos, sargentos*) through the whole time of actual service, whether they are occupied in war or in garrisons, have received a most absolute dispensation from laws regarding fast or abstinence in any way whatever (Brief *Cum in regis*, 16 Dec. 1803).

2. Leaders superior to decurions enjoy the same most absolute dispensation, but only when they set out for waging war or are actually occupied in an expedition (ib.). The dispensation in the same circumstances is extended to physicians, military chaplains, etc.

3. The same leaders, actually exercising their office in garrisons, at the same time enjoy dispensation, excepted: a) as regards fast and abstinence from meat together: Ash Wednesday, the seven Fridays of Lent; Wednesday, Thursday, and Saturday of Holy Week; b) as regards fast alone, without any abstinence, not even from mixed foods: the seven Saturdays of Lent and Monday and Tuesday of Holy Week (ib.).

4. The families, servants, table-companions of soldiers and leaders can use respectively the same privileges as parents, masters… but as regards abstinence alone (the law of fast remaining firm, insofar as it permits only one meal); yet under a double condition: a) that they habitually eat from their table; b) that the principally privileged are not absent for three days (ib.).

5. On 20 Mar. 1906 it was conceded for ten years that chaplains, travelers, carriers, and all others in whatever way staying in ships of the Transatlantic Society of Barcelona can enjoy the same privileges as common soldiers, the following days excepted, on which only the law prohibiting the mixing of fish and meat is to be observed, namely: the seven Fridays of Lent and also Wednesday, Thursday, and Saturday of Holy Week.

B. Dependently on the Bull of the Crusade are ordered the dispensations usually conceded to other Spanish faithful and also to foreigners staying in Spain, beyond those enumerated above. Hence it is plain that the Bull of the Crusade, as regards what pertains to the present matter, both has the force of an indult, and confers strength and value on the two indults attached to the same.

Addendum link: see the Addendum to n. 1248 B on the Bull of the Crusade.

These two indults are commonly called the Bulls of meat and milk-foods. From their names the matter of the dispensations is shown.

I. OBJECT OF THE BULLS. The Bulls regard only dispensations from the law of abstinence as introduced by common Right; whence 1. those who by natural Right itself exist certainly dispensed from the positive precept of abstinence do not need the Bulls; 2. but neither are helped by the Bulls those Regulars who by a special vow have bound themselves to preserving perpetual abstinence; 3. the Bulls similarly leave untouched the law of fast, insofar as: a) it permits only one meal; b) it excludes eggs and milk-foods from the little supper (hence those not dispensed from fast can use conceded foods in the meal alone; but those dispensed as often as they wish to eat); c) insofar finally as it prohibits the mixing of fishes and meat in the same eating.

Note. Summaries of the three indults have been prepared in which both the privileges of the Bulls and the conditions or limitations of the privileges (where they have been added) are set forth. Moreover four Declarations have been issued by the Reverend Congregations, namely: S. Off., 4 Mar. 1891, 23 Jan. 1901, as regards Regulars; 31 Mar. 1906, as regards sexagenarian secular priests; S. C. C., 23 Jan. 1910, as regards the poor; which necessarily must be consulted.

II. GENERAL CONDITIONS REQUIRED FOR VALIDITY. The Bulls and their summaries present privileges. Therefore they do not profit the unwilling. These privileges are: 1. personal: whence they must be applied to individual privileged persons; 2. onerous: whence individual persons must accept individual summaries and apply them personally to themselves, and also according to their condition pay the stated taxes from their own goods; 3. temporal: the value of the summaries endures from the day of taking until the next following promulgation in the place where the privileged person resides; but this promulgation must be made each year; whence each year each one must procure new summaries for himself; 4. local: whence both the Bulls must be taken in Spain by persons existing or staying there, and the legitimate use of the privileges (as regards meats conceded unconditionally) is circumscribed by the limits of Spanish territory; 5. unequally distributed according to the diverse state of persons; hence each one should attend to restrictions perhaps pertaining to himself.

III. THE BULL OF THE CRUSADE (properly the Lenten Indult) of itself confers two privileges: 1. the unconditional right of using eggs and milk-foods through the whole Lenten time, no day excepted; 2. the conditional right of eating meats, no time of year, no day excepted. But a double condition is added: a) a grave cause, that is, sufficient for introducing doubt whether you are dispensed by natural Right itself or not; b) the counsel of both physicians. From the use of this other privilege (the conditions having been verified) no one is excluded.

IV. THE BULL OF MEAT permits unconditionally the use of meat, on any days of the year whatever consecrated both to fast and to simple abstinence, besides the following: a) outside Lent, the vigils of the Nativity of the Lord, Pentecost, the Assumption of the B. V. M., and of the Holy Apostles Peter and Paul; b) within Lent, Ash Wednesday, the seven Fridays, and also Wednesday, Thursday, and Saturday of Holy Week.

Note. 1. Participants in the privileges (III, IV) are: a) Fully: all whether laymen or clerics, or regulars not distinguished by the priesthood, and also secular priests born sixty years (31 Mar. 1906). b) Outside Holy Week: regular priests living the cloistered life (S. Off., 4 Mar. 1891). But regular priests who are sexagenarians, but live outside cloisters, can use milk-foods indeed without limitation of days, but meats only outside Holy Week.

2. Entirely excluded from the use of the same are: priests, both secular and regular living outside cloisters, who are not born sixty years. But this exclusion is not extended to the conditional privilege conferred on all through the Bull of the Crusade, as we have seen above.

3. To regulars not priests it is insinuated by counsel that they fast in the same way as priests of regular Orders (23 Jan. 1901).

V. THE BULL OF MILK-FOODS is a certain remedy, which those entirely excluded from the use of the privileges (III, IV) are able to use for obtaining participation in the aforesaid privileges; yet under a threefold condition: that for milk-foods alone they prepare for themselves the double summary, namely of the Crusade and of milk-foods; for milk-foods together with meats the triple summary of Crusade, of meat, and of milk-foods; and that they are able to enjoy the grace conceded only outside Holy Week.

Note. In the present matter, Holy Week does not comprehend Palm Sunday.

VI. THE NECESSITY OF THE BULLS must be taken disjunctively, so namely that those who are not exempt from paying the tax either take the Bulls or are held under grave matter to observe the law of abstinence most strictly.

VII. EXEMPT from the burden of taking the Bull of the Crusade are the poor and almost poor, accepted in a somewhat broader sense. These fully enjoy the privilege of each Bull, one *Pater* and *Ave* having been recited as often as they eat meats (S. C. C., 23 Jun. 1910).

The Lesser Brothers of St. Francis are excused from taking the Bull of meat, with the faculty of eating milk-foods through the whole of Lent, and meats up to Wednesday of Holy Week exclusively, if they are not priests; if priests, of eating both dishes up to Palm Sunday inclusively. From the burden of the Bull of milk-foods all are free, except non-sexagenarian priests living in the world or outside cloisters.

VIII. SCHEMA. 1. As regards the Bull of milk-foods. a) The poor need none; b) almost all the rest, one; c) only non-sexagenarian priests living in the world or outside cloisters, two.

2. As regards the Bull of meat and milk-foods. a) The poor need none; b) Lesser Brothers, one; c) almost all the rest, two; d) only non-sexagenarian priests, commonly three.

Note. See a fuller exposition of the whole Bull in the Salmanticenses, Tamburini, Croix, Ferraris, and other older theologians. Among more recent authors see Pavone, *La luce fra le tenebre*; Michael Sanchez, *Expositio Bullae Cruc.*; Mach, *Tesoro del sacerdote.*

TRACTATE II.

On Censures and Ecclesiastical Penalties

1249. • All delicts, and especially public delicts, import a perturbation of order, both with respect to God, and with respect to society, and with respect to the delinquent himself.

Therefore the disturbed order must be restored. But it is restored by PENALTIES, both vindicative, by which, namely, the injured honor of God is vindicated; and exemplary, by which others are deterred, lest they also offend; and medicinal, such as ecclesiastical censures are, by which the guilty are incited to come to their senses more quickly.

1250. It pertains to Canon Law to treat of these various penalties, insofar as they regard the external forum. Nevertheless, moral science also ought to hand down notions concerning Censures and Ecclesiastical Penalties, at least concerning those which are more useful and more necessary for the confessor to know.

We shall speak: 1. of censures in general; 2. of the three species of censures, which are: Excommunication, Suspension, and Interdict; 3. of the censures which in present times are in force in particular; 4. of certain other penalties inflicted by the Church.

CHAPTER I.

On Censures in General.

St. Alphonsus, VII, 1-133; ed. G., IV, p. 171; H. Ap., tr. XIX, c. 1; Suarez, *de Cens.*; Berardi, *Comment. in Jus*, vol. II, Diss. III; Aichner, *Comp. Jur. eccl.*, sect. III, c. 2, a. 2; Lega, *de Judic. eccl.*, l. 2, P. 1, tit. 3; Bucceroni, *de Cens.*; Hilarius a Sexten, Bargilliat, Hollweck and others, on the same matter.

We must treat: 1. of the notion and division of censures; 2. of their infliction, valid or licit; 3. of causes excusing from censure; 4. of absolution from censures.

ARTICLE I.

On the Notion and Division of Censures.

1251. DEFINITION. A censure is a spiritual and medicinal penalty, inflicted by ecclesiastical power, through which the use of certain spiritual goods is taken away from a baptized man who is delinquent and contumacious.

It is called: 1. a penalty, strictly speaking, that is, an evil inflicted by legitimate authority because of fault; 2. spiritual, because it deprives one of spiritual goods, as is clear from the Bull *Auctorem fidei* under n. 46; 3. medicinal, that is, inflicted so that the guilty person may come to his senses and be amended: this is the primary and specific end of censure; it is not inflicted on those whose correction is despaired of, except sometimes for the terror of others; 4. on a baptized man; for an infidel is not subject to the Church; 5. delinquent and contumacious, namely, one who, by an external action, from a certain at least virtual contempt, does not obey the warnings of the Church; 6. the use of certain spiritual goods, namely of those which are subject to the power of the Church, as will presently be explained.

1252. ON THE SPIRITUAL GOODS OF THE CHURCH. In the Church there exist goods of a threefold kind: 1. Some proceed immediately from the Head, or Christ, as various graces. Censure does not deprive one of these, because they do not depend on the Church; whence censure can coexist with the state of grace, for example in one who incurs a censure because of a sin concerning which afterward he is perfectly contrite. 2. Others proceed from the members taken privately, as the prayers and good works of individual faithful. Nor does censure take away these goods, at least of itself, because the Church cannot impede that communion of Saints which proceeds from faith and charity. 3. Finally others proceed from the body, or the Church, as the use of the sacraments, divine offices, indulgences, jurisdiction, benefice, common suffrages. Censure deprives one of these, either wholly or in part. It can also deprive one of the use and commerce of the faithful in civil matters, for example honor, salutation, etc., but only secondarily and in order to spiritual things (Suarez, l. c., disp. I, s. I, n. 6).

1253. From these things you will gather: Censure differs: a) from deposition, degradation, and privation of benefice; for these penalties are primarily vindicative, in such a way indeed that of themselves they are perpetual, and can be inflicted even after amendment of sin, and, when the sinner has now been amended, still endure; b) from irregularity, which of itself is not a penalty, but is a canonical impediment; whence it is removed only by dispensation; c) from cessation from divine things, which is imposed primarily for repelling an injury inflicted on the Church (VII, 2-5).

Note. The effects of censure in particular are indicated in n. 1291 sqq., 1304, 1308.

1254. DIVISION. Censure is distinguished in manifold ways:

1255. By reason of species it is threefold, namely: excommunication, suspension, and interdict.

The last two are not always censures; sometimes they are merely medicinal penalties, but sometimes they also assume the nature of a vindicative penalty, as we shall say below (n. 1300).

2. By reason of the mode by which it is inflicted, one is from law, another by man.

a) A CENSURE FROM LAW is that which is issued through canons or ecclesiastical laws, for example through a synodal statute. This does not cease by the death or removal of the legislator. - b) A CENSURE BY MAN is that which is inflicted by a legitimate Superior, whether by way of judicial sentence, or by way of precept.

But a precept, although transitory, is either general, without determination of persons, for example: if anyone knows the perpetrator of this delict, he is bound to denounce him, under penalty of excommunication; or particular, affecting determinate persons. A censure of this kind ceases by the death or removal of him who issued it, that is, it is no longer incurred; for if it had already been contracted, the bond would be removed by absolution alone (VII, 6; Lehmkuhl, II, 1102).1

Note. A censure by man can also be issued *ex informata conscientia*, as we shall explain below (n. 1301).

3. By reason of the mode by which it is incurred, a censure is *latae sententiae* or *ferendae sententiae*.

a) A CENSURE *LATAE SENTENTIAE* (which is proper to the Church, unknown in the civil Code) is that which is incurred by the very fact by which someone has violated the law, without a condemnatory sentence of the judge being required.

Such it is: if in the law it is said: by the very fact, by the very law, by law, by that very thing, from then, immediately, forthwith, without another sentence; if the words are of past or present tense, for example: we have excommunicated, I

excommunicate, they are suspended, they are interdicted; if it is said in the imperative mode: let him fall into excommunication, let him remain suspended or interdicted, we will or command that he be excommunicated, suspended; or even: let him be excommunicated, let him be suspended, etc., namely absolutely without the ministry of another; but not if the precept of excommunicating, suspending, etc., is imposed on another, say, the Bishop.

b) A CENSURE *FERENDAE SENTENTIAE* is that which is not contracted unless the sentence of a judge accedes.

Such it is judged to be: if the words are of future tense, for example: he will be excommunicated, he will be suspended; if they express the precept of excommunicating, suspending, for example: let him be excommunicated by the Bishop; if they are comminatory, for example: under penalty of excommunication, under threat of anathema, etc.; unless, however, something else is gathered from the adjuncts; likewise, if they are ambiguous; for according to Rule of Law 49 in the Sixth: "In penalties the more benign interpretation must be made." But ambiguous would be, for example, these words: let him be excommunicated. But in the case of heresy, they are *latae sententiae*, as all teach (H. Ap., XIX, at the beginning).

4. By reason of the power of absolving, censures are reserved or non-reserved. a) NON-RESERVED are those which can be absolved by inferiors. b) RESERVED are those which cannot be absolved except by the one issuing them, or by another to whom they have been reserved.

Some are reserved to the Roman Pontiff, either in a special way, or simply. Others are reserved to Bishops or prelates, either by common Law, that is, through canons or papal constitutions, or by particular Law, for example through the statutes of a diocese or Religion.

Censures by man, however, are always judged reserved, unless they have been issued through a general precept.

Note. 1. From the fact that something is prohibited under censure, as penalty, it does not always follow that the law obliges under mortal sin (cf. n. 1263, 2). 2. He who can absolve from censures as censures, can also absolve from them as penalties (D'Annibale, *Summula*, I, n. 358).

1 There are not lacking those who think that censures issued by a Bishop outside a synod are from Law (cf. *Ami du Cl.*, 1910, p. 229). Nevertheless those things which the Salmanticenses, Roncaglia, and Croix establish, with St. Alph., l. c., are more pleasing to us.

ARTICLE II.

On the Infliction of Censures.

The conditions required for censures to be inflicted validly and licitly regard their author, subject, matter or cause, and form.

§ 1. ON THE AUTHOR OF CENSURE. 1255. PRINCIPLES. I. The power of issuing censures is in the possession of the Church. This is of faith, against the innovators, and is clear both from the fact that Christ gave pastors the power of punishing; and from the use of the apostles and the constant practice of the Church; and finally from the Council of Constance, Sess. 8, err. 3, as well as from the Bulls of Martin V and Leo X (VII, 9).

1256. II. The ordinary power of issuing censures is in the possession of all and only ecclesiastical Superiors having jurisdiction in the external and contentious forum. This is clear from various places of Canon Law. The external forum is the place, territory, in which matters pertaining to the external government of the Church are treated. The contentious forum supposes lawsuits and judicial noise.

Hence, the following can issue censures: 1. The Pope and a general Council, with respect to the whole Church. 2. Roman Congregations, as the Congregation of the Council, of the Holy Office, of Religious, etc., even for the universal Church, in those things which have been committed to them to execute. 3. Apostolic legates, in the territory assigned to them; Cardinals, in their churches. 4. Patriarchs and Archbishops with respect to the subjects of their own diocese; but not in the diocese of suffragans, unless at the time of visitation, or unless a cause is devolved to them by appeal. 5. Bishops, with respect to their own diocese, provided they have been confirmed, although not yet consecrated. 6. Vicars general of Bishops, with respect to the diocesans; because they constitute one tribunal with their own Bishop. 7. Generals, Provincials, and local Superiors of Religions, namely of regulars, as priors, guardians, rectors, with respect to subjects, and according to the various statutes of the Orders.[425] - 8. Provincial Councils, Congregations of Religions, the Chapter of a cathedral church when the see is vacant and the Vicar has not yet been elected; then the capitular Vicar: each respectively

[425]Superiors of Congregations which enjoy the privilege of exemption can use the same power with respect to issuing censures which Regulars enjoy. Passive exemption, which has been conceded to them by the Holy See, carries this with it. Vermeersch, I, n. 454, 2.

for his own subjects. 9. Certain others by privilege, as many Archdeacons, Archpriests, and Deans are. 10. All who, through common error, with a presumed title, are regarded as Superiors (cf. n. 139-144).

Note. Parish priests cannot issue censures; for they have no power in the external forum (VII, 10, 11); nor does custom favor them.

1257. • III. The delegated power of issuing censures is usually committed to clerics alone. The reason is that ordinarily clerics alone are capable of ecclesiastical jurisdiction. Married clerics, however, are declared by Law incapable of this jurisdiction (c. *de Cler. conjug.*, in 6).

It is said: to clerics alone; but it suffices that they be marked with first tonsure; is usually committed: by these words regard is had only to ordinary cases. For in an extraordinary case, a baptized layman could be deputed to issue censures, but from the sole Commission of the Supreme Pontiff. Baptized, we have said; for he who is not in the Church is not capable of ecclesiastical jurisdiction, as the truer opinion teaches.

It is a great question whether a woman, for example an Abbess, can be delegated.

The first opinion says: a woman by divine Law is incapable of an office properly ecclesiastical; yet from this it does not necessarily follow that the Supreme Pontiff, from absolute power, can commit no delegation to a woman, by way of a transitory act (Suarez, *de Cens.*, disp. 2, s. 3, n. 7). Lugo defends the same opinion (*Resp. mor.*, l. 6, c. 6, n. 9), where he asks whether the Supreme Pontiff can delegate spiritual power to an unbaptized man (cf. Lehmkuhl, II, 1118).

But the second opinion, to which St. Alphonsus adheres (VII, 12), holds with St. Thomas (in 4. D. 19, q. 1, a. 1, sol. 3, ad 4), the Salmanticenses, and others, that a woman can in no way have either the key of order, or the key of jurisdiction (cf. *Vind. Alph.*, P. VIII, q. 5). But an Abbess could obtain a Decree by which, under penalty of censure, her commands must be observed.

Note. a) Delegated power ceases by the death or removal of the delegating one, unless the cause has already been begun by the delegate, at least by citation of the accused. b) A delegate cannot subdelegate, unless he has a special commission for this, or unless he is delegated by the Roman Pontiff or for the universality of causes, and, in both cases, by way of office (cf. n. 322).

1258. IV. For the valid exercise of the power of issuing censures there are required: the intention of binding and a power unimpeded as to use. The first is evident. As to the second, everyone knows that the excommunicated, suspended, heretics or schismatics, if they are to be avoided, can issue no censures, since their power is bound by Law (VII, 12).

Note. He who issues a censure from grave fear validly binds the censured person; because an act done from grave fear does not of itself take away the voluntary; it is therefore valid, unless it is specially nullified by positive Law. Concerning absolution from censures extorted by grave fear, see what is to be said n. 1286.

Corollaries. Since the power of issuing censures is something annexed to legislative power, the following things follow:

1. A Bishop existing OUTSIDE his own diocese can issue censures upon subjects, by way of statute, or precept, for preventing future crimes, because for issuing a censure in this way judicial noise is not required; but not by way of sentence, because no one is able to exercise contentious jurisdiction in another's territory.

Except: a) If the contumacy of the delinquent subject is so manifest that it does not need cognition of the cause. b) If the cause has already been judicially cognized in his own territory. c) If the Bishop has been unjustly expelled from his diocese; in which case, he can exercise his jurisdiction in nearer places, permission having been sought from the Ordinary of the place, although not obtained. d) If, in other cases, the Ordinary of the place consents; provided that the consent of the parties also accedes, because no one can unwillingly be drawn outside his territory (VII, 21).

2. Regularly it is not expedient that a Superior issue censures in his own cause; this is reputed in Law as vengeance.

Except: a) if it is done not by way of judgment, but by way of defense, against him who inflicts violence; because it is permitted to repel force by force; b) if the cause is so public and manifest that it can neither be denied nor needs any examination (Konings, 1662).

§ 2. ON THE SUBJECT OF CENSURE. 1259. PRINCIPLES. I. A Superior can issue censures upon all and only his subjects. The reason is that subjection and jurisdiction are correlative (VII, 13). Therefore, that someone may be able to be bound by censure, it is required: 1. That he be a man; for against demons the Church uses exorcisms, not censures. 2. Baptized; whence heretics can be excommunicated, but not catechumens. 3. A wayfarer; because the dead are only

declared excommunicated, or are deprived of suffrages and ecclesiastical burial. 4. Not exempt; because through the privilege of exemption jurisdiction is taken away, namely within the limits of the exemption.

1260. From these things you will gather: a) THE POPE cannot be bound by censures; not indeed by another, because he has no superior; nor by himself, because he is not bound by his own precepts by coercive force.

b) BISHOPS are not bound by censures emanating from themselves, because no one is his own subject. Indeed, by privilege of Law, Bishops and Cardinals do not incur suspension or interdict, unless express mention is made of them, at least indirectly, for example by the clause: "even those worthy of special or individual note." But they are subject to papal excommunication excepted above, even if in the law no mention is made of them (Giraldi, *Exp. Jur. pont.*, P. I, s. 623).

c) KINGS and QUEENS, although they are subjects to Bishops in spiritual matters, nevertheless cannot, by custom, be bound by censure by them. But they are subject to pontifical censures, even those issued by Law, for example against invaders of the temporal dominion of the Holy See and their helpers (VII, 16).

d) EXEMPT RELIGIOUS cannot be bound by the censure of a Bishop. Except if they offend concerning those things in which they are subject to the Bishop as apostolic delegate, for example concerning the celebration of Mass. Indeed, some religious, as mendicants and Jesuits, enjoy a broader privilege, so that they can never be punished by episcopal censure, except in one or another case in which their privileges have expressly been derogated. Nevertheless they can be coerced by other penalties (St. Alph., *de Privil.*, 75; H. Ap., XIX, 43; cf. Lehmkuhl, II, 1117).

1261. • II. Censures are not usually issued against prepubescent persons, nor against indeterminate persons. Thus from the practice of the Church (VII, 14-19).

1262. As regards prepubescent persons, if they are already capable of deceit,1 all authors indeed affirm that they can be bound by censure, by way of law or precept. But since prepubescents cannot defend themselves in judgment except through another, there is controversy whether they can also be bound by a censure which is issued by way of sentence.

Each opinion indeed is probable; but in fact, from the common interpretation of laws it is certain "that censures generally issued by Law or by man are not incurred by prepubescents, unless this is expressed in the law: as it is expressed concerning the entrance of boys into monasteries of nuns, and concerning prepubescent strikers of clerics," as we shall note below, n. 1329 and 1333.

2. But as regards indeterminate persons, they indeed can be punished by censures which are issued after the manner of statute or precept (cf. n. 1254).

However: a) EXCOMMUNICATION which is inflicted by way of sentence is null, if it is issued against some uncertain person from a community, for example in these words: he who has perpetrated such a delict, let him be excommunicated.

But if all of some community, after examination has been made, are found guilty, the whole community can validly and licitly be excommunicated by the Pope; but by other Superiors it would be excommunicated illicitly, since this is prohibited by positive Law; and also invalidly, according to the probable opinion. Wherefore the Bishop or prelate ought to excommunicate each guilty person by name.

b) SUSPENSION and INTERDICT can indeed be issued by way of sentence against a whole community, for example against a college or chapter; but then personal rights remain intact, as will be explained in its own place (n. 1303, 5).

1262. III. A subject offending in another's territory or in an exempt place cannot of himself be punished by his own Superior with censure. For a censure issued through a general statute immediately affects the territory, and is restricted to it; when intimated through a particular precept, it touches the delinquent only in the case in which the Superior, before the delinquent's departure, should impose on him the precept under censure (VII, 23). Here the axiom holds: "He who pronounces law outside his territory is not obeyed with impunity" (l. fin., ff., *de Jurisdict.*).

This opinion is probable, St. Alphonsus being witness (l. c.). There is another opinion, which appears a little more probable to our holy Doctor, resting on this principle, that a precept affects the person and clings to the bones. Whatever the case may be, a censure inflicted by way of sentence touches the subject, even if he exists in another's territory: if he offended in his own territory, or if the delict has its effect in it, for example if a cleric ordered to go to a synod does not obey. But otherwise in other cases (VII, 22).

IV. Travelers or wanderers can be bound by censure by the Superior of the place in which they offended, provided it is done by way of sentence. For any delinquent obtains the forum of the place in which he has sinned.

Yet observe: 1. an inferior cannot bind his own Superior by censure if that Superior has offended in the territory of the inferior; 2. a delinquent traveler, that he may be punished, must by law be warned: for only the contumacious obtain the forum of the place; furthermore, he must be anticipated by citation before he leaves the territory, so that thus, by reason of the judgment begun, he remains subject to the Superior of the place.

We have said: provided it is done by way of sentence; for more probably a delinquent traveler cannot be punished by the Superior of the place by way of statute or particular precept; because a traveler (cf. n. 204), unless he has acquired at least a quasi-domicile, is not certainly subject to the Superior of the place (VII, 26, 27).

IT IS ASKED. Can someone be bound by SEVERAL censures at the same time?

Resp. In the affirmative, because it is not repugnant for someone to be constrained by several chains at the same time, and, being released from one bond, to remain bound by others.

This indeed can happen in a threefold way:

1. If the guilty person has committed several sins to which some censure is annexed. Thus, for example, he who believes a heretic and reads his book is entangled in a double excommunication (cf. n. 1314, 1316). Likewise, he who twice absolves an accomplice from the sin of complicity, or struck two clerics, although by one act.

2. If several legislators have inflicted a censure on the same sin. Thus, for example, he who kills a cleric, although already excommunicated by the Pope, can also be excommunicated or suspended by the Bishop, either by sentence, or by statute, for example one issued against murderers. Thus more probably Suarez with others; and the reason is that the jurisdiction of one legislator does not take away the jurisdiction of another. "This, however, must be understood if the second Superior intends to impose a new penalty; otherwise regularly, the second censure, if it is of the same species, is held as an innovation or publication of the first."

3. If, because of one and the same sin, the same legislator has inflicted several censures of diverse species. Thus, for example, Bishops, because of intrusion, incur the double penalty of suspension and interdict: from the Constitution *Romanus Pontifex* (cf. n. 1375 and 1376). - We have said of diverse species; for it seems alien to Law that someone, because of the same sin, be punished by the same legislator with several censures of the same species, for example one reserved and another non-reserved (VII, 28).

1 This must always be presupposed; for censure, since it is a penalty, always prerequires on the part of the one to be punished the use of reason: whence the perpetually insane cannot be punished. As regards those who have lucid intervals, they can be bound by censures to which they gave cause during the use of reason. The Superior of whom there is speech here is not the Supreme Pontiff, to whom the whole world is subject, nor a regular Prelate, who governs his own by precepts, and therefore can everywhere touch persons subject to himself. The question concerns other Ordinaries.

§ 3. ON THE CAUSE OR MATTER OF CENSURE. 1263. PRINCIPLE. Censures are not usually inflicted except because of a grave, external sin, consummated in its own genus, conjoined with contumacy. Thus from the use and practice of the Church. Therefore, unless the law expresses otherwise, all these conditions are required for the validity and effect of the censure. If doubt is present in relation to the enumerated conditions, see below n. 1273.

There must be present: 1. SIN: for censures are medicinal penalties, as has been said (n. 1251).

Among censures, however, there is this distinction: a) excommunication, as being the gravest penalty, is not inflicted except because of personal fault; b) but suspension and interdict can be issued against a community, because of its fault or that of its head, so that they even bind the innocent, insofar as and as long as they belong to the community. To this pertains Rule 23 of Law in the Sixth: "Without fault, unless a cause is present, someone is not to be punished." Yet it is probable that suspension and interdict, for those who have admitted no fault, do not assume the nature of a true censure, but rather of a simple privation, whose violation, although culpable, does not carry irregularity with it.

2. GRAVE, either of itself, by reason of matter, or from an adjoined circumstance of scandal, danger, intended end, and the like. The reason is that a penalty, by both natural and divine Law, ought to be proportionate to the fault (VII, 31).

In doubt concerning the gravity of the matter, a precept imposed under censure obliges, because the power of the Superior possesses. But prelates ought carefully to beware lest they burden subjects with censures because of matters not so grave, when it is not established for them that those matters conduce greatly to a good end. These things are to be understood of a grave and properly so called censure; for suspension or interdict for a short time, and depriving one only of some use, can be inflicted because of venial sin, as is commonly taught (VII, 337).

3. EXTERNAL, although perhaps it remains occult; for the Church, in the external forum, does not judge concerning merely internal sins: therefore neither can she punish them. Indeed, for a grave censure, the sin ought to be grave as to the substance of the external work.

Whence a mortal act from evil intention alone, or from an erroneous conscience, does not suffice. Thus, for example, he does not incur excommunication who strikes a cleric altogether lightly, although with the intention of killing him; nor he who strikes a table, or says: "so it is," intending to confirm an internal heresy etc.; nor finally he who falsely thinks himself to violate a law, for example by reading a book which he believes to be condemned: for all these indeed sin against conscience, but not against Canon Law (VII, 34).

4. CONSUMMATED IN ITS OWN GENUS, that is, completed in work and indeed as to the lowest species; unless the words of the law express otherwise. The reason is that penalties and odious things are to be restricted. Hence he is not bound by censure who only counsels some crime, if in the law no others than the perpetrators are noted; but he will be bound if the law also designates counselors, or those cooperating in any way.

Wherefore St. Alphonsus notes: a) If the censure is issued principally against doers, and accessorily against commanders, counselors, etc., the commander, counselor, or one casting a vote does not incur it if the command, counsel, or vote did not effectively influence the crime, or if the crime was not carried through to effect. Thus, for example, he is exempted from excommunication who gave a command or counsel to him who was already prepared to perpetrate the delict; likewise, the one commanding a cleric to be struck is exempted if in reality the striking did not happen. And the same must probably be said if it is doubted whether the command or counsel influenced. b) On the contrary, if the censure is issued principally against commanders, counselors, etc., it is incurred as soon as the command or counsel is given, although the effect does not follow. The reason is that then the censure is imposed precisely because of the command or counsel, and not because of the work to be caused from the command or counsel (VII, 36-39).

5. CONJOINED WITH CONTUMACY, which indeed imports at least virtual contempt of the censure.1 For it is clear from the use of the Church and from the nature of censure that this is not incurred except by him who spurns the warnings of the Church, or who, after the precept or statute of the Superior issued under penalty of censure has been known, does not desist from sin. The words of Christ indicate the same, saying (Matt. 18:17): *But if he will not hear the Church, let him be to thee as the heathen and the publican* (VII, 43, 54).

6. From these things you will gather: a) Censure cannot be inflicted because of a PAST sin, for example blasphemy, unless this has, as they say, a successive tract into the future. - Therefore, because of theft someone can be excommunicated if, warned under penalty of censure, he refuses to restore. - Apply the same to the case of scandal given and not yet repaired.

b) More probably censure is not incurred if someone, BEFORE the evil work is consummated, revokes the command or counsel as much as he can, or, not being able to impede the consummation of the delict, at least warns the one to be injured that he should take care for himself. - Likewise, one who gave poison to a cleric, and before the poison begins to operate retracts his intention and sees to it that the effect is impeded, probably does not incur excommunication. - The reason is that, in these cases, the delinquent is no longer contumacious at the time at which the sin can be said to be consummated in work. - Nevertheless, restitution is subject to other rules, as was seen n. 949.

Note. Some authors with Ballerini indeed defend another opinion, but the opinion of the holy Doctor seems safe to us (cf. *Vind. Alph.*, P. VIII, q. 1).

1 Virtual contempt is present if someone habitually knows that such an action is prohibited under penalty. Others use the name: general contempt.

§ 4. ON THE FORM OF CENSURE. FORM, or the formality required in issuing censures, regards either the warning of the guilty person, or the sentence of the judge.

1265. - A. On warning. Warning is defined: a declaration made by the judge to the delinquent that he is about to incur censure if he does not come to his senses, or does not obey. It differs from citation, which is intimated to the accused, that he should present himself before the judge for his defense, or to hear the sentence.

1266. PRINCIPLES. I. Censures should never be issued without some previous warning. For censure is issued to break the contumacy of the guilty person;

but the guilty person cannot be said to be contumacious unless he has been forewarned concerning the penalty to be inflicted (VII, 51-53).

We have said 1. Censures, that is, properly so called; because, if suspension or interdict is issued by way of pure penalty, warning is not necessarily to be sent beforehand.

2. Should never be issued; because warning is required for the liceity of a censure, in every case.

But whether it is also required for validity is a controverted question. The more common and more probable opinion indeed affirms; but the denying opinion is also probable, at least with respect to the Roman Pontiff, if he should act from the plenitude of power.

3. Without some warning; so that it may be understood that a different one is required according to the diversity of the case.

For if a censure is issued by man by way of sentence, canonical warning is required, as above. But if it is issued by Law or by man, by way of precept, with respect to a future act, then the law itself or the precept sufficiently warns, nor is another warning required, unless Law prescribes it. And the same must more probably be said if the censure is threatened by Law, or *ferendae sententiae*; because in this case also the law sufficiently admonishes (VII, 53, 55).

1267. II. From Canon Law, for the liceity of a censure judicially to be issued there is required a threefold warning, or at least one peremptory warning. This is gathered from c. *Const.*, *de Sent. excomm.*, in 6.

A peremptory warning is that in which it is expressed that it is valid for a threefold warning, and in which time for coming to one's senses equivalent to the time of three warnings is conceded, namely two days for each warning, and therefore a space of six days: for example, "we command that within six days you cast such a woman out of the house; otherwise by the very fact you are excommunicated." But from a just cause, the three spaces can be reduced to one day or to a briefer time; but if there is danger in delay, as if it is a question of repressing violence, for example of church-wardens refusing to open the doors of the church, a single warning suffices, provided that time for coming to one's senses, say the space of one hour, is designated (VII, 56-58).

1268. B. On the sentence of the judge. The following are to be noted:

1269. That a censure be issued licitly by way of sentence, it is required that the judge issue it in writing, noting in it, and indeed distinctly, both the person, and the censure, and the cause in species. But if the one to be censured demands for himself a copy of this writing, it must be furnished.

It was said licitly; for if the censure is issued with the solemnities disregarded, it is indeed valid, but the judge, unless excused by necessity or ignorance, sins gravely (VII, 50).

2. The censured person, so that he may come to his senses more quickly, ought, unless circumstances suggest otherwise, to be denounced.

Moreover, if he has been censured by man, the denunciation is to be made by the author of the censure itself, or by his delegate, and indeed publicly, for example in the church, at the time of Mass or sermon, by the living voice, or through a sheet affixed to the doors of the church, according to the custom of the region. But if he has been censured by common Law, the denunciation, in the same way, is to be made by the Ordinary of the place in which the censure was incurred. But then, before denunciation, there ought to precede the citation of the guilty person, to be made by his own Superior, a term having been given to him for declaring his right; otherwise the denunciation will be null, unless perhaps, Bonacina excepts, the crime is so notorious that it is evidently established that no defense is available to the guilty person (VII, 55 and 65, note 3).

3. As soon as the guilty person offers satisfaction, he is to be absolved.

ARTICLE III.

On Causes Excusing from Censure.

1269. Four things excuse from censure: 1. ignorance; 2. fear; 3. impotence; 4. nullity of the censure.

I. IGNORANCE excuses; because he who does not know the censure cannot be said to be contumacious. And this is true even if the ignorance is merely concomitant, for example when someone kills a cleric not knowing that he is a cleric, but so prepared in mind that, if he had known, he would also have killed him.

Hence: 1. Ignorance excuses both of law, when someone, namely, is ignorant either that the crime is prohibited by the Church, or that a censure is annexed to the crime; and of fact, when someone is ignorant that he is positing an act forbidden

under censure. Thus, for example, you are excused if you do not know that the book which you read or retain has been prohibited by name through Apostolic Letters.

2. Even vincible ignorance excuses, if it is not gravely culpable. For light fault is not punished by a grave penalty. But ignorance GRAVELY culpable generally does not excuse; because this can practically be called crass. Now in Law it is said: "We do not wish the ignorant to be bound; provided, however, that their ignorance has not been crass or supine" (Boniface, c. 2, *de Const.* in 6).

3. Even gravely culpable ignorance excuses sometimes; namely when in the decree of censure it is said: "he who shall have done this knowingly, deliberately..." or also: "he who shall have presumed..., by rash daring," or something similar, by which certain knowledge or a direct and perfect voluntary is required (cf. n. 220).

But whether affected ignorance itself also excuses in this case is disputed. Others more commonly deny it; because this includes deceit and is equivalent to knowledge. But others, and not improbably, affirm it, at least if it is a question of a censure inflicted on those sinning knowingly; because he indeed who knowingly sins against the law truly contemns it; but he who sins from affected ignorance, although he wishes to be ignorant so that he may sin more freely, nevertheless demonstrates some reverence toward the law, while he seeks to be ignorant of it from fear that, if he should know it, he may be drawn back from sin: therefore he shows virtual deceit, not formal deceit (VII, 45-48, 301).

1270. II. GRAVE FEAR excuses as often as it frees from a delict against ecclesiastical law. The reason is that censure, as a sanction of law, is not incurred except because of transgression of the law itself.

We have said: as often as it frees from a delict against ecclesiastical law; now, grave fear of imminent harm from observing an ecclesiastical law, and consequently from delict, excuses, unless from neglect of the law a greater harm follows than is the inconvenience which its fulfillment carries with it (cf. n. 223).

This holds even in the case in which fear would not excuse from fault against divine Law. Thus, for example, he who from fear lest he himself be killed, kills a cleric, certainly sins against the law of God; but because of the straits of the case, ecclesiastical law ceases to oblige, and therefore the censure is not incurred. But otherwise, if the law of the Church is of such a kind that it obliges even with fear of grave evil; if, say, its observance is morally necessary for the public good, or if its violation yields to contempt of faith or of ecclesiastical power (VII, 46; H. Ap., XIX, 8, 2). Cf. *Nouv. Rev. Theol.*, 37, p. 524.

Note. If it is a question of a censure established against those presuming, even light fear would excuse from incurring it.

1271. III. IMPOTENCE, whether physical or moral, likewise excuses from censure, as is evident. Thus, for example, he who does not have whence to restore, or who cannot restore without grave inconvenience, does not incur censures issued against retainers of another's goods (VII, 42).

1272. • IV. NULLITY OF THE CENSURE can be had from a threefold head:1 1. From defect of the one issuing it, that is, if he lacks jurisdiction, whether he has it impeded through censure, or suspended through a legitimate appeal which has been interposed before the sentence was absolutely issued. 2. From defect of form, that is, if the substantial order of judgment is omitted; as, if the guilty person is not cited, nor warned under threat of censure, according to what was said n. 1266. 3. From defect of a just cause, or matter (VII, 50, 51, 66).

But a just cause can fail in a threefold way: a) "If it subsists neither on the part of the thing, nor according to the allegations of the external forum. b) If on the part of the thing the crime indeed subsists, but not in order to judgment, because the guilty person does not confess it, nor is he legitimately convicted of it. c) If on the part of the thing the crime does not subsist, although it is juridically proved, and therefore the judge has a presumed title or cause. In which case, although the sentence on the part of the thing is unjust, and therefore more probably the censure does not bind in the forum of conscience, nevertheless in the external forum it must be observed, because of scandal" (VII, 66). Whence for the external forum he needs absolution who contracted marriage before a little minister (Holy Office, 1892).

1273. IT IS ASKED. In DOUBTS concerning censures, what is to be held?

Resp. 1. In a doubt antecedent to action, he who suspects that a censure is annexed to his action ought to inquire into the truth. If, after diligence has been applied, he does not find it, he is excused from censure by reason of invincible ignorance.

But if in inquiring he neglects all diligence, or uses only very little, he will not be immune from crass ignorance, and consequently is not exempted from censure, unless in the law it is said: he who shall have done this knowingly, etc. See what was said n. 1269, 3.

2. In a doubt consequent to action, that is, in doubt whether a censure has been incurred or not, "in the forum of conscience we are not held to conduct ourselves as censured persons."

And this whether the doubt is of fact, that is, concerning the crime, for example whether the striking of a cleric was gravely injurious; or whether the doubt is of law, that is, concerning the sentence, suppose if it is doubted whether a censure was *latae* or *ferendae sententiae*, or whether a condition placed in the sentence has been fulfilled or not. The reason, for doubt of fact, is that no one in doubt is to be stripped of his right of communicating with the Church, which he possesses; but for doubt of law, because penalties are to be restricted, whence in doubt they are not incurred.

3. In a doubt concerning the cessation of a censure certainly inflicted, that is, if the censured person doubts concerning absolution obtained, concerning the effect of an appeal interposed, and similar things, he ought still to hold himself as censured; because possession stands for the law, or for the Superior.

And the same must be said if he doubts concerning the power of the Superior, when this Superior peacefully possesses it. Likewise, more truly, in doubt whether the censure is just or not, whatever some say; because even in such a doubt, the power of the Superior possesses (n. 55). Cf. St. Alphonsus, VII, 45, 67, 68; D'Annibale, *Summula*, I, 312.

1 The things noted here refer to censures issued by man alone. Cf. Aertnys (l. VII, n. 17), who explains these things lucidly.

ARTICLE IV.

On Absolution from Censures.

Three things are to be weighed: 1. how incurred censures are released; 2. who can absolve; 3. what conditions are required.

§ 1. HOW CENSURES ARE RELEASED. 1274. DEFINITION. The absolution of a censure is the relaxation of the penalty itself, made by the power of the keys, through a fit Superior. Of itself and primarily it is an act of jurisdiction of the external forum, just as the infliction itself of censure is. It differs from dispensation, which takes away the bond of a law or precept (cf. n. 227).

DIVISION. Someone can be absolved from censure in manifold ways: 1. as to all effects, or only as to some; 2. absolutely or conditionally; 3. with falling back; 4. for caution (D'Annibale on the Constitution *Apost. Sed.*).

Now: 1. Absolution is given ordinarily to take away ALL EFFECTS; sometimes it is given FOR A PARTIAL EFFECT, for example to remove privation of active voice in a canonical election.1

This, however, is improperly called absolution, because it presents the appearance of a dispensation (VII, 125, end).

1 Thus, for example, censures by which the Cardinal electors of a new Pontiff perhaps are punished are suspended for the effect of election, while otherwise remaining in their force (Const. *Vacante Sede Apost.*, n. 29 and 79; *Acta Pii X*, vol. 3, p. 253 and 282).

2. Absolution can be given UNDER CONDITION, either concerning the past, for example: "if you have already satisfied, I absolve you"; or concerning the present: "if I can absolve"; or concerning the future: "if you will satisfy hereafter, now for then I absolve you."

This last absolution, however, is illicit, unless it is made honorable by some grave cause, say, if afterward he from whom the censured person can be absolved would be lacking (VII, 123).

3. Absolution is sometimes given WITH FALLING BACK, which is a species of condition; namely so that the absolved person, unless within a certain time he shall have performed something, for example unless within a month he shall have restored, or gone to the excommunicating one, falls back by the very fact into the same censure.

Moreover, falling back is by man or by Law: a) It is by man, as often as it is adjoined by the will of the absolving Superior himself. b) It is by Law, when it is imposed by force of law: which is done, for example, when someone, either in urgent necessity, or in the article or danger of death, is absolved from censures reserved to the Pope in a special way (VII, 86, 87, 125). See what is to be said n. 1282 and 1284.

4. Absolution FOR CAUTION is that which is given to remove or to suspend a censure perhaps unknown.

Of this kind is that which is given before absolution of sins, to avoid irreverence; or before conferral of orders, benefices, etc., to remove the impediment of a censure perhaps forgotten, or incurred with crass ignorance. Cf. Sanchez, *Decal.*, l. I, c. 10, n. 55.

Note. It is EXPEDIENT to give absolution for caution as often as there is doubt concerning excommunication incurred: a) because, once it has been given, the censure ceases, even if afterward it appears certain; b) lest perhaps, in doubt of fact, whether someone has really contracted it, whether he has been absolved from it, he remain outside the Church, bereft of her goods; for in such a doubt, our false estimation does not change the truth of the thing. Nor ought the form of absolution from the Roman Ritual to be vain and useless. Otherwise in doubt of law, because a doubtful law certainly does not oblige (Lugo, *de Poenit.*, disp. 20, n. 22, 23).

1275. • PRINCIPLES. I. Censures once incurred are removed through the absolution alone of a legitimate judge. This is clear from the sacred canons (VII, 122).

Hence: 1. Censure is not removed through the amendment of the guilty person; which moreover is clear from proposition 44 condemned by Alexander VII: "As regards the forum of conscience, when the guilty person has been corrected and his contumacy has ceased, the censures cease." 2. It is not removed by the death or removal of the one issuing it, as is clear from c. *Pastoralis*, *de officio judicis ordinarii*; and the reason is that a penalty once inflicted passes into a matter adjudged. 3. It is not removed by the death of the censured person, as is clear from c. *Sacris*, *de Sent. excomm.* Wherefore a dead person, although he died contrite, is deprived of the suffrages of the Church and ecclesiastical burial.

It was said: 1. Censures, that is, properly so called; for suspensions and interdicts which are inflicted by way of vindicative penalty cease, not through absolution, but through time elapsed, or a condition fulfilled, or through dispensation of the Superior (cf. n. 1305). - 2. Once incurred; because censures not yet incurred are deleted either by abrogation of the law, or by revocation of the precept, or also by the death of the Superior issuing a particular sentence.

1276. II. Absolution from censures can be given both in the external forum and in the internal forum. Indeed, since censure without fault cannot even be understood, in the sacramental forum absolution must be given at the same time from censures and from sins, but first from censures. If absolution from censures is given after absolution from sins, it is gravely illicit, nevertheless valid; and if the penitent, in receiving it, was in good faith and otherwise disposed, absolution from sins also will be valid (VI, 430, end; VII, 70, 126).

1277. • III. The value of absolution from censures is one thing in the external forum, another in the internal forum. Absolution given in the external forum always avails for the internal forum. Given in the internal forum, it does not profit before the judge or the faithful unless it is publicly established, for example if it is known that the censured person has confessed and has offered satisfaction, if any was necessary. But prudence forbids that absolution in the internal forum be granted if the case has already been brought into the contentious forum or is soon to be brought there (Suarez, *de Cens.*, disp. 7).

A great difference intervenes between absolution from SINS and absolution from CENSURES.

1. The former is given to reconcile us to God; but the latter to restore those things which are proper to the Church militant. 2. The former extends to all sins, but the latter is sometimes restricted to one censure. 3. The former is given only to the contrite and willing; the latter is validly granted even to the contumacious, and to the unwilling themselves; indeed also licitly in some cases, for example when this conduces to the common good. 4. The former, of itself, is absolute; the latter is often given under condition, from day to day, with falling back, for caution, for a particular effect, etc. 5. The former is given only to those present; the latter is rightly given also to the absent by letters or telephone or intermediary, if an urgent cause is present, except if it has been committed to someone to absolve in the form customary to the Church. 6. The former is given by an approved priest alone; the latter can be given by a simple cleric endowed with due faculty. 7. Finally, sins can be absolved not only directly, but also indirectly, that is, by concomitance with those things which are subject to the keys; but censures are absolved only directly; because among them there is not a necessary connection, but they are held like chains, some of which are released without the others (VI, 597, 618; VII, 117, 131).

§ 2. WHO CAN ABSOLVE FROM CENSURES.

1. REGULARLY, outside necessity. 1278. PRINCIPLES. I. From a censure inflicted through a particular sentence upon a determinate person, no one can absolve except he who inflicted it, or his successor, or Superior, or the delegate of these. Such a censure, from its own nature, is most specially reserved, even in a Jubilee; and the reason is that otherwise the order of judgments would be disturbed (VII, 72; H. Ap., XIX, 11).

Wherefore St. Alphonsus notes: "1. That a Bishop, even in another's territory, can absolve his own subjects, in the forum both external and internal, whenever the absolution is without judicial noise. 2. That if someone offends in another's territory, and is specially excommunicated by that Bishop, he cannot be absolved by his own Bishop, except by permission of the Bishop of the place" (cf. n. 204).

1279. II. From censures issued, whether by Law, or by man through a general sentence against indeterminate persons, which censures are equated with censures issued by Law, if they are not reserved, any confessor can validly and licitly absolve, for both forums. Thus commonly, from the concession of Innocent III, c. *Nuper*, *de Sent. excomm.*, and from the universal practice of the Church.

We have said: 1. From censures, for otherwise, if some penalty, stated under the form of censure, is really vindicative (cf. n. 1300). 2. Any confessor, namely approved, and having jurisdiction over the censured person. But a simple priest, outside the case of danger of death, cannot absolve anyone even from excommunication reserved to no one, whatever some say. 3. For both forums: whence this absolution can be given both outside and within confession, and it avails also for the external forum, in non-contentious cases, according to what was said n. 1276 (VII, 70-73).

1280. • III. From censures reserved by Law no one can absolve, except he to whom they are reserved, or his Superior, or successor, or one duly delegated. This is clear from c. *Nuper*, *de Sent. excomm.*, and from Trent, Sess. 14, c. 7.

As regards delegated faculty let the following rules stand:

FIRST RULE. If censures are reserved to the Roman Pontiff in a special way, for absolving, outside the case of necessity, a special concession is required, which is not usually granted by the Holy See except for a time, or for the life of the person, or for a certain number of cases.1 This is clear from the practice of the Holy See and from the Constitution of Pius IX, by which censures were limited, and at the same time all real privileges were revoked, as regards absolution from censures, whether specially or simply reserved.

Moreover, the SPECIAL concession is made, for example, through the indult of a Jubilee, through a little document of the Sacred Penitentiary, through quinquennial faculties and other personal faculties of this kind. The Pontiff did not revoke these faculties, as is clear from an oracle of the living voice promulgated by the Holy Office, 1 Feb. 1871.

SECOND RULE. If censures are simply reserved to the Roman Pontiff, Bishops in their own diocese can, by themselves or through another specially to be deputed for this, absolve any of their subjects; but only in occult cases, and in the forum of conscience. Thus from the celebrated chapter *Liceat* of the Council of Trent, whose disposition Pius IX confirmed in the Constitution *Apostolicae Sedis*.

Now these are the words of Trent (Sess. 24, c. 6, *de Reform.*): "It is permitted to Bishops, in all irregularities and suspensions proceeding from an occult delict, except that which arises from voluntary homicide, and except others brought to the contentious forum, to dispense; and in any occult cases whatever, even those reserved to the Apostolic See, to absolve, gratuitously, in the forum of conscience, any delinquent subjects of their own, in their own diocese, by themselves or by a vicar specially to be deputed for this, a salutary penance having been imposed."

Under the words: 1. Bishops, there also come Abbots having territory, capitular Vicars, and others enjoying episcopal jurisdiction (VII, 79); but not Vicars general from their general commission (de Privil., 31); nor regular prelates, as is clear from the Response of the Sacred Penitentiary, 5 Dec. 1873. Cf. Lehmkuhl, II, 1123. 2. Through another specially to be deputed… understand either for one case, or for all cases, provided the delegation is made not to all in common, but to individual persons, this faculty being expressly named, as the authors most commonly interpret (VII, 93; de Privil., 34; cf. *Ami du Cl.*, 1911, p. 223). 3. Their subjects… understand those staying in the diocese, or even outsiders approaching the sacred Tribunal in the diocese: because by this very fact they become subjects as regards absolution, although not yet as regards dispensation from an irregularity or suspension reserved to the Pontiff (VI, 593). 4. In occult cases, which namely are not formally notorious, either by notoriety of law, or by notoriety of fact, according to the sense which we stated n. 1190. 5. In the forum of conscience, that is, in the sacramental forum, as St. Alphonsus judges more probably (*de Privil.*, n. 29); or at least not in the external and contentious forum, as is altogether certain from Trent (cf. n. 138).

THIRD RULE. If censures are reserved to Bishops, or Ordinaries, by pontifical Law, Bishops, Abbots, capitular or general Vicars, and all Ordinaries can absolve, in both forums, from cases even notorious.1 In the internal forum, regulars can absolve from cases not brought to the judicial forum nor easily to be brought there (I, App. II, n. 100; ed. G., I, p. 239): for nothing, as regards cases reserved by law to ORDINARIES, has been innovated through the Bull *Apostolicae Sedis*.

Under the name of Ordinaries regular prelates also come with respect to their own subjects: for these, as exempt, have no other Ordinaries than their own prelates. Therefore these can absolve their own, even novices and familiars, from

cases reserved to the Ordinary, but not from cases, whether public or occult, reserved in any way to the Roman Pontiff. S. Poenit., 5 Dec. 1873 (ap. Noldin, *de Poenit.*, n. 381). As regards absolution from cases pertaining to internal governance, nothing indeed has been innovated through the Constitution *Apostolicae Sedis* (Holy Office, 22 Mar. 1881), but see the new Decree, 5 Aug. 1913 (cf. what is to be said n. 1762).

1281. • FOURTH RULE. If censures have been reserved by other Bishops, any Bishop can, by himself or through another, absolve from them, but only in occult cases. For it is read in c. *Liceat*: "In any occult cases whatever, EVEN those reserved to the Apostolic See." Whence, the authors say, lest the particle "even" seem to have been placed uselessly, it must be understood that the faculty of absolving from occult censures which other Bishops reserved to themselves is conceded to Bishops. Thus Bonacina (*de Cens.*, disp. 1, q. 3, punct. 2, n. 6), who adds that this seems to be received by custom, which is wont to confer jurisdiction. Cf. St. Alph., *de Privil.*, n. 35.

Nevertheless censures issued through a particular sentence are excepted (cf. n. 1278).

Hence: A simple confessor cannot absolve a traveler from a censure reserved in the traveler's homeland; but a regular validly absolves novices as regards episcopal censures contracted before entrance (VI, 583).

Concerning the faculty of absolving from censures in the time of Jubilee, see the treatise on Penance (cf. n. 1736, B).

2. By way of EXCEPTION, in a case of necessity. 1282. PRINCIPLES. I. Any priest, even not approved, can absolve a censured person constituted in the article or danger of death from all censures issued or reserved in whatever way. This is clear from Trent declaring thus (Sess. 14, c. 7): "Very piously, lest by this occasion itself of reservation anyone perish, it has always been guarded in the same Church of God, that there be no reservation in the article of death, and therefore all priests can absolve any penitents whatever from any sins and censures." See nevertheless what is to be said n. 1753.

1283. Absolution should not be given except those things having been enjoined which must be enjoined by law, as will be explained below (n. 1287). But especially these things are to be noted:

1284. If it is a question of censures reserved to the Roman Pontiff in a special way, the obligation, from the Constitution *Apostolicae Sedis*, remains firm for those absolved to stand by the commands of the Church if they recover: understand under grave sin and under penalty of falling back, as the S. R. U. Inq. defined, on 19 August 1891; on which day it also decreed that the obligation of standing by the commands of the Church imports the burden, either by oneself or through a confessor, of recurring to the Supreme Pontiff and obeying his commands, or of seeking a new absolution from one having the faculty of absolving from censures reserved to the Supreme Pontiff in a special way (*Nouv. Rev. Theol.*, 24, p. 166).

1285. If it is a question of censures simply reserved to the Roman Pontiff, the obligation of presenting oneself to the Supreme Pontiff does not subsist. Holy Office, 17 Jun. 1891 (*Nouv. Rev. Theol.*, ib., p. 159). The same must be said concerning censures which a Bishop has issued, provided the Bishop has not specially reserved the censure to himself (cf. Lehmkuhl, II, 1125).

1286. II. In an urgent case, any approved confessor can directly absolve from any cases and censures reserved to the Holy See, with the obligation imposed of recurring within a month to the competent authority to hear the commands, under penalty of falling back. This is clear from various documents of the Holy Office and Sacred Penitentiary, especially from the Decree of 23 June 1886 (*A. S. S.*, 24, p. 744); through these a new order is instituted in the absolution of censures and reserved cases. Cf. also *A. A. S.*, I, p. 677.

It is said: 1. In an urgent case; this is verified not only when there is necessity of celebrating, communicating, or danger of infamy, but also if it is hard for the penitent to remain in sin so long until the Roman Responses arrive (Holy Office, 18 Jun. 1897; *A. S. S.*, 30, p. 124). On this point the conscience of the confessor is burdened.

2. Directly absolve, so that a new sacramental accusation of this sin is not necessary (Holy Office, 19 Aug. 1891). Nevertheless, if someone, absolved in this way, does not seek the commands from competent authority, and approaches an inferior endowed with delegated faculty to receive the commands, he will be able to be absolved only after a new confession of the sin (ib.).

3. From any cases… reserved, so that it is understood that no exception is given: neither as regards censures even most specially reserved to the Supreme Pontiff, nor as regards suspensions, nor even as regards occult irregularities arising from censure (S. Poenit., 7 Nov. 1888; Holy Office, 19 Aug. 1891; 6 Sept. 1909).

4. With the obligation imposed of recurring within a month etc. The penitent ought to recur by himself or through a chosen confessor; for it is not necessary that recourse be made through the same confessor who absolved the

penitent (S. Poenit., 28 May 1888). Within a month recourse must be made, under penalty of falling back into the same censure.

5. Of recurring to the competent authority. The competent authority is the Holy See, or also the Bishop or Vicar general, if namely he uses quinquennial faculties for absolving from papal cases.

As we have already said, the competent authority from whom the commands must be received without the burden of confession is not a privileged confessor.

Note. a) Sometimes the penitent can neither personally go to Rome, nor send a letter. Then the obligation of recurring ceases, if the penitent cannot present himself again to the same confessor, and it is hard for him to go to another confessor. It is known to all that this is often verified during missions; because either the missionary imparts absolution outside the place of his domicile, or the penitent makes confession outside his own domicile; whence the response of the competent authority, because of the departure of the confessor, cannot personally be notified to the penitent. Cf. Resp. Holy Office, 9 Nov. 1898; 5 Sept. 1900.

b) This impossibility of recurring, as is evident, is never present for a priest penitent (Holy Office, 3 Jun. 1899). For generally, as often as the penitent can recur to the competent authority, he is bound to recur (Van Rossum, *Nederl. Kath. Stemmen*, 1902, p. 165-172).

1 There are also two cases which are reserved to the Supreme Pontiff in a stricter way: namely the attempted absolution of an accomplice and, but without censure, the false denunciation of a confessor (cf. n. 1736, 1772).

1 Therefore cases reserved to Ordinaries by pontifical Law should rather be called papal. From this it follows that those to whom the faculty is conceded of absolving from cases reserved even to the Roman Pontiff can absolve also from the aforesaid (VII, n. 39; *de Privil.*, n. 100). Cf. what is to be said n. 1348.

1285. • YOU WILL ASK. Can a SIMPLE CONFESSOR ever absolve from censures reserved to the Bishop?

Resp. He can absolve a censured person constituted in the article of death, as we have just said (n. 1282 and 1283); nor does there remain an obligation, health having been restored, of going to the Bishop, unless the Bishop reserved the censure to himself with that condition.

But whether, besides the article of death, he can absolve one impeded from going to the Bishop is greatly controverted. A sufficiently probable opinion today affirms this, if the impediment is perpetual, that is, to last beyond 5 years, or at least long-lasting, that is, to remain beyond six months, but less than five years.1 In this latter case, however, the absolved person is bound, the impediment having been removed, to present himself to the Superior; otherwise, if the impediment was perpetual. - The reason for these things is that no recent law has abrogated the ancient Law. Cf. St. Alphonsus, VII, 92.

§ 3. WHAT ARE THE CONDITIONS OF ABSOLUTION. Several conditions are required by Law, whether on the part of the absolving person, or on the part of the person to be absolved, or finally on the part of the form (H. Ap., XIX, 14).

1286. I. On the part of the ABSOLVING PERSON, besides power, free will is required, and indeed under penalty of nullity; that is, both grave fear unjustly instilled, and deception and error, must be absent. Whence, if the principal cause is false, for example if the guilty person falsely says that he has satisfied the injured party, the absolution is null, unless the Superior himself absolves and is conscious of the falsity (VII, 132).

What, you ask, if the error concerns the POWER of the absolving person? - Resp. 1. If the error is private, for example of the confessor and penitent only, absolution of the censure, although given and accepted in good faith, is invalid. 2. If the error is common, and the absolving person is commonly held as endowed with faculty, the absolution of censure accepted in good faith is valid. The reason is that, in this second case, because of the common good, but not in the first, the Church supplies jurisdiction. See the treatise on Penance, n. 1754.

1287. II. On the part of the PERSON TO BE ABSOLVED it is required first of all that he himself seek absolution;2 then that he fulfill all the conditions, whether general or special, which are usually placed in Rescripts.

But the general conditions which are usually expressed under this formula: "THOSE THINGS HAVING BEEN ENJOINED WHICH MUST BE ENJOINED BY LAW," are the following: 1. That the guilty person first satisfy the injured party, for example the Church whose goods he usurped; or if he cannot then satisfy, that he provide sufficient caution, or, if he cannot even furnish this, that at least he swear that he will satisfy as soon as possible (I, 204; VII, 128). As regards excusing causes, see n. 1016-1031. 2. That scandal, if it has been given publicly, be repaired in the better way he can,

according to the prudent judgment of the Ordinary or confessor. Thus the Sacred Penitentiary, 10 Dec. 1860. The reason is that repair of scandal is necessary by divine Law. The same must be said concerning removal of the occasion of sin, if it is required (*A. S. S.*, I, p. 565, n. 27). 3. That the one to be absolved from a censure reserved in a special way emit the promise, and in the external forum the oath, of standing by the commands of the Church, as was said n. 1282. 4. That he furnish an oath concerning not perpetrating the crime again, if the crime is very enormous, as would be, for example, the notorious striking of a Bishop or Cardinal, grave striking of a cleric, scandalous violation of a church, etc. (VII, 129). 5. That a salutary penance be imposed and accepted, besides sacramental satisfaction.

1288. IT IS ASKED. Is absolution of a censure given by a DELEGATE invalid when the clauses placed in Law or in the Rescript have been neglected?

Resp. It is controverted. The more probable and more common opinion teaches that clauses which are expressed by an ablative absolute, for example, the party having been satisfied, import a true condition *sine qua non*; whence, if these have been neglected, absolution would certainly be gravely illicit, and more probably invalid. - But the opposite opinion is also probable, which says that these clauses are placed only for admonishing, and therefore that absolution is not invalid unless this is expressed in the Rescript. Therefore a delegate for absolving should take care before the fact to observe accurately whatever things are prescribed by law; but after the fact, if he notices that something has been omitted in good faith, the absolution is not on that account to be held invalid: for we are dealing with a doubt of law, while which stands the Church supplies (VII, 121, 127; Porpora, tr. 22, n. 78).

1289. • III. On the part of the FORM, certain words are not required for valid absolution; but it is required and suffices that the will of the Superior be manifested by some sensible sign (VII, 116). - For absolving rightly in the exterior forum, the form described in the Roman Ritual should be used, either for the living or for the dead. But in the interior forum, the confessor having faculty of absolving an excommunicated person should absolve according to the common form prescribed in sacramental absolution. Thus the Ritual.

Note. He who possesses the faculty of absolving from reserved cases should use it prudently and discreetly. 1. He should warn the penitent that the case is reserved to the Bishop or Roman Pontiff, so that in this way the guilty person may perceive the gravity of the delict. He who acts otherwise, how will he instill horror of crimes of this more atrocious kind, such as the faithful, according to the Council of Trent, ought to conceive? (Pedicini, *La Cost. Ap. S.*, c. 10, p. 56). 2. Prudence is especially necessary when it is a question of an enormous and easily notorious crime, or when the case is easily to be brought to the contentious forum (cf. n. 1276). - Other things as regards delegated JURISDICTION, see in the treatise on Penance (n. 1776).

1 That the nature of these impediments may be better understood, it must be noted that in relation to episcopal cases no obligation of writing is given, unless perhaps the Bishop imposes this (VII, 89); indeed the penitent is not bound personally to go to a privileged person (VII, ib.). Cf. Lehmkuhl, II, 536; Genicot, II, 347.

2 Absolutely speaking, even he who is unwilling or unworthy can be absolved from censure, at least by him who enjoys ordinary power. For such absolution is not necessarily done in the sacramental forum, nor is it sacramental (cf. n. 1277). Indeed it seems that St. Alphonsus (VI, 618) approves Suarez, who says that an absent and ignorant person can be absolved from censure through words of absolution, with no one perceiving them (cf. Lehmkuhl, II, 1121). Absolution from censures, given by means of telephone, can be said to be valid.

CHAPTER II.

On the Various Species of Censure.

St. Alphonsus, VII, 133, sqq.; ed. G., p. 333; H. Ap., XIX, n. 15; Lega, o. c., tit. IV; Giraldi, *Exp. Jur. pont.*, t. 39, s. 919; Pignatelli, *Consult. can.*, consult. 112, 121, 122, etc.; Schmalzgrueber, *Jus eccl.*, tit. 39, vol. XI; Pallottini, *Collect. conclus. Conc. Trid.*, vol. X, v. Excommunicatio, vol. XVI, v. Suspensio; D'Annibale, *Summula*, ed. 5, I, n. 359; Lehmkuhl, Noldin, and others.

There are three SPECIES of censures: excommunication, suspension, interdict.

ARTICLE I.

On Excommunication.

1290. - DEFINITION. Excommunication is a censure through which someone is deprived of communion of the Church (cf. n. 1252).

DIVISION. 1. Excommunication, by reason of effects, is twofold: a) MAJOR, which deprives one of all ecclesiastical communion, that is, of all the common spiritual goods of the Church whose distribution pertains to her.

This is almost always understood when mention is made simply of excommunication.

b) MINOR, by which someone, under grave sin, is deprived of passive communion or reception of the sacraments, and passive election or eligibility to ecclesiastical benefices (VII, 148-150; H. Ap., XIX, 15).

MINOR EXCOMMUNICATION formerly was incurred because of illicit conversation with an excommunicated person to be avoided; but, in present times, this censure has now been abrogated through the Constitution *Apostolicae Sedis*, as is clear from the Response of the Holy Office, issued 10 Dec. 1883, "the word having been had with the Most Holy One" (*A. S. S.*, vol. 17, p. 555). - Nevertheless, communication with those to be avoided is still prohibited (Holy Office, 2 Aug. 1893; cf. *A. S. S.*, vol. 31, p. 41). Likewise, the Bishop can, not indeed by statute, but by name, interdict to someone passive use, or reception of the sacraments, or at least of communion (VII, 148).

2. Of the excommunicated, by major excommunication, some are called tolerated, whom the faithful are not bound to avoid; others non-tolerated, or to be avoided, whom the faithful are bound to avoid, especially in divine things (VII, 150).

Anciently, all the excommunicated, as soon as the incurred censure was established, had to be avoided; today, with attention to the Constitution of Martin V *Ad vitanda scandala*, by which it was permitted to the faithful to communicate, even in divine things, as is more commonly taught, with the guilty bound by any censure whatever, only those excommunicated, suspended, interdicted by name, or notorious strikers of clerics, are to be avoided (VII, 135-144). - Now:

Those excommunicated by name are: a) those against whom sentence has been issued by the office of a competent judge, and indeed with express name, surname, or such a designation as can function in place of the name; b) those whose censure furthermore has been specially denounced in a public place, namely by command of him who issued it (cf. n. 1268). It is not required that they have been excommunicated by the Pope through apostolic letters. Cf. *A. S. S.*, 40, p. 69; 41, p. 141.

A notorious striker of a cleric, that he must be avoided, must commit a crime which cannot be hidden by any evasion, nor excused by any defense. Thus in the Constitution *Ad evitanda*. Therefore there is required: a) notoriety of fact, namely in such a way that the matter is known to the greater part of a college, neighborhood, or a great number of persons; b) a certain notoriety of law; for, until the guilty person is confessed or condemned in judgment, he can always be excused by some defense, by saying, for example, that he struck the other for his own defense, that he was drunk, etc. (VII, 141, 145). Cf. what has already been said n. 1190.

These things having been premised, inquiry must be made concerning the effects of excommunication, both with respect to the excommunicated person and with respect to the faithful.

§ 1. ON THE EFFECTS OF EXCOMMUNICATION IN THE EXCOMMUNICATED PERSON. The effects of excommunication in the excommunicated person are remote or proximate.

1291. I. The REMOTE or mediate effects, which it is helpful to premise, are two: 1. Irregularity, which the excommunicated person incurs if he knowingly and solemnly exercises an act of sacred Order, as will be explained in its own place (n. 1942) (VII, 171). 2. Suspicion of heresy, which he incurs who contumaciously, according to St. Alphonsus in any censure whatever, but especially in excommunication, persists for a year, or, as the laws speak, grows filthy in it. Whence, because he is presumed to think badly concerning the power of the Church, proceedings can be made against him as against one suspected of heresy (VII, 157). Thus from Trent, Sess. 25, c. 3. Cf. *Vind. Alph.*, P. VIII, q. 8.

1292. II. The PROXIMATE or immediate effects are nine, namely: passive and active privation of the sacraments, of divine offices, of the suffrages of the Church, of ecclesiastical jurisdiction, of benefices, of forensic communication, of civil communication, and finally of ecclesiastical burial. - Therefore the excommunicated person is stripped of almost every right which belonged to him as a member of the Church.

1293. He is deprived of the PASSIVE USE of the sacraments; that is, he cannot licitly receive the sacraments, and sins gravely by receiving them, unless he is excused by ignorance, or by necessity of avoiding scandal or some other grave evil (cf. n. 1284). This is confirmed from the Response of the Sacred Penitentiary, 10 Dec. 1860 (*A. S. S.*, I, p. 563).

It is said licitly: because he receives them validly, at least as regards substance. Except the sacrament of Penance, insofar as, from defect of disposition, not indeed by reason of the censure, the penitent cannot receive the grace of the sacrament. If nevertheless he confesses in good faith, he is validly absolved from sins, the censure remaining, if it is reserved (VII, 158, 159).

2. He is deprived of the ACTIVE USE of the sacraments; that is, although tolerated, he cannot licitly confer them, just as he cannot celebrate Mass, unless a case of necessity excuses, or fear of great inconvenience, for example of infamy or loss of goods; or unless he is requested by the faithful, who nevertheless do not need a special reason in order licitly to seek sacraments from one tolerated.

But an excommunicated person to be avoided cannot confer them, even if requested; indeed, the conferral of the sacrament of Penance would be invalid, outside the case of common error, or the article of death; because, outside these cases, he lacks necessary jurisdiction. But for the article of death, he can minister Penance, in the case in which another priest is lacking, just as also Viaticum, or Extreme Unction, if the sick person cannot duly confess (VII, 165-172). From this conclude that schismatic priests, since they are not in the strict sense excommunicated persons to be avoided, absolve validly (cf. Verricelli, *de Mission. Apostol.*, p. 464). Nevertheless Catholics cannot seek absolution from them, as we shall say n. 1439, 1.

Note. But "the use of sacramentals is permitted to an excommunicated person; not indeed so that he may participate in the fruit which they produce from the blessing of the Church, but only so that he may venerate them" (VII, 174).

3. He is deprived of DIVINE OFFICES, that is, he cannot, without grave sin, even on days of precept, be present at the sacred rite, a public procession, the Hours solemnly chanted, other public functions, and generally communicate with the faithful in divine things (Sacred Penitentiary, 5 Jul. 1856), for example to be a sponsor in solemn Baptism; excepted are the sermon, theological lecture, or catechesis.1 But he himself cannot preach or, unless he is tolerated and is requested by others, lecture in Theology or in Canon Law.

If one to be avoided does not wish, after warning, to go out of the church, clerics are bound, and indeed under grave obligation, to expel him. But if he cannot be expelled, the celebrant must interrupt Mass, unless he has already begun the Canon: in which case, the others departing, let him continue the sacred rite with one minister, and, after the consumption has been made, let him depart, to complete the rest in the sacristy, or in another decent place (VII, 173-178).

Note. Nevertheless an excommunicated person, even one to be avoided, can, at a time when divine offices are not celebrated, enter the church and pray in it, but separated from the assembly of the faithful. If he is obliged to the Hours, he is in no way dispensed from them, although he ought not say: *Dominus vobiscum*, but *Domine, exaudi orationem meam*: otherwise he would sin venially, unless he recites alone, as many except. If nevertheless he is tolerated, he in no way sins if he recites with another, when requested by him (VII, 178).

4. He is deprived of the COMMON SUFFRAGES OF THE CHURCH, that is, of the fruits of sacrifice, indulgences, and public prayers, which cannot be applied in the name of the Church to the excommunicated, even if they were in the state of grace. It is probable, however, that this prohibition is restricted to those to be avoided (VII, 164).

1 There are not lacking authors who think that, in present times, as regards tolerated excommunicated persons, for example Freemasons, these prohibitions do not press so strictly (Noldin, *de Poenit.*, 40). The Church tolerates schismatic girls singing, together with Catholics, in public offices (*A. S. S.*, 40, p. 269).

But private suffrages, for example fasts, prayers, alms, and all works of charity which are privately performed by the faithful or by ministers of God, indeed even the sacrifice itself, insofar as it is offered in the priest's own name, or as it depends on the merit and prayer of the one operating, can be applied to excommunicated persons, even those to be avoided, so that in this way they may obtain the grace of conversion (VII, 162, 163).

5. He is deprived of the USE OF ECCLESIASTICAL JURISDICTION; of licit and valid use indeed, if he is to be avoided; but only of licit use, if he is tolerated.

Hence, with exceptions to be excepted, as above n. 2, one to be avoided can neither licitly nor validly issue a law, pronounce sentence, give absolution, present or elect to a benefice. Indeed one excommunicated by name cannot validly assist at marriage, as also neither can one who by public Decree was suspended from office; furthermore, they cannot validly delegate another (Wouters, *In Decr. Ne temere*, p. 50). - One tolerated indeed can exercise acts of jurisdiction validly, because of the common good; but he exercises illicitly, unless he has been requested, or compelled by necessity (*Can. Cont.*, 26, p. 609).

6. He is deprived of the RIGHT TO BENEFICES, ecclesiastical offices, and Rescripts; that is, any excommunicated person, whether to be avoided or tolerated, is incapable of the aforesaid; in such a way that presentation, election, nomination or provision, dispensation, in his favor, is by the law itself null and gravely illicit, both on the part of the one conferring and on the part of the one accepting. This incapacity is had even because of an occult or unknown censure, as is more commonly and more truly taught; and hence it is why a Superior, in conferring dignities, offices, benefices, or pensions, and likewise the Pope in issuing Rescripts, is accustomed to absolve for caution.

- Nevertheless Rescripts of the Sacred Congregations, in which faculties are conceded, for example of reading prohibited books, blessing rosaries, etc., are valid, at least for the forum of conscience, notwithstanding occult excommunication (Sacred Penitentiary, 9 Sept. 1898). Likewise, an excommunicated person is not deprived of a benefice which was conferred before the excommunication was incurred; nor of the fruits of the same, if by himself or through another he has fulfilled the burdens. But he can be deprived of both, through sentence, if for a year he grows filthy in the censure (VII, 180-185, where there are many things).

7. He is deprived of FORENSIC COMMUNICATION, that is, of the right of acting in ecclesiastical judgment, formerly also in civil judgment, from Roman Law.

Hence an excommunicated person to be avoided cannot be judge, advocate, plaintiff, witness, procurator, etc.; nor can he discharge the offices of curator, tutor, executor of a testament, etc. One tolerated indeed acts validly in all these things, but he can juridically be repelled by exception, both by the adversary and by the judge; for each can pursue appeal (VII, 184).

8. He is deprived of CIVIL COMMUNION with the faithful. This imports that neither the excommunicated person himself can communicate with others, nor others with him, in a civil and political matter, by way either of society or conversation, unless a grave cause excuses.

But these things are to be understood only of those to be avoided; for although the privilege of Martin V, concerning which above n. 1290, 2, does not directly favor tolerated persons, since it was given in favor of the faithful, nevertheless from present-day custom, or, as others prefer, because of good faith, these no longer sin by communicating in civil matters with the faithful, even if they have not been requested by them (VII, 138).

Note. According to many authors (cf. Lehmkuhl, II, 1129; *Ami du Cl.*, 1900, p. 129; 1904, p. 701), even as regards those to be avoided, these things have fallen into desuetude in our times.

9. Finally he is deprived of ECCLESIASTICAL BURIAL, namely in a place blessed for the burial of the faithful.

Moreover: a) If an excommunicated person to be avoided, impenitent, has been buried in a sacred place, his corpse must be extracted, if this can still be done, and the sacred place must be reconciled. But if he died with signs of penitence, his body ought before burial to be absolved from censure, or afterward, if he has already been buried (VII, 186). b) A tolerated excommunicated person, if he was notorious and impenitent, is likewise deprived of ecclesiastical burial; and his corpse, from a sacred place, must similarly be extracted. Nevertheless the place is not judged polluted, and therefore does not need expiation (VII, 187; Ferraris, v. Sepultura, n. 202). c) As regards those commanding or compelling notorious heretics, or those excommunicated or interdicted by name, to be handed over to ecclesiastical burial (cf. n. 1351 and 1385).

1293. It was asked: If someone notoriously bound by ecclesiastical censure should die, and according to the sacred canons and the norms handed down by Doctors concerning this matter, he must altogether lack ecclesiastical burial, and if, with grave threats, funeral rites and ecclesiastical burial itself are obstinately demanded, how ought the parish priest conduct himself in a case of this kind?

The Sacred Penitentiary, 10 Dec. 1860, responded: "Care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the parish priest should in no way concur, either by himself or through other priests, in the funeral rites and burial" (*A. S. S.*, I, p. 563, n. 21).

§ 2. ON THE EFFECTS OF EXCOMMUNICATION WITH RESPECT TO THE FAITHFUL. Excommunication directly binds only delinquents, but indirectly it also binds the faithful, especially clerics.

1294. PRINCIPLES. I. We can avoid tolerated excommunicated persons, but we are not bound. We can avoid them, if they are notorious, because they do not have a right to communion with the faithful; but we are not bound, because, although they sin (cf. n. 1292, 3 and 8), we can use the privilege of Martin V even in sacred matters, for example admit them as sponsors in Baptism or Confirmation. Sacred Penitentiary, 5 Jul. 1856.

These things indeed by force of ecclesiastical law; but divine law prohibits that the sacraments be conferred on an excommunicated person even tolerated, unless a just cause excuses (cf. n. 1423, 1425). The law of avoiding scandal or danger of seduction, the law of fraternal correction, the law of faith, which forbids communion with heretics, at least in divine things, etc., can prohibit the very same (cf. n. 447).

1295. II. We are bound to avoid excommunicated persons not tolerated; namely in acts which are prohibited to them by censure or sentence.

Thus commonly from the Council of Constance, and from the Bull of Martin V; the Response of the Holy Office, 9 Jan. 1884, accedes (*Anal. eccl.*, VII, p. 5).

But the acts in which it is not licit commonly to have fellowship with an excommunicated person TO BE AVOIDED are five, expressed in these little verses:

If for delicts someone is made anathema,
Mouth, to pray, farewell, communion, table are denied.

It is said: 1. MOUTH, that is, the kiss of peace, conversations, letters, more probably also a written reply, gifts, and any sign of benevolence. 2. TO PRAY, that is, communication in divine things; whether public, which is forbidden of itself under grave obligation, as is clear from n. 1294, and sometimes under penalty of excommunication reserved to the Pope (n. 1344), or interdict (n. 1377); or even private, which, commonly, is prohibited only under light obligation. 3. FAREWELL, that is, salutation or signification of honor, made from the mind; but not, probably, that which is made to avoid the note of incivility, contumely, or contempt. 4. COMMUNION, that is, any society of business, habitation, contract, cooperation, etc. But one communicating with an excommunicated person named by the Pope, in a criminal crime, namely in that for which he was excommunicated, incurs excommunication reserved to the Roman Pontiff, as is to be seen n. 1343. 5. TABLE, that is, common life and banquets by way of society and commerce; such as it is not if by chance you fall into the same inn, journey, table, indeed bed (VII, 188-195).

1296. Just causes can excuse reciprocal communication between one to be avoided and the faithful, outside divine things. Whence by law these excuse: utility, particular law, state of subjection, ignorance, and necessity.1

We have said: 1. Utility, whether spiritual or bodily, both one's own and that of the excommunicated person. Hence it is licit to seek from him a debt, counsel, help, if another suitable person is lacking; to continue a society entered into with him, but not to institute new contracts. 2. Particular law, namely matrimonial law, by which spouses are bound to live together and to furnish mutual offices to one another. Except if divorce has been made, and if excommunication has been issued because of heresy or because of doubt concerning the validity of the marriage. And more truly, communication in divine things is never conceded, because it is not a due service. 3. State of subjection, in which namely a son, grandson, great-grandson, daughter-in-law, owes reverence to parents, a servant to a master, a soldier to a leader, and generally a subject to a Superior. - 4. Ignorance, whether of law or of fact, even crass, as is more commonly and probably taught. 5. Grave necessity, whether spiritual or temporal, both of the one communicating, and of the excommunicated person, or of others. Thus grave fear unjustly instilled likewise excuses; because human law does not oblige with grave inconvenience (VII, 200-206; H. Ap., XIX, 23).

1297. • IT IS ASKED. What kind of sin is it to communicate without just cause with one to be avoided?

Resp. 1. It is a grave sin if you communicate in divine things, unless smallness of matter excuses; or in contempt of the prohibition of the Church; or in a criminal crime (cf. n. 1343). And the same must more probably be said if communication in civil matters is frequent with the intention of often repeating it; but this is also probably denied. 2. In other acts, of its kind, it is venial (VII, 196-198).

1 Whence it is said:

Useful, law, humble, thing unknown, necessity:
These five release anathema, lest it be able to harm.

1298. Note. In doubt whether someone is to be avoided, attention should be given to this twofold rule: 1. The obligation begins of avoiding him, of refusing him sacraments, etc., even in another diocese, when the sentence of excommunication and denunciation is established by public fame, or by two trustworthy witnesses, or at least by one of grave authority. 2. The obligation ceases when it is established concerning the absolution of the same, even through one trustworthy witness; indeed through the excommunicated person himself, if he is worthy of trust, and asserts that he was absolved. When doubt remains, either concerning denunciation or concerning absolution, it is not licit, if he is a priest, to confess before him, because of danger of frustration of the sacrament (VII, 145, 146, 207; H. Ap., XIX, 26).

ARTICLE II.

On Suspension.

1299. DEFINITION. Suspension is a censure by which a cleric is prohibited from exercising certain ecclesiastical functions.

It differs: 1. From excommunication, both because it is issued against clerics alone, and because it deprives one only of the active use of certain sacred things, but not of passive use or reception. 2. From interdict; because this is issued also against laymen, and deprives one of the reception of some sacraments, divine offices, and ecclesiastical burial.

DIVISION. Suspension by reason of effects is either total or partial. The former excludes a cleric from every function or from every ecclesiastical right; the latter excludes only from some function, or from some right, as they are distinctly expressed in the sentence, or are included in it.

Partial, or special, suspension is threefold: 1. from Order, which deprives one of the exercise of the functions of Order, for example from pontificals, from the altar, that is, from celebration of Mass, etc.; 2. from jurisdiction, which deprives one of the use of jurisdiction, whether in the external forum, or also in the internal forum;1 3. from benefice, which deprives one of the fruits and administration of the benefice. Sometimes not all the functions of Order or office are interdicted, but only one or another: of which kind is the prohibition of celebrating Mass, of hearing confessions (VII, 315, 316; cf. Wouters, in Decr. *Ne temere*, p. 34).

1300. • PRINCIPLES. I. Suspension is not necessarily and essentially a censure. Such indeed is a suspension which is imposed for breaking the contumacy of a cleric, either by Law, or by man by way of precept, because of a future crime to be avoided, or also because of a past crime having a successive tract (n. 1264).

But furthermore there is given:

1. Suspension inflicted by way of vindicative penalty because of a past delict. Such is presumed to be a suspension which is inflicted either by Law in perpetuity,

1 If suspensions from Order and from jurisdiction are inflicted at the same time, suspension from office is had. Others say that suspension from office is the same as suspension from divine things; others assimilate suspension from divine things to suspension from Order (D'Annibale, n. 380; Hilarius a Sexten, Noldin, etc.).

or irremissibly; or by man orally; or for a merely past sin; or at pleasure, or for as long as it shall seem to the one imposing; or conditionally, for example until you restore (VII, 317, 322). Thus, for example, prefects of monasteries of solemn vows, if they do not inform the Bishop concerning the profession of their novices before a month, incur suspension from office for as long as it shall seem to the Bishop (Trent, Sess. 25, c. 17, *de Reg.*).

2. Suspension inflicted by way of mere prohibition, or for caution, for example because of the fame of a delict not yet confessed or proved in judgment. This of itself does not have the character of penalty, and much less the character of censure (*A. S. S.*, vol. 2, p. 284).

3. II. Suspension can sometimes be inflicted in a special way. This happens when it is inflicted *EX INFORMATA CONSCIENTIA*. - Now, suspension is said to be issued *ex informata conscientia* when a Bishop or prelate, expressly declaring that he acts by force of the Council of Trent, without the solemnities required, imposes this penalty by way of simple punishment, or also inhibition, from grave causes weighed in his conscience, even because of an occult crime, and extrajudicially; and thus prohibits the delinquent cleric either from ascent to sacred Orders, or from the exercise of them, or from office, not however from benefice, as is most probably taught.

Suspension *ex informata conscientia* is an extraordinary remedy. Therefore it is necessary that several conditions be present for it to be inflicted licitly (cf. *A. S. S.*, vol. 17, p. 373; Aichner, p. 784). The new Decree *Maxima cura* has not restricted the right of Bishops to inflict suspensions *ex informata conscientia* (*Ami du Cl.*, 1913, p. 670).

A sentence of this kind cannot, probably, be issued in perpetuity, nor is it ordinarily prolonged beyond six months. Against it no appeal is conceded, but only recourse to the Holy See, without suspensive effect. - But it ceases, even when issued for an indeterminate time, with the jurisdiction of the Bishop who issued it (cf. n. 1304, II). See more among the canonists (cf. Benedict XIV, *de Synod.*, l. 12, c. 8; *Monit. eccl.*, II, P. III, p. 3; *Nouv. Rev. Theol.*, 18, p. 469).

1. Effect of Suspension. The extension and force of suspension ought to be gathered from the words by which it is issued. Wherefore the following rules hold.

1302. - RULE 1. Suspension which is issued absolutely is judged total. - For indefinite speech is equivalent to universal. Hence a priest thus suspended is deprived of every use of Order, jurisdiction, and benefice; unless usage or circumstances clearly signify otherwise.

RULE 2. Suspension determined to something is judged partial. Therefore it deprives one only of other functions of office which are distinctly expressed in the sentence, or which are included in them.

1303. • Hence you will deduce: 1. One suspended FROM ORDER simply is deprived of the exercise and use of any Order whatever, whether major or minor; but he is not deprived of the use of jurisdiction, except indirectly, namely with regard to those acts of jurisdiction which require the actual use of Order.

Thus a Bishop suspended from Order can delegate to another the power of absolving from sins, although he himself cannot absolve; likewise, he can confer first tonsure or benefices, and absolve from censures in the external forum.

2. One suspended FROM A HIGHER ORDER is not on that account suspended from an inferior one.

Thus, for example, a Bishop suspended from pontificals can celebrate Mass; indeed if he celebrates it solemnly with pontificals, he indeed sins, but does not incur irregularity; because he does not exercise a substantial act of episcopal Order. - Otherwise if he confirms the faithful, consecrates a chalice, etc.; because then he exercises pontificals properly.

3. One suspended simply FROM OFFICE is deprived, unless something else is established from elsewhere, of the use of Order and jurisdiction, consequently of all functions of ecclesiastical ministry which are exercised by a cleric as such (n. 1299, note).

But he is not on that account judged suspended from benefice, unless the delict was enormous, or unless for a year he has grown filthy in suspension. Whence one suspended only from office can receive the fruits of the benefice, provided he fulfills the parts of the duty through others.

4. One suspended FROM BENEFICE is understood as suspended from the fruits and administration of the benefice, but not from office. Wherefore he is bound to the canonical Hours and to other burdens, although he is deprived of the fruits.

But he is never deprived of the title itself of the benefice, unless this penalty is specially decreed against him; indeed, if during the time of suspension he acquires another benefice, the conferral of this is more probably not null by the very fact, but only to be nullified through the judge. If someone, occultly suspended, faithfully fulfills his obligations, he can retain the part of the fruits congruent to his labor, or the part which he would have to give to a substitute. But he is bound to restore the rest.

5. When a community is suspended, for example a chapter, convent, etc., the individual persons are understood as suspended as regards offices and rights which they can exercise collegially; but not as regards functions and rights which belong to them personally, for example as regards the right of celebrating Mass.

But if the suspension has been imposed both on the community and on its individual members, the innocent do not incur it, but only the delinquents (VII, 316, 323; H. Ap., XIX, 64 sqq.). Cf. the canonists, for example Craisson, Bargilliat, Aichner, Heiner, etc.

2. Violation of Suspension. Violation of suspension produces multiple effects.

1304. PRINCIPLES. I. He who violates suspension by exercising an act forbidden to him sins, of itself, mortally. The reason is that in a grave matter he resists the Church.

Nevertheless he can licitly do all those things which are customarily done by laymen, for example sing in choir in the manner of laymen, serve Mass, bless the table, etc. Nor does he sin mortally if he exercises an Order not sacred; or a sacred one, but not solemnly (VII, 313; H. Ap., XIX, 64).

II. He who knowingly and solemnly exercises an act of sacred Order from which he is truly and properly suspended becomes irregular. But this penalty is not incurred from violation of suspension from jurisdiction or benefice. Thus commonly (n. 1942).

It is disputed among the authors whether irregularity is incurred because of violation of a suspension inflicted by way of vindicative penalty. More commonly it is denied, unless something else is expressly provided in the law. Nevertheless, the Sacred Congregation of the Council, in Sagonen., 21 June 1625, declared a certain parish priest bound by irregularity who, suspended by his Bishop *ex informata conscientia*, had persevered in exercising functions of the sacred ministry after an appeal had been interposed. And a similar decision was given on 22 May 1848, in Lucionen. These must now be followed in practice (Benedict XIV, *de Synod.*, l. 12, c. 8).

III. One suspended from jurisdiction exercises it invalidly, if he has been publicly denounced. The reason is that, except in the case in which another is lacking for absolving one dying, a denounced suspended person is deprived of all actual jurisdiction. - Otherwise, if he is tolerated, because such a one exercises jurisdiction validly; although illicitly when he has not been requested by the faithful (VII, 314, 4).

Note. Communication with a DENOUNCED suspended person is of itself illicit if it is done by way of cooperation in the act from which he is suspended. In other things it is licit, unless scandal or danger of perversion is present. Whence to hear his Mass will not be a sin, at least not mortal, if you do not serve (VII, 140, 313).

3. Cessation of Suspension. 1305. Besides those things which we have already said concerning the absolution of censures, the following are to be noted:

1. If suspension has the character of censure, it is removed as excommunication is, namely by absolution alone, and indeed of the Superior, if it is, as it almost always is, reserved (cf. n. 1275).
2. If it has been imposed by way of perpetual penalty because of a fault altogether past, it is removed by dispensation alone of the Superior, or of his delegate.
3. If it has been issued, by way either of penalty or prohibition, for a determinate time, for example for a year, for three years, or under condition, for example until you have restored, it ceases of itself, the time having passed, or the condition having been fulfilled. This indeed is from the will itself of the Superior, as is evident (VII, 322; cf. Salmanticenses, c. 5, n. 32).

ARTICLE III.

On Interdict.

1306. - DEFINITION. Interdict is a censure by which the use of divine offices, of some sacraments, and of ecclesiastical burial is prohibited to certain persons, or in certain places.

Therefore interdict deprives one of the use of sacred things insofar as they are certain sacred things, and thus it differs: 1. from excommunication, which deprives one of the use of sacred things insofar as that use is communication with the faithful; 2. from suspension, which deprives one of that use insofar as it is the exercise of sacred power (Suarez, *de Cens.*, disp. 32).

DIVISION. Interdict is multiple, namely:

1. PERSONAL, LOCAL, or MIXED, as it immediately affects persons, or place, or both together.
2. GENERAL or PARTICULAR, as it is extended to a whole region, city, community; or is restricted to an oratory, particular church, or determinate persons.
3. TOTAL or PARTIAL, as it comprehends all the effects of interdict, or only some.

To partial interdict is numbered interdict from entrance of the church, by which someone is prohibited, in church, from exercising sacred order, being present at divine things, and being buried in a sacred place. But such a one is not prohibited, more probably, from praying privately in the church, or celebrating in a private oratory. Cf. VII, 329; Salmant., tr. 10, c. 6, n. 83.

1. Extension of Interdict. 1307. - To know the extension of interdict, the following RULES hold:

I. In a general LOCAL interdict, when a city is interdicted, the suburbs and churches of regulars, although exempt, are also interdicted. All are bound to observe an interdict of this kind, even the Bishop himself who imposed it. Yet citizens who did not give cause for the interdict can go elsewhere, so that they may attend divine offices.

When a parish church is interdicted, chapels and contiguous cemeteries are also interdicted; because the accessory follows the principal, but not vice versa.

II. In a PERSONAL interdict, when a people is interdicted, clerics, students, and travelers are not judged interdicted; because they are not part of the people.

When the clergy is interdicted, laymen and religious are not interdicted, unless they have an office or benefice among that people; nor other clerics lacking office, because they do not constitute one body with the clergy. Nor likewise are churches, when citizens of the city are interdicted, subject to the interdict.

III. In a general PERSONAL interdict, Bishops are exempt, who are also exempt from general suspension; the innocent, as soon as they transfer domicile elsewhere; outsiders, although they are detained among those citizens for much time; infants and the insane, who nevertheless are deprived of ecclesiastical burial (VII, 330-332). Cf. above n. 1263, 1.

2. Effects of Interdict. 1308. There are three effects of TOTAL INTERDICT, namely:

1. Prohibition of divine offices, that is, of Mass and of all those things which can be done by clerics alone; but not of the offices of the B. V. M., of the dead, etc., if they are said privately and in a place not deputed for them. Whence, even those interdicted because of another's fault cannot be present at the sacred rite.

Nevertheless clerics and religious, when they themselves are not interdicted, can and ought, as before, to celebrate Mass and divine offices; but with doors closed, bells not rung, unless for a sermon, the Angelic salutation, or the death of someone, in a subdued voice, and with the interdicted excluded, namely those who gave cause for the interdict, or are personally interdicted, provided they have been denounced. Also excepted, in a general local interdict, are some solemnities, for example of the Nativity of the Lord, Easter, Pentecost, the Assumption of the B. V. M., and the Octave of Corpus Christi, and, for Spain, the feast of the Immaculate Conception of the B. V. M., from the indult of Leo X: on which all the interdicted can be admitted to divine offices, and, insofar as these solemnities are of precept, they ought to be present at the sacred rite (VII, 333; cf. IV, 61, where concerning religious).

2. Prohibition of the administration of some sacraments.

a) Baptism, even solemn, confirmation, and penance are excepted; these are permitted to all, except those who gave cause for the interdict, or are interdicted by name: unless they have first satisfied, or have given sworn caution concerning satisfying. b) The Eucharist is conceded only to the dying; to whom Extreme Unction also is permitted, in the case in which they cannot duly receive another sacrament. But religious can, in time of interdict, receive communion and Extreme Unction. c) Ordination is altogether prohibited, except in the case of gravest necessity. d) Marriage can, from present use, be contracted; for it is administered by the contracting parties themselves. But the nuptial blessing must be omitted (VII, 334).

3. Prohibition of ecclesiastical burial.

Nevertheless this difference is present, that laymen, even infants, are to be buried in a non-sacred place; but clerics not interdicted by name can be buried in a church, and it is permitted to celebrate Mass for them, but without pomp. Yet this is not permitted if the church is specially interdicted (cf. n. 1292, 9).

Note. The effects of a partial interdict are defined by the very words of the sentence.

3. Violation of Interdict. 1309. 1. CLERICS and RELIGIOUS sin gravely by violating an interdict, whether personal or local; unless they are excused by smallness of matter, say, if they leave the door of the church open for a brief time.

Furthermore, they incur: a) irregularity, if they violate the censure by exercising an act of their proper Order; b) suspension reserved to the Pope, if they receive Order from an interdicted Bishop who has been denounced by name (cf. n. 1366); c) interdict from entrance of the church, if they knowingly celebrate divine things in interdicted places (n. 1377).

2. LAYMEN sin gravely if they violate a personal interdict, for example by receiving the Eucharist; likewise, if they compel clerics to celebrate sacred things against a local interdict; in which case they incur, just as clerics do, a personal interdict from entrance of the church.

They sin only lightly, more probably, if they themselves, not personally interdicted, merely assist at divine offices in an interdicted place (VII, 336).

4. Cessation of Interdict. 1310. 1. Local interdicts and general personal interdicts which have been imposed by common Law, and not reserved, can be removed by the Bishop, or another having jurisdiction in the interdicted community… 2. General interdicts issued by man cannot be removed except by him who issued them, or by the Pope. - 3. From a particular personal interdict of Law, if it is not reserved, any approved person can absolve.

For the rest, through the privilege of absolving from all censures the power of removing interdicts is not understood; because place and community are not subject to the forum of penance (VII, 338, 339).

CHAPTER III.

On Censures in Force Today

from the Constitution of Pius IX, "Apostolicae Sedis," 12 Oct. 1869.

St. Alphonsus, VII, n. 281; ed. G., vol. 4, p. 419, with the necessary changes having been made; Aertnys, VII, n. 75; D'Annibale (Reatinus) on the Constitution *Apost. Sed.* (ed. 4); *Summula* (ed. 5); Patavinus (Bertapelle), ed. 2; Piatus,

Avanzini, Pennacchi, Del Vecchio, Bucceroni, on this Constitution; Lehmkuhl, II, n. 1179; Noldin, I, *de Poenis*, etc., etc.

1311. Preliminary notes. 1. Scope of the Constitution. The scope of this Constitution was, as the Supreme Pontiff himself declares, to diminish the number of censures, for avoiding many inconveniences, and to make a full and clear review of those which henceforth are to be observed and retained.

Whence it follows that the same Constitution is as it were the penal code of the Church, in which are contained, directly or indirectly expressed, all *latae sententiae* censures in force today; with the addition, however, of those which afterward, for example in the Constitution *Romanus Pontifex*, were inflicted.

2. The Constitution does not change all things. Nothing was changed: a) as regards censures *ferendae sententiae*, nor as regards censures issued by prelates or Chapters against their own subjects; b) as regards other canonical penalties, for example irregularities, incapacities, etc.; c) as regards cases reserved without censure; d) as regards privileges which do not regard censures; e) as regards ecclesiastical laws from which censures have been taken away. Therefore, in all these things, one must stand by the ancient Law.

Nevertheless, if the ancient Law punished certain delicts, which are now coerced by excommunication, with other penalties, these penalties seem now abrogated; because it would be too hard and alien to Law, because of the same crime, to be subject to several laws and to be affected by several penalties (D'Annibale, I, n. 389).

3. The Constitution has its own force. The Supreme Pontiff declares that all the censures which he decrees "ought to receive their force altogether not only from the authority of the ancient canons, insofar as they agree with this our Constitution, but also from this Constitution of ours itself, no otherwise than if they had first been issued by it."

From which clause it follows: a) that the censures reviewed here are to be understood first indeed according to the sense which is clearly inferred from the words of the Pontiff, but then according to the tradition of the ancient canons and the received interpretation; b) that desuetude of the ancient canons, even immemorial, can no longer be invoked as regards censures clearly and expressly renewed or confirmed: as is clear from several Decrees of the Holy Office (cf. below n. 1353).1

1312. What *LATAE SENTENTIAE* censures therefore remain in force today?

Resp. 1. Censures which are either contained in the Constitution *Apostolicae Sedis*, or have been issued afterward, as we shall see in its own place.

2. Censures which were directly inflicted by the COUNCIL OF TRENT and confirmed by Pius IX. We say directly inflicted: for from the scope of the Constitution, and from the common opinion, the other censures which Trent only indirectly inflicted or renewed, or imposed in general words, do not seem confirmed; because penalties only remembered by Trent, or even renewed, can in no way be called Tridentine penalties (Patavin., 100).

3. Censures issued "for the election of the Roman Pontiff, insofar as hitherto they have persisted in their force." Moreover, those things persist in force which the Roman Pontiffs sanctioned, for example against those violating the law of secrecy, or against all, even Cardinals, who, while the Roman Pontiff is living, or while the See is vacant, shall have made agreements concerning the election of a successor; nevertheless discussions which, when the See is vacant, are had for the election are not forbidden. Thus especially from the new Constitution of Pius X, *Vacante Sede Apostolica*, 25 Dec. 1904 (*Acta Pii X*, vol. 3, Appendix), by which the earlier Constitutions either are abrogated, or confirmed, or completed.

4. All censures which have been issued "for the internal governance" of any Orders and regular Institutes whatever, as well as of any colleges, congregations, assemblies, and pious places whatever, of whatever name or kind they may be… insofar as by desuetude, or by another cause, they have not ceased in some place or Institute. It is said for internal governance: to this is referred excommunication against those regulars who rashly lay aside the habit of Religion (c. *Ut periculosa, ne clerici vel monachi*, in 6); or who keep arms within the enclosures of a monastery without permission of Superiors (Clem. 1, *de Statu monachorum*); or who do not denounce their confreres or Superiors suspected in any way whatever of heresy (Paul V, Const. *Romanus Pontifex*); or who, in order to cause damage to their prelates or monasteries, presume to go to the courts of princes (ib.); and other censures similar to these.

1 A review of censures formerly in force, see in Edm. Voit, *Theol. mor.*, t. 2, at the end, Alphabetical Index; a fuller interpretation, see in Suarez, Bonacina, the Salmanticenses, etc.

ARTICLE I.

On Excommunications *Latae Sententiae.*

1313. Excommunications are given which are either 1. reserved to the Roman Pontiff in a special way; or 2. reserved to the same simply; or 3. reserved to Ordinaries; or 4. reserved to no one.

Those which are reviewed in the first part are with very good right disposed thus: The first five fortify the FOUNDATION of the Church, namely faith and the divine Constitution of the Church reposed in the Supreme Pontiff and Bishops; the four following, together with the thirteenth concerning intruded persons, defend the POWER and LIBERTY of the Church; and the last three protect the GOODS of the Church, whether spiritual, excomm. 10, or temporal. In the second series almost the same order recurs.

§ 1. EXCOMMUNICATIONS *LATAE SENTENTIAE* RESERVED TO THE ROMAN PONTIFF IN A SPECIAL WAY. Twelve of this kind are reviewed in the Constitution *Apostolicae Sedis*, all indeed, except the tenth, already contained in the Bull *Coenae*: to which is added the thirteenth, from the Constitution *Romanus Pontifex*, issued 28 Aug. 1873.1 In very recent times another excommunication acceded for repressing the EXCLUSIVE (Veto) of civil power (cf. n. 1327).

Therefore Pius IX declares subject to such a censure:

1314. I. "All apostates from the Christian faith, and all and individual heretics, by whatever name they may be reckoned, and of whatever sect they may exist; and those believing them; and their receivers, favorers, and generally any defenders of them."

1. By APOSTATES and HERETICS understand those who have sinned gravely against faith by an internal and external act, according to what was said n. 438 sqq.; 573, 2; 596, 3.
2. BELIEVERS, of apostates or heretics, are those who implicitly sustain their errors, declaring in general that these or those heretics think rightly; for example if someone says: "I believe what Calvin believes," etc. Likewise, if someone attends the sermons of heretics, not indeed drawn by curiosity of hearing, or by greed for money, but led by the intention of assenting to false doctrine, to which in a confused way he already offers faith.
3. RECEIVERS: those who receive or conceal a heretic as such, not as a friend or blood-relative, in their home, so that he may escape the penalties of heresy. FAVORERS: those who furnish favor to heretics, whether notorious or occult; either positively by praising them, commending them, for example before the government, promoting the exercise of heretical worship, opening schools for them for the sake of fostering heresy, etc.; or negatively, by omitting, without just cause, denunciation of them; or correction, when they are bound by office to make it.1 All those incur the same excommunication who enroll themselves even merely by name in a heretical or schismatic sect, for whatever cause this may be done. Likewise those who contract marriage before a heretical or schismatic minister attached to sacred things (Holy Office, 22 Mar. 1879, and 18 May 1892; *Nouv. Rev. Theol.*, vol. 15, p. 284). DEFENDERS: those who, in whatever way, defend either the errors of heretics; or protect their persons, for example by impeding them from being brought before judges or punished by them. Nevertheless those are not to be numbered among defenders who praise the style, elegance, or knowledge of the author of a heretical book, unless perhaps the praise redounds to approval of the doctrine itself (VII, 300-308). As regards absolution of heretics, see n. 443.2

Note. If the Bishop has reserved absolution of this sin, the confessor would need a twofold faculty. See nevertheless what we shall say n. 1348, note.

1315. • II. "All and individual persons knowingly reading without authority of the Apostolic See the books of the same apostates and heretics, defending heresy, as well as books of any author prohibited by name through Apostolic Letters; those retaining, printing, and in any way defending the same books." This censure is in force today from the Constitution *Officiorum*, n. 47, and draws its force from it.

By the name of book is understood a writing which consists of some bulk and unity of object. Wherefore under the name of book do not come newspapers or daily papers, letters, sermons, smaller booklets, just as neither do certain pages separated from a prohibited book (Holy Office, 21 Apr. 1886); nor even probably manuscripts, for "today we take books to be those which are published in type," as D'Annibale says (*Summula*, III, 141); now this censure must be interpreted according to the sense received today. On the contrary, under the name of books come periodical writings (*livraisons*, *revues*) or individual fascicles destined to compose a volume (Holy Office, 13 Jan. 1892; *Monit. eccl.*, VII, P. I, p. 266); likewise translations of a work into another language (St. Alph., VII, 281).

1. Therefore books prohibited by this censure are of a twofold kind: a) Books of apostates or heretics, provided that concerning these two things at the same time it is established: that the author is publicly held as an apostate or heretic, whether from the sect to which he belongs, or from the pertinacity with which he hands down and defends heretical doctrine; that heresy is not only contained in the book, but is also defended. b) Books of any author, prohibited by name or by the express title of the work, and that under penalty of excommunication reserved to the Roman Pontiff, through Apostolic Letters in any form, containing these or similar expressions: "from the plenitude of our Apostolic authority," or "by Apostolic authority" (Pennacchi, I, p. 117).

Therefore the censure does not extend to books prohibited through general Decrees, or condemned by some Sacred Congregation, or entered by name or in the mass into the Index; nor to books of infidels or Jews, unless perhaps the conditions which we have enumerated are verified in them. Cf. *Ami du Cl.*, 1911, p. 734; Hilgers, *Der Index*, p. 90 sqq.

1316. 2. The EXCOMMUNICATED PERSONS, the things to be posited having been posited, are the following:

a) Readers. To read, strictly speaking, is to look with the eyes and perceive with the mind the things which are written. Wherefore he does not read who only materially runs through with the eyes a book composed in a language unknown to him, nor he who hears another reading, even by his command, as Navarrus and others probably teach, against many (VII, n. 292). Therefore readers in a relatively notable quantity are bound by the censure.

But when will the quantity be notable? The older theologians, Lugo, disp. 21, n. 85; St. Alph., VII, 284, 292, say that the object of reading is notable: either one or another page, or a proemium in the case in which less dangerous matter is set forth there; or a few lines, if precisely there heretical doctrine is defended. - Recent authors teach that the matter is notable: either 3-4 pages, if they contain truly dangerous things, or 30 pages, if the danger contained in them is less. Thus Noldin, II, 700. But we ask whether the circumstances of the times and the end of the Constitution *Officiorum ac munerum*, of which account must certainly be had, demand this, that one depart by such large steps from the opinion of the older authors? Cf. *Ami du Cl.*, 1912, p. 952. More rightly, in our judgment, Lehmkuhl (I, 1335) thinks: He sins gravely, he says, who without faculty reads a place which treats specially of prohibited matter, or, if the matter is not dangerous, a notable part, for example one or another page of larger format. Cf. the things which Vermeersch wisely notes, *de Prohib. libr.* (ed. 4), p. 43 sqq.

b) Retainers, for a notable time, for example for three days, whether with themselves, or with a friend, although endowed with faculty of retaining, but from whom they can demand the book back at their own pleasure; otherwise if with a pact not to demand it back except after purgation of the book or license obtained; although they do not retain it for reading, as, for example, a depositary, borrower, bookseller, or associate having co-ownership in a literary society (Kon., n. 1704, q. 8). This nevertheless does not seem to extend to public libraries (Noldin, n. 53). He does not seem to retain who is merely custodian of a library, for in reality he neither detains nor possesses. But it is disputed whether under the name of retainers come binders of books (*les relieurs*). Strictly speaking it must be affirmed, yet from epikeia this retention seems permitted if they bind them for one having faculty. In other cases the reason of damage will very often excuse (Vermeersch, p. 39). But he is excused who retains for a longer time while waiting until he hands it over at a suitable time to the Superior, or to another having license. Nor is the censure incurred if that part of the book which gave occasion to the prohibition is destroyed in such a way that it can no longer be read.

c) Printers, under which name, besides the editor and owner of the printing-house, come all those who knowingly and proximately concur toward the edition of the book. Cf. the cited Instruction of the Eminent Cardinal Vicar. - See what was said n. 524.

d) Defenders; whether by deeds, by propagating books, exposing them for sale, hiding them lest they be handed over to the judge or burned; or by words, by praising them, excusing them, etc. Nevertheless he who praises not the depraved doctrine of the book, but the style or knowledge of the author, is excused from the censure (VII, l. c.).

1317. • III. "Schismatics, and those who from the obedience of the Roman Pontiff existing for the time being pertinaciously withdraw themselves or depart."

The censure touches: 1. SCHISMATICS properly so called, namely those who boldly establish or follow new Churches. Such are, for example, the Old Catholics. 2. Imperfect schismatics, namely those who, led by true malice, do not wish to obey the Roman Pontiff existing for the time being, holding themselves as freed from his power. From these are certain writers, called liberals, who under a futile pretext pertinaciously reject the decisions and commands of the Roman Pontiff (Pennacchi, I, p. 10, annot. 1). 3. Those giving their name to a society for vindicating the rights of the people in the election of the Supreme Pontiff, or promoting it or in any way favoring or adhering to it (Sacred Penitentiary, 4 Aug. 1876). Cf. *A. S. S.*, vol. 9, p. 352.

But the censure does not touch: a) those who detract from the temporal dominion of the Roman Pontiff; b) those who simply refuse to obey his commands, because they are grave and burdensome, or from hatred toward his private person; c) him who should refuse to be subject to the Pontiff insofar as he is suspect to him, or doubtfully legitimate, that is, not yet received by the universal Church because of an election doubtfully valid; d) him who departs from obedience due to his own Bishop, even pertinaciously. Except if he refuses to be subject to the Bishop because he does not wish to have him as legitimate pastor; for this is the same as not wishing to be subject to the Roman Pontiff who sent him (Konings, 1708).

1318. IV. "All and individual persons, of whatever state, grade, or condition they may have been, appealing from the ordinances or commands of the Roman Pontiffs existing for the time being to a future universal Council; as well as those by whose help, counsel, or favor the appeal shall have been made."

The following are excommunicated: 1. Appellants; and the reason is that they not only do injury to the supreme head of the Church, but also present an appearance of schism. Indeed, if someone should appeal because he thought the Pope did not have supreme and infallible authority in the Church, he would furthermore be a heretic and would be punished by a double excommunication. - But by ordinances and commands, from which it is unlawful to appeal, are to be understood all those things by which the Roman Pontiff, even through a particular and disciplinary Decree, commands something which regards the good of souls; but not those things which refer to civil rule. He who should appeal from a dogmatic Decree would also be excommunicated as a heretic. See as regards colleges, etc., n. 1376.

2. Cooperators, "by whose help, counsel, or favor the appeal shall have been made." - The censure does not touch him who should appeal to the present Council or to a future Pontiff, nor him who should approve an appeal already made by others.

1 For the sake of helping memory, use these little verses, if you please:

Heretic, reader, tearing, crying out, or striking,
Impeding, compelling, prohibiting, falsifying, dishonest,
Usurping, retaining, intruded by whatever name;
All these guilty ones must present themselves at Rome.

1 Instruction of the Eminent Cardinal Vicar to the parish priests of the nourishing City, 12 Jul. 1878 (*A. S. S.*, vol. 11, p. 168). There he further declares that parents who send children to a heretical school do not incur the censure. For they are not truly favorers of heretics.

2 To this excommunication there have been added, in favor of faith in the City, the four following, specially reserved to the Supreme Pontiff. The following are excommunicated: a) All those who, even without the will of adhering to heresy, and only for the sake of human respect, give their names to the enclosures of heretics, of any denomination whatever. b) Those who are present at non-Catholic functions, or services, as it is usually said, or hear one preaching, with the intention that they may give themselves to the same, insofar as, as they impiously say, they can be persuaded by him. c) Those who, having become favorers of the spiritual ruin of another, induce in any way and see to it that others go or come to the halls or temples of heretics to hear conferences. d) Those who publish in type invitations to the aforesaid conferences and the themes of the same; because of the favor which, by such action, they furnish to the propagation or confirmation of heresy. Same Instruction, *A. S. S.*, 11, p. 172.

1319. • V. "All killing, mutilating, striking, capturing, imprisoning, detaining, or hostilely pursuing Cardinals of the Holy Roman Church, Patriarchs, Archbishops, Bishops, and legates or nuncios of the Apostolic See, or casting them out from their dioceses, territories, lands, or dominions; as well as those commanding these things, or holding them ratified, or furnishing help, counsel, or favor in them."

By this censure are punished: 1. Those exercising cruelty against the LEADERS OF THE CHURCH, whether against their bodies, or against their liberty, or against their dignity, with the intention of harming them; or casting them, once received, out from places subject to their jurisdiction. But those are not bound by the censure who simply do not receive them, or expel them only from a city.

2. Cooperators, that is, those commanding, furnishing help or favor. Indeed, those holding the aforesaid crimes ratified incur the present excommunication. But for this it is required: a) that the crime was done in their name; b) that at the time of the delict perpetrated they could have commanded it; c) that they approve it by some grave external action, for example by writing, congratulation, applause, praise, etc. (VII, 267).

N. B. This censure must not be confused with that which begins *Violentas manus*, etc. (n. 1329), for protecting any ecclesiastical person whatever.

1320. VI. "Those directly or indirectly impeding the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and, that is, also, recurring for this to the secular forum and procuring or issuing its commands, or furnishing help, counsel, or favor."

The following are excommunicated: 1. Those impeding by force, threats, or command any exercise whatever of ecclesiastical jurisdiction,1 whether this be ordinary or delegated; whether of the internal forum, which the Sacred Penitentiary governs, or of the external, in which both the Roman Congregations and the Ordinaries of places pronounce law (cf. n. 138). But they impede directly or indirectly: directly, if they themselves obstruct the person endowed with jurisdiction, for example if someone threatens death to a Bishop lest he issue a censure, confer a benefice, visit a diocese, send preachers, acquire or alienate goods, change a parish priest, etc.; indirectly, if they obstruct efficaciously in another thing, or in another person, for example by sequestering the Bishop's goods, vexing his officials or familiars, etc.

2. Those recurring to the secular forum, or to secular magistrates, and procuring its commands, so that they may obstruct a sentence, namely, or an act of ecclesiastical jurisdiction. Of this kind are those who, elected by the suffrage of the people, and furnished with the mandate of the civil power, dare, by obstructing the Church, to intrude themselves into parochial or episcopal governance (*A. S. S.*, vol. 7, p. 702). Cf. Excomm. XI, n. 1325. See *Monit. eccl.*, 1910, ap. *Nouv. Rev. Theol.*, 1911, p. 246.

3. Those issuing commands, or the civil judges or magistrates themselves, who frame and issue commands in their own right, for impeding some act of jurisdiction. But actuaries, heralds, and couriers are not excommunicated. The reason is both because all these obey necessity, although perhaps they furnish their work with a willing mind, and because the law, when it wished them to be held by censure, declared this formally.

4. Cooperators, or secondary impeders, namely those who, by some reason sufficiently efficacious and gravely culpable, either furnished help to the persons reviewed above, by physically cooperating with them; or furnished counsel or favor, by morally cooperating in such a way. - Of this kind are, for example, those who elect, help, and favor INTRUDED pastors.

Note. Certain governments have established a tribunal for judging concerning abuse of ecclesiastical power. He who recurs to such a tribunal against Decrees of a Bishop incurs this grave censure. "Some authors wish (D'Annibale, l. c., n. 61; Gabriel a Varceno, n. 9) that those recurring do not incur excommunication unless the effect has followed; others however (Del Vecchio, I, 574; Grandclaude, in h. exc., n. 2; Avanzini, ed. 2, note 7) say that unjust recourse to a civil tribunal, for impeding Decrees of an ecclesiastical judge, suffices; and this opinion seems more probable to us." Cf. Haringer, App. ad l. VII S. Alph., n. 26.

1321. VII. "Those compelling, whether directly or indirectly, lay judges to draw ecclesiastical persons before their tribunal, contrary to canonical dispositions; likewise those issuing laws or decrees against the liberty or rights of the Church."

By this censure are struck: 1. Those who violate the privilege of FORUM, or the immunity of ecclesiastical persons, whether in a criminal cause or in a civil one.

By COMPELLING are understood any private persons whatever, even priests, who, with no permission of ecclesiastical power, call any ecclesiastical persons whatever, whether in a criminal or penal cause, to the tribunal of laymen, and compel them to be present there. Pius X, in the Motu proprio *Quantavis diligentia*, 9 Oct. 1911 (*A. A. S.*, III, p. 556). - From these things it follows that under the name compelling are understood those who, in a public penal cause, constitute themselves a civil party, or who cause an ecclesiastical person, as witness, to appear in any cause whatever. Thus from the authentic declaration of the Supreme Pontiff to the Bishop of Larino, 11 Jan. 1912 (ap. *Monit. eccl.*, 1912, p. 4). - Cf. *A. A. S.*, VI, p. 277.

It must be noted, however, that mere denunciation before civil officials is not touched by the censure (*Ami du Cl.*, 1912, p. 1035).

By the words contrary to canonical dispositions, allusion is made to multiple cases in which a lay judge can proceed licitly against clerics, whether in civil matters, or even in criminal ones, for example if a cleric has been degraded, etc. But where, with the Holy See permitting or silent, the privilege of FORUM no longer is in force, nor can the civil Right of private persons be obtained from an ecclesiastical judge, the censure seems to cease by the very fact1 (cf. n. 201 and 2234).

They are struck: 2. Those who issue laws or decrees against the LIBERTY or RIGHTS of the Church. These words are very widely open: for by them are expressed all the rights and liberties which belong to the Church, even the right of acquiring by acts either of last will or among the living; the right of alienating, leasing her goods, etc. (cf. n. 874).

Moreover, by the censure are struck the authors of laws and decrees of this kind, that is, deputies and senators who are efficacious causes; the prince who subscribes his name to them or promulgates them; likewise ministers, governors, prefects, municipal officers, etc., who issue decrees attacking some right of the Church, as, for example, decrees by which monasteries or pious places are suppressed.1

But they do not incur the censure: heralds or officials who promulgate such decrees or see that they are observed; notaries who draw up acts according to their norm; litigants who use those decrees; nor judges who accommodate their sentences to them. But consider whether they do not fall into another censure, for example from the fact that they injure ecclesiastical jurisdiction.

1322. VIII. "Those recurring to lay power for impeding letters or any acts whatever proceeding from the Apostolic See, or from its legates or delegates whatever, and those directly or indirectly prohibiting their promulgation or execution; or, by reason of them, injuring or terrifying either the parties themselves or others."

The present censure protects the Letters and Acts of the Holy See, that is, documents proceeding either immediately from the Roman Pontiff and from the Holy See, for example from the Sacred Penitentiary, or from the other Sacred Congregations (Holy Office, 13 Jan. 1892);2 or mediately through legates, nuncios, etc.

The following are excommunicated: 1. Those recurring, for impeding them, whether by appealing or provoking, to lay power, of whatever grade that power may be; and this, in the more probable opinion, although the recourse has suffered rejection.3 2. Those prohibiting promulgation, namely that which induces the obligation of law; or execution, for example by impeding the letters from obtaining their effect, as if someone intercepts them, or prohibits a notary from drawing up instruments concerning them, or from handing over instruments already drawn up. 3. Those injuring, as to the body, or terrifying, by very grave fear, either the parties themselves, that is, the persons who are helped by those letters; or others, for example advocates of the parties, executors, and finally all to whom the acts obtained are referred in some way (De Angelis, l. I, tit. 29, n. 6).

1323. IX. "All falsifiers of Apostolic Letters, even in the form of a Brief, and of supplications concerning grace or justice, signed by the Roman Pontiff, or by the vice-chancellors of the Holy Roman Church, or those taking their place, or by command of the same Roman Pontiff; as well as those falsely publishing Apostolic Letters, even in the form of a Brief; and also those falsely signing supplications of this kind under the name of the Roman Pontiff, or of the vice-chancellor or one taking the place of the aforesaid."

By Apostolic Letters here are not understood letters or Rescripts of the Sacred Congregations or of Nuncios.

Therefore the following are excommunicated: 1. Those who falsify Apostolic Letters, etc., namely by changing, adding, or taking away something by which the sense is corrupted, suppose if the Pontiff has conceded something for three years, and the petitioner changes it into five years.4 - 2. Those who falsely publish either true letters, but secretly and against the will of the Pontiff; or letters altogether false or corrupted, just as if they were authentic. Otherwise, if you publish doubtful letters as doubtful, or if you relate them historically, as published by another. 3. Those who falsely subscribe with the name of the Pontiff, for a grace made. As regards those who use false letters, cf. n. 1350.

1324. X. "Those absolving an accomplice in a shameful sin, even in the article of death, if another priest, although not approved for confessions, without some grave infamy and scandal about to arise, can receive the confession of the dying person."

It is said: 1. Those absolving, even with crass and supine ignorance (Holy Office, 13 Jan. 1892); nor do those simulating absolution escape excommunication (Resp. S. Poenit., 1 Mar. 1878; Holy Office, 10 Dec. 1883; *A. S. S.*, 27, p. 555). - But the censure does not strike him who only hears the accomplice in confession; nor probably him who indeed absolves, but without advertence.

2. An accomplice in a shameful sin; by which name comes every external, grave, certain, and formal sin from each side, against chastity, which must be subjected and actually is subjected to absolution as necessary matter.

3. Even in the article of death, if, etc.; whence the accomplice does not avoid the censure, although he validly absolves, if he does not take care that another confessor or priest be present to the dying accomplice. See more at n. 1780.

Note. This censure is called most specially reserved; because in the faculty of absolving from cases reserved to the Holy See even in a special way, which is conceded to Ordinaries or missionaries, this case is expressly excepted, as is clear from several Decrees of the Holy Office. It is similarly excepted in the Bull of the Crusade (*Monit. eccl.*, I, p. 173, 269).

1 Note that here it is a question only of the jurisdiction of the Catholic Church, but not of the jurisdiction of religious Orders, as regards the use of privileges; nor of the exercise of sacred Orders, as regards conferring them, reading Mass,

etc.; nor finally of acts of mere administration (D'Annibale, n. 57).

1 D'Annibale, n. 65. - The privilege of forum for the above-said causes is no longer in force in Austria, Germany, Luxembourg, Belgium, Holland.

1 D'Annibale, n. 68; cf. Syllab. Pius IX, n. 32, 33, 45, 47.

2 *Collect. S. C. de P. F.*, 2172.

3 D'Annibale, Bucceroni defend the contrary opinion (apud Lehmkuhl, II, 1199).

4 Lehmkuhl (II, 1200) judges that those who fabricate Apostolic Letters are not subject to the censure, if they do not publish them.

1325. XI. "Those usurping or sequestering jurisdiction, goods, revenues pertaining to ecclesiastical persons by reason of their churches or benefices."

Preliminary note. Four excommunications are issued against those who dispose illicitly of the GOODS OF THE CHURCH: the first in the present article, if they usurp goods which pertain to ecclesiastical persons by title of church or benefice; the second in the following article, if they invade the goods of the Roman Church; the third, simply reserved to the Roman Pontiff from Trent (n. 1347), if they usurp the goods of any benefice or pious place whatever; and finally the fourth, reserved to no one (n. 1353), if in an illicit way they alienate ecclesiastical goods of whatever kind.

1. Therefore the GOODS which this article protects are: a) jurisdiction, even temporal or delegated; b) temporal goods, indeed even rights to the same; c) revenues pertaining to ecclesiastical persons, not by any reason whatever, but by reason of their churches, or secular or regular benefices. But the goods of vacant benefices are not comprehended, nor those which pertain to Monts of Piety, hospitals, cemeteries, lay chaplaincies, sodalities of laymen, or the fabric of a Church (cf. n. 2235). Nor do the goods of monasteries, which were reviewed in the Bull *Coenae*, seem to be comprehended here (Avanzini, note 34; D'Annibale, n. 90).

2. THE FOLLOWING ARE EXCOMMUNICATED: a) Usurpers, that is, those occupying another's thing, designated above, as owed to themselves and pertaining to them by right. - Whence thieves, robbers, plunderers, etc., do not incur this censure (Holy Office, 9 Mar. 1870); nor probably those who acquire for themselves, by acts either of last will or among the living, a thing usurped by others; because they do not properly usurp, although they sin and incur other penalties (cf. n. 1347). b) Sequestrators, that is, those pronouncing sequestration by judicial office, or even executing it, and thus impeding goods from being received by the designated persons. Cf. however what was said n. 526, II, 5.

Likewise, from the Encyclical Letters of Pius IX, 21 Nov. 1873, for Switzerland, and from the Decree of the Sacred Congregation of the Council, 23 May 1874, for the Venetian and Milanese provinces, those are declared bound by a censure peculiarly reserved to the Holy See and by other penalties "whoever in the aforementioned dioceses, with the people voting, elected to the office of parish priest or vicar, dare to seize the pretended possession either of the Church, or of rights and goods, and to discharge the duties of ecclesiastical ministry."

This excommunication is also incurred by the followers of the clerical-liberal society, or emancipatory society of the clergy, who devote their work to the popular election of sacred ministers (S. C. Conc., 27 Jan. 1878).

N. B. The Instructions of the Sacred Penitentiary concerning those who buy or retain usurped goods, see n. 1031; concerning intruded persons, n. 1327, Question.

1326. XII. "Those invading, destroying, detaining, by themselves or through others, cities, lands, places, or rights pertaining to the Roman Church; or usurping, disturbing, retaining supreme jurisdiction in them; as well as those furnishing help, counsel, or favor to each of the aforesaid."

This censure protects the TEMPORAL DOMINION of the Holy See. - The following are excommunicated: 1. Those who by themselves, or through others, invade, etc., cities, lands, places, or rights, namely temporal and principal rights. 2. Those who usurp, or disturb, or retain the supreme and temporal jurisdiction of the Roman Pontiff in these, for example those who impede the Roman Pontiff from publishing laws in these places, exacting taxes, etc. (cf. n. 1325 B, v. Usurpers). - 3. Cooperators, who furnish help, counsel, or favor to each of the aforesaid: namely through a formal, efficacious action, free from grave fear and coercion, for example the first magistrates of each province, city, land, or town.

The following are not excommunicated: a) 1. soldiers who invaded Rome, unless they were volunteers; b) those who fulfill municipal or other duties for protecting public tranquility: unless they furnish an oath by which they promise active obedience to the usurper, or unless they execute such things as are opposed to divine and ecclesiastical laws; c)

those who, before the intruded government, discharge the office of consul and legate; d) a fortiori those who furnish only remote work, for example by providing victuals to usurpers, leasing buildings, serving, etc., as is clear from various Responses of the Sacred Penitentiary (*A. S. S.*, I, p. 557-566; II, p. 675).

Note. As regards adherents, although they are not reviewed here, nevertheless they certainly incur the aforesaid excommunication, as is clear from the Encyclical Letter of Pius IX issued on 1 Nov. 1870. But for this, according to the more common opinion, it is required that adhesion or approval of the delict, for example in public papers, furnish help or favor, that is, that it truly concur toward the spoliation, or maintenance of the spoil (Patavin., 200, 202).

1327. XIII. To the specially reserved excommunications another must be added, which the Constitution *Romanus Pontifex*, 5 Sept. 1873, issued for protecting the Right of capitular vicars against INTRUDED PERSONS (*A. S. S.*, 7, 401 and 702).1

By this censure are punished: 1. Canons and dignities of vacant cathedral churches who shall have dared to concede and transfer the care, governance, and administration of the vacant church… into one nominated and presented by lay power from concession of the Holy See, or elected by right by the capitulars themselves, before the exhibition of Apostolic Letters. 2. The one himself nominated and presented, or elected as above, to the vacant church, who dares to take up its care, governance, and administration, under the name of provider, vicar general, or another name. 3. All who have obeyed the foregoing, or furnished help, counsel, or favor, of whatever state, condition, preeminence, and dignity they may have been. Cf. n. 1361, 1375, 1380, where other penalties are noted.

Furthermore: 1. The aforesaid Canons and dignities are punished with the penalty of privation of ecclesiastical fruits and revenues, to be incurred by the very fact and to be relaxed by the Roman Pontiff. 2. The nominated one exists deprived of that right which perhaps had been acquired for him by the nomination.

IT IS ASKED. What things must Catholics observe as regards INTRUDED PERSONS?

Resp. Behold the principal prescriptions which Pius VI gave to be observed with respect to intruded persons in FRANCE, and by which now one must stand everywhere: 1. The intruded parish priest cannot be approached for the administration of Baptism, except in the case in which there is no other person willing to baptize; nor is it licit to discharge the office of sponsor, if perhaps the intruded person baptizes. - 2. It is not licit, even on feast days, to hear Mass celebrated by an intruded person, although another cannot be heard; nor is it licit to be present at the sermon and other functions of the intruded person, or to ask other ministries of office from him, or to commit to him the celebration of Mass. 3. It is not licit to receive communion from an intruded person, not even for satisfying the Easter precept. 4. Although one must genuflect before hosts consecrated by an intruded person, nevertheless care must be taken, lest in offering this worship Catholics seem to communicate with schismatics, that the meeting of the intruded person be avoided while he carries the Eucharist. 5. It is not licit to approach an intruded parish priest for contracting marriage: whence, if no other means is available, nor can the Superior provide another parish priest or presbyter, the faithful ought to contract without the presence of a pastor. - 6. It is not licit for women, after childbirth has been completed, to receive from intruded persons the blessing which is usually given to a woman after birth. 7. Funeral rites of the dead must be celebrated by the legitimate pastor, even in private houses, if they cannot be done otherwise. But if the intruded person carries the corpse to the church, Catholics should neither accompany the funeral, nor recite sacred prayers, nor perform other rites of the Church associated with him (Ninzatti, n. 1728; cf. *Acta Pii VII*, II, p. 84). See other things n. 1439.

§ 2. EXCOMMUNICATIONS SIMPLY RESERVED TO THE ROMAN PONTIFF. There are EIGHTEEN; to which are added one from TRENT and another from a declaration of the HOLY OFFICE, as will be seen below.

Pius IX declares subject to excommunication of this kind:

1328. I. "Those teaching or defending, whether publicly or privately, propositions condemned by the Apostolic See under the penalty of excommunication *latae sententiae*; likewise those teaching or defending as licit the practice of inquiring from a penitent the name of an accomplice, as it was condemned by Benedict XIV in the Constitutions *Suprema*, 7 July 1745, *Ubi primum*, 2 June 1746, *Ad eradicandum*, 28 Sept. 1746."

1. That someone incur the censure expressed in the first part, it is necessary: a) That he teach, that is, hand down to those not knowing, whether publicly or privately, by words or writings, or defend, that is, strive to maintain as true or licit and not to be condemned, the condemned propositions. But he does not incur the censure if by good and not futile arguments he contends to demonstrate that some proposition contains a sense not condemned; for among condemned propositions, "some were condemned because they spoke too generally, and therefore they are not to be extended to all particular cases which are distinguished because of some grave circumstance" (I, 104; III, 760). - b) That these propositions have been condemned by the Apostolic See, that is, by the Roman Pontiff, whether

by himself or through the Holy Office, but not by ecumenical Councils; under penalty of excommunication *latae sententiae*, which affects the propositions themselves, and not only the book in which they are contained.

Thus were condemned, among others (cf. Konings, I, series of condemned propositions): 5 propositions by Benedict XIV concerning duel, 65 propositions contained in the Decree *Lamentabili* of 4 Jul. 1907; and generally propositions which are contrary to the doctrine of the Encyclical *Pascendi*. Cf. Motu proprio of Pius X, 18 Nov. 1907 (*A. S. S.*, 40, p. 723; likewise ib., p. 470 and 593).

But here do not come propositions condemned under penalties established by Law, that is, under penalties pronounced against heretics or those suspected of heresy; nor propositions condemned by Martin V against J. Wicleff and against J. Hus; or by Pius VI against the Synod of Pistoia; nor the errors reviewed in the Syllabus, since they carry no censure with themselves (Patavin., 230-238).

2. As regards specifically the practice of inquiring the name of an accomplice, three things are required for the censure: a) that someone teach this practice to be licit; b) that he teach each thing simultaneously to be licit, both to ask the name of the accomplice in any matter, and to deny absolution to one remaining silent; c) that he rashly teach or defend these things (VI, 491). - See the treatise on Penance, n. 1701.

1 Those who have a part in the Conclave incur this by the very fact that they assume from civil power the duty of proposing the Veto, even under the form of a simple desire. Similarly, if they make known this Veto itself, known to them by any reason, either to the College of Cardinals gathered together, or to individual purple Fathers, whether by writing or orally, whether directly and proximately or obliquely and through others. Cf. *Acta Pii X*, vol. 3, Appendix; *Nouv. Rev. Theol.*, vol. 42, p. 65.

1329. • II. "Those laying violent hands, at the persuasion of the devil, upon clerics, or monks of either sex; excepted, as regards reservation, the cases and persons concerning whom, by law or privilege, it is permitted that the Bishop or another absolve." Can. *Si quis deinceps*, 22, and Can. *Si quis suadente diabolo*, 29, XVII, q. 4 (c. 15 of Lateran Council II under Innocent II).

We note beforehand that the interpretation of this article must be made broadly, both in the first part, where there is question of the privilege of the canon, and in the second, where there is question of the faculty of absolving; for in both places the rule holds: "favors are to be amplified." See what was said n. 1319.

As regards the FIRST, by the words: 1. Laying on are designated: a) the strikers themselves, or those maltreating a cleric, even prepubescents and of whatever age, sex, condition, or state they may be, provided they are capable of reason and capable of deceit; b) those commanding, counseling, consenting, provided they gravely and efficaciously influence the striking; c) those ratifying, in the way we explained above (n. 1319); d) those not impeding, if by justice or by office they are bound to impede. Thus commonly from the authentic interpretation of the celebrated Canon *Si quis suadente diabolo*. Cf. St. Alph., VII, 264-280; ed. G., IV, p. 408.1

2. By violent hands is understood any contumelious action, externally grave, by which the body, liberty, or dignity of a cleric is injured. Hence he incurs the censure: a) who lightly, indeed very lightly, strikes a cleric, if the striking, by reason of the reverence owed to him or by reason of the circumstances, is judged gravely injurious; b) who spits upon a cleric, soils him with mud, sprinkles him with water, detains him in prison, pursues him fleeing, so that he falls into a river or ditch, tears out his hair, tears his garment, takes something by force and injury from his body, for example a cap, cloak, etc., in such a way that the action is gravely injurious; c) who does these things, thinking him to be another cleric whom he intends to injure, or with the cleric consenting; because injury is inflicted upon the clerical order itself.

3. Upon clerics, that is, those marked at least with first tonsure; even excommunicated, suspended, interdicted, verbally degraded only, provided they have not lost the privilege by public degradation by law (cf. n. 1382);2 and monks of either sex, that is, any religious men or women, in the broader sense; therefore also women living together in a religious manner in a congregation erected by the Bishop, although no profession is made in it, or the institute has not yet been approved by the Holy See; likewise novices or tertiaries, if they wear the habit and live in community (Konings, 1719, 3).

4. At the persuasion of the devil, that is, with grave sin. But otherwise: a) if someone acts from sudden anger; b) if he strikes playfully, or by chance, although the striking is materially grave, or blood is poured out copiously from the nostrils, and although it is joined even with some venially culpable anger; c) if he strikes for defense of himself or his relatives, indeed of his own goods; d) if he has authority over the cleric, as prelate, teacher, father, etc., and strikes moderately and for correction.

As regards the SECOND, that is, as regards ABSOLUTION, a threefold striking must be distinguished: 1. enormous, in which a great wounding or great injury intervenes; 2. grave or middling, when a contusion of the flesh occurs, or when indeed an abundance of blood is poured out, but without great lesion or injury, for example if a tooth is knocked out, or a quantity of hair torn out; 3. light, not indeed in itself, but relative to the aforesaid, when a simple striking occurs, for example by hand, foot, stick, and the like, without notable damage, and without wound, notable contusion, or trace of the striking remaining.3

Now, concerning these, what can the Bishop or his Vicar do by common Law?

Resp. 1. If the striking, although public, was light, he can absolve the striker, whoever he may be; 2. if middling, only those who live collegially, women, and prepubescents; 3. if enormous, only prepubescent females, whether they seek to be absolved before or after puberty, with things to be excepted excepted, in an occult case from c. *Liceat.* - In doubt whether the striking was light, grave, or enormous, you must follow that which is greater, or that which favors the privileged more, from the aforementioned rule of interpretation (VII, 279, 280).

But notorious strikers of clerics are excommunicated persons to be avoided (see n. 1295).

1330. III. "Those perpetrating a duel, or simply challenging to it, or accepting it, and any accomplices whatever, or those furnishing any work or favor whatever, as well as those watching deliberately, and those permitting it, or not prohibiting it insofar as is in them, of whatever dignity they may be, even royal or imperial." Trent, Sess. 25, c. 19, *de Ref.*; Gregory XIII, *Ad tollendam*; Clement VIII, *Illius vices*; Benedict XIV, *Detestabilem.*

The following are excommunicated: 1. Those perpetrating a duel, namely all those who by private authority, from agreement, enter a single combat with danger of killing or grave wound. But it makes no difference whether seconds are present or not; whether they fight with lethal weapons, or not; provided there is danger of grave wound, and this is foreseen, as frequently happens in certain Universities.1 Likewise, those challenging to a duel with a serious intention of fighting, although the one challenged does not accept. Likewise those accepting, although the duel does not follow.

2. Accomplices, those furnishing any work or favor whatever, as seconds, witnesses; those who give counsel, who dictate, write, carry letters of challenge; or otherwise involve themselves in these, for example a physician or confessor who from agreement would be nearby to bring help to the wounded (Holy Office, 31 May 1884; *A. S. S.*, 17, p. 604). - Yet those seem immune from censure who only teach the art of fencing to those about to duel.

3. Those watching deliberately, that is, those who by their presence incite to the fight; but not those who, passing by chance, look, or in secret, or from afar; nor those who go to the place of the contest in order to impede the duel.

4. Those permitting it, or not prohibiting it, when they are able and ought to prohibit, as leaders of an army, lords of a land, prefects, etc. (cf. n. 747, 1387). St. Alph., VII, 220.

Note. All who are indicated under 2-4 do not seem certainly to incur the censure if the duel does not in fact follow (Genicot, II, n. 595; Lehmkuhl, II, 1222).

1331. IV. "Those giving their name to the masonic or carbonarian sect, or to other sects of the same kind, which plot against the Church or legitimate powers, whether openly or secretly; as well as those furnishing any favor whatever to the same sects; and those not denouncing their hidden chiefs and leaders until they have denounced them." Clement XII, *In eminenti*; Benedict XIV, *Providas*; Pius VII, *Ecclesiam*; Leo XII, *Quo graviora*; Pius IX, *Qui pluribus*; Leo XIII, *Humanum genus*, on 20 Apr. 1884.

The following incur this censure: 1. Those giving their name to sects prohibited under censure. One must carefully distinguish between societies prohibited indeed under grave obligation, but without censure, and societies forbidden under censure.

For a society to be prohibited under censure, two things are required: that it truly constitute a sect united by a close bond, and that it plot something against the Church or legitimate Government. For censure IV is directed first against the masonic sect, and then against those societies which are constituted according to its pattern.1

Now: a) Prohibited, but without censure, are, for example, the three American societies called Odd Fellows, Sons of Temperance, Knights of Pythias (Holy Office, 20 Aug. 1894),2 and in general all those which demand from their followers a secret to be disclosed to no one, and obedience in every way to be furnished to hidden leaders (Holy Office, 10 May 1884).3 Similarly the society of Sillonists (*A. A. S.*, II, p. 608 sqq.), biblical societies, or those which are constituted for burning corpses (Holy Office, 19 May 1886), are altogether forbidden.

b) Prohibited under censure are: the masonic and carbonarian society, from the Constitution itself, and the Fenians (Holy Office, 12 Jan. 1870);4 societies of Solidarists, Internationalists, Mazzinians, Communists, Nihilists, Anarchists, as well as similar societies, whether or not they demand from their followers an oath of keeping secrecy (Holy Office, 1846 and 1884; *Coll. Prop. Fid.*, n. 1861).

As regards socialists, the doubt among authors whether they are punished by this censure arises from this, that socialists do not have, like masons, hidden leaders and hidden ordinances (Lehmkuhl, II, 1225; Noldin, I, 74; Vermeersch, *de Prohib. libr.*, n. 83; Genicot, II, 596). But against this is that the Holy Office, in the Decree of 10 May 1884, declares that the mark of a society prohibited under censure consists especially in plotting against the Church or Government. Cf. D'Annibale, Ballerini-Palmieri.

2. Favorers, who furnish any favor whatever to those sects, that is, who provide counsel, help, openly or in secret, by themselves or through others, who receive them in their buildings, conceal them, or make a convenience for them so that they may be summoned to another place; who exhort others or persuade them to enroll themselves in societies of this kind, or to be present at their meetings; finally all who in any way help and favor them, and constitute themselves guilty of gravely illicit cooperation. Nevertheless, the censure no longer touches those who fictitiously are present at their meetings.

3. Those not denouncing, within a month, to the Ordinary the hidden chiefs and leaders, and these alone. a) The obligation of denouncing is the same as for a heretic and must be interpreted by the same reason (cf. n. 442); but it suffices if you manifest the guilty through an interposed person, for example through a confessor or parish priest. Holy Office, 15 June 1870. b) This obligation urges even when the leaders to be denounced are publicly known as Freemasons, but not as chiefs or leaders of the masonic sect. It urges also in those regions in which they cannot be punished by ecclesiastical power, nor in any way restrained (Holy Office, 19 Apr. 1893).5 c) The obligation of denouncing ceases if the leaders as such are certainly known; but it does not cease on that account because their names are read everywhere in books and newspapers (Holy Office, 1 Feb. 1871).6 It also ceases as long as someone cannot denounce without betraying himself. d) Denunciation having been made within 30 days after the obligation has been known, or after the impediment which perhaps stood in the way has been removed, the censure is not incurred. Denunciation having been made later, the incurred censure is not removed by the very fact, as some wish, but it is no longer reserved, and can be removed by any confessor, as is clear from the Response of the Sacred Penitentiary in the year 1832, given for a similar case.1 See nevertheless what Lehmkuhl adds (II, n. 1227) at the end of the article.

Note as regards absolution. It is not enough, as the Holy Office declared, 5 Jul. 1837, that the sectarian be sorry for the oath emitted so that he can be absolved, if externally he still communicates with the same associates. He must abjure the sect, at least before the confessor (Holy Office, 5 Aug. 1898),2 and bid it farewell; likewise he must hand over the books and all signs, so that they may be transmitted to the Bishop or inquisitor, or at least burned, if just and grave causes demand this.3 Yet several authors4 think that that Response of 5 Jul. 1837, given according to the things set forth, must be accepted with a grain of salt, and that the penitent can licitly be absolved if he cannot at once break off every relation with his sect without danger of death or of another most grave evil equivalent to death, which nevertheless today does not happen so easily. Yet under this condition, that participation is not made in intrinsically evil acts, nor arises any emolument for the sect, nor any spiritual detriment of the penitent, or scandal of neighbor. Thus it seems to be merely material cooperation, which becomes licit because of most grave causes (cf. Resp. Holy Office, 18 Jan. 1896).

1 Certain more recent authors (Noldin, *de Poenis*, n. 70) deny that the censure is incurred by prepubescents, although they are in possession of themselves; others (D'Annibale, 111; Pennacchi, I, p. 481; Formisano, p. 71; Del Vecchio, I, n. 598) do not extend it to cooperators. These opinions do not appear sufficiently probable to us: for the censure itself and its authentic interpretation constantly require this broadest signification. Besides, if prepubescents are not comprehended, the power, to be cited below, granted to Bishops as regards absolution of prepubescents becomes useless. Cf. Patavin., n. 263; Avanzini, p. 86; Lehmkuhl, II, 1217; *Nouv. Rev. Theol.*, vol. 6, p. 119. See also above n. 1311, 3.

2 Those who do not wear clerical habit do not lose the privilege because they are impeded, as in England; but the striker, to incur the censure, ought to know that they are clerics (Scavini).

3 Zitelli, *App. Jur. can.*, l. II, c. VI, art. 2, 1. Cf. Const. of John XXII: *Perlectis*.

1 As regards student duels, see the Decree of the Sacred Congregation of the Council, 9 Aug. 1890 (*A. S. S.*, 33, p. 242). We reported it above n. 747.

1 Cf. Acts of the Plenary Council of Latin America (1899), tit. 2, c. VII; Noldin, *de Poenis ecclesiasticis*, n. 74.

2 *A. S. S.*, 28, p. 438.

3 *Nouv. Rev. Theol.*, 16, p. 407.

4 Avanzini, p. 245; *Collect. S. S.*, n. 515.

5 *Anal. eccl.*, t. I, p. 204.

6 *A. S. S.*, vol. 6, p. 435.

1 Cf. *Nouv. Rev. Theol.*, t. 8, p. 612; Patavin., n. 302; Formisano, in h. loc.; St. Alph., VII, 123.

2 *Nouv. Rev. Theol.*, 31, p. 96.

3 Cf. Konings, n. 1721 where there are many things; Avanzini, note 26, as regards the practice of the Sacred Penitentiary.

4 D'Annibale, I, n. 391, p. 406; Del Vecchio, I, n. 604; Noldin, *de Poenis*, n. 76; Genicot, II, n. 597.

1332. V. "Those commanding to violate, or violating with rash daring, the immunity of ecclesiastical asylum." L. III Decretal., tit. 49; Gregory XIV, *Cum alios*; Clement VIII, Decret. *Sacra Congregatio*.

Preliminary notes. The IMMUNITY of asylum consists in this, that delinquents, except heretics, murderers, public robbers, and others to be excepted by law, who have fled into a sacred or religious place, erected by the authority of the Supreme Pontiff or Bishop, cannot be extracted thence, but are preserved there safe and whole (St. Alph., *de Privil.*, 25-28). - To this right, in several regions, because of the vicissitudes of times, an easing has already been given by the Holy See. Nevertheless the Holy Office, 22 Dec. 1880, established that the right of asylum must be observed at least as to substance, and therefore has not been totally abrogated by contrary custom. Cf. also *A. S. S.*, II, p. 45 and 484. The right of asylum was similarly restricted in the Austrian Concordat; for it was established that the immunity of sacred temples was to be observed "insofar as public security and those things which justice demands permit this to be done."5

But by force of the present article, THE FOLLOWING ARE EXCOMMUNICATED: 1. those who command this immunity to be violated; 2. those who in reality, with force applied, violate it; provided that all these do this with rash daring, in contempt of religion or of the canon. Hence judges, soldiers, and all who, compelled by civil law or otherwise, violate the right of asylum are exempt from the censure. Holy Office, 1 Feb. 1871 (ap. *Nouv. Rev. Theol.*, 15, p. 243).

1333. • VI. "Those violating the enclosure of nuns, of whatever kind or condition, sex or age they may have been, by entering their monasteries without legitimate license; and likewise those introducing or admitting them; and likewise nuns going out from it outside the cases and form prescribed by St. Pius V in the Constitution *Decori*."

THE FOLLOWING ARE EXCOMMUNICATED: 1. Those violating the enclosure, that is, for nuns, the whole house, and all enclosures annexed to it and surrounded by a wall; of nuns, namely those who emit solemn vows and have papal enclosure; of whatever kind, etc., therefore the Ordinaries of places themselves, women, and prepubescents capable of deceit: yet excepted, from ancient Law, are kings, queens, and their retinue; by entering without legitimate license, although it is not for an evil or lustful end, or under pretext of faculties or privileges (cf. n. 2163, as regards LICENSE).1

2. Those introducing or admitting. Only outsiders can introduce; only nuns are said to admit. All nuns can admit positively, but negatively only the Superior, the keeper of the door, or the more dignified from the monastery, conscious that permission was not imparted. To accompany those already entered, to converse with them, is not to admit, except insofar as, through conversation within the enclosures of the monastery, those who would already wish to go out are retained (Aertnys, l. VII, n. 94; Lehmkuhl, II, 1231).

But whether introduction or admission of prepubescents before the seventh year certainly causes the censure to be incurred is disputed among the learned (cf. Aertnys, Lehmkuhl, l. c.).

3. Nuns going out outside the cases determined by St. Pius V, that is, without cause of great fire, contagious disease, or a similar event, for example flood, imminent ruin, invasion of soldiers; outside the form..., that is, unless the cause has been cognized by the Ordinary and approved in writing, when time permits.2 But from the Decree of the Holy Office, 22 Dec. 1860, the custom, even immemorial, of conceding departure for other causes, although grave and recognized by Bishops, must be judged abrogated, nor can it be continued. See n. 2162.

Note. Nuns who have legitimately gone out, but return more slowly, are not indeed excommunicated, but they sin. Gennari, *Quest. de mor.*, I, n. 52.

1334. VII. "Women violating the enclosure of regular men, Superiors or others admitting them." St. Pius V, Const. *Regularium* and Const. *Decet.*

The enclosure of REGULARS, that is, of those emitting solemn vows, is all that space which is contained by the enclosures of the monastery; and so, cloister, house, interior workshops, for example library; but not the church, sacristy ordinarily, nor the garden, if it can be approached without passage through the monastery and is separated from the enclosure by a key and suitable wall.

The following are excommunicated: 1. any women whatever, provided they are postpubescent, except queens and similar privileged women; 2. those admitting them, namely all who directly or indirectly are in cause why women enter, for example Superiors or the doorkeeper, if they do not impede entrance, when the obligation of prohibiting and impeding it is incumbent.

1335. VIII. "Those guilty of real simony in any benefices whatever, and their accomplices." Paul II, *Cum detestabile*; Trent, Sess. 24, c. 18, *de Ref.*

The excommunication STRIKES: 1. Those guilty of real simony, which is had, namely, when someone buys or sells: a) the benefice itself; or b) its conferral or provision; or c) election or presentation for obtaining it; provided that execution of the agreement has at least been begun on each side… in any benefices whatever, provided they are benefices properly so called, whether secular, as an episcopate, canonry, deanery, parish; or regular, as abbeys, and certain priories, which are benefices of the true name. Nevertheless, more probably under the censure are not comprehended generally prelacies of regulars, as generalate, provincialate, etc.; nor ecclesiastical offices which lack a benefice; nor subsidiary parishes removable at will, although in favorables they can come under the name of benefices.1

2. And their accomplices, that is, "those who have procured or existed as mediators, so that simony be done," as is read in the Constitution of Paul II2 (cf. n. 591).

3. IX. "Those guilty of confidential simony in any benefices whatever, of whatever dignity they may be." Pius IV, Const. *Romanum*; St. Pius V, *Intolerabilis*; Trent, Sess. 25, c. 7, *de Ref.*

This censure touches each guilty party, provided the simony is consummated at least on one side. It is incurred, therefore, when someone procures a benefice, properly so called, for another, by election, presentation, conferral, resignation, etc., with certain confidence, that is, with an express or tacit pact, that the one for whom he procures it will at a certain time resign it to the procurer himself or another, or pay a pension because of the fruits received from it.

But the phrase "of whatever dignity they may be" was added because Cardinals, Bishops, and major prelates were punished by Pius IV with interdict alone (cf. n. 591).

1337. X. "Those guilty of real simony because of entrance into Religion." Urban IV, Extrav., *Sane, de Simonia.*

The censure is incurred by him who, because of the very entrance into Religion, gives or accepts something temporal; when the simony has been real, that is, after it has been completed on each side, and therefore, according to a very probable opinion, only after solemn profession has been emitted (III, 108). It is not incurred if something is accepted for the support of the religious, although illicitly.3 Indeed, if it is a question of nuns, a dowry for support must always be assigned, as is clear from decisions of the Sacred Congregations (cf. n. 591).

1338. • XI. "All who, making gain from indulgences and other spiritual graces, are punished by the censure of excommunication in the Constitution of St. Pius V, *Quam plenum*, 2 January 1569."

By this Constitution are punished "all lower than Bishops" who, money having been accepted, have in fact conceded or published either indulgences or other graces designated in that Constitution of St. Pius V itself. But these are: 1. faculty of choosing for oneself a priest for absolution from cases reserved to the Bishop; 2. celebration of Mass and burial in time of interdict; 3. use of prohibited foods; 4. assumption of several co-parents at baptism, contrary to the Decree of Trent; 5. absolution from real simony reserved to the Pope (Avanzini, in h. exc., p. 30).

1339. XII. "Those collecting alms of greater price for Masses, and taking profit from them by causing them to be celebrated in places where Mass stipends are usually of lesser price." Benedict XIV, Const. *Quanta cura* and Our Most Holy Lord Pius X, Decree of the Sacred Congregation of the Council *De observandis* (*Ut debita*).

Both clerics and laymen incur this excommunication whenever, for Masses celebrated or to be celebrated, after the stipend has been handed over, they retain part of it as profit, and indeed so much as suffices for grave theft. But it is necessary that they be at the same time:

1. Collectors, as if by industry, of many manual alms, or alms taxed from foundation for Masses. Whence, although he sins, nevertheless he does not incur this censure who seeks profit from stipends which are given to him so that he himself may pay them; nor he to whom they are spontaneously brought so that he himself may take care that Masses be celebrated by others, unless they are brought to him as to a collector; nor he who once or again should collect some small number of Masses; for such a one is not a collector of the true name.1

2. Taking profit. - Whence he who, like a thief, claims for himself part of the stipend (Bucceroni, *Comm.* III, n. 62), or spends the excess for pious uses, is not subject to this censure, although he is not immune from fault, as is clear from the Decree of the Sacred Congregation of the Council, 9 Sept. 1874 (Del Vecchio, I, n. 608; II, 1067); nor is he held by fault who retains something for himself as the just price of his labor; for, as St. Alphonsus says (VI, 322), "if he has been designated for this duty, and his labor truly deserves a wage, then a wage of this kind is owed to him from natural equity, and from the will of those offering the alms." See Resp. S. C. C., 18 Mar. 1905 (*A. S. S.*, 38, p. 80).

3. That they cause Masses to be celebrated in places where Mass stipends are usually of lesser price. Moreover, the Holy Office declared, on 13 Jan. 1892, that this censure is incurred also by those who cause Masses to be celebrated for a lesser stipend in the same place where they collected the alms (*Nouv. Rev. Theol.*, 24, p. 170). Understand, if in that place the customary stipends are usually of lesser price (Lehmkuhl, II, 1237).

Note. Absolution concerning these things is not to be given except to those willing to restore, or prepared to stand by the commands of the Holy See, in the case in which recourse is made to it for condonation (cf. n. 1613).

1340. •XIII. "All who are punished by excommunication in the Constitutions of St. Pius V, *Admonet nos*, 29 March 1567; Innocent IX, *Quae ab hac Sede*, 4 Nov. 1591; Clement VIII, *Ad Romani Pontificis curam*, 26 June 1592, and Alexander VII, *Inter ceteras*, 24 Oct. 1660, regarding alienation and infeudation of cities and places of the Holy Roman Church."

By this censure are punished all, whether laymen or clerics, of whatever dignity, who, without consulting the Most Holy One, strive, by themselves or through others, either to act, or to suggest or persuade the Roman Pontiff to any alienation whatever of cities or places pertaining to the Holy See; from any pretext whatever, even of necessity or evident utility, and although they lose their work and oil. - Therefore those who subscribed to letters once sent to the Roman Pontiff, for example by C. Passaglia, that he should renounce his temporal dominion, are, according to some, with others contradicting, bound by this excommunication.2

1341. •XIV. "Religious presuming, outside the case of necessity, to minister to clerics or laymen the sacrament of Extreme Unction, or the Eucharist by way of Viaticum, without permission of the parish priest." Clement V, in Clem. 1, *de Privil.*

Here understand religious in the strict sense: for thus the common interpretation bears in odious matters. But by the name of parish priest comes he who has actual care of souls, or who acts in his place. It is said presuming: therefore the censure is not incurred if in good faith it is judged either that necessity urges, or that the permission of the parish priest can be presumed, or if the sacraments are ministered to those who are not subject to parochial jurisdiction, for example to other regulars, travelers, wanderers, etc. - Nor is it prohibited to repeat Viaticum from devotion (cf. n. 1537 and 2187, 4). Cf. D'Annibale, n. 145.

1342. XV. "Those extracting, without legitimate permission, relics from the sacred cemeteries or catacombs of the city of Rome and its territory, and those furnishing help or favor to them." Paul V, Decr. 24 Aug. 1613; Clement X, Const. *Ex commissae.*

In the Clementine Constitution two things are required:

1. Legitimate permission, conceded in writing by the Eminent Cardinal Vicar, with the subscription and seal of the Vicar of the City.

2. Presence of a priest delegated by the Vicar, while the extraction of the relics is made.

But it makes no difference whether someone extracts in great or small quantity, if it is established that they are from the relics of martyrs, for example when glass or earthen phials stained with blood, or at least bloody crusts enclosing them, are found at the burial niches, inside or outside them (S. R. C., 27 Nov. 1863). But otherwise concerning other ashes or bones of the faithful, although the prohibition of taking away anything from them must be observed at least under venial sin.

1343. XVI. "Those communicating with one excommunicated by name by the Pope in a criminal crime, namely by expending help or favor to him." Innocent III, c. *Nuper*, 29, *de Sent. excomm.*

By the words one excommunicated by name by the Pope are not comprehended those excommunicated by the Roman Congregations, even when approval of the Supreme Pontiff accedes to their Decrees (Holy Office, 18 Jun. 1897). Cf. *Anal. eccl.*, V, 380.

To communicate in a criminal crime is the same as to cooperate in a crime already perpetrated, or in the contumacy because of which another is excommunicated: suppose if someone furnishes help or favor to another excommunicated because of retention of a thing, lest he make restitution. It is controverted as regards those giving counsel (cf. VII, 197).

1344.XVII. "Clerics knowingly and spontaneously communicating in divine things with persons excommunicated by name by the Roman Pontiff, and receiving them in the offices." Clement III, c. 18, *de Sent. excomm.*

It is said 1. clerics, therefore laymen and Bishops are exempt from the censure; 2. knowingly and spontaneously: whence ignorance excuses (cf. n. 1269, 3), and even light fear; 3. communicating in divine things, for example in administering sacraments, and receiving them in the offices, liturgical ones; namely both are required, according to the ancient tradition of the identical censure;

5 Muller, *Theol. mor.*, l. III, App.; Sagmuller, *Kirchenr.*, 167, V.

1 Formerly the license had to be conceded in writing. Today license given orally seems to suffice. General license is conceded only to the physician, confessor, and workmen. St. Alph., VII, 221 sqq., with changes to be changed from the new law.

2 St. Alph., III, 106-112; cf. D'Annibale, n. 118.

3 Cf. Gabr. a Varceno, t. II, p. 470, n. 5.

4 Thus D'Annibale, n. 116; which nevertheless is not pleasing to all (see Lehmkuhl, II, 1234).

1 St. Alph., III, 92; Patavin., 329-338.

1 Deliberately we said: this censure; because both priests, clerics, and laymen can fall into others. Cf. what we shall say when there is speech concerning Mass stipends (n. 1615-1619). See also n. 1350 bis.

2 Cf. Pennacchi, App. 26; Signoriello, *Novello missionario*, p. 64, where there is a formula of retraction; Piatus, on this excommunication.

4. by the Roman Pontiff by name excommunicated: whence excommunication is not incurred if communication is admitted with those who are censured by name by the Sacred Congregations, even with the Roman Pontiff approving. Cf. n. 1290 and 1295. See nevertheless n. 1377.

5. XVIII. "But let those presuming to absolve, namely from excommunications reserved in a special way, without due faculty, even under any pretext whatever, know that they are bound by the bond of excommunication reserved to the Roman Pontiff; provided that it is not a question of the article of death." From the first part of the Constitution after excomm. XII.

It is said: 1. presuming: therefore he is immune from censure who absolves from ignorance, even crass (cf. n. 1269), from grave fear, from probability by which, being led, he judges either that the penitent is not entangled in excommunication, or that he himself has power to absolve him; 2. provided that etc.; because there is no reservation in the article of death (cf. 1282 sqq.).

1346. •XIX. Missionaries and ecclesiastics are excommunicated who, by themselves or through others, by any title or form, apply themselves to trade in the East Indies, China, Japan, or in America, whether southern or northern; likewise Superiors, even mediate, who do not punish delinquent religious immediately subject to themselves.

Thus from the Constitution *Ex debito* of Urban VIII, and the Constitution *Sollicitudo* of Clement IX, which Pius IX, through an authentic declaration of the Holy Office, pronounced still to be in force (4 Dec. 1872).3

The said prohibition and penalty, according to the mind of the same Clement IX: 1. affects not only European missionaries, but also any ecclesiastical men whatever, except indigenous priests, who under the name of missionaries, or by any other title, shall have been sent for a time, or will be staying in those parts in any way whatever (Holy Office, 17 Jan. 1883). 2. It regards trade properly so called, showing itself by continuous acts (cf. *Ami du Cl.*, 1907, p. 947; 1908, p. 1196).

Moreover this censure is commonly placed among the reserved, because, Clement IX so establishing, "none of the aforesaid delinquents can be absolved, except constituted in the article of death, unless profits of this kind have first been restored."4

But if restitution has not merely been promised, but actually made, namely to pious causes, but not to the institute of the delinquents, the excommunication will no longer have to be held as reserved, as is evident (*A. S. S.*, 7, p. 317; *Monit. eccl.*, VIII, P. II, p. 245).

1347. • XX. From TRENT: "One presuming to usurp or impede the goods, jurisdictions, rights, etc., of any benefices and pious places whatever, shall be subject to anathema so long as he has not restored these things integrally, and then obtained absolution from the Roman Pontiff" (Sess. 22, c. 11, *de Ref.*).

This excommunication, which is much broader than the others (n. 1325, 1326), comprehends: 1. As regards OBJECTS, the jurisdictions, goods, censuses, rights, for example right of administering, of churches, benefices, and any pious places whatever, or any obventions whatever which must be converted to the necessities of ministers and the poor. 2. As regards persons, all those who, by themselves or through others, and therefore it comprehends also the one commanding, by force or fear instilled, or by any art, fraud, or by any sought color, title or pretext, PRESUME to convert and usurp the said goods for their own uses, or only to impede them from being received by those to whom they pertain by right: therefore it comprehends those occupying, or placing impediment, as if by right to those things.

But he is not subject to the censure who used no force, fear, fraud, or pretext, as if someone omits to restore a thing loaned to him or deposited with him. But those buying ecclesiastical goods, movable or immovable, usurped by usurpers, fall at least into this Tridentine excommunication. This is clear from the Response of the Holy Office, 8 July 1874; and the reason is that they truly detain sacred goods and transfer them to their own uses. And furthermore, the Sacred Penitentiary, 21 May 1897 (*Nouv. Rev. Theol.*, 30, p. 85), declared that those buying goods of religious, which the fisc sells because the same religious refuse to pay a tax imposed by civil law, commonly called *loi d'abonnement*, fall into this Tridentine excommunication. Say the same of those who have accepted, in lease or emphyteusis, ecclesiastical goods occupied or alienated by the fisc. Likewise the same concerning those who redeemed censuses, canons, and other ecclesiastical rights, whether redeemable or not redeemable, without an indult of the Holy See. All these things are gathered from various Responses of the Sacred Penitentiary, for the jubilees of the years 1866 and 1875 (Del Vecchio, I, n. 629-632; Piat in h. exc., where there are many things). Recall what was said n. 1325.

The Council adds: but the cleric who was the contriver or consenting party of such nefarious fraud and usurpation shall be subject to the same penalties; and shall also be deprived of any benefices whatever, and made incapable of any other benefices whatever; and, even after integral satisfaction and absolution, shall be suspended from the execution of his orders at the judgment of his Ordinary (Patavin., n. 190, 370). See what was said n. 1254, 3.

§ 3. EXCOMMUNICATIONS RESERVED TO ORDINARIES.1 1348. THREE are stated in the Constitution *Apostolicae Sedis*, in these words:

"We declare subject to excommunication *latae sententiae* reserved to Bishops or Ordinaries:

I. "Clerics constituted in sacred orders, or regulars or nuns, presuming to contract marriage after a solemn vow of chastity; as well as all presuming to contract marriage with any of the aforesaid persons." Clement V, *de Consang.*

To incur this censure it is required: 1. That at least one of them be marked with sacred Order, or bound by a solemn vow of chastity, although another impediment is present, for example of affinity or consanguinity, from which the marriage is null (Holy Office, 13 Jan. 1892). 2. That they presume to contract marriage, that is, that both furnish matrimonial consent concerning the present, and that they do this with presumption, that is, with perfect knowledge of fact and law, and with full liberty. But so-called civil marriage suffices, as is clear from the Decree of the Holy Office, 22 December 1880.1

1349. II. "Those procuring abortion, the effect having followed." Sixtus V, Const. *Effraenatam*, § 7.

To contract this censure three things are required:

1. That the abortion be true and certain (cf. n. 741). Whence excommunication is not incurred unless both conception or existence of the fetus, and its premature ejection from the maternal womb, were certain.2 - But the ancient distinction (Gregory XIV) between an animated and unanimated fetus is removed; wherefore, at whatever time after conception a true and certain abortion is procured, the censure is contracted. Otherwise as regards irregularity (cf. n. 1946). Craniotomy, as we said n. 745, does not induce censure; because it is not abortion strictly so called.

2. That it was procured, that is, sought by industry and directly willed, whether by oneself or through interposed persons, as the Bull of Sixtus V has it. Hence by the censure are punished the physician, maidservant, companion, offering a potion; likewise the father of the family, husband, fornicator, who strike while intending abortion, or who by command or threats compel a woman to inflict abortion upon herself. Exempt from it is he who gravely strikes a pregnant woman from anger, hatred, or jealousy, perhaps foreseeing abortion, but not intending it. Likewise exempt

is the physician giving mere counsel, or indicating suitable means; the pharmacist preparing or selling the remedy, although from a gravely evil intention; for they are not reviewed in the article, as formerly in the Constitution *Effraenatam*, "those who knowingly gave aid, counsel, or favor."

3. That it truly followed from the cause placed for this end. But otherwise, if it is established or at least probable that the abortion happened from another cause; for example from the fact that after taking the abortive the woman fell from a height. Otherwise also, if the guilty person repents before the effect follows (cf. n. 1264, 2).

Note. The woman herself who procures abortion for herself, according to a very probable opinion and, with attention to intrinsic reason, the more probable, does not incur the censure. The reason is that generally women take medicaments "driven by vehement fear of harm to come... and while they do not shrink from so great a crime, they would easily also make little account of excommunication; and therefore the Pontiff, and this is most important, in order to avoid a new snare of the soul and other dangers, especially of sacrilegious confessions, did not wish to comprehend them." Thus St. Alphonsus on the Bull *Effraenatam* of Sixtus V, in which the word *procurantes* is the same.3 And among more recent authors D'Annibale,1 Cretoni, Avanzini,3 Ballerini, Del Vecchio, Vecchiotti, Ninzatti,1 Pennacchi, Konings, Haringer, Sabetti, Lehmkuhl, etc., teach the same.

1350. III. "Those knowingly using false Apostolic Letters, or cooperating in the crime in this matter."

Users are those who exhibit false Letters, changed or supposed, so that they can obtain the effect which they intend, whether they actually obtain it or do not obtain it; cooperators, those who furnish work to the user, not to the falsifier. But if someone publishes false Letters and uses them, he incurs a double excommunication (cf. n. 1323).

1350bis. - IV. Laymen offending with rash daring against the decrees by which traffic from Mass stipends is prohibited are bound by excommunication *latae sententiae* reserved to Bishops. Decree *Vigilanti* of the Sacred Congregation of the Council, 25 May 1893 and Decree *De observandis* of the same Sacred Congregation, 11 May 1904.

Base traffic from Mass stipends has always been most severely prohibited; now the sanction of penalties has been added, namely excommunication for laymen, suspension for priests and clerics, as will be said n. 1615-1619.

§ 4. EXCOMMUNICATIONS *LATAE SENTENTIAE* RESERVED TO NO ONE. Ten are numbered: namely FOUR from the Constitution *Apostolicae Sedis*. SIX others inflicted by the Council of Trent.

1351. I. "Those commanding or compelling that notorious heretics, or those excommunicated or interdicted by name, be handed over to ecclesiastical burial."

Only those commanding by their own authority, for example syndics, or compelling, through force or grave fear, that a notorious heretic, although he may have been in good faith, or apostate, although not to be avoided, or any other person excommunicated by name, whether by the Pope or by the Bishop, or interdicted by name, be buried in a blessed cemetery or in another sacred place, although polluted or interdicted, incur this censure. More probably they do not incur this censure who bury, as a priest merely obeying, cf. however n. 1344, or furnish work to those burying. Nor those who command an unworthy person to be buried in a profane or separate place, although with ecclesiastical rite and blessing of the grave. On the contrary, those incur it who command such a one to be buried in a sacred place, although no sacred rite is used (cf. n. 1377, end); except if by force of civil law, as in Germany, they are bound to command this. See Piat, on this excommunication.

1352. II. "Those injuring or terrifying inquisitors, denouncers, witnesses, or other ministers of the Holy Office, or tearing away or burning the writings of its sacred tribunal; or furnishing help, counsel, or favor to any of the aforesaid."

Injuring, etc. (cf. 1322); tearing away, that is, as if plundering, destroying, lacerating, burning, but not secretly taking away by force one or another writing of the Holy Office, not only at Rome, but wherever it exists (D'Annibale, n. 174); writings, that is, instruments whether public or private, whether handwritten or printed in type, which pertain to this Sacred Tribunal. Those are not subject to this excommunication who admit the same things against denouncers before Bishops, or witnesses, or ministers of Bishops, or writings pertaining before them to the matter of the Holy Inquisition. Holy Office, 28 Jan. 1892 (*Nouv. Rev. Theol.*, 26, p. 317).

1353. III. "Those alienating and presuming to receive ecclesiastical goods, without apostolic beneplacit, according to the form of the Extravagant *Ambitiosae*, concerning things of the Church not to be alienated."

THE FOLLOWING ARE EXCOMMUNICATED: 1. Those alienating, namely those in whose possession is the administration of goods, and by whose mandate and in whose name the alienation is made; but not Bishops or abbots, who, in the cited Extravagant, are coerced only by interdict from entrance of the Church.1 2. Those presuming to receive, namely

those who, no ignorance, etc., excusing, according to what was said n. 1269, 3, acquire, hire, etc., the aforesaid goods, or by whose mandate and in whose name the goods are received, of whatever dignity they may be. - Those consenting, counseling, favoring, mandataries, those destroying ecclesiastical things, stealing, etc., are not comprehended.2

Let it be noted: 1. Under the name of ALIENATION comes every perfect act by which direct or useful ownership, in whole or in part, is transferred to another, or is in any way changed, obligated, or made worse. Of this kind is donation, exchange, sale, emphyteusis, infeudation, census, hypothec, imposition of servitude, transaction, cession of a right already acquired, etc., likewise lease beyond a useful or fruitful three years (Ferraris, v. Alienatio, art. I).

Alienation is also had if the title of money is exchanged into another, as is clear from the Decree of S. C. C., 17 Febr. 1906 (cf. *A. S. S.*, 39, p. 156; Wernz, *Jus Decr.*, III, n. 160).

The contraction of debts performed by Religious, if it exceeds 10000 lire, is an alienation which requires apostolic beneplacit (*A. A. S.*, I, p. 698).

2. ECCLESIASTICAL GOODS are here understood as all goods whose administration is subject to ecclesiastical authority, such as: a) goods, whether immovable or precious movable, which pertain to churches or monasteries, even of congregations (S. C. de P. F., 15 Jan. 1903); b) ecclesiastical benefices, even rights of patronage and ecclesiastical chaplaincies, but not lay ones, as is more probably taught (cf. Lucidi, *de Vis. SS. Lim.*, III, n. XLIV, 16); c) goods of any pious place whatever, for example confraternity, academy, seminary, hospital, etc., erected by ecclesiastical authority, although in the civil forum the goods are inscribed as property of a private man (Resp. S. Congr. Episc. et Reg., on 17 Feb. 1886). Immovable goods are buildings, estates, fields, forests,1 etc.; likewise rights and actions in immovables. Precious movable goods are judged to be all things which are of the treasury of the Church, or of the pious place, as gold and silver vessels, gems, abundant libraries, and similar things. In these is not comprehended MONEY which is destined for daily uses, or which comes from fruits of estates; even if it has been placed in public census, in banks, etc. But that money is comprehended which comes from the alienation of immovables, or has been given with the perpetual burden of Masses, or with the express obligation of buying an immovable or precious movable, as Bouix asserts and proves at length (*de Reg.*, P. V, s. IV, c. III). The dowry of sisters is also comprehended in religious Institutes (*A. A. S.*, l. c.).

3. WITHOUT APOSTOLIC BENEPLACIT, yet with the consent of the Bishop, or of the regular Superior if it is a question of exempt persons, alienation is made LICITLY and VALIDLY: a) if the thing, even immovable, for example a little plot of land, a sterile estate, is of slight value, that is, below 25 gold scudi of the camera (221 fr. 30; Roman scudi 41.25);2 or such that its revenues do not suffice for preserving it; or it is leased for three years, even with a promise added of leasing for another three years; or such that it is likely not to last for three years without notable deterioration, for example a garment, beast of burden, etc.; or b) if necessity urges, or an occasion of great utility is present which otherwise would pass; or c) if the thing was given to the Church with this condition, that it can be alienated; or d) if the thing has been left to one incapable of possessing, as the Friars Minor Observants and Capuchins are, who for this reason can sell the thing and apply it to the utility of the Church or monastery; or e) if a special and personal privilege is had, as is drawn from the Decree of the Holy Office, 22 Dec. 1880.3

4. Understand the words ACCORDING TO THE FORM OF THE EXTRAVAGANT concerning the just causes and solemnities which are required for obtaining apostolic beneplacit. These and other things, see in St. Alphonsus, IV, 187; cf. De Angelis, l. III, tit. 13.

Note. On 8 Feb. 1911, the Sacred Penitentiary established these things: Lessees of ecclesiastical goods do not incur the Tridentine censure unless the damage thence coming to the Church, in the space of one or more years, according to the estimation of a prudent confessor, reaches a notable quantity, greater indeed than what regularly suffices for the gravity of unjust damaging (*Nouv. Rev. Theol.*, 1911, p. 294).

1354. IV. "Those neglecting, or culpably omitting, to denounce within a month confessors or priests by whom they have been solicited to shameful things, in any cases whatever expressed by our predecessors, Gregory XV, Const. *Universi*, 20 August 1622, and Benedict XIV, Const. *Sacramentum Poenitentiae*, 1 June 1741."

The crime of solicitation is provocation to shameful things, made by a priest as confessor. See more n. 1794 sqq.; cf. St. Alph., VI, 675 sqq.

That the censure be incurred, it is necessary that someone culpably omit the denunciation for an entire month. But, "because time does not run for one ignorant," the month must be computed from when he knew: the obligation of denouncing, the censure annexed to the obligation, and the time fixed for himself. If something grave stands in the way of denunciation, the obligation is suspended. - The denunciation having been made after the conceded time, the excommunicated

penitent can be absolved by any confessor.

1 Cf. Noldin, *de Poenis*, n. 101. D'Annibale, n. 175, Lehmkuhl, and others judge that alienation which would be made between pious places, convents, or churches, is not comprehended in this censure. But the Decree of S. C. C., 24 Jan. 1632, seems to stand in the way. - Note, the condition of alienators and recipients is diverse. Crass ignorance does not profit alienators, but excuses recipients.

1 Fruit-bearing trees do not pertain to immovables, if you take ecclesiastical goods strictly, insofar as, under censure, apostolic beneplacit is required for alienating them. - For their destruction only the consent of the Ordinary is required. Bizzarri, *Collectanea*, p. 331.

2 Yet Wernz and Vermeersch judge that today, because of the changed condition of money, a value which does not exceed 750-1000 francs can be held slight.

3 *A. S. S.*, 15, p. 539; cf. Del Vecchio, I, n. 628, where there are many things.

From TRENT are excommunicated:

1355. V. Those who print, or cause to be printed, books treating of sacred things, without the approval of the Ordinary (Trent, Sess. 4, c. 1).

The Holy Office, on 22 Dec. 1880, decreed that this censure must be restricted to books of the sacred Scriptures, and also to any annotations whatever on the same which treat of sacred things in general, that is, things pertaining to religion. But Leo XIII renewed this excommunication, within the limits of this Decree of the Holy Office, in the Constitution *Officiorum ac munerum*, n. 48.

Only the printers are excommunicated, that is, the owners of the press, or the principal managers, who take upon themselves the care of printing; or those causing printing, that is, the author of the book, the publisher, or another who commands or cares for it by himself, that the book be committed to type. Cf. Vermeersch, *de Prohib. et Cens. libr.*, n. 125, p. 155.

1356. VI. Those who teach certain errors concerning holy communion, or concerning marriage.

The following are excommunicated: 1. Those who shall have presumed to teach, pertinaciously assert, publicly defend: that confession of mortal sin is not to be placed before communion (Trent, Sess. 13, *de Euchar.*, can. 11).

2. Those who deny that clandestine marriages are true marriages, so long as the Church has not made them invalid; and who falsely affirm that marriages contracted by children of families without the consent of parents are invalid, and that parents can make them ratified or invalid (ibid., Sess. 26, c. 1, *de Ref.*).

3. VII. Ravishers of women, and those furnishing counsel, help, or favor to them (Sess. 24, c. 6, *de Ref. Matrim.*).

He does not incur this censure who keeps in his own house a woman already ravished by others; because the ravishing has already been consummated. But the following incur it: the ravisher, namely such a one as contracts the diriment impediment of marriage; the executor, if he is distinguished from the ravisher; finally all cooperators (see n. 2005). Cf. St. Alph., VI, 1106 sqq.

1358. VIII. Those violating the liberty of contracting marriage (Sess. 24, c. 9, *de Ref. Matrim.*).

This censure does not strike private persons, or those who exercise supreme power, but only temporal lords or magistrates, who exercise jurisdiction (for example in some province, in some tribunal), when namely, directly or indirectly, they compel their subjects or any others whatever, so that they do not freely contract marriages.1 But if marriage does not follow, the censure is not incurred (see n. 2003, at the end).

1359. IX. Those violating, in a woman, liberty of entering Religion (Sess. 25, c. 18, *de Reg.*).

1360. "The holy Synod subjects to anathema all and singular persons… if in any way they shall have compelled another's virgin, or widow, or any other woman unwilling, except in the cases expressed by law, to enter a monastery, or to receive the habit of any Religion whatever, or to emit profession; and those who have given counsel, help, or favor; and those who, knowing that she does not enter a monastery, or receive the habit, or emit profession of her own accord, in any way interpose either presence, consent, or authority to the same act."

Moreover the cases which the Law excepts are the following: a) if a woman, after she has consented to the religious profession of her husband, and she herself has vowed continence, casts suspicion of violating the vow; b) if an adulterous woman, after her conversion, is no longer received by her husband; c) if a girl, for the sake of education or custody, for

some time, namely until she is fit for marriage, is placed unwilling in a monastery. From the Decree of Gregory IX, c. 18 and 19, *de Conv. conjugatorum.* Cf. St. Alph., VII, 212, and l. El. qq. ref., n. 98; De Angelis, l. 3, tit. 31, n. 9.

2. "Likewise the holy Synod subjects to a similar anathema those who, in any way, without just cause, shall have impeded the will of holy virgins or other women of receiving the veil or emitting a vow" (l. c.).

3. X. A magistrate who, at the instance of the Bishop, does not furnish help against contradictors and violators of the enclosure of nuns (Sess. 25, c. 5, *de Reg.*).

Under the name of magistrate comes a praetor, judge, rector of a city, prefect of a province; not however a prince. Enclosure is understood to be papal.

ARTICLE II.

On Suspensions *Latae Sententiae.*

Of suspensions *latae sententiae*, which now are in force in the Church, some are enumerated in the new Constitution *Apostolicae Sedis*, others are renewed from the Council of Trent, others have been introduced after the said Constitution.

1361. A. The suspensions which are enumerated in the Constitution *Apostolicae Sedis* are these SEVEN, and all these are declared simply reserved to the Roman Pontiff:

I. "Chapters and convents of churches and monasteries, and all others who receive into the governance and administration of those churches or monasteries Bishops, or other prelates, provided in any way by the same Holy See over the aforesaid churches or monasteries, before they have exhibited to them the Apostolic Letters concerning their promotion, incur suspension by the very fact from the perception of their benefices, AT THE GOOD PLEASURE OF THE HOLY SEE."

The suspension is borne: 1. against the Chapter or monastery which receives those provided contrary to law; whence the capitulars are suspended from the benefices which they possess collegially or in common (according to what was said n. 1303, 5); 2. against all others who offer honor and obedience to the Bishop or prelate, as if he were legitimate. These are suspended from their own benefices, that is, from the perception of fruits and, more probably, from administration (Del Vecchio, I, n. 639; Piat, in h. l.).

Other things concerning intruded persons, see n. 1375.

1 There are not lacking those who apply these things to the case in which a civil magistrate would compel putative spouses to cohabit (Lehmkuhl, II, 1262).

1362. II. "Those ordaining someone without title of benefice or patrimony, with an agreement that the ordained one not seek sustenance from them, incur by the law itself suspension FOR THREE YEARS from the conferring of orders." Trent, Sess. 21, c. 2, *de Ref.*

Only the ordaining person incurs suspension, if he illicitly confers a sacred order in the aforesaid way. Thereafter he cannot confer orders, whether major or minor, for three years, unless he is first absolved by the Roman Pontiff (Avanzini, note 42).

1363. III. "Those ordaining another's subject, even under pretext of a benefice immediately to be conferred, or already conferred but by no means sufficient, without dimissorial letters of his Bishop; or even their own subject, who has stayed elsewhere so long a time that he could have contracted there a canonical impediment, without testimonial letters of the Ordinary of that place, incur by the law itself suspension FOR A YEAR from the administration of orders." Trent, Sess. 23, c. 8.

Below we shall say by what reason the one to be ordained can become the subject of the ordaining one; likewise what dimissorial and testimonial letters are (n. 1907 and 1908). Cf. *Anal. eccl.*, I, p. 406; III, p. 16.

The censure binds THOSE ORDAINING, that is, those conferring not indeed first tonsure (Holy Office, 18 April 1888), but major or minor orders, and this in the double case, as is clearly expressed in the text. This censure is not contracted by Ordinaries who, for the liberty of the state of those to be ordained, stand by the instructions and faculties for proving the free state of spouses. Holy Office, 11 May 1892 (*Nouv. Rev. Theol.*, 26, p. 317). - As regards the ordained one, see n. 1368, 1370, and 1371.

1364. IV. "He who, excepting the case of legitimate privilege, shall have conferred sacred order without title of benefice or patrimony on a cleric living in some congregation in which solemn profession is not emitted, or even on

a religious not yet professed, incurs by the law itself suspension FOR A YEAR from the conferring of orders." St. Pius V, Const. *Rom. Pontifex*.

See what is to be said n. 1922.

1365. V. "Ejected religious, living outside Religion, incur by the law itself PERPETUAL suspension from the exercise of orders." By Decree of the S. C. of the Council, 21 Sept. 1624, Urban VIII approving.

The canonical reason of this article is because a regular who is ejected from his Religion lacks, by that very fact, the title of his ordination, indeed also the church to which he may be ascribed. Formerly only religious of solemn vows incurred this suspension; but now, from the Decree *Auctis admodum* of the S. Congregation of Bishops and Regulars, issued by express mandate of His Holiness, on 4 Nov. 1892, all religious, both of solemn vows and of simple vows, whether perpetual or temporary, constituted in sacred orders, who shall have been expelled or dismissed, remain perpetually suspended, until provision is made for them by the Holy See in another way, and besides until they find a benevolent receiving Bishop and provide for themselves concerning an ecclesiastical patrimony. But religious of simple vows who, a voluntary petition having been made, legitimately obtained dispensation, or, the time of obligation having elapsed, are now held by no vow; nevertheless let them not go out from the cloister until they have found a benevolent Bishop and provided for themselves concerning ecclesiastical patrimony; otherwise they remain suspended from the exercise of orders received. They will be able to be absolved from this suspension by any confessor, as soon as they have fulfilled the condition set down, as regards both parts (*A. S. S.*, 25, p. 312; 26, p. 616; 28, p. 559). This Decree the S. C. of Religious confirmed, 16 May 1911 (*A. A. S.*, III, p. 235). See what is to be said n. 2173.

1366. VI. "Those who have presumed to receive the same order from one excommunicated, or suspended, or interdicted, by name denounced, or from a notorious heretic or schismatic, incur by the law itself suspension from the order received; but we declare that he who in good faith has been ordained by any one of them does not have the exercise of the order so received until he is dispensed."

The suspension strikes only those ordained by a Bishop censured by name, or notoriously heretical or schismatic (Avanzini, adn. 16; Patavin., n. 506). - But the case is twofold: 1. If he was ordained in BAD FAITH, presuming (knowingly and without grave fear) to receive, etc., he incurs a true censure reserved to the Pope. Except the case in which he was invalidly ordained, for example by an Anglican minister; because suspension from order in this hypothesis cannot even be conceived. 2. If he was ordained in GOOD FAITH, he incurs only a certain inability; until he is dispensed, understand by the Bishop, according to law. See what is to be said n. 1944.

1367. VII. "Secular foreign clerics, staying more than four months in the City, ordained by another than their own Ordinary, without license of the Cardinal Vicar of the City, or without a previous examination performed before the same, or even by their own Ordinary after they have been rejected in the aforesaid examination; and also clerics pertaining to one of the six suburbicarian episcopates, if they are ordained outside their own diocese, with the dimissorial letters of their Ordinary directed to another than to the Cardinal Vicar of the City; or if spiritual exercises for ten days in the urban House of priests called of the Mission have not first been performed before receiving sacred order, incur by the law itself suspension from the orders so received AT THE GOOD PLEASURE OF THE HOLY SEE; but the ordaining Bishops incur suspension from the use of pontificals FOR A YEAR."

1368. Therefore those ordaining are suspended for a year from the use of pontificals, that is, from every act of episcopal power for which the use of pontifical insignia is required, that is, miter, staff, pallium (cf. 1303, 2).

1369. But clerics are either foreign or suburbicarian. a) If they are FOREIGNERS, staying at Rome more than four months, they are held to the prohibitions stated above. But if they have returned to their fatherland, with the intention of remaining there, the law and the censure cease (but see n. 1363 as regards testimonial letters). - b) If they are SUBURBICARIAN, that is, if they pertain to the Roman diocese, or to one of the six suburbicarian episcopates, under the same censure they are forbidden: a) to be ordained outside their own diocese without dimissorial letters obtained from their own Ordinary directed to the Cardinal Vicar; b) to receive sacred orders without having performed spiritual exercises for ten days, etc. (Patavin., n. 509; Haine, t. 4, p. 412).

B. The suspensions renewed from the Council of Trent are likewise SEVEN, of which some are reserved to Bishops, others to no one, namely:

1368. I. A Bishop incurs suspension from the exercise of pontificals who exercises pontificals in another's diocese, without the express license of the Ordinary of the place, or upon persons not subject to the same Ordinary. If in this way he

confers orders, those ordained remain by the law itself suspended from the execution of orders (Trent, Sess. 6, c. 5, *de Ref.*).

Neither censure is reserved to the Pope. But, license of the Ordinary of the place having been given, another's subjects can be ordained with legitimate dimissorials (cf. n. 1363).

1369. II. A cleric incurs suspension from the exercise of orders, at the good pleasure of the future prelate, who receives major orders with dimissorials of the Chapter (or capitular Vicar) granted within a year from the day of vacancy of the episcopal See; unless however he was constrained by reason of an ecclesiastical benefice received or to be received (Trent, Sess. 7, c. 10, *de Ref.*).

Those promoted in this way to minor orders are deprived of clerical privilege. The CHAPTER is subject to interdict (see n. 1379). - Finally the ORDAINING person, since legitimate dimissorials are lacking, falls into the suspension explained under n. 1363 (cf. St. Alph., VI, 788; Patavin., n. 514).

1370. III. A titular Bishop incurs suspension FOR A YEAR from the exercise of pontificals who, even under pretext of continuous familiarity, confers orders of whatever kind, or promotes to first tonsure, without the consent of the proper prelate of those to be ordained, or without dimissorial letters. But those who have been ordained in this way remain suspended by the law itself from the execution of orders, until it shall seem good to their prelate (Trent, Sess. 14, c. 2, *de Ref.*).

The censure inflicted on the ordaining person is not reserved; unless it agrees with suspension II of the Constitution *Apostolicae Sedis* (cf. n. 1362).

1371. IV. A Bishop incurs suspension from the conferring of orders FOR A YEAR who, even under pretext of any general or special rescript or privilege whatever, ordains another's subject without the testimony of his Ordinary, by which the probity and morals of that one are commended. "And let the ordained one be suspended from the execution of the orders received, for as long as it shall seem expedient to his own Ordinary" (Sess. 23, c. 8, *de Ref.*).

Here there is no question of those who are ordained without the required dimissorials (concerning whom n. 1363); the discussion here is about those who by privilege can be ordained by another than by their own Bishop, but not without testimonial letters, by which the ordaining one may be certain concerning the required endowments. The censure borne against the ordaining one is not reserved, nor is it incurred if only tonsure is conferred (VI, 797, at the end).

1372. V. Abbots, exempt prelates, colleges and Chapters of whatever kind incur suspension from office and benefice FOR A YEAR, if, under whatever pretext of privilege or custom, they grant dimissorials to secular clerics, that they may be ordained by another than by their own Bishop (Sess. 23, c. 10, *de Ref.*).

This suspension does not regard dimissorials granted while the see is vacant (concerning these there is another disposition, n. 1379), but looks to this, that the aforesaid abbots, prelates, etc., be prohibited from granting dimissorials to others than religious subject to themselves, under pretext of a right which they may have by privilege or custom. For although jurisdiction can belong to some one of them, for example to an abbot nullius, nevertheless it does not avail for granting dimissorials (VI, 788, note 7). See other things n. 1905 and 1910.

IT IS ASKED. Does any censure or penalty now remain in force against those who are ordained by a leap?

Resp. 1. The suspension, as censure, which the Tridentine Synod (Sess. 23, c. 14, at the end) only commemorated, more probably ceases by the Constitution *Apostolicae Sedis* (cf. n. 1312, 2). 2. The impediment remains, by force of which anyone ordained by a leap cannot, without grave guilt, either minister in the order received, or ascend to a higher order, or receive the omitted one, unless he obtains the necessary dispensation. Bishops can concede this to those who have not ministered in the order received; but only the Pope can concede it to those who have ministered, as Trent itself declares. Cf. Wernz, *Jus Decr.*, II, n. 73, note 89.

1373. VI. Those who bless marriage illegitimately are suspended (where the Decree of Trent on Clandestinity is in force).

Priests who shall have dared to join, or bless, marriages without the license of the proper parish priest of the spouses, or of the Bishop, remain suspended (from priestly office) for as long as they are not absolved by the Ordinary of that parish priest (Sess. 24, c. 1, *de Ref.*).1

1374. VII. Concubinary Bishops, or those detaining suspect women, are suspended if, admonished by the provincial Synod, they have not amended themselves (Sess. 25, c. 14, *de Ref.*).

Suspension, excommunication, and other penalties, on account of the same scandal, are decreed also by the Council against clerics inferior to Bishops, but they are *ferendae sententiae*.

1375. C. Suspensions introduced after the Constitution *Apostolicae Sedis* are the following:

1376. From the Constitution *Romanus Pontifex* of Pius IX, 5 Sept. 1873, another suspension is incurred, which we reported above (n. 1327).

1377. By the Decree *Vigilanti*, issued by the S. Congregation of the Council on 25 May 1893, a suspension, reserved to the Holy See, was decreed against ecclesiastics violating the Decrees by which shameful trade from Mass stipends is prohibited (*A. S. S.*, 26, p. 56).

1378. By the Decree *De observandis*, S. Congregation of the Council, 11 May 1904, n. 12, the same suspension was decreed against ecclesiastics who shall have dared in any way or under any pretext to violate the statutes n. 8, 9, 10, 11 of the same Decree, by which it is prescribed that, in the transfer of Masses, the stipend be handed over entire and in its own species to the celebrant (ibid., 36, p. 672). See what is to be said n. 1607 sqq.

1379. By the Decree *Anteactis temporibus*, issued by the S. Congregation of the Council, 22 Dec. 1894, clerics not conforming themselves to the dispositions of the same Decree, by which norms are prescribed for ecclesiastical men who intend to live at Rome, are declared liable by the very fact to suspension from divine things (ibid., 27, p. 373). Moreover these are the following:

a) Clerics and secular priests, or even regulars living outside the cloisters, unless they are ascribed to the Roman diocese, will not be able to establish stable domicile in the City without express permission of the Supreme Pontiff, to be obtained through the office of the S. Congregation of the Council.

b) None of them can be chosen by anyone to any ecclesiastical office, or to another function which requires residence in the City, unless, besides testimonial commendatory letters of his Bishop, he also exhibits permission already obtained for remaining at Rome; likewise a benefice will be conferred on no one, if he has not obtained the assent of his own Ordinary for this: and a conferral of benefice made otherwise will be null and void.

c) Those who, for a temporary cause, are staying in the City with license of the Ordinary must, the cause having ceased or the Bishop commanding, return immediately to their own diocese.

5. By the Constitution of Leo XIII *Orientalium dignitas ecclesiarum*, 30 Nov. 1894, any Latin missionary whatever, from secular or regular clergy, who by counsel or help induces any Eastern man to the Latin rite, is declared to incur by the very fact suspension from divine things (*A. S. S.*, 27, p. 257).

6. By Decree of the S. C. C., 12 July 1900, a priest and a cleric who abandon their proper residence, in order to bear help in any way in internal wars and political contentions, or who in a civil war have of their own accord given their name to military service, are punished with suspension from order, office, and benefice. The suspension is specially reserved to the Holy See (*A. S. S.*, 33, p. 53).

ARTICLE III.

On Interdicts *Latae Sententiae.*

There are FIVE interdicts *latae sententiae*: namely two reserved in the Constitution *Apostolicae Sedis*; another two expressed by the Tridentine Synod; the fifth from the Constitution *Romanus Pontifex*, against intruded Bishops, reserved in a special way to the Pope.

A. From the CONSTITUTION *Apostolicae Sedis*:

1376. I. "Universities, colleges, and Chapters, by whatever name they may be called, appealing from the ordinations or mandates of the same Roman Pontiff existing for the time to a future universal Council, incur by the law itself an interdict reserved to the Roman Pontiff in a special way."

Understand this interdict, which is PERSONAL GENERAL, according to what was said n. 1307, III, and 1308. See also n. 1318.

1377. "II. Those knowingly celebrating, or causing divine things to be celebrated, in places interdicted by the Ordinary, or by a delegated judge, or by law, or admitting persons excommunicated by name to divine offices, or ecclesiastical sacraments, or ecclesiastical burial, incur by the law itself interdict from entrance of the church, until they have competently made satisfaction at the judgment of him whose sentence they have contemned."

The following are interdicted from ENTRANCE OF THE CHURCH: 1. clerics knowingly celebrating divine things, which namely it is lawful for only ministers of the Church to perform, and which in an interdicted place are prohibited under grave obligation, either in themselves, or as to the manner; 2. those causing celebration, that is, prelates or others furnished with authority, who cause celebration before themselves, or compel clerics to celebrate publicly and solemnly; 3. those admitting... namely clerics (Bishops being excepted by law), to whom, according to their authority, it belongs to prohibit or admit either to divine offices, or to sacraments, or to ecclesiastical burial. But whether a layman who has custody of a church or cemetery, and admits to burial, incurs this censure, is of uncertain law (Gabriel a Varceno, in h. cens.; Patavin., n. 538).

Let it be noted: 1. Places interdicted by Law (by general or particular interdict) are not considered such, unless a declaration of a judge accedes, that is, of the Roman Pontiff or Bishop, according to the rule established by Martin V in the Bull *Ad evitanda*. Hence, if the declaration or sentence was issued by the Bishop or in his name, absolution also depends on him; if in the name of the Roman Pontiff, the Pontiff himself or his delegate must absolve. 2. By those excommunicated by name understand those excommunicated even by Bishops or other Ordinaries. Those who admit notorious heretics, or persons interdicted by name, to divine offices, although they sin, nevertheless are not struck by this censure. As regards burial, recall what was said n. 1351.

B. From the COUNCIL OF TRENT:

1378. I. Bishops are interdicted from entrance of the church who do not denounce Bishops illegitimately absent (Sess. 6, c. 1, *de Ref.*).

The holy Synod has these words: "The Metropolitan is held to denounce absent suffragan Bishops, and the older resident suffragan Bishop an absent metropolitan, to the Roman Pontiff within three months by letters or messenger, under penalty of interdict of entrance of the church to be incurred by that very fact." Cf. n. 2251.

1379. II. The Chapter (respectively the capitular Vicar) is interdicted if, within a year of the vacant see, it grants dimissorial letters to a cleric not constrained by reason of a benefice received or to be received (Sess. 7, c. 10, *de Ref.*).

In a case of necessity, the S. Congregation is accustomed to hand down broader faculties for granting dimissorials, according as they are sought by the capitular Vicar (De Angelis, l. I, tit. 28, n. 21).

1380. C. From the Constitution *Romanus Pontifex*, interdict from entrance of the church is inflicted on INTRUDED Bishops, or authors of intrusion. - See n. 1327, 1361, and 1375.

CHAPTER IV.

On the Other Ecclesiastical Penalties.

St. Alphonsus, VII, 323; ed. G., IV, p. 440; Ferraris, v. *Degradatio*, *Sepultura*; Wernz, *Jus Decr.*, III, n. 772; Many, *de Locis sacris*, tit. IV, especially n. 211-225.

The penalties concerning which it remains for us to treat are the following: 1. deposition and degradation; 2. infamy; 3. cessation from divine things; 4. privation of burial (cf. n. 1251).

1. Deposition and degradation. 1381. DEPOSITION is a canonical penalty by which a cleric is deprived of the use of ecclesiastical power, and of every radical title for exercising it, and also of every right validly to possess benefices; and that, at least by ordinary law, perpetually, or irremissibly (Salmant., tr. X, c. 5, n. 55).

This penalty: 1. can be imposed by the Bishop or his Vicar deputed for this, but only in cases expressed in Law, and for more atrocious delicts; 2. does not deprive the deposed man of the privilege of canon and forum; 3. although it is of itself irremissible, nevertheless it can be removed by the Bishop through dispensation, provided the crime is lighter than adultery (VII, 325; H. Ap., XIX, 67).

1382. DEGRADATION is the solemn privation of all ecclesiastical titles, goods, privileges, and honors; so that the degraded man, only the indelible character remaining, is reduced to the lay condition.

Let it be noted: 1. Degradation can be done by the Bishop alone, and only for the gravest crimes, such as: manifest heresy, falsification of Apostolic Letters, grave calumny brought against one's own Bishop, repeated sodomy, and similar things. 2. The Pope alone dispenses in this most grave penalty. 3. The degraded man, because he retains order, is held to the vow of chastity already emitted, and therefore he would invalidly contract marriage. He is held also to the canonical Hours;

unless perhaps the penalty to which he is condemned, for example the galleys, impedes their recitation (VII, 324 sqq.). - 4. He who lays violent hands on a degraded man does not incur excommunication (cf. what was said n. 1329).

2. Infamy. 1383. This penalty is a state of injured dignity on account of crime, by which someone is publicly held guilty. It is not merely lack of good fame, but besides is a state in which someone is considered positively evil.

1 These things formerly, before the new Pian Law. But it can be doubted whether the aforesaid censure is still in force. For it is said in the Decree *Ne temere*, n. 10: Parish priests who have violated the things prescribed here hitherto are to be punished by the Ordinaries according to the manner and gravity of the fault.

It is twofold: 1. Of fact, which arises from depraved morals, and is abolished through amendment. 2. Of law, or legal, which, on account of a shameful crime, is inflicted from the authority of Law. This is contracted in three ways, either by the law itself, or by sentence of a judge, or by the kind of an infaming penalty (Craisson, n. 5856).

All infamous persons, whether of Law (even civil) or of fact, are to be held as irregular, as will be seen in its own place (n. 1938). Hence that celebrated saying of Law: "Let the gates of dignities not lie open to infamous persons" (Reg. 87, in 6). St. Alph., VII, 362.

3. Cessation from divine things. 1384. Cessation from divine things is defined: "A prohibition made to clerics that they abstain from divine offices and from ecclesiastical burial."

It differs from interdict, both because it is not a censure, nor a penalty of delict; and because it is never directly borne against persons, but only against places. It is imposed by the Church as a sign of sorrow, on account of a grave injury inflicted upon her, so that thus the guilty man may be induced to make satisfaction (VII, 340).

Cessation is twofold: 1. By Law, which exists by the very fact, when a Church is polluted or execrated; 2. by man, which, a warning having preceded, is imposed by a Superior having jurisdiction in the external forum.

During the time of cessation: a) Clerics are deprived of the privilege granted to them in time of interdict; nevertheless they do not become irregular if they transgress the prohibition. - b) The sacraments are prohibited or conceded as in time of interdict. Hence, generally, a private Mass is permitted once a week for renewing sacred particles for viaticum (H. Ap., XIX, 71; Craisson, n. 6639).

The Superior who imposed the cessation can remove it, or suspend it for a time, for example through some solemn days.

4. Privation of Ecclesiastical Burial. 1385. Ecclesiastical burial is that which is done in a sacred place, with the Catholic rite used (cf. n. 1351). It is part of the communion of the Church; and therefore, regularly, it is to be denied to none of the faithful.

PRINCIPLES. I. Privation of ecclesiastical burial is a most grave penalty of the external forum, inflicted by the law itself. It is clear from c. 12, *de Sepulturis*, and from the Roman Ritual.

We have said: 1. It is a most grave penalty. Wherefore "where a doubt occurs whether it is to be inflicted, let the Ordinary be consulted." If he cannot be consulted, let burial be conceded, from the Rule: "In doubt, odious things are to be restricted." 2. Of the external forum: therefore the guilt or cause on account of which it is inflicted must be notorious; nor does it suffice if it is privately known to the parish priest. 3. Inflicted by the law itself; whence this penalty is incurred by the very fact in all cases which the Roman Ritual commemorates; nor is another sentence required.

St. Alphonsus indeed says (*de Privil.*, n. 91, at the end): "No one is to be deprived of burial, in whatever case, without the sentence of the Bishop; or of the Superior, if the corpse is of a religious"; but understand this if recourse to the Bishop is easy, and the case needs a declaratory sentence of the crime, for example of heresy, suicide, impenitence, etc.

Indeed, since the penalty has been introduced by Canon law, whose obligation exists short of grave inconvenience, the PARISH PRIEST can often be excused from inflicting it, by reason of scandal or grave evil to be avoided; never however if burial were extorted in contempt of the Church, as the Salmanticenses say (tr. 18, c. 3, n. 193). Cf. n. 1293.

1386. II. By common law, ecclesiastical burial is denied to those who, separated from the communion of the Church, or manifestly impenitent, have departed from the living. From the same places.

As regards the FIRST, the Rule of Law is (c. 12, *de Sepult.*), "that those with whom we have not communicated while living, with them we do not communicate when dead."

Under this head are excluded: 1. All non-baptized, that is, pagans, Jews, immature fetuses or abortives, and infants dead without baptism, at least doubtfully valid.

Catechumens are not repelled, if they departed from the living rightly disposed, because they are considered cleansed by baptism of desire; otherwise, if they were gravely negligent.

2. Apostates from the Christian faith. Among these are to be counted all impious persons who publicly profess atheism, deism, pantheism, materialism (cf. n. 438 and n. 1314).

3. Heretics, who openly affirm their errors, although perhaps they may be only materially heretics; likewise notorious favorers of heretics, and also schismatics.

But their children, or those baptized by a heretical minister, at least before the seventh year, can be given ecclesiastical burial.

4. Notorious excommunicated persons although not denounced, such as those ascribed to societies certainly condemned by the Church and publicly known, and those interdicted by name, if they died impenitent (cf. n. 526, II, 1 and 1292, 9).

Moreover it is had as a sign of repentance if such a one in the article of death has invoked the name of JESUS or sought a confessor, etc.; to prove which one witness suffices (VII, 187; cf. also l. VI, 480, 481).

1387. As regards the SECOND, all who have died in mortal sin, certainly and notoriously, without repentance, are kept away from ecclesiastical burial.

Such are: 1. Suicides, who from anger or desperation have brought death upon themselves, unless, surviving for some time, they gave signs of repentance. But those are not to be equated with suicides who in a state of frenzy or in another excess of disease killed themselves. "When doubt remains whether someone gave death to himself through desperation, or through insanity, ecclesiastical burial can be given, yet with the pomp and solemnities of the funeral avoided" (Holy Office, 16 May 1866; *Coll. Prop. Fid.*, n. 1605).

More often today than before, on account of scandal of civil funerals to be feared, one must strive that ecclesiastical burial be given to suicides. Yet careful caution must be taken lest it be conceded where no serious signs of insanity preceded: because not only would the law of the Church be disregarded, but horror of suicide among the faithful would be diminished, or there would even be the appearance of shameful gain, especially if ecclesiastical burial were conceded more readily to the rich than to the poor (Genicot, II, n. 628, 3).

2. Duelers who have perished from a wound received in duel. Namely holy Church uses extraordinary severity against men of this sort, even if they have been penitent.

"We decree and declare" (thus Benedict XII, Const. *Detestabilem*, 10 Nov. 1752) "that privation of sacred burial… shall be incurred perpetually by those dying in the place of duel and conflict, even before the sentence of a judge, and also by one departing outside the place of conflict, from a wound received there… and even if the wounded man before death gave not uncertain signs of repentance, and obtained absolution from sins and censures." And this "with the faculty of interpreting and dispensing concerning this penalty removed from Bishops and Ordinaries of places." See St. Alph., III, 401.

3. Manifest and public sinners "who have perished without repentance" (Rom. Rit.).

Hence the following are to be buried outside a sacred place: prostitutes, concubinaries, usurers, and all who have died in the act of some crime, provided: a) their delict is certain (as to the fact and as to the intention) and notorious, that is, known to the greater number of inhabitants of the city or parish; b) they gave no sign of repentance before at least one witness (H. Ap., tr. XX, 91).1

4. Those who are publicly known to have omitted confession and communion within the year of their death, and who died without any sign of contrition.

But concerning a culpable omission of this sort, it scarcely can be publicly established except through a sentence of the Ordinary or public edict. Except, unless they were from the number of those who notoriously never assist at sacred things and live impiously; in which case they are to be counted among manifest and public sinners, as is plain. But IN PRACTICE, since very great inconveniences would arise from denial of burial, the canonical prohibition is not to be pressed.

1388. From what has been said you resolve: By force of ecclesiastical law, the following are not to be deprived of sacred burial: a) mimes and actors, unless from the circumstances they ought to be numbered among public sinners; b) drunkards, who have died in drunkenness, for it can be doubted whether the drunkenness was voluntary; c)

criminals punished capitally, who gave signs of repentance (although they are to be buried without solemnity); d) those who rejected the last sacraments, unless they did this scandalously, that is, before many, or unless they are from those who were described above. And Fr. Gury wisely admonishes, writing (II, n. 1013): "It will be worthwhile that the priest, doubtful concerning the disposition of the dying person, address him without witnesses, and induce him to confession, lest his evil mind become known; provided however some scandal is not necessarily to be repaired."

Likewise, because today (all divine and human things being mixed together) all are to be buried in cemeteries newly constructed by municipalities, it is EXPEDIENT either to leave a place in the cemetery not blessed, for burying those who are kept away from ecclesiastical burial; or in no way to bless the cemetery, but rather, on individual occasions, the little grave in which he who has piously died in Christ is to be buried.

Concerning the right of burial, see St. Alphonsus, *de Privil.*, n. 91. Cf. Salmant., tr. 18, c. 5, p. 6; Bucceroni, *de Cens.*, n. 138; Del Vecchio, I, n. 542, where there are many things.

SCHOLIUM.

On Civil Burial and on Cremation of Corpses. 1388bis. I. Civil burial is imposed not only by the Church as a penalty of delict, but sometimes is accustomed to be sought by the faithful themselves by a formal will, and imposed on legatees to be carried out.

1. To seek burial with the rites of the Church excluded is a grave sin. For this petition contains external apostasy, and brings it about that, at least externally, the one to be buried becomes a favorer and follower of the ends of impious persons, which freethinkers pursue.

2. To assist at a civil burial which the deceased (or his family) sought is gravely illicit, by reason of cooperation and scandal. Yet this can become licit, if, on account of the gravity of reasons, scandal having been removed, this assistance can be rendered only passive, as happens for public officials, children, the wife of the deceased, near blood relatives, or, as some concede, for very closely joined friends (*Ami du Cl.*, 1890, p. 691, where Resp. Holy Office, 1907, p. 1138, etc.).

3. To assist at a civil burial in the case in which the Church has not conceded liturgical rites as a penalty is also illicit (D'Annibale, *Summula*, I, n. 115); nevertheless excusing reasons are more readily present, because the reasons set forth above are lacking. Cf. *Ami du Cl.*, 1890, l. c.

II. Cremation of corpses. Although cremation is not an action evil in itself, nevertheless by accident, and by reason of the end of those who try to introduce this practice, it must be called altogether impious, ordered to this, that the esteem and reverence of the Catholic religion be diminished; wherefore it is most severely prohibited. Holy Office, 19 May 1886 (*A. S. S.*, 19, p. 46).

Therefore it is not licit: 1. To give one's name to societies which promote this manner of burying.

2. To administer the sacraments of the dying to those who, of their own will, moved by any motives whatever, commanded their bodies to be cremated after death, if, warned, they are unwilling to retract this command (Holy Office, 27 July 1892);1 and if in this will they certainly and notoriously persevered up to death, ecclesiastical burial must be denied to them (Holy Office, 15 Dec. 1886).2

3. As often as there is question of those whose bodies are subjected to cremation not by their own will, the rites and suffrages of the Church can be used both at home and in church, but not up to the place of cremation, scandal having been removed. Moreover scandal can also be removed if it becomes known that cremation was chosen not by the proper will of the deceased (Holy Office, ib.).

4. Nevertheless it is licit for the faithful whose bodies have been cremated not without their own fault, to offer the sacrifice of the Mass privately, and likewise to accept foundations for this end (Holy Office, 27 July 1892).

5. But in particular cases in which doubt or difficulty arises, the Ordinary is to be consulted, who, all circumstances having been carefully weighed, will decree that which he shall judge more expedient in the Lord (Holy Office, 15 Dec. 1886).

See more in the little work of the distinguished Berardi, *de Crematione cadaverum.* Cf. also *Stimmen aus Mar.-Laach*, 1892, II S.; *Linz. Quart. Schr.*, 1906, p. 320, 501; 1911, p. 497; *Kirchenlex.*, VII, 1679. Read various documents in Lehmkuhl, II, n. 1171 sqq.

Note. As regards the burial to be given to amputated human members, see Resp. Holy Office, 6 Aug. 1897 (*A. S. S.*, 30, p. 630; *Monit. eccl.*, X, p. 11; *Nouv. Rev. Theol.*, vol. 32, p. 303).

1 Thus the Holy Office responded, 8 May 1908 (*A. S. S.*, 41, p. 583), that those who contracted marriage before a little minister, and die suddenly, without a sign of repentance, cannot be buried with the prayers of the Church. Already above, n. 526, II, we reported the Responses of the S. Penitentiary, 20 May 1908, with relation to those who framed iniquitous laws against religious (*Ami du Cl.*, 1908, p. 631).

1 *Nouv. Rev. Theol.*, 27, p. 128. Yet among the Indians, where this custom is present (although the faithful should be warned), confessors can bear themselves passively if the faithful have chosen this manner of burial (S. C. de P. F., 27 Sept. 1884, ap. *Ami du Cl.*, 1902, p. 697). - 2 *Nouv. Rev. Theol.*, 24, p. 618; *A. S. S.*, 25, p. 63.

APPENDIX

ON THE CONSTITUTION *OFFICIORUM AC MUNERUM*

St. Alphonsus, Appendix *de Prohib. libr.*; ed. G., I, p. 253; VII, *de Cens.*, n. 281; ed. G., IV, p. 419; Vermeersch, *de Prohib. et Cens. libr.* (ed. 4); Piat, in *Nouv. Rev. Theol.* vol. 30 sqq.; Van Coillie, *Comment. in Const. Offic.*; Lega, *de Judiciis eccles.*, l. 2, tit. IX, c. II and III, vol. III; Boudinhon, in *Canoniste contemp.*, XX; Gennari, in *Monit. eccl.*, XXII; Pennacchi, in *A. S. S.*, vol. 30; Wernz, *Jus Decr.*, III, n. 95; Del Vecchio, *Theol. mor.*, t. II, App. III; Hollweck, *Das kirchl. Bücherverbot*; Hilgers, *Der Index*; Sleumer, *Index Romanus.*

PRELIMINARY NOTIONS.

As we already admonished in the treatise *de Fide*, n. 452, the publication and reading of books, in our times, are governed by the Constitution *Officiorum ac munerum*, which Leo XIII promulgated on 25 Jan. 1897 (*A. S. S.*, 29, p. 388), and by the Index of prohibited books, which the same Supreme Pontiff made public on 17 Sept. 1900. Our working-out will be concerned only with those things which in the Constitution bear more upon the moral matter.

We shall say nothing concerning the Constitution *Sollicita et provida* of Benedict XIV (not abrogated by our Constitution), since it pertains only to those to whom the burden is incumbent of examining books brought before the Holy See. But often, according as the argument will demand, we shall report those things which our Most Holy Lord Pius X, in the Motu proprio *Sacrorum Antistitum*, 1 Sept. 1910, commanded to be observed.

A few things are first to be said: 1. concerning the obligation of this Constitution *Officiorum*; 2. concerning the norms to be used in interpretation of the same; 3. concerning the force of prohibition.

I. The OBLIGATION is grave and universal. The reason of the first is because there is question of a grave matter, namely of guarding against danger to faith and morals. Yet smallness of matter can be given, whether as regards the edition, or as regards the reading or retention of prohibited books. As regards publishers, we wish it noted that they more easily avoid mortal sin, if they print or sell books… prohibited for this reason, because they lack due approval. The reason of the second is because the Legislator openly set forth his mind: "We have determined to issue General Decrees," he says in the preface, "…which Catholic men throughout the whole world may religiously obey." And to the question, "Whether the said Constitution has obligatory force also for regions of the British tongue, which some think enjoy a tacit dispensation?" the S. Congregation of the Index, 23 May 1898, responded: "Affirmatively." This response certainly must be extended to all regions (*A. S. S.*, 30, p. 677).

IT IS ASKED. But are particular customs in force?

Resp. 1. That new customs can be introduced must not be doubted, provided there is question of legitimate custom, for example of newspapers not to be subjected to censure, which according to law would have to be subjected (cf. art. 13).

2. If there is question of particular customs existing before the Constitution, one must say: the legislator revoked many at least implicitly; for Leo XIII, as is to be seen in the preface of the Constitution, proposed a law aptly accommodated to the times, and substituted the same for the laws previously issued on this matter; whence he sanctioned by his new law only those mitigations introduced by custom which he wished to be observed. Therefore it was superfluous to make mention of them and it sufficed to say: let Catholic men throughout the whole world religiously obey… any contrary things whatever notwithstanding. Yet we would admit with Van Coillie (n. 7) that some secondary temperaments, which had already prevailed universally and which rather explain the new laws than remove them, are still in force. See what is to be said in art. 1, 7, 47.

II. The GENERAL NORMS OF INTERPRETATION of this Constitution must be determined accurately.

1. As regards the sense, it must carefully be observed that of themselves these Decrees alone are to be kept before one's eyes; yet the old Decrees can be recalled as a means of interpretation. Therefore those prescriptions which sound like ancient ones are to be interpreted in a similar way. But as regards those which differ from the prior Law, the manner of interpretation must be sought from the obvious sense of the words of the Constitution.

2. As regards the extension to be attributed to the General Decrees, the more common opinion holds that this Constitution must be interpreted strictly not only in penalties, but also in prohibitions. The reason is because Leo XIII testifies that he wished to make the Rules of the Index "somewhat milder, so plainly that to obey them, provided one is not of an evil disposition, cannot be grave and arduous." He declared the same in his Brief *Romani Pontifices*, the same is had in the preface of the Index; all which things indeed seem to demand a strict interpretation of the Constitution (Vermeersch, p. 22; *Nouv. Rev. Theol.*, 36, p. 99).

III. The word PROHIBITION (and the words proscribe, condemn, interdict, reprobate sound the same) in its comprehension includes the reading, retention, printing, sale, giving or lending of a book, and finally any defense whatever of it. Cf. things already said n. 1316.

But if prohibition is considered in its extension, the diverse questions which can arise are to be solved.

1. A book being prohibited, the whole is prohibited, and not only the part which gave occasion for proscription; whence even leaves separated from the book are condemned. Yet, the pernicious part which was the cause of the prohibition having been removed (if this is established), the prohibition ceases (St. Alph., VII, 283). Hence, if a work is composed of several volumes, and it is established that in only one an error condemned is found, this volume being removed, the prescription of the work ceases by the very fact.

2. Prohibition of the prior volumes of some work does not hand down condemnation of the volumes which follow; nevertheless those are rightly held suspect, unless the repentance of the author is established.

3. Prohibition of all the works of some author does not now affect all writings of the author, but only those which either treat of religion, or, although they do not treat of it, nevertheless are proscribed by some general or special Decree. Besides, the clause: all works does not comprehend works issued after the Decree. Yet those are held suspect, as we said above; for prohibition in hatred of the author is today obsolete.

4. As regards works prior to the Constitution, the prohibition extends itself to them if they are condemned on account of intrinsic matter, or if they were proscribed on account of omitted extrinsic solemnity (for example the obtaining of legitimate license) which formerly was required.

5. The prohibition which refers to all love stories probably does not reach those of these stories which are reached neither by a singular nor by a general Decree. Cf. Hilgers, *Der Index*, p. 106; *Ami du Cl.*, 1906, p. 1123. See, as regards all these things, the Preface of the Index itself; Vermeersch, o. c., p. 24 sqq.

From these things you conclude: a) Books, therefore, are not considered prohibited when concerning them it is said only: let them not be published without license (art. 17); or a similar expression is used (art. 16, 19).

b) The clause: until it is corrected regards only the manner, not the effect of prohibition.

Note. What comes under the name of book, little book, newspaper, sheet, to read, to retain, etc., we already said n. 1315, 1316.

GENERAL DECREES

CONCERNING THE PROHIBITION AND CENSURE OF BOOKS

TITLE I.

On the Prohibition of Books

CHAPTER I.

On Prohibited Books of Apostates, Heretics, Schismatics, and Other Writers.

1. "All books which before the year 1600 either the Supreme Pontiffs or ecumenical Councils condemned, and which are not reviewed in the new Index, are to be held condemned in the same way as they were formerly condemned: excepting

those which are permitted by these General Decrees."

It is said: 1. Either the Supreme Pontiffs or ecumenical Councils condemned; and therefore this prohibition does not reach books condemned by the Sacred Roman Congregations.

2. Excepting those, etc.; this exception seems rather to refer itself to art. 3, 5, 6, 8, 10 sqq. Besides, just as formerly by custom the writings of ancient heretics, such as Tertullian, Origen, Pelagius, etc., could already be read licitly, so today we are not held to be more severe. For these works are held as historical documents in which danger of perversion is not present (Boudinhon, ap. *Can. Cont.*, 20, p. 209).

3. "Books of apostates, heretics, schismatics, and any writers whatever, defending heresy or schism or overthrowing the foundations themselves of religion, are altogether prohibited."

By this article are prohibited: 1. Books by any authors whatever, even those not ascribed to a heretical sect, defending heresy or schism. Now, that a book defend heresy or schism, it is required that the author not only set forth either one in passing, but that with set purpose and, as it were, according to his powers, he try to persuade this by arguments (*Nouv. Rev. Theol.*, 30, p. 49).

2. Books which in any way, or, in whatever way, whether seriously or through ridicule, directly or indirectly, overthrow the foundations themselves of religion, namely those truths of the natural order which either found natural religion itself, or are preambles for an adult infidel to embracing the faith, for example the existence of God, the spirituality of the soul, the possibility of miracles, etc. Cf. Van Coillie, n. 19.

3. "Likewise the books of non-Catholics, which professedly treat of religion, are prohibited, unless it is established that nothing against the Catholic faith is contained in them."

Authors disagree concerning the sense to be attributed to the word non-Catholics. Some understand non-Catholics, but Christians; but others by non-Catholics understand all, even the non-baptized, who in any way are alien from the Catholic community. In art. 5, 6, and 8, there is no doubt that this word must be taken in this latter sense.

Therefore it is said: 1. Which professedly treat; namely, not only in passing but by design, when namely the author directly and in a notable part of the book discusses a religious argument and establishes and defends his opinion with reasons summoned.

2. Of religion; that is, of sacred matter, whether natural or positive, "namely of Sacred Scripture or of scholastic, dogmatic, or moral Theology, or of mysteries of faith, of the worship of God or of the Saints, of the rites of the Church, of canons, of spiritual things, and similar matters" (St. Alph., VII, 283).

3. Unless it is established, etc.; private authority suffices, for example the testimony of a man of proven probity or knowledge: for of itself the presumption stands against books of this kind.

4. "Books of the same authors, which do not professedly treat of religion, but only touch upon truths of faith in passing, are not to be held prohibited by ecclesiastical Law until they have been proscribed by a special Decree."

CHAPTER II.

On Editions of the Original Text and Non-Vernacular Versions of Sacred Scripture.

5. "Editions of the original text and of ancient Catholic versions of Sacred Scripture, even of the Eastern Church, published by any non-Catholics whatever, although they may appear to have been edited faithfully and integrally, are permitted only to those who give work to theological or biblical studies, provided however that dogmas of the Catholic faith are not attacked in the prolegomena or annotations."

All those are to be considered as giving work to theological or biblical studies, both clerics and seculars, both learned men and beginners in theology (S. C. of the Index, 23 May 1898), whether from office in schools, or from private industry, who habitually, for at least some time (say several weeks), attend in a special way to these studies. Students of Hebrew or Greek school, not giving work to theological or biblical studies, cannot use these editions for learning languages, and the Bishop cannot permit this to them. Vermeersch, n. 69; cf. *Ami du Cl.*, 1910, p. 431.

The restriction is placed: provided… dogmas of faith are not attacked. To attack is not simply to bring forth errors against dogmas, but also to support them with reasons. It is said: dogmas of faith, and therefore there is no question of only one dogma which is attacked only once or very rarely, nor of truths which are only theologically certain.

6. "In the same way, and under the same conditions, other versions of the Sacred Bibles, whether Latin or in another non-vernacular language, edited by non-Catholics, are permitted."

CHAPTER III.

On Vernacular Versions of Sacred Scripture.

7. "Since it is manifest by experience that, if the Sacred Bibles in the vernacular tongue are permitted everywhere without discrimination, more detriment than utility arises thence on account of the rashness of men; all versions in the vernacular language, even those made by Catholic men, are altogether prohibited, unless they shall have been approved by the Apostolic See, or edited under the vigilance of Bishops, with annotations drawn from the holy Fathers of the Church and from learned and Catholic writers."

1. Therefore versions in the vernacular language, even those made by Catholic men, are altogether prohibited, unless either condition is verified, either that, adorned with the prescribed annotations, they are edited under the vigilance of Bishops, or that, if they lack notes, the approval of the Holy See is present. Yet they are permitted to those who give work to theological or biblical studies (under the restriction placed in n. 5); for we think the faculty made through the second paragraph of art. 8 is to be applied to them.

2. That they can be published under the vigilance, or with the approval, of the Bishop, they must be enriched with annotations drawn from the holy Fathers of the Church, etc.; yet it does not seem to be required on that account that all annotations be drawn from this source, but some can be drawn even from learned non-Catholics, for example those looking to geography or archaeology, not however to faith or morals (*A. S. S.*, 30, p. 184). Paraphrastic versions seem to be assimilated to versions with annotations.

Note. The article does not touch sacred histories drawn from the Sacred Bible; or those parts which are inserted in prayer books; or Epistles and Gospels of the liturgical year, if they are printed separately.

8. "All versions of the Sacred Bibles, in whatever vernacular language, made by any non-Catholics whatever, are interdicted, and especially those which are spread abroad through Biblical Societies, condemned more than once by the Roman Pontiffs, since in them the most salutary laws of the Church concerning the editing of divine books are fundamentally disregarded.

"Nevertheless these versions are permitted to those who give work to theological or biblical studies: those things being observed which are established above (n. 5)."

CHAPTER IV.

On Obscene Books.

9. "Books which professedly treat of, narrate, or teach lascivious or obscene matters, since account must be taken not only of faith, but also of morals, which are accustomed easily to be corrupted by the reading of books of this kind, are altogether prohibited."

In this article is set forth the general prohibition of obscene books, that is, books which treat of shameful things for this end, that they may excite lust; but there is no discussion of books which ought to furnish necessary anatomical notions. Cf. Lega, *Praelect.*, t. III, n. 358.

That such books be prohibited, it is required that they treat of these professedly, that is, not in passing, but either in the whole book or in a notable part; or narrate, that is, describe shameful deeds of men, whether true or fictitious; or teach, that is, explain how shameful acts are performed.

Hence it is clear that all books called "pornographic" are proscribed. As regards novels, namely those which treat of profane or vicious love, very many of our age can be called professedly obscene; yet since not all narrate obscene matters themselves, they are not condemned universally by this article. But as St. Alphonsus very well observes: "By Natural Law they are often prohibited of themselves on account of the grave damage which they inflict on readers; for in them the less the poison appears, the more it harms" (App. *de Prohib. libr.*, c. I, n. 9).

10. "Books of authors, whether ancient or recent, which are called classics, if they are infected with this very stain of shamefulness, on account of elegance and propriety of speech are permitted only to those whom the reason of office or teaching excuses; nevertheless in no way are they to be handed over or read aloud to boys or adolescents, unless expurgated by solicitous care."

By this article two things are established: 1. An exception is made to the general prohibition for classical books. Those are called classics which are held as examples of proper and more elegant speech, and according to some (Lega, n. 360; Vermeersch, p. 74), even their versions into another idiom.

It is said: a) If they are infected with this very, etc.; therefore the exception does not favor classical books condemned for another cause, for example on account of heresy.

b) Whom the reason of office or teaching excuses; by reason of office those are excused who professedly compose or judge works of letters, and to them the prefects of Universities, colleges, etc., seem to be numbered; by reason of teaching all who teach letters are to be excused, but not those who teach only the first rudiments of language or other sciences, although nobler, for example Theology (Palmieri, *Op. Theol. mor.*, ed. 3, II, n. 1181).

c) Excuses; wherefore this reading is permitted to them only insofar as it is necessary or useful to them, and always with the natural law of avoiding proximate danger of sinning being kept safe.

2. To this exception a restriction is added for boys or adolescents. Under the name of adolescents, do there come also young men who at the age of 20 or 24 years attend Universities? Some seem to deny this, but it must altogether be affirmed; for from the general expression boys or adolescents, it is plain that the mind of the legislator is to embrace all who have not attained manly age. Now adolescence lasts at least up to the twenty-fifth year of age. Thus Lega, Van Coillie, Vermeersch, Genicot, and others. Yet Noldin observes that the reason of office or teaching excuses those pupils who prepare themselves in Universities for composing literary works or for teaching letters. Cf. *Ami du Cl.*, 1911, p. 848; Vermeersch, p. 73.

CHAPTER V.

On Certain Books of Special Argument.

11. "Books are condemned in which God, or the Blessed Virgin Mary, or the Saints, or the Catholic Church and its Worship or Sacraments, or the Apostolic See, are disparaged. Works in which the concept of the inspiration of Sacred Scripture is perverted, or its extension is too much narrowed, are subject to the same judgment of reprobation. Books also are prohibited which with set purpose load the Ecclesiastical Hierarchy or the clerical or religious state with reproaches."

It is said: 1. Books… in which are disparaged; the word disparage here comprehends whatever by words takes away or diminishes the fame or esteem of someone. Nor is it required that detractions be made with set purpose, for whenever the legislator requires this condition, he indicates it. More truly it suffices that the detraction be grave and be made in some notable way, yet so that (as the title of the chapter requires) it can be called the special argument of such a book.

2. In which the concept of inspiration… is perverted; if someone, for example, wished by arguments to prove and persuade the reader that inspiration must be restricted to matters of faith and morals or to some parts. Cf. Const. *Providentissimus*, 18 Nov. 1893; Resp. Biblical Commission, 13 Feb. and 23 Jun. 1905.

3. Books also are prohibited which with set purpose; with set purpose is taken by approved authors almost in the same sense as professedly and in a notable part (Pennacchi, ap. *A. S. S.*, 30, p. 346; Hollweck, p. 34). See what was said above, art. 2 and 3.

4. Church, Hierarchy, etc.; hence a book is not prohibited which only loads singular persons with reproaches.

5. "It is unlawful to publish, read, or retain books in which lots, divination, magic, evocation of Spirits, and other superstitions of this kind are taught or commended."

Since only books which teach these things, or hand down rules of the art, or commend them, namely extol them with praises, are proscribed, those are not condemned which treat of these things in order to refute them, nor those which merely report facts (*Can. Cont.*, 20, p. 307). Cf. what was said above n. 566.

13. "Books or writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under pretext that they are private, are proscribed if they are published without legitimate license of the Superiors of the Church."

It is said: 1. Books or writings; therefore even manuscripts, but only if they are published; now, for the most part these are not sufficiently made of public law, or spread among the common people. But as regards newspapers which carry to public notice some miraculous fact which occurred on pilgrimage (for example at Lourdes), especially if there is question of a simple narration of facts, authors testify that the practice of publishing supernatural things of this kind has prevailed among all, without either the Bishops or the Apostolic See being solicitous about the matter. "But that which is commonly

done, with the prelates of the Church seeing and being silent, is not to be condemned so easily" (cf. *A. S. S.*, 30, p. 290; Del Vecchio, on this article).

2. Which narrate. Authors require that the book narrate rather fully and, as it were, professedly, so that it has this narration for its argument.

3. New apparitions, etc.; we understand those which have occurred recently, or even less recent ones but not yet received by usage, or approved. - As regards new devotions, the word introduce must be attended to; namely it does not suffice merely to report them. Several devotions of this sort in these times have been condemned by the Holy Office (cf. Vermeersch, n. 80, p. 84).

4. If they are published without legitimate license; if there is question of marvelous facts of living persons, the Holy See must be approached; if of those things which pertain to causes of beatification, license must be sought from the S. R. C.; for the rest, the Bishop of the place is competent.

Note. The new Constitution has nothing concerning the protestation of the author prescribed by Urban VIII: whence authors are no longer obliged to place it at the beginning of books. Cf. nevertheless the Motu proprio *Sacrorum Antistitum*, n. VI (*A. A. S.*, II, p. 665), where mention is made of this declaration.

14. "Likewise books are prohibited which establish duel, suicide, or divorce as licit, which treat of masonic sects or other societies of the same kind, and contend that these are useful and not pernicious to the Church and civil society, and which defend errors proscribed by the Apostolic See."

Authors require that books of this kind treat of these matters not in passing but as if with set purpose, and not without reason: for otherwise someone cannot truly be said to establish, contend, defend. To establish is the same as to demonstrate, to contend the same as to affirm keenly, to defend the same as to champion.

What societies are of the same kind as masonic sects we said n. 1331. Errors proscribed by the Apostolic See are also those which the Holy See proscribes through the Sacred Congregations, provided the sentence has been confirmed by the Roman Pontiff. Among these errors come those which the Syllabus condemned (S. C. Ind., 23 May 1898; *A. S. S.*, 30, p. 698). Cf. n. 1328.

CHAPTER VI.

On Sacred Images and Indulgences.

15. "Images printed in whatever way of Our Lord Jesus Christ, the Blessed Virgin Mary, Angels and Saints, or other Servants of God, which are not in conformity with the sense and Decrees of the Church, are altogether forbidden. But new ones, whether they have prayers annexed, or are issued without them, are not to be published without license of ecclesiastical power."

It is said: 1. Images printed in whatever way; whence, from the consensus of interpreters, neither paintings or statues, nor medals, which are rather struck than printed, are struck by this article.

2. Not in conformity with the sense and Decrees of the Church. Which ones are to be reproved for this reason must be drawn especially from the Constitution *Sollicitudini* of Benedict XIV, 1 Oct. 1745: they are generally those which can introduce danger to faith and morals. These images are altogether forbidden; therefore even for private devotion.

Note. As regards new images, it is not clear whether a new edition of old images is prohibited (Vermeersch, n. 85).

16. "It is interdicted to all to spread abroad in any way apocryphal indulgences and those prescribed or revoked by the Apostolic See. Those which have already been spread abroad are to be taken from the hands of the faithful."

With Palmieri (*Op. mor.*, n. 1187), Pennacchi (*A. S. S.*, 30, p. 317), Vermeersch (n. 86, 2), and others, we think this article imposes nothing on the faithful except the obligation of obeying Superiors, if they have commanded something.

17. "All books of indulgences, summaries, little books, sheets, etc., in which their concessions are contained, are not to be published without license of the competent authority."

Yet, as some authors rightly observe, images which are accustomed to be composed in memory of the deceased or in recollection of another pious event, with one or another prayer added and an indulgence annexed, are not sheets of indulgences; whence, as usage sufficiently proves, they are not contained by this prohibition.

CHAPTER VII.

On Liturgical and Prayer Books.

18. "In authentic editions of the Missal, Breviary, Ritual, Ceremonial of Bishops, Roman Pontifical, and other liturgical books approved by the Apostolic See, let no one presume to change anything: if otherwise it has been done, these new editions are prohibited."

By this article these new editions are prohibited only in the case of change, but not if they lack due approval. Thus most authors. Cf. Gennari, o. c., on this article; Vermeersch, n. 88, 4. Therefore he who recited the Breviary, using an edition prohibited (because it lacks approval), would satisfy the obligation, provided the edition has not been changed.

19. "All litanies, except the most ancient and common ones which are contained in Breviaries, Missals, Pontificals, and Rituals, and except the Litanies of the Blessed Virgin, which are accustomed to be sung in the sacred House of Loreto, and the Litanies of the Most Holy Name of Jesus already approved by the Holy See, are not to be issued without revision and approval of the Ordinary."

To these approved litanies must be added the litanies of the Most Sacred Heart of Jesus and of St. Joseph. But the required approval of the Bishop avails only for their private recitation; for public recitation in churches or public oratories the approval of the Holy See is always required, from the Decrees of the S. R. C., 20 Jun. 1896 and 11 Feb. 1898 (S. R. C., n. 3916, 3980).

20. "Let no one publish books, or little books, of prayers, devotion, or religious, moral, ascetical, mystical doctrine and instruction, and others of this kind, although they may seem to conduce to fostering the piety of the Christian people, without license of legitimate authority: otherwise let them be held prohibited."

It is said: books or little books, to the exclusion of sheets and writings. - Besides, only those books seem to be reached whose scope is immediately practical, but not those which treat doctrine speculatively. Many authors draw this both from the inscription of the chapter: on books... of prayer, and from the text itself of the article: although they may seem to conduce to fostering the piety of the Christian people (Lega, III, n. 373).

Note. On 21 Mar. 1914, the S. R. C. prescribed: Prayers which are directed to the Lord God for obtaining graces through the intercession of servants of God who died with fame of sanctity need permission of the Bishop, that they may be printed and spread among the faithful. Cf. what was said n. 538.

CHAPTER VIII.

On Newspapers, Sheets, and Periodical Booklets.

21. "Newspapers, sheets, and periodical booklets which with set purpose attack religion or good morals are to be held proscribed not only by natural Law, but also by ecclesiastical Law.

"But let Ordinaries take care, where there is need, opportunely to warn the faithful concerning the danger and harm of reading of this kind."

Sheets are prohibited; understand periodical sheets, as the whole context suggests.

The added prohibition of positive Law is founded on the presumption of danger, and this brings it about that even those in whom by accident the danger ceases nevertheless are obliged by the present law, while the prohibition of Natural Law must be judged entirely from danger. Therefore the prohibition of the Church is more severe and more extended. This, besides, brings it about that even parts innocent in themselves of publications of this sort are proscribed (Pennacchi, n. 59).

Some understand religion to be natural religion only, and therefore say that only those periodical sheets are condemned which habitually defend atheism, materialism, and other errors of this kind; others understand only true or Catholic religion. The S. C. of the Index refused to solve the question. Cf. Vermeersch, n. 92, p. 111.

What the proper signification of this word with set purpose may be, we said above. As regards newspapers specifically, with set purpose signifies that it be done habitually: so that the publication itself or series can be called hostile to religion or good morals; whence it can by no means be conceded that all liberal newspapers are prohibited by this article.

Note. Authors ask whether obscene images are comprehended in this article, or in art. 9. More truly one must respond by distinguishing: Either they are inserted in the text of a prohibited book or newspaper or any sheet; then insofar as they are part of a forbidden work they are proscribed. Or they are printed separately, and then they are not reached by

our Constitution, even if they are bound together in a collection. But certainly they are prohibited by Natural Law (*Can. cont.*, 20, p. 305).

22. "Let no Catholic, especially from among ecclesiastical men, publish anything in newspapers, or sheets, or periodical booklets of this kind, unless a just and reasonable cause suggests it."

Therefore of itself it is not licit regularly to send articles, even those treating of a scientific matter, to bad periodicals, nor to announce one's things to be sold, leased, etc., in depraved newspapers; yet according to circumstances this latter thing can more easily become licit, especially if the same matter to be announced is handed over not only to that depraved periodical, but also to other good ones. A just and reasonable cause will be present if some article, insulting to the faith or hierarchy, must be refuted in the newspaper itself.

Note. It will not be beside the matter here to add the prescriptions which recently were promulgated for seminaries in the Motu proprio *Sacrorum Antistitum*: "We altogether forbid any newspapers, or reviews, however excellent, to be read by the same [that is, by young men in seminaries], the conscience of the moderators being burdened, if they shall not have religiously taken care that this not occur" (*A. A. S.*, II, p. 668). These prescriptions are also to be religiously observed by students giving work to studies in monasteries and religious congregations (S. C. Consist., 25 Sept. 1910; *A. A. S.*, II, p. 740). Yet, as is clear from the Letter of 20 Oct. 1910 to the Archbishop Primate of Hungary (*A. A. S.*, II, p. 855), by these documents only newspapers and reviews concerning political matters or social and scientific questions, which are agitated day by day, are prohibited. Nothing prevents Superiors or teachers, if there is question of scientific questions, from reading useful articles to the students, or handing them over to be read in their presence.

CHAPTER IX.

On the Faculty of Reading and Retaining Prohibited Books.

23. "Books proscribed either by special Decrees or by these general Decrees, only those will be able to read and retain who have obtained opportune faculties from the Apostolic See, or from those to whom it has delegated its powers."

See however what was said n. 454. The license of the Ordinary is not required so that someone can use a faculty obtained from the Holy See.

24. "For conceding licenses of reading and retaining any prohibited books whatever, the Roman Pontiffs placed over [this] the Sacred Congregation of the Index. Nevertheless the same power is enjoyed both by the Supreme Congregation of the Holy Office, and also by the Sacred Congregation of Propaganda Fide for regions subject to its governance. For the City only, this faculty belongs also to the Master of the Apostolic Sacred Palace."

25. "Bishops and other Prelates possessing quasi-episcopal jurisdiction, for singular books, and only in urgent cases, can concede license. But if the same have obtained from the Apostolic See a general faculty, that they can impart to the faithful license of reading and retaining proscribed books, let them concede it only with selection and from a just and reasonable cause."

26. "All who have obtained an apostolic faculty of reading and retaining prohibited books cannot on that account read and retain any books whatever, or periodicals proscribed by Ordinaries of places, unless in the apostolic indult an express power has been given to them of reading and retaining books condemned by anyone whatever. Let those who have obtained license of reading prohibited books remember besides that they are held by grave precept so to guard books of this kind, that they do not come to the hands of others."

Our Most Holy Lord Pius X wished to recall this last article to the memory of all whom it concerns, in the Motu proprio *Sacrorum Antistitum* (*A. A. S.*, II, p. 661).

CHAPTER X.

On Denunciation of Depraved Books.

27. "Although it belongs to all Catholics, especially those who excel in doctrine, to denounce pernicious books to Bishops or to the Apostolic See; nevertheless this pertains by a special title to Nuncios, Apostolic Delegates, Ordinaries of places, and Rectors of Universities flourishing with the praise of doctrine."

Authors doubt whether a special precept is given by this article. Whatever the case, it is certain that those who preside over the people are held from justice by force of their office to denounce, but the faithful only from charity.

28. "It is expedient that in denunciation of depraved books not only the title of the book be indicated, but also, insofar as it can be done, the causes be set forth on account of which the book is considered worthy of censure. But to those to whom the denunciation is brought, it will be sacred to keep secret the names of those denouncing."

29. "Let Ordinaries, even as Delegates of the Apostolic See, strive to proscribe books and other harmful writings issued or spread in their Diocese, and to take them from the hands of the faithful. Let them bring to Apostolic judgment those works or writings which require a more subtle examination, or in which, to obtain a salutary effect, the sentence of supreme authority seems to be required."

Pennacchi wishes (*A. S. S.*, 30, p. 407) exempt regulars to be bound by prohibitions made by Ordinaries; but the much more common opinion teaches that in this matter they are immune from the jurisdiction of the Bishop. Cf. Vermeersch (o. c., n. 64, p. 52), who strenuously champions this opinion.

TITLE II.

On the Censure of Books

CHAPTER I.

On Prelates Set Over the Censure of Books.

30. "With whom the power resides of approving or permitting editions and versions of the sacred Bibles is plain from those things which are established above (n. 7)."

The censure of which there is question in this title is not required that a book be committed to type, but that it come forth into the light. Thus understand the things that will be said in n. 37, 38, and 40.

The obligation of subjecting a book to censure is grave or light according to the argument of the book, or the manner of publication. Thus, for example, omission of a new approval, if the edition is conformable to the prior approved one, does not seem to be a grave sin.

31. "Let no one dare to issue again into the light books proscribed by the Apostolic See: but if, from a grave and reasonable cause, some singular exception seems to be admitted concerning this matter, this will never be done unless license of the S. Congregation of the Index has first been obtained."

By books proscribed by the Apostolic See are understood only those books which by special Decree and by name are condemned by the Holy See, whether immediately, or through some Congregation, but not those which are reached only by these General Decrees.

32. "Those things which in any way pertain to causes of Beatifications and Canonizations of the Servants of God cannot be published without the beneplacit of the Congregation set over guarding Sacred Rites."

33. "The same must be said of Collections of Decrees of individual Roman Congregations: namely these Collections cannot be issued unless license has first been obtained, and the conditions prescribed by the moderators of each Congregation have been observed."

34. "Let Apostolic Vicars and Missionaries faithfully observe the Decrees of the Sacred Congregation set over Propaganda Fide concerning the issuing of books."

35. "The approval of books whose censure, by force of the present Decrees, is not reserved to the Apostolic See or to the Roman Congregations, pertains to the Ordinary of the place in which they are made of public law."

Therefore this approval no longer pertains to the Ordinary of the place in which the printing is done. If the edition has place in several dioceses, the approval of one Ordinary suffices. - In Germany, from legitimate custom, the approval of the Ordinary of the diocese to which the author is ascribed suffices.

Yet let the Response of the S. C. of the Index, 9 May 1912, be noted: The Bishop of the place in which some author not subject to him desires to make public a book already examined by his own Ordinary and judged worthy of the press, can permit the printing of this book without subjecting it to a new censure. It suffices that he place the judgment *Nihil obstat* of the censor of the other diocese, transmitted to him by that Ordinary (*A. A. S.*, IV, p. 370).

36. "Let regulars remember that, besides the license of the Bishop, they are held by the Decree of the sacred Council of Trent to obtain from the Prelate to whom they are subject the faculty of issuing a work into the light. But each concession is to be printed at the beginning or end of the work."

The Constitution uses the word Regulars; yet, as the S. C. of Religious declared, 15 Jun. 1911, the article extends itself also to religious of Institutes. The same Congregation also prohibited religious, as often as their Moderators interdict to them publication of a manuscript, from handing it over to a printer, who may publish the book with only the Imprimatur of the Bishop (*A. A. S.*, III, p. 270).

37. "If an author living at Rome wishes to print a book not in the City, but elsewhere, no other approval is required besides the approval of the Cardinal Vicar of the City and of the Master of the Sacred Apostolic Palace."

CHAPTER II.

On the Office of Censors in the Previous Examination of Books.

38. "Let Bishops, whose office it is to grant the faculty of printing books, take care that they employ for examining them men of proven piety and doctrine, concerning whose faith and integrity they can promise themselves that they will give nothing to favor, nothing to hatred, but, every human affection being put after, will look only to the glory of God and the utility of the faithful people."

By these words the institution of censors from office is only commended. But Pius X, in his Motu proprio *Sacrorum Antistitum*, prescribed that in all dioceses and in the Roman Curia censors from office be named (*A. A. S.*, II, p. 661). The institution of a Council of vigilance is also prescribed, whose function is to investigate indications of Modernism both in books and in teachings (ibid., 663, 664).

39. "Let censors know that they must judge concerning various opinions and sentences (according to the precept of Benedict XIV) with a mind empty of all prejudices. Therefore let them shake off affection of nation, family, school, institute; let them put aside party zeal. Let them keep before their eyes only the dogmas of holy Church and the common doctrine of Catholics, which are contained in the Decrees of general Councils, Constitutions of Roman Pontiffs, and consensus of Doctors."

40. "The examination having been completed, if nothing seems to stand in the way of publication of the book, let the Ordinary concede to the author, in writing and altogether gratis, license of publishing it, to be printed at the beginning or end of the work."

It is said: 1. If nothing, etc.; it must be noted, from the Response of the S. C. of the Index, 1 Sept. 1898, that Ordinaries who deny license are held to indicate to the author the reasons for the license denied, if the book seems capable of correction or expurgation (*A. S. S.*, 31, p. 256).

2. In writing; nevertheless authors probably assert that license imparted orally suffices for validity; for, as they say, the substance of the precept consists in the concession of license, and this, whether by voice or by writing, is true license (*A. S. S.*, 31, p. 500). But as often as license is conceded in writing, let the formula *Nihil obstat* be placed before it, the name of the censor being ascribed. Thus from the Motu proprio *Sacrorum Antistitum*, 1 Sept. 1910 (*A. A. S.*, II, p. 661).

3. License to be printed; probably it is not necessary that this be printed in exactly the same words in which it was given; any general formula suffices. Likewise we think it probable that sometimes from a just cause, the Bishop assenting, the license can be passed over entirely in silence. Cf. Pennacchi, Vermeersch, etc. - The Motu proprio itself concedes (l. c., p. 662) that in extraordinary circumstances mention of the censor can be omitted.

CHAPTER III.

On Books to Be Subjected to Previous Censure.

41. "All the faithful are held to subject to previous ecclesiastical censure at least those books which regard the divine Scriptures, sacred Theology, ecclesiastical History, Canon law, natural Theology, Ethics, or other religious or moral disciplines of this kind, and generally all writings in which religion and the honesty of morals is especially concerned."

It is said: 1. Are held; if therefore due license is omitted, the author sins; but the book is not prohibited, unless there is question of those which by the very fact of omitted approval are proscribed (cf. art. 7, 13, 20).

2. Generally all writings, and therefore also articles of newspapers in which religion and the honesty of morals is especially concerned, namely which have a moral or religious argument. Nevertheless some authors judge that the custom previously in force has not been abrogated, by force of which periodicals not explicitly treating of religion

insert, without previous censure, articles which of themselves would have to be subjected to revision. Cf. Van Coillie, n. 69; Vermeersch, n. 118, p. 144.

From the Motu proprio *Sacrorum Antistitum* (*A. A. S.*, II, p. 662) it is gathered that for periodicals a special censor, insofar as it can be done, must be designated.

Note. In the judgment of all, printed works and works to be issued lithographically or polygraphically, if they are made public and made of public law, are to be subjected to censure; but if they come forth only for the use of pupils or for another limited use, and are not placed in commerce, they are not liable to this censure; "which we know to have been approved by Roman practice itself," as Vermeersch testifies, p. 33. The reason of these things is because the license of the Bishop is not required precisely for this end, that the book can be printed, but that it can be made of public law. Therefore formularies of prayers for the use of a community, academic lectures for hearers, do not need episcopal censure (*Linz. Quart. Schr.*, 1913, p. 488).

42. "Men from the secular clergy are not to publish even books which treat of merely natural arts and sciences without consulting their Ordinaries, that they may offer an example of an obedient mind toward them.

"The same are prohibited from taking up the direction of periodical sheets without previous permission of the Ordinaries."

The first part of this number is not only a recommendation; for (whatever Vermeersch may say, n. 119, p. 145) the S. C. of Extraordinary Affairs in its Instruction of 17 Jan. 1902 interpreted it thus: "Ecclesiastical men, according to the prescriptions of art. 42 of the same Constitution (*Officiorum*), must obtain the previous consent of the Ordinary for publishing writings which treat of merely natural arts and sciences." And our Most Holy Lord Pius X declared the same in his Motu proprio of the day 18 Dec. 1903. *A. S. S.*, 36, p. 344. - The Motu proprio *Sacrorum Antistitum*, n. IV, commands the second part to be observed more diligently. Cf. *A. A. S.*, II, p. 662.

CHAPTER IV.

On Printers and Publishers of Books.

43. "Let no book subject to ecclesiastical censure be printed, unless at the beginning it bears the name and surname both of the author and of the publisher, and besides the place and year of printing and edition. But if in some case, for just causes, the name of the author seems to be passed over in silence, the power of permitting this is with the Ordinary."

Only books ought to bring forth at the beginning the name of the author, etc. Therefore writings which do not reach the bulk of a book, and even periodical publications, are not touched by these prescriptions, as it seems.

44. "Let printers and publishers of books know that new editions of the same approved work require new approval; moreover this approval, bestowed on the original text, does not avail for its version into another idiom."

The S. C. of the Index, having been asked: "Whether chapters excerpted from periodicals and issued separately (commonly *tirages a part*) must be considered new editions and therefore need new approval," responded: Negatively (*Nouv. Rev. Theol.*, 30, p. 510).

45. "Books condemned by the Apostolic See are to be considered prohibited everywhere among the nations, and into whatever language they may be translated."

46. "Any booksellers whatever, especially those who glory in the Catholic name, are neither to sell, nor lend, nor retain books treating professedly of obscene matters: let them not have the other prohibited books for sale, unless they have obtained permission from the Sacred Congregation of the Index through the Ordinary; nor let them sell them to anyone unless they prudently can judge that they are legitimately sought by the buyer."

Therefore the bookseller is not held to interrogate the buyer, but it suffices that from the circumstances of persons he can form for himself a prudent judgment concerning the legitimate petition of the buyer. - As regards obscene books, see art. 10.

CHAPTER V.

On the Penalties Established against Transgressors of the General Decrees.

47. "All and singular persons knowingly reading, without authority of the Apostolic See, books of apostates and heretics defending heresy, and also books of any author whatever by name prohibited through Apostolic Letters, and retaining,

printing, and in any way defending the same books, incur by the very fact excommunication reserved in a special way to the Roman Pontiff."

Cf. those things which we said n. 1315. Yet, according to some authors, the word printing may be interpreted more strictly than was done in the Constitution *Apostolicae Sedis* (n. 1316, 3), so that it is understood in the sense indicated n. 1355.

48. "Those who, without the approval of the Ordinary, print or cause to be printed books of the Sacred Scriptures, or annotations or commentaries on the same, fall by the very fact into excommunication reserved to no one."

See what was said n. 1355.

49. "But those who have transgressed the other things which are prescribed by these General Decrees, according to the diverse gravity of guilt, are to be seriously warned by the Bishop; and if it will seem opportune, they are also to be coerced by canonical penalties."

Addenda to Part II

ADDENDA.

Back to n. 1248 B in the main text.

Editorial note. The corresponding main-text place, n. 1248 B, has been marked with a link to this Addenda entry; the full printed Addenda text is preserved here.

Page 782 n. 1248 B (up to the end), where there is question of the Bull of the CRUSADE, all things must be reformed according to the norm of the Apostolic Letters of 12 Aug. 1915. Cf. *A. A. S.*, VII, p. 557.

These Apostolic Letters consist of diverse parts, in which various faculties are contained: namely Indults as regards indulgences, divine offices and burial, confession and commutation of vows, dispensation from irregularity and from the impediment of affinity and crime, convalidations and compositions of benefices, the law of abstinence and fast, and finally as regards private oratories. From these it pleases us to note only those things which pertain to the matter of fast and abstinence.

Note. For Lusitania and places subject to the dominion of Lusitania, an almost identical Indult, to be valid for ten years, was promulgated on 31 Dec. 1914. Cf. *A. A. S.*, VII, p. 549.

I. Publication of the Indults (of the Crusade) and their use. The Indults conceded to the Spanish nation are to be published every year. The year is computed from the day of the publication previously made, up to the day of the new publication to be made.

Summaries (of these Indults) taken by the faithful are valid for their use during the whole aforesaid year. But the Indults are always understood to be prorogued, for the greater convenience of the faithful, to one entire month after the completed year from their publication.

All who are staying in the territory of Spain, or in any other territory whatever subject to Spanish dominion, enjoy the Indults, if however they take the Summaries. But they can use the Indult as regards the law of abstinence and fast both in Spain and outside Spain, provided scandal is absent.

For licit and valid use of the Indults, it suffices to take the Summaries. It is not necessary to subscribe in them one's proper name and surname. Nor is it necessary to have them with oneself, or to preserve them.

The tax, or alms, to be paid, is to be consigned at the foot of each Summary. Moreover let the faithful know that proceeds of this kind are destined principally for sustaining divine worship, for pious works of beneficence, and for sustaining the burdens of the Bull of the Crusade itself.

II. Indult as regards the law of abstinence and fast. 1. To all absolutely, on whatever day, and at whatever meal, it is licit to use condiments from any fat, from butter, from margarine, and other similar condiments; likewise it is licit to eat milk-foods and even eggs, in the same way, that is, on whatever day and at whatever meal.

2. Abstinence from meat and from meat-juice is to be observed only on Fridays of Lent, of the Four Times, and also on the three vigils of Pentecost, of the Assumption of the Blessed Virgin Mary into Heaven, and of the Nativity of Our Lord Jesus Christ.

Note. For Lusitanians, there are besides days of abstinence: the Fridays of Advent and the vigil of All Saints.

3. Fast will have to be observed only on Wednesdays and Fridays and also Saturdays of Lent, and on the vigils noted in the preceding paragraph 2.

The vigil of the Nativity is anticipated and remitted to the Saturday of the Four Times immediately preceding.

Nor is it forbidden to mix fish and meats in the same meal on days of fast and Sundays of Lent.

4. All can, from a reasonable and just motive, be dispensed by their own confessors from the law of abstinence and fast.

III. Conditions concerning the use of the preceding Indult.

With the Indult of paragraphs 1 and 2, the law of fast remains intact, or of one eating per day, for those who are held to fast, according to the third paragraph.

They do not enjoy the same Indult except only those who have taken the present Summary and the Summaries of indulgences and of divine offices, and have paid the taxed alms to be applied for the benefit of Seminaries and other pious ends assigned by the Holy See.

This Indult can be taken by a collective Summary for oneself and the whole family, extending to any familiars whatever, guests even for a very brief time, and table companions. That collective Summary has altogether the same effects if it is taken by the mother of the family.

The poor are not held to take the aforesaid Summaries, nor to give any alms, in order that they may enjoy the Indult as regards the law of abstinence and fast. But they are held, if they wish to enjoy the other Indults.

Regulars who by special vow are held to observe esurial foods throughout the whole year are altogether excluded from the same Indult, as regards the law of abstinence.

ERRATA.

Page	Line	Read	Not
150	19	beneficium	privilegium
277	22	cadaver	cadaverem
377	2	588	885
485	31	bellantes	bellicantes
496	27	vas femineum	vase femineo
501	21	hypersexualitate	hypersexualite
556	24	3	23
579	35	ART. III	III
592	12	casu	caso
730	31	1161	1061

Supplement to Part II

SUPPLEMENT

DISPOSITIONS

OF THE CODE OF CANON LAW PROMULGATED BY THE AUTHORITY OF POPE BENEDICT XV

WHICH PERTAIN TO MORAL THEOLOGY

PROEMIUM.

In this Supplement, according to the order of the numbers and tractates of the *Moral Institutions*, there are found those things which in them are confirmed by the new Code, and those things which must be changed from it. This arrangement of the matter by way of an appendix, although it has against it the fact that it is not inserted into the book itself, nevertheless bears before itself no lesser utilities, especially from this, that thus it may be seen clearly and immediately what things are retained in all moral theology, and what things truly are abolished or renewed, after the Code has begun to have binding force, i.e., after the nineteenth day of the month of May of the year 1918. From it there is thus at once understood the distinction between the old and the new discipline, which helps not a little toward understanding better the new dispositions of law and toward retaining them more easily in memory. It is supposed that anyone possesses a volume of the new Code, which indeed not only most greatly befits a cleric and especially a student of Sacred Theology, but is also plainly necessary for him for observing ecclesiastical laws.

N. B. - Lest the word *is confirmed* (*confirm.*) recur too much, it will be omitted whenever it would have to be applied to several immediately following numbers.

PART II. - SECTION I.

TRACTATE I. - On Theological Faith.

428 1° is confirmed by can. 1325 § 1; 2° is confirmed as regards substance by can. 1406, 1407, 1408. In person and not through a procurator from can. 1407. Concerning the oath against modernism, discourse is not made in the Code, and therefore from can. 5 n. 6 it no longer obliges. Besides those whom the author enumerates, now the following are held to emit the profession of faith: 1° those promoted to the cardinalitial dignity; 2° those promoted to an episcopal see, even non-residential, to the rule of an Abbey or Prelature *nullius*, of an Apostolic Vicariate, of an Apostolic Prefecture; 3° the Chapter Vicar; 4° those assumed to the office of diocesan consultors; 5° professors of canon law, censors of books; 6° the Rector and professors in a canonically erected University or Faculty. - 430 is confirmed by can. 1325 § 1. - 433 I can. 1258 § 1; II can. 1258 § 2, cf. also can. 823 § 1; can. 731 § 2; can. 2259 §§ 1-2. - 437 can. 1351. - 438 and 441 can. 1325 § 2. - 441 Qu. 2 can. 2317. - 442 1° a) can. 2314; b) from can. 987 7° the sons of heretics are no longer irregular, but only impeded, as long as the parents remain in their error; from can. 985 1° it is confirmed as regards the heretics themselves; c) incapacity when they pass over to a non-Catholic sect from can. 2314 § 1 n. 3 joined with can. 2294 § 1; d) is confirmed by can. 2314 § 1 n. 2; e) can. 1240 § 1 n. 1, provided the defection from the faith or the passing over to a sect is notorious; II is confirmed by can. 1935 § 2. - 443 II and III are confirmed by can. 2314 § 2. - 448 can. 1258 and can. 2316. - 449 in can. 1325 § 3 the doctrine is handed down concisely thus: "Let Catholics beware lest they have disputations or conferences, especially public ones, with non-Catholics, without permission of the Holy See, or, if the case urges, of the Ordinary." Therefore it is substantially confirmed. - 450, 3° is confirmed by can. 1374. - 452 can. 1398 § 1; but in the explanation 1° by the name of book now, from can. 1384 § 2, there are understood also daily publications, periodicals, and any other published writings whatever, unless something else is clear. 2° censure, can. 2318 § 1. 5° through the S. Congr. of the Holy Office from can. 247 § 4, even for the regions of the missions from can. 252 § 4, but through the channel of the S. Congr. de Prop. Fide. See below the explanation to the Const. *Officiorum et Munerum.* - 453 is confirmed by can. 1395.

TRACTATE II. - On Hope.

Nothing to be observed.

TRACTATE III. - On Charity.

526 II 1° is confirmed by can. 2334 n. 1; 5° can. 2346, but the excommunication is *ferendae sententiae.*

SECTION II.

TRACTATE I. - On the First Precept of the Decalogue.

531 2° is confirmed by can. 1255 § 2; 3° can. 1256; Note can. 1257. - 533 can. 1255 § 1. - 534 cf. can. 1287 and 1288. - 535 1°-2° is confirmed by can. 1150. The things for use etc. a) can. 1187. - 537 is confirmed by can. 1255 § 1, 1276. - 538 can. 1277. III can. 1255 § 2. - 539 2° can. 1281 § 2; 3° can. 1283 and 1285 §§ 1-2; 4° can. 1282;

5° can. 1287; see also can. 1286, 1289 and 2326. - 540 can. 1279, 3° can. 1279 § 1; see also can. 1280 and 1281 § 1. - 552-553 can. 1502, which says: "As regards the payment of tithes and first-fruits, particular statutes and laudable customs in each region are to be observed." - 554 and following are confirmed by can. 1261; penalties, can. 2325. - 578 penalties, can. 2325. - 581 is confirmed by can. 132 § 1. - 582 can. 1154; as regards the right of asylum, can. 1179 says: "The Church enjoys the right of asylum, so that the guilty who have fled to it are not to be extracted from it, unless necessity urges, without the assent of the Ordinary, or at least of the rector of the church." But violation of a church, which formerly was called pollution, now occurs in the same way as before, except that, in place of the effusion of human semen, can. 1172 § 1 n. 3 has substituted: "impious or sordid uses, to which the church has been devoted." - 583 On real sacrilege, see can. 1150. - 584 can. 727 §§ 1-2 clearly explains what simony of divine law is, what simony of ecclesiastical law is; cf. also can. 1441, 1465 § 2 and 1539 § 1. - 585 3° is confirmed by can. 728. But simony, etc., can. 730. - 588 2° and 3° can. 730. - 591 1° can. 729 and can. 2392; but from this can. n. 2 the incapacity of which under c) is reduced to a simple privation of the right of electing, presenting, nominating, and indeed only as regards those who have such a right. 2° the censure has been taken away; there is only a prohibition, can. 570. 3° there is a simple prohibition of trading in the stipend of Masses, can. 827, and the penalties from can. 2324 henceforth will be only *ferendae sententiae*. - 592 is confirmed by can. 729.

TRACTATE II. - On the Second Precept of the Decalogue.

600 and 605 are confirmed by can. 1316 § 1. - 614 I and II can. 1317 § 1; III can. 1318. Note to I is confirmed by can. 1317 § 3. - 615 Rule 1 is confirmed by can. 1321, Rule 3 by can. 1319. - 617 Qu. 1° from can. 1318 § 2. Qu. 3° can. 1317 § 2. By canon 1320 the question about the power of dissolving from an oath is decided: namely, all who can irritate, dispense, commute a vow (see can. 1312, 1313, 1314) have the same power and in the same manner concerning a promissory oath, with one case excepted, if the dispensation turns to the prejudice of a third party, because then it is reserved to the Holy See. - 622 I is confirmed by can. 1151. Can. 1152 can be added, by which it is said that exorcisms can also be made over non-Catholics or excommunicates. - 623 is confirmed by can. 1307 § 1. To the division there is to be added: into public and private from can. 1308; the first is that which is accepted in the name of the Church by a legitimate Superior. The rest is confirmed. - 625 is confirmed by can. 1307 § 1 and 2. Hence 4° can. 1307 § 3. - 626 can. 1307 § 1. - 629 can. 1310. - 630 can. 1311. - 632 can. 1311. - 635-636 can. 1311. - 637-638 can. 1312 § 1. - 639 can. 1312 § 2. - 640 can. 1312 § 1. - 641-645 can. 1313. - 645 Qu. 2° only two private vows from can. 1309 are reserved to the Apostolic See: 1° the vow of perfect and perpetual chastity, and 2° the vow of entering a religion of solemn vows, provided they have been emitted 1) absolutely and 2) after the completion of the eighteenth year of age. All public vows are reserved. - 646-650 are confirmed by can. 1314. Note from can. 1315, all vows emitted before religious profession are by this suspended by the law itself, as long as the one vowing remains in the religion. If therefore he goes out, of themselves they return into force.

TRACTATE III. - On the Third Precept of the Decalogue.

652 is confirmed by can. 1243 and 1244 § 1. Note can. 1244 § 2. - 654 can. 1247 § 1. Al. As regards 1° can. 1247 § 3; 2° from § 1 the feasts of Corpus Christi and of Saint Joseph are to be added; 3° is confirmed by § 1; 5° can. 1252 § 4 and can. 1245 § 2: add Holy Saturday after midday, when the law of abstinence and fast ceases.

656 is confirmed by can. 1248. - 658 sqq. can. 1248. - 664 I can. 1245 §§ 1 and 3. - 670 sqq. can. 1248. - 677 can. 1249 and 1190. - 678 1° can. 1188 § 2 n. 1; 2° n. 2. - 679 can. 1188 § 2 n. 3; ibid. 2° can. 1195 § 1. As regards more solemn feasts, the concession of the celebration of Mass can be made by the Ordinary from just causes, distinct from the causes of an indult from § 2. - He who has an indult etc. is confirmed by can. 1192 and 1193. Let it be noted from can. 1190 that small chapels erected in a cemetery by private persons are private oratories. See, however, can. 1194.

TRACTATE IV. - On the Fourth Precept of the Decalogue.

700-702 are confirmed by can. 1113 and 1372. - 703 can. 1110-1111. - 707 can. 1524. - 712 sqq. can. 1373-1374.

TRACTATE V. - On the Fifth Precept of the Decalogue.

734 is confirmed by can. 2205 § 4. - 738 sqq. penalties, can. 2354 §§ 1-2. Irregularity, can. 985 n. 4. - 745 penalties, can. 2350 § 1. Irregularity, can. 985 n. 4. - 748 can. 1240 § 1, n. 4°; by can. 2351 the penalties are confirmed. - 752 Let can. 141 be noted, by which clerics are prohibited from voluntarily taking up secular military service, and can. 987 n. 5, by which those who by civil law are bound to ordinary military service are declared impeded from sacred ordination, until they have completed it. The faculty, concerning which in this number under 3°, thereafter was restricted by the declaration of the S. Penit., dated 17 March 1916, to those who are actually in the battle line, or in the line and place of combat (*A. A. S.* VIII p. 108). - 753 and 756 for irregularity, can. 985 n. 5, for the other penalties, can. 2350 § 2. - 759 Qu. 2° is confirmed by can. 2201 § 3 and can. 2229 § 3 n. 2.

TRACTATE VI. - On the Sixth and Ninth Precepts of the Decalogue.

779 penalty, can. 2353. - 787 is confirmed by can. 132 § 1. - 790 sqq. penalties, can. 2357 and 2358, 2359 §§ 2-3 (for clerics). - 829 is confirmed by can. 140.

TRACTATE VII. - On the Seventh Precept of the Decalogue.

Penalties, can. 2354 and 2355. - 871 is confirmed by can. 99-103. - 873 can. 1495. - 874 can. 1497 § 1. - 875 Qu. 1° can. 1499 § 2. Qu. 2° can. 1518, 1519 and following. - 890-891 can. 1508. - 892 can. 1509-1510. Let there be added to imprescriptible things: 1) an ecclesiastical benefice without title; 2) the right of visitation and obedience, so that subjects could be visited by no Prelate or already be subject to no Prelate; 3) the payment of the cathedraticum (cf. can. 1504). - 893 and 895 are confirmed by can. 1512. - 897 is confirmed by can. 1511, by which immovable things, precious movables, rights and actions, whether personal or real, which pertain to the Apostolic See, are prescribed only by the space of 100 years; but if they pertain to another ecclesiastical moral person, by 30 years. The rest follows the civil law of the respective nation from can. 1508. - 941 is confirmed by can. 1731 n. 3. - 959 according to can. 1017 § 3: "From the promise of marriage, although it is valid and no just cause excuses from fulfilling the same, no action is given for seeking the celebration of marriage; nevertheless one is given for the reparation of damages, if any is owed." But these things do not exclude the moral obligation of fulfilling the promise. - 965 3° is confirmed by can. 1496. - 974 I can. 1475 § 2; II can. 1476 § 2. - 976 sqq. confer can. 2209. - 1032 concerning contracts is treated in can. 1529-1543. - 1033 is confirmed by can. 1529. - 1039 see can. 100 § 3. - 1046-1047 are confirmed

by can. 104. - 1048 can. 103 § 1. - 1049 sqq. are confirmed by can. 103 § 2 and can. 1684-1689. - 1054 confer can. 1529. - 1057 5° concerning a condition added to marriage, cf. can. 1092. For a testament, can. 1515 § 3. - 1065 1° is confirmed by can. 1535. - 1066 can. 1536 § 4. - 1067 cf. can. 1536 §§ 1, 2, 3. - 1068 Qu. 2° is confirmed by can. 1513 § 1, 1517. - 1070 can. 1513 § 2. - 1077 4° concerning fideicommissum, can. 1516 establishes. - 1078 is confirmed by can. 1513 § 1. - 1083 Qu. 3° can. 1513 § 2. Pious cause, can. 1489 sqq. and 1544. By the laws of the Church exclusively they are subject from can. 1487 §§ 2, 3, 1491-1494, 1515-1517, 1545, 1546, 1551. - 1086 is confirmed by can. 1493 and 1514. - 1087 Qu. 2° is confirmed from can. 1517; likewise the sentence of Laymann from can. § 2; only Mass burdens are excepted, the reduction of which pertains exclusively to the Apostolic See. - 1096 see can. 1537. - 1102 sqq. are confirmed by can. 1543 (first part). - 1107 sqq. can. 1543 (second part). - 1120 can. 1532 § 1 joined with can. 1530 § 1 n. 3 confirms. - 1122 is confirmed by can. 1539 § 1. - 1142 confer can. 1539 § 1 and, as regards benefices, can. 1487-1488. - 1143 sqq. are confirmed by can. 1539 § 2. - 1146 cf. can. 1455 n. 2. - 1149 see can. 1541 § 1 and 2, where lease of ecclesiastical goods is treated, and the conditions under which it can be made. - 1153 is confirmed by can. 1524. - 1155 see can. 1542 for emphyteusis in ecclesiastical goods. - 1160 see can. 1925-1928, where the doctrine of the author is confirmed.

TRACTATE VIII. - On the Eighth Precept of the Decalogue.

1185 concerning the obligation of preserving a secret, e.g., can. 1623 §§ 1, 2, 3 treats for judges. - 1190 sqq. the penalties against those who injure another's reputation are had in can. 2355. Can. 1618, 1938 treat of satisfaction to be rendered and damages to be repaired.

SECTION THIRD.

TRACTATE I. - On the Precepts of the Church.

1217 1° is confirmed by can. 1248; 2° can. 1252 §§ 2, 3; 3° can. 1252 § 1 for Friday only; 4° can. 859 and can. 906, 907; 5° can. 1108 § 2. - 1219-1223 are partly changed by can. 1250: "The law of abstinence forbids eating flesh and broth from flesh, but not eggs, milk foods, and any condiments whatever even from animal fat," and by can. 1252 § 2: "The law

of abstinence together with fast is to be observed on Ash Wednesday, the Fridays and Saturdays of Lent and of Ember days, on the vigils of Pentecost, of the Mother of God assumed into Heaven, of All Saints and of the Nativity of the Lord." § 3: "The law of fast alone is to be observed on all remaining days of Lent." § 4: "On Sundays or feasts of precept the law of abstinence, or of abstinence and fast, or of fast only ceases, and vigils are not anticipated; likewise it ceases on Holy Saturday after midday." - 1224-1228; concerning these note can. 1251 § 1: "The law of fast prescribes that only one meal per day be taken; but it does not forbid taking some food morning and evening, with the approved custom of places nevertheless being observed concerning the quantity and quality of foods." § 2: "Nor is it forbidden to mix meats and fish in the same meal; nor to exchange the evening refection with dinner." - 1231 Qu. 2° can. 1251 § 2. - 1234 f) can. 1254 § 2, but even women up to the begun sixtieth year are held by the law of fast. - 1240 is confirmed by can. 1245. - 1242 Rule 2 has been taken away from can. 1251 § 2. - 1243 Qu. 1° is confirmed by can. 1253. - 1244 "The law of abstinence alone is to be observed on each Friday" from can. 1252 § 1. - 1245 is confirmed by can. 1254 § 1.

TRACTATE II. - On Ecclesiastical Censures and Penalties.

Concerning these it is treated in book V of the Code. The doctrine concerning censures and penalties in general is for the most part confirmed by the Code. As regards censures in species, in the law in force hitherto many things are changed.

1249 al. 2 is confirmed by can. 2216.

Chapter I. - On Censures in General. 1251 The definition as regards substance is confirmed from can. 2241 § 1. - 1253 a) can. 2298 can be conferred; b) can. 983 can be conferred; c) cessation from divine things is not had except in can. 1173 § 2. - 1254 1° is confirmed by can. 2255 § 1; the paragraph is confirmed from can. 2291, 2298 and the last words of can. 2255 § 2; 2° is confirmed as regards the division itself in can. 2217 § 1 n. 3; but from the same canon b) by way of precept is to be understood only of a particular precept. The things which are added as regards cessation are confirmed by can. 2226 § 4 and can. 24; 3° a) is confirmed by can. 2217 § 1 n. 2; b) from the same canon let there be added: or by sentence of the Superior. The paragraphs are confirmed by can. 2217 § 2; 4° is confirmed by can. 2245. In the paragraph concerning those reserved to the Roman Pontiff, from the same canon § 3 let there be added those reserved in a most special way. It can be added from the same canon § 4 that a censure is not reserved unless it is expressly said in the law or precept, and that reservation does not urge in doubt either of law or of fact. - 1255 is confirmed by can. 2214 § 1. - 1256 is confirmed generally from can. 2220. But the power of the Vicar General must be denied from the same canon § 2. As regards the others, it is confirmed especially by 4° can. 274 n. 5; 5° can. 335 and 334 § 2; 7° can. 198 § 1, also the note; 10° can. 209, which also extends it to common error without title and to probable doubt either of law or of fact. - 1257 is confirmed by can. 118. As regards married clerics, it is confirmed by can. 188 n. 5. Note a) must be changed in some measure from can. 207 § 1 joined with can. 61, by which it is said that the power of a delegate perishes only in the two cases expressed there; b) is confirmed by can. 199 §§ 2, 3 and 4. - 1258 is confirmed by can. 2264. Corollaries. 1° can. 201 §§ 2, 3. Except c) can. 1637; 2° from the same can. 201 § 2 and 3. - 1259 can. 201 § 1, joined with can. 2226 § 1. - 1260 b) can. 2227 § 2; c) can. 2227 § 1 and can. 1557 § 1; d) can. 619. - 1261 1° from can. 2230 the impubescent are altogether excused from penalties *l. s.*, and therefore the annexed question also is solved. Who are impubescent, see can. 88 § 3; 2° is confirmed by can. 2242 § 1; a) is to be understood according to can. 2255 § 2; b) is confirmed by the same canon. - 1262 this doctrine is to be understood according to can. 201 § 2, if the superior proceeds judicially; but otherwise if he uses voluntary jurisdiction, from the same canon § 3; cf. however can. 2221 where there is added "within the limits of his jurisdiction." As regards precepts, cf. can. 24 and can. 2226 § 1. As regards substance the doctrine of the author seems to be confirmed; cf. also can. 1566 § 2. IV is confirmed from can. 1566 § 1. The response to the question, can. 2244. The cases are referred under § 2 of the same canon. But the 3rd case of the author is not had. The example brought forward there no longer has force from can. 2394. But there are other examples, e.g., he who shall have laid violent hands upon the person of the Roman Pontiff, from can. 2343 § 1. - 1263 is confirmed by can. 2241 § 1, joined with can. 2228. For the word "sin" let another word be substituted, "delict." 1° Delict among censures is confirmed by can. 2255 § 2. The last words "Probable" etc. are confirmed by can. 2285 § 3 and from can. 2274 § 3; 2° the note is confirmed by can. 2219 § 2 and can. 2241 § 2; 4° the note must be changed in some measure from can. 2231 joined with can. 2209 §§ 1-3, by which principal cooperators as regards penalties are equated with the delinquents themselves, unless something else is expressly established in the law; 5° is confirmed

by can. 2242 §§ 2-3. - 1264 a) is confirmed implicitly by can. 2242 § 2; b) is confirmed by can. 2209 § 5 with can. 2218 § 2. - 1265 cf. can. 2233 § 2, 2242 § 3 and 2222 § 1. - 1266 is confirmed by can. 2222; 1° from the first part of can. 2222 § 1; 2° now also for validity, because the law says: "it cannot be inflicted"; 3° to the last words: in censures by law *ferendae sententiae*, warnings are now also required from can. 2242 § 2; cf. also can. 2217 § 1, 3°. - 1267 is confirmed by can. 2233 § 2 and can. 2242 § 2; cf. also can. 1845, can. 1949 and can. 1714, from which it is clear that citation in the new law, with one case excepted, is always peremptory. Then see canons 2307, 2308 and 2310. - 1268 1° is confirmed by can. 2225 joined

with can. 1874; 2° is confirmed by can. 1877; cf. also can. 1956, 1958 and 1876. "But if the censured one," cf. can. 2223 § 4 and can. 2232; 3° is confirmed by can. 2248 § 2. - 1269 can. 2229 §§ 1, 2, 3 n. 1 and § 4 and can. 2202. Affected ignorance never excuses from the same can. 2229 § 1, and therefore the question about it is solved. - 1270 is confirmed by can. 2229 § 3 n. 3 and can. 2205 §§ 2 and 3. - 1272 if jurisdiction has been suspended, the nullity of the censure is confirmed by can. 2243 § 1 and especially § 2 and 2219 § 2; cf. also can. 1889. - 1273 2° and 3° cf. can. 2219 §§ 1 and 2, where the doctrine of the author is confirmed. - 1274 is confirmed by can. 2236 § 1 and can. 2248 § 1; 3° can. 2252, 2254 §§ 1 and 3, and 2248 § 3. - 1275 can. 2248 § 1. - 1276 can. 2239, 2251 and 2250 §§ 1-2. - 1277 can. 2251; 5° can. 2239 § 2; 7° can. 2249. - 1278 can. 2253, 2°, can. 2245 § 2, can. 2217 § 1 n. 3, can. 2236 § 1; also the note is confirmed by the same canons. - 1279 is confirmed by can. 2245 § 4, can. 2253 n. 1. - 1280 The whole doctrine contained in this number is clearly declared by can. 2253 n. 3, which reads thus: "From a censure reserved by law, he who established the censure or to whom it is reserved can absolve, and their successors or competent Superiors or delegates. Wherefore from a censure reserved to the Bishop or Ordinary, any Ordinary can absolve his subjects, and the local Ordinary also pilgrims; from one reserved to the Apostolic See, this See or others who have obtained from it the power of absolving, whether general, if the censure is simply reserved, or special, if reserved in a special way, or finally most special, if reserved in a most special way, with the prescription of can. 2254 being saved." As regards the second rule, cf. also can. 2237 § 2. Therefore the faculty in occult cases belongs to all Ordinaries, not only Bishops. Indeed, from § 1 of the same canon an Ordinary can also remit a penalty in public cases, with some excepted, and as regards censures, with those excepted which are reserved to the Apostolic See in a special or most special way. Who are Ordinaries is said in can. 198; cf. also can. 488 n. 8. As regards the third rule, in the last line of the decree of 5 Aug. 1913 it is had in can. 519. - 1281 it is confirmed as regards all cases, even public ones, by can. 2253 n. 3, when the censure is established by law, but not when it is *ab homine*, from the same canon n. 2. - 1282 is confirmed by can. 2252 and can. 882. - 1283 can. 2252, but only for censures reserved to the Supreme Pontiff in a most special way. - 1284 is confirmed by can. 2254 §§ 1, 2, 3. If it can be done without grave inconvenience, he must have recourse by letter and through the confessor, the name being withheld. - 1285 Even apart from the article of death from can. 2254 § 1, under the conditions set forth under 1284; but the footnote is to be deleted from the same canon. If recourse is morally impossible, the confessor can absolve, with those things being observed which must be observed by law, and excepting the censure imposed because of solicitation to shameful things in confession. - 1286 is confirmed by can. 2238. But as regards the question about private error, in can. 2247 § 3 it is said that absolution has force, provided it is not a censure *ab homine* or a censure reserved to the Apostolic See in a most special way, if the error proceeds from ignorance of the reservation in the confessor; and if the error is common, the absolution given has force even without a colored title,

from can. 209. - 1287 is confirmed implicitly by can. 2249 § 2, 2248 § 2, 2242 § 3. Note 2 at the foot is confirmed by can. 2239. - 1288 can. 203 joined with can. 39. - 1289 can. 2250 § 3.

Chapter II. - On the Various Species of Censure. Concerning these it is treated in the Code in can. 2255-2285. Three species are had in can. 2255 § 1. - 1290 The definition of excommunication is had in can. 2237 § 1. The effects cannot be separated; therefore the distinction between greater and lesser excommunication is altogether taken away; 2° is confirmed by can. 2258 § 1. Today from § 2 of the same canon only those are to be avoided who are excommunicated by name by the Holy See; besides, the excommunication must be publicly denounced, and in the decree or sentence it must be expressly said that he must be avoided. - 1291 1° is confirmed by can. 985 n. 7; 2° can. 2340 § 1. - 1292 1° can. 2260 § 1. Note can. 2250 § 1; 2° can. 2261 §§ 1, 2, 3. The Note which pertains to 1°, can. 2260 § 1; 3° can. 2259 §§ 1 and 2, cf. also can. 2256 n. 1; 4° can. 2262 § 1, but it is extended to all excommunicates. As regards private suffrages, it is confirmed by the same canon § 2; 5° can. 2264. As regards assistance at marriage, can. 1095 § 1, 1° (it is extended to the interdicted); 6° can. 2265 § 1 nn. 1 and 2; in § 2 of the same canon the nullity of acts is restricted to the case in which there is had a declaratory sentence of excommunication. As regards rescripts, cf. there and can. 36 § 2. As regards privation of benefice, it is confirmed by can. 2340 § 1, 2315, 2314 § 1 n. 2 taken together. As regards fruits, can. 2266; 7° can. 2263, 2256 n. 2, 1654; 8° can. 2267; 9° can. 2260 § 2 and 2240 § 1 n. 2, where it is limited only to excommunicates after a condemnatory or declaratory sentence. As regards extracting corpses, the obligation from can. 1242 is limited to those alone who are to be avoided, and if indeed it can be done without grave inconvenience. An excommunicate, although he has not been condemned or declared, sometimes must be deprived of ecclesiastical burial from another head, can. 1241 § 1, e.g., from n. 6. - 1294 and 1295 are confirmed by can. 2267. Private prayer is licit from can. 2262 § 2 n. 1; 4° one communicating in a criminal crime is confirmed by can. 2338 § 2. - 1298. A doubt concerning one to be avoided, after can. 2258 § 2, can scarcely be had any longer.

1299. The definition of suspension is had in can. 2278 § 1. The division is somewhat other: suspension is total or partial, and this is either from office or from benefice from can. 2278 § 2; partial suspension from office is again total or partial from can. 2279 § 1; from benefice it is had in can. 2280 § 1. - 1300 1° is confirmed by can. 2298 n. 2; 2° can. 2222 § 2 and by the last words of the same: "they do not have the nature of a penalty." - 1301 is confirmed by can.

2186-2194 and can. 2222 § 1. - 1302 can. 2278 § 2. - 1303 can. 2279 § 2. In this canon the species of partial suspension from office are clearly indicated with their effects; 4° is confirmed from can. 2280 §§ 1, 2; 5° from can. 2285. - 1304 I is confirmed by can. 986; II can. 985 n. 7. The question concerning violation of suspension as a vindictive penalty is solved through this canon, so that then an irregularity is also incurred; III is confirmed by can. 2284. - 1305 1° and 2° can. 2236 § 1, 2248 § 1 and 2289.

1300. The definition of interdict is in can. 2268 § 1. As regards the division, 1° mixed is to be omitted, can. 2268 § 2. The rest is confirmed by can. 2269 § 1. Concerning interdict from entrance of the church, it is treated in can. 2277. - 1307 I is confirmed by can. 2273, but as regards the note, the cemetery is not interdicted when the church has been interdicted. Those who did not give the cause from can. 2276 can receive the sacraments. Concerning the faculty of the Bishop, confer can. 2269 § 1; II is confirmed in some measure by can. 2269 § 2; III Bishops are exempt from can. 2227 § 2; innocents from can. 2276; externs from can. 2269 § 2; infants from can. 2230 and the insane from can. 2201 § 1 and 2218 § 2, who are not even

deprived of ecclesiastical burial from can. 1240 § 1 n. 2. - 1308 must be changed in some measure, although it is substantially confirmed. 1° The effect of a local interdict (whether general or partial) is the prohibition of any divine office or sacred rite in the interdicted place from can. 2269 § 1. What is understood by divine offices, see can. 2256 n. 1. The limits as regards the dying are in can. 2270 § 1; as regards clerics they are confirmed by can. 2271, 1°; as regards days, can. 2270 § 2; as regards sacraments, if the church is the only one or is parochial, can. 2271 n. 2. Ecclesiastical burial is prohibited only for those who are personally interdicted from can. 1240 § 1 n. 2, and only after sentence. For the rest in a local interdict only solemnities in funerals are prohibited from can. 2271 n. 2; b) if it is a particular local one; cf. besides can. 2272. - 1309. 1° a) is confirmed by can. 985, 7°; b) can. 2372; c) can. 2338 § 3; 2° is confirmed by can. 2338 § 3 and can. 2275. - 1310. 1° is confirmed by can. 2353 n. 1; as regards reserved ones confer can. 2237 § 1; 2° is confirmed by can. 2253 n. 2 and can. 2247 § 2; 3° can. 2253 n. 1.

Chapter III. - On the Censures in Force Today. 1311 sqq. Hitherto there were in force the censures *latae sententiae* which were had in the Constitution of Pius IX *Apost. Sedis*, with some added from the Council of Trent, from the Const. *Officiorum et munerum*, from the Const. *Vacante Sede Apostolica*, and special censures for those violating the oath of secrecy of the Holy Office and of the S. Consistorial Congregation. Concerning these last, mention is not made in the Code, and they remain. All the rest are in force according to the new Code; and therefore if they are not had there, from can. 6 n. 5 they are abolished; if they are had there, they must be explained and applied only from the words of the Code. Some censures have also been added which were not present in the old discipline. In the Code all penalties are referred according to the order of delicts against different rights or obligations. But we, who treat here only of censures and indeed of censures *latae sententiae*, shall refer them only according to the old order of reservation. Therefore we shall treat 1° of excommunications *l. s.*, and indeed of those reserved to the S. P. in a most special way, in a special way, and simply, then of the same reserved to Ordinaries, and finally of those reserved to no one; 2° of suspensions *l. s.* reserved to the Apostolic See, reserved to Ordinaries, and reserved to no one; 3° of interdicts *l. s.*

A. - On Excommunications *Latae Sententiae.*

I. - On Excommunications *l. s.* Reserved to the Supreme Pontiff in a Most Special Way. There are four principal ones, to which are numbered some special ones, as below under 5°:

1° He who shall have thrown away the consecrated species, or taken them away or retained them for an evil end,

from can. 2320. The delict concerning which there is question is clear of itself and does not need further explanation.

2° He who shall have laid violent hands upon the person of the Roman Pontiff,

from can. 2343 § 1 n. 1. Cf. the explanation in the author nn. 1319 and 1329.

3° One absolving or pretending to absolve an accomplice in a shameful sin,

from can. 2367 §§ 1 and 2.

For explanation see nn. 1324, and in vol. II n. 1780, all of which are confirmed by this canon.

4° A confessor who shall have presumed directly to violate the sacramental seal,

from can. 2369 § 1. It is said: "confessor"; therefore there is no question of others who, in whatever way, know something which it is not licit for them to manifest, lest they violate the seal of the sacrament. It is said: "who has violated directly." What the direct violation of the seal is, see in the author n. 1859 b) and 1864.

5° To these four there can be joined those excommunications which are reserved in a most special way to the future Pontiff from the Const. *Vacante Sede Apostolica*, all of which are renewed in can. 2330. The constitution itself, together with the other *Commissura Nobis* on the Veto (see in the author I p. 829 in the note), is found in the Appendix of the Code.

II. - On Excommunications *l. s.* Reserved to the Supreme Pontiff in a Special Way. Twelve are numbered:

1° All apostates from the Christian faith and all and each heretics and schismatics,

from can. 2314. This censure from § 2 of the same canon is reserved in a special way to the Apostolic See, if absolution is to be given in the forum of conscience.

For explanation the author n. 1314 can be approached. Note, in the censure now in force, receivers, favorers, etc., concerning whom in can. 2316, are no longer comprehended. But he who is suspected of heresy and within six full months from the contracted penalty has not amended himself, is also liable to the aforesaid excommunication from can. 2315, but, as it seems, only after a sentence at least declaratory. Then note that the present censure is incurred by schismatics, concerning whom formerly in another article; cf. the author n. 1317. It is said that the censure is reserved for absolution in the forum of conscience; because from the same canon § 2, if the delict concerning which there is question has been brought to the external forum, the local Ordinary, the Vicar General being excluded however of himself, can absolve the delinquent, with those things being observed which must be observed, in the external forum, and by this absolution the reservation is also taken away in the internal forum. Those suspected of heresy are enumerated in canons 2316, 2319 §§ 1 and 2, 2320, 2332 and 2340 § 1.

2° When the work has been made public, publishers of books of apostates, heretics and schismatics, which defend apostasy, heresy, schism, and likewise those defending the same books or other books prohibited by name through apostolic letters, or knowingly reading or retaining them without due license,

from can. 2318 § 1. As regards the explanation, see the author n. 1315. But observe, in this censure printers are no longer included, and in their place come publishers of books, and therefore the censure is contracted only after their delict has been consummated, i.e., after the work has been made public. Schismatic books are also added. As regards books of apostates, heretics and schismatics, the censure extends to books which defend apostasy, heresy or schism; formerly it was only said: "which defend heresy."

3° If someone not promoted to the sacerdotal order shall have simulated the celebration of Mass or heard sacramental confession,

from can. 2322. This censure is new. It is easily understood.

4° All and each, of whatever status, grade, or condition they may be, even royal, episcopal, or cardinalitial, appealing from the laws, decrees, mandates of the Roman Pontiff for the time being to a Universal Council,

from can. 2332. For explanation, see in the author n. 1318. The new redaction of this censure is more specified as regards persons and as regards acts of the Roman Pontiff; but cooperators are not excluded from the excommunication, although they are not named, because by the law itself, from can. 2231 and 2209 §§ 1-3, they incur the penalty.

5° Those having recourse to the lay power for impeding letters or any acts whatever proceeding from the Apostolic See or from its Legates, or directly or indirectly prohibiting their promulgation or execution, or by reason of them injuring or terrifying either those to whom the letters or acts pertain or others,

from can. 2333. This censure was already had in the Const. of Pius IX under n. VIII; see in the author n. 1322.

6° Those who issue laws, mandates, or decrees against the liberty or rights of the Church,

from can. 2334, 1°. This censure also was had in the Const. of Pius IX under n. VII, 2nd part. Cf. the author n. 1321.

7° Those who directly or indirectly impede the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, having recourse for this to any lay power,

from can. 2334 n. 2. This censure is the same as before, because cooperators, according to the things said above under 4°, are comprehended by the law itself. For explanation, see in the author n. 1320.

8° If someone against the prescription of can. 120 shall have dared to draw to a lay judge, even by simple citation, someone from the Cardinals of the Holy Roman Church or Legates of the Apostolic See or higher Officials of the Roman Curia on account of affairs pertaining to their office, or his own Ordinary,

from can. 2341. By this canon the censure which was had in the Const. of Pius IX under n. VII is restricted and more determined; cf. in the author n. 1321. The higher Officials of the Roman Curia are the Assessors and Secretaries of the Sacred Roman Congregations, the Regent of the S. Penitentiary, and those who govern the Tribunals or Offices of the Holy See. The censure is restricted for these to the case in which they are cited on account of affairs which pertain to their office.

9° He who shall have laid violent hands upon the person of a Cardinal of the Holy Roman Church or of a Legate of the Roman Pontiff,

from can. 2343 § 2 n. 1 and

upon the person of a Patriarch, Archbishop, Bishop, even only titular,

from the same canon § 3. This censure is now enunciated in a simpler manner than before. Nor here are cooperators expressly named, but they are comprehended by the law itself, as was said under 4°. For explanation, see the author n. 1319.

10° Those usurping or detaining, through themselves or through others, goods or rights pertaining to the Roman Church,

from can. 2345. This censure also expresses more concisely that which was had in the Const. of Pius IX under n. XII. The explanation is in the author n. 1326. The censure itself is limited

to "usurpers," which word comprehends all those who violate goods or rights and retain them for themselves as things or rights owed to themselves, and to "detainers." Nevertheless cooperators are included according to the norm of those things which were said under 4°; cf. also in the author n. 1325, 2°, a).

11° All fabricators or falsifiers of letters, decrees, or rescripts of the Apostolic See, or those knowingly using the same letters, decrees, or rescripts,

from can. 2360 § 1. This censure formerly was had under two heads, which now are united, namely under n. IX § 2 and under n. III § 3 of the Bull of Pope Pius IX; cf. in the author under n. 1323 and 1350. Because all cooperators also incur it, the new censure does not differ from the old.

12° If someone through himself or through others shall have falsely denounced a confessor before Superiors for the crime of solicitation. From this censure the delinquent can be absolved in no case unless he has formally retracted the false denunciation and has repaired, according to his powers, the damages, if any have followed from it, with a grave and long penance moreover having been imposed,

from can. 2363. Formerly this delict, without censure, as a sin reserved in a most special way, was reserved to the Supreme Pontiff, and this reservation even now remains from can. 894; cf. in the author, vol. II n. 1772. But now moreover a censure has been added from this canon. See ibid. the note to num. 1770, where it is said what among other things follows for practice from this addition. The reservation of the sin regards the internal forum; the reservation of absolution of the delict because of the censure regards rather the external forum and the internal forum only by accident.

III. - On Excommunications *l. s.* Simply Reserved to the Supreme Pontiff. Eleven are numbered:

1° Those making gain from indulgences,

from can. 2327. It was formerly had in the Const. of Pope Pius IX under n. XI § 2. Cf. in the author n. 1338.

2° Those giving their name to the masonic sect or to other associations of the same kind which plot against the Church or legitimate civil powers,

from can. 2335. Although the obligation remains of denouncing the hidden leaders of those sects, those who do not satisfy this obligation are no longer, as formerly, punished by this censure, which was had in the Const. of Pope Pius IX under n. IV § 2. Cf. in the author n. 1331. Concerning the obligation of denouncing, see canon 1935 § 2.

3° Those presuming to absolve, without due faculty, from an excommunication *latae sententiae* reserved to the Apostolic See in a most special or special way,

from can. 2338 § 1. It was formerly had in § 1 of the Const. of Pius IX after number XII; cf. in the author n. 1345.

4° Those expending any aid or favor whatever upon an excommunicate to be avoided in the delict because of which he was excommunicated; and likewise clerics

knowingly and spontaneously communicating with the same in divine things and receiving him in divine offices,

from can. 2338 § 2. This censure formerly was had in the Const. of Pius IX under nn. XVI and XVII § 2. Cf. in the author nn. 1343 and 1344. For further explanation, see can. 2258 § 2 where it is said who are to be avoided, can. 2259 § 2 where it is said when he is to be expelled, and can. 2260 and 2262 where discourse is made concerning communication in divine things with him on the part of clerics.

5° If someone against the prescription of can. 120 shall have dared to draw to a lay judge … another Bishop, even merely titular, or an Abbot or Prelate *nullius*, or one from the major superiors of religions of pontifical law,

from can. 2341. Who are major superiors of religions is said in can. 488 n. 8°; what are religions of pontifical law in the same canon n. 3°; who are abbots or Prelates *nullius*, can. 319 § 1. The rest is clear. Formerly the same censure was for all cases; cf. in the author n. 1321 and above under II n. 8°.

6° Those violating the cloister of nuns, of whatever kind or condition or sex they may be, by entering their monasteries without legitimate license, and likewise those introducing or admitting them,

from can. 2342 n. 1,

and nuns illegitimately going out from cloister against the prescription of can. 601,

from the same canon n. 3. Formerly this censure was in force from the Const. of Pius IX n. VI. See in the author n. 1333. "Of whatever age" is omitted, because from can. 2230 the impubescent are excused from penalties *l. s.*

7° Women violating the cloister of regular men, and Superiors and others, whoever they may be, introducing or admitting them, of whatever age,

from can. 2342 n. 2. Formerly from n. VII of the Const. of Pius IX; cf. in the author n. 1334. Regular men are those who have pronounced vows in an Order, i.e., in a religion in which solemn vows are pronounced, from can. 488 nn. 7 and 2. How far the cloister extends, see can. 597 § 2.

8° Those perpetrating a duel or simply provoking to it or accepting it, or providing any work or favor whatever, and also deliberately watching it and permitting it or not prohibiting it as much as is in them, of whatever dignity they may be,

from can. 2351 § 1. Formerly it was had to the letter in n. III of the Const. of Pope Pius IX with the determination of dignity (royal or imperial); cf. in the author n. 1330.

9° Clerics constituted in sacred orders or regulars or nuns after a solemn vow of chastity, and likewise all presuming to contract marriage, even only civilly, with any of the aforesaid persons,

from can. 2388 § 1. This censure formerly was reserved to the Ordinary from the Const. *Ap. Sedis* § 3, I. Cf. the author n. 1348. It has been expressly extended to marriage which they call civil.

10° Those who perpetrate the delict of simony in any ecclesiastical offices, benefices, or dignities,

from can. 2392 n. 1. Formerly under n. VIII and IX; cf. in the author n. 1335 and 1336. When the delict of simony is had is deduced from can. 727 and 728.

11° The Chapter Vicar and all others, whether from the Chapter or outsiders, who by themselves or through another shall have removed, destroyed, hidden, or substantially changed any document pertaining to the episcopal Curia,

from can. 2405. This censure is new. It does not need explanation.

IV. - On Excommunications *l. s.* Reserved to Ordinaries. Nine are numbered:

1° Catholics who enter marriage before a non-Catholic minister against the prescription of can. 1063,

from can. 2319 § 1 n. 1. Formerly these and the three following incurred an excommunication reserved to the Supreme Pontiff in a special way, because they were favorers of heresy; cf. in the author n. 1314, 3°.

2° Catholics who are joined in marriage with an explicit or implicit pact that all or some offspring be educated outside the Catholic Church,

from can. 2319 § 1 n. 2. By this canon all those are punished who, e.g., contract under the condition that males be educated in a heterodox religion and females in the Catholic religion. It is also incurred when this condition is prescribed by civil laws, and then the promise is not expressly made to educate all offspring Catholicly.

3° Catholics who knowingly presume to offer their children to be baptized by non-Catholic ministers,

from can. 2319 § 1 n. 3. Observe that there is added: knowingly and presume, and see can. 2229 § 2 by which these are explained.

4° Catholics, parents or those holding the place of parents, who knowingly hand over children to be educated or instructed in a non-Catholic religion,

from can. 2319 § 1 n. 4. Observe again that there is added: knowingly. That this censure may be incurred, the education or instruction must be such that it has as its scope the embracing of a non-Catholic religion. Therefore they do not of themselves incur the censure who send children to a non-Catholic school, or make them be educated in profane matters by non-Catholic instructors.

5° He who makes false relics, or knowingly sells, distributes, or exposes them to the public veneration of the faithful,

from can. 2326. This censure is new. Note that knowingly pertains both to selling and to distribution and to public exposition. The rest is clear.

6° He who shall have laid violent hands upon the person of other clerics or of religious of either sex,

from can. 2343 § 4; cf. the things said above and in the author n. 1392. Formerly this censure was simply reserved to the Roman Pontiff.

7° Those procuring abortion, the mother not excepted, the effect having followed,

from can. 2350 § 1. Therefore the sentence which formerly said that the woman herself did not incur the censure is no longer probable; cf. in the author n. 1349. Nor are those exempted, as it seems, who cooperate proximately, from can. 2231 and can. 2209 §§ 1-3.

8° A religious apostate from religion,

from can. 2385. This excommunication is reserved to the major Superior of the religious himself, or, if the religion is lay or non-exempt, to the Ordinary of the place in which he is staying. Formerly it was had from privileges; henceforth it is in force from the law itself, but only as regards apostates, not as regards fugitives. Cf. in the author, vol. II n. 2172.

9° Professed of perpetual simple vows both in Orders and in religious Congregations, and likewise all presuming to contract marriage, even only civilly, with any of the aforesaid persons.

from can. 2388 § 2; cf. the things said above III, 9° and in the author n. 1348. The censure which formerly was in force only for professed of solemn vows is now also incurred by professed of perpetual simple vows.

V. - On Excommunications *l. s.* Reserved to No One. 1° Authors and publishers who, without due license, cause the books of Sacred Scriptures or annotations or commentaries on them to be printed,

from can. 2318 § 2. This censure was in force from Trent, restricted by the Holy Office; cf. in the author n. 1355. Formerly printers also were excommunicated; but now only authors and publishers.

2° Those who shall have dared to mandate or compel that infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, be given ecclesiastical burial against the prescription of can. 1240 § 1,

from can. 2339. This censure was formerly had in the Const. *Ap. Sedis* § 4, I. Now infidels, apostates, and schismatics are added; cf. in the author n. 1351.

3° Those who shall have presumed to alienate ecclesiastical goods or to give consent in alienating them against the prescriptions of can. 534 § 1 and can. 1532, if the apostolic good-pleasure prescribed in the mentioned canons has knowingly been omitted, all who are guilty in any way, whether by giving or by receiving or by giving consent,

from can. 2347 n. 3. This censure was formerly had in the Const. of Pope Pius IX § 4, n. III, cf. in the author n. 1353. It is now required that the Apostolic good-pleasure has knowingly been omitted.

4° All, shining even with any dignity whatever, who in any way compel either a man to embrace the clerical state, or a man or woman to enter religion or to emit religious profession, whether solemn or simple, whether perpetual or temporary,

from can. 2352. This censure formerly was in force from the Council of Trent; cf. in the author n. 1359, 1°. But it has been more extended, namely to those who compel to the clerical state,

and, as regards religion, also to those who compel men; and as regards the persons who can incur it, no one, except the Roman Pontiff, is excepted.

5° A faithful person who shall knowingly have omitted to denounce within a month him by whom he was solicited, against the prescription of can. 904,

from can. 2368 § 2. And from the same canon such a one is not to be absolved unless after he has satisfied the obligation or has seriously promised that he will satisfy it. It was formerly had in the Const. *Ap. Sedis* § 4 n. IV; cf. in the author n. 1354.

B. - On Suspensions *Latae Sententiae.*

I. - On Suspensions *l. s.* Reserved to the Apostolic See. 1° A Bishop consecrating someone as Bishop, the Bishops or, in place of Bishops, the assisting priests, and he who receives consecration without an apostolic mandate against the prescription of can. 953,

from can. 2370. This censure is new, inasmuch as it was no longer in force either from the Piana Constitution or from the Council of Trent. But Alexander VII in the Apostolic Letter *Alias* of the day 27 Feb. 1660 supposed it to exist. Now indeed it has been restored. There are four who in such a case incur the censure.

2° Those who presume to receive orders from one excommunicated or suspended or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, schismatic; but he who in good faith has been ordained by any of these lacks the exercise of the order thus received until he is dispensed,

from can. 2372. In antiquity it was had in the Const. *Ap. Sedis* under n. IV; cf. in the author n. 1366.

3° They incur by the very fact a suspension for one year from the conferral of orders, reserved to the Apostolic See: 1° those who, against the prescription of can. 955, shall have ordained another's subject without dimissorial letters of his proper Ordinary; 2° those who shall have ordained their own subject, who has stayed elsewhere for so much time that he could have contracted a canonical impediment there, against the prescription of can. 993, 994; 3° those who shall have promoted someone to major orders without a canonical title against the prescription of can. 974 § 1 n. 7; 4° those who, with legitimate privilege being saved, shall have promoted a religious pertaining to a family which is outside the territory of the one ordaining, even with dimissorial letters of his proper Superior, unless it has been legitimately proved that some one of the cases occurs concerning which in can. 966,

from can. 2373. The two prior censures were formerly had in the Const. of Pius IX under n. III Susp. *l. s.*; cf. in the author n. 1363; the third was in force from the same Const. n. II; cf. in the author n. 1362; the fourth is new. It is understood from can. 966. A legitimate privilege is not when it is had only by communication from the Const. *Impositi nobis* of Benedict XIV.

4° A religious cleric whose profession, because of fraud admitted by himself, shall have been declared null, if he is constituted in major orders, remains by the very fact suspended until it shall have seemed otherwise to the Apostolic See,

from can. 2387. The censure is new. Note that it is incurred only after the declaration of nullity of the profession, and indeed it is required that the cause why it is declared null be fraud admitted by the religious himself.

5° Chapters, convents, and all others to whom it pertains, admitting those elected, presented, or nominated (of this kind) before the exhibition of the letters, remain by the very fact suspended from the right of electing, nominating, or presenting, at the good pleasure of the Apostolic See,

from can. 2394 n. 3. Formerly they were suspended from the perception of their benefices; cf. in the author n. 1361.

II. - On Suspensions *l. s.* Reserved to Ordinaries. 1° If a cleric, against the prescription of can. 120, without having obtained license from the Ordinary of the place, shall have dared to draw to a lay judge another person (besides those who are enumerated in can. 2341 in the first place) enjoying the privilege of forum, he incurs by the very fact suspension from Office reserved to the Ordinary,

from can. 2341. Cf. in the author n. 1321 and the things said above under A, II, 8° and III, 5°. With license of the Ordinary it is licit.

2° A fugitive religious, if he is in sacred orders, incurs a suspension reserved to his own major Superior,

from can. 2386. Cf. in the author n. 2172 and above under A, IV, n. 8°.

III. - On Suspensions *l. s.* Reserved to No One. 1° A priest who, without necessary jurisdiction, shall have presumed to hear sacramental confessions is by the very fact suspended from divine things; but he who absolves from reserved sins is by the very fact suspended from hearing confessions,

from can. 2366. Presumption is required for incurring the censure. In the 2nd part of the canon there is question only of reserved sins (with or without censure) and not of sins reserved because of a censure, concerning which there is question in can. 2338.

2° He who without letters, or with false dimissorial letters, or before canonical age, or by a leap shall maliciously have approached orders, is by the very fact suspended from the order received,

from can. 2374. Formerly some censure was present from the Council of Trent for the 1st and 2nd case; cf. in the author n. 1370. Concerning those ordained by a leap there was a question; see in the author n. 1372.

3° A cleric who shall have presumed to resign an ecclesiastical office, benefice, or dignity into the hands of laymen, incurs by the very fact suspension from divine things,

from can. 2400. The resignation of a benefice cannot be made except into the hands of the legitimate superior, and indeed only in favor of some suitable person who accepts. He who therefore

sends his benefice into the hands of laymen so that they may dispose of it, incurs this censure. The censure is new.

4° An Abbot or Prelate *nullius* who, against the prescription of can. 322 § 2, shall not have received the blessing, is by the very fact suspended from jurisdiction,

from can. 2402. In the aforesaid can. 322 § 2 it is said: "Abbots or Prelates *nullius* who by apostolic prescription or from the constitutions of their own religion must be blessed, within three months from the received apostolic letters, a legitimate impediment ceasing, are to receive the blessing from the Bishop whom they shall have preferred." The censure is new.

5° A Chapter Vicar granting dimissorial letters for ordination against the prescription of can. 958 § 1 n. 3, by the very fact is subject to suspension from divine things,

from can. 2409. Formerly an interdict was had from the Council of Trent. Cf. in the author n. 1379. Therefore now he incurs it if he grants them before a year has elapsed from the vacant see, to those not constrained by reason of a benefice received or to be received, or by reason of some certain office, for which because of the necessity of the diocese provision must be made without delay.

6° Religious Superiors who, against the prescription of can. 965-967, shall have presumed to send their subjects to another Bishop to be ordained, are by the very fact suspended for one month from the celebration of Mass,

from can. 2410. Religious must be ordained by the Bishop of the diocese in which the religious house is situated. Only some cases are excepted, concerning which in vol. II n. 1910. The censure is new.

C. - On Interdicts *Latae Sententiae.*

1° Universities, Colleges, Chapters, or other moral persons, by whatever name they are called, appealing from the laws, decrees, mandates of the Roman Pontiff for the time being to a Universal Council, by the very fact contract an interdict reserved to the Apostolic See in a special way,

from can. 2332. This censure was formerly had in the Const. *Ap. Sedis*; cf. in the author n. 1376.

2° Those knowingly celebrating, or causing divine things to be celebrated, in interdicted places, or admitting to celebrating divine offices forbidden by censure clerics excommunicated, interdicted, suspended after a declaratory or condemnatory sentence, contract by the law itself an interdict from entrance of the Church, until, at the judgment of him whose sentence they contemned, they have made suitable satisfaction,

from can. 2338 § 3. It was formerly had in the Const. *Ap. Sedis*; cf. the author n. 1377. Nevertheless it has been limited in some measure, because admission to the sacraments or to ecclesiastical burial is excluded, and as regards admission to divine offices, it is limited to the celebration of these by clerics excommunicated, interdicted, suspended after a declaratory or condemnatory sentence.

3° Those who have given cause to a local interdict or to an interdict against a community or college are by the very fact personally interdicted,

from can. 2338 § 4. These, when they repent, can be absolved for the internal forum by any confessor.

Chapter IV. - On the Other Ecclesiastical Penalties. Many are enumerated in the Code can. 2291 and 2298. In this tractate we shall refer only those things which, in the matters the author hands down, are confirmed or must be changed, leaving a fuller treatment of the matter to canonists. - 1381 Deposition is described in can. 2303 § 1: "Deposition, the obligations arising from the order received and clerical privileges remaining firm, carries with it both suspension from office and incapacity for any offices, dignities, benefices, pensions, duties in the Church, and also privation of those things which the guilty person has, although he may have been ordained by their title." By this definition and the following § 2 and § 3 those things which are had in the author are substantially confirmed; cf. also can. 2304. - 1382 is confirmed by can. 2305. - 1383 is confirmed by can. 2293 and 2294. Infamy of fact is not an irregularity, but only an impediment; cf. can. 987 n. 7. Infamy of law from can. 2295 ceases only by dispensation of the Apostolic See. - 1384 Concerning cessation from divine things, discourse is no longer made in the new law. Can. 2290 can be added, by which the faculty is given to confessors of suspending in the internal forum for a month the obligation of observing a vindictive penalty *latae sententiae*, if in more urgent occult cases the guilty person otherwise truly would betray himself with infamy and scandal. Nevertheless the burden of having recourse within a month is enjoined. If this recourse is morally impossible, cf. § 2 of the same canon. - 1385 Concerning privation of ecclesiastical burial, it is treated in can. 2291 n. 5 and in can. 1239, 1240, 1241 and 1242; I 1° is confirmed from can. 1240 § 2. - 1386 is confirmed by can. 1239 § 1 and can. 1240 § 1 nn. 1-2. As regards excommunicates and the interdicted, a sentence is required. - 1387 is confirmed by can. 1240 nn. 3-6. - 1388bis II 2° can. 1240 n. 5.

APPENDIX OF THE AUTHOR

ON THE CONSTITUTION "OFFICIORUM ET MUNERUM".

Those things which in this constitution are prescribed or prohibited are found arranged in better order, for the dispositive part, in can. 1385-1405; as regards penalties, in can. 2318. Generally all things are confirmed. It is only to be noted from can. 1384 § 2 that under the name of books there are also comprehended daily publications, periodicals, and any other published writings. From can. 1385 § 2 the license of publishing can be given either by the Ordinary of the place of the author, or by the Ordinary of the place in which they are made public, or by the Ordinary of the place in which they are printed, yet so that, if one of these Ordinaries has denied the license, the author cannot seek it from another Ordinary unless he has made the same certain of the license denied by the other. Anonymous publications are also no longer prohibited. In Proemium III is confirmed from can. 1398 § 1.

1 remains. - 2 is confirmed by can. 1399 n. 2. - 3 can. 1399 n. 4. - 4 is clear of itself. - 5 can. 1399 n. 1 with can. 1400, where it is said: "those who devote effort in any way to theological or biblical studies." - 6 can. 1399 n. 5, 1391 and 1400. - 7 can. 1385 § 1 n. 1, 1391 and 1399 n. 5. - 8 can. 1391, 1399

n. 3, and 1400. - 9 can. 1399 n. 9. - 10 concerning classic works discourse is no longer made. - 11 as regards substance is confirmed in can. 1399 n. 6. - 12 is confirmed by can. 1399 n. 7. - 13 can. 1399 n. 5. - 14 can. 1399 n. 8 and, as regards the last part, by the same canon n. 6. - 15 is confirmed by can. 1399 n. 12. - 16 by the same canon 11. - 17 can. 1388 § 1. - 18 can. 1399 n. 10 and can. 1390. - 19 can. 1390 and implicitly 1385 § 1 n. 2. - 20 can. 1385 § 1 n. 2 and 1391 n. 5. - 21 can. 1399 n. 3. - 22 can. 1386 § 2. - 23 can. 1398 § 1 and 1402 § 1. - 24 this faculty is transferred to the Holy Office from can. 247 § 4. The S. Congr. of the Index has been suppressed. - 25 is confirmed by can. 1402 §§ 1-2. - 26 can. 1403 §§ 1-2. - 27 can. 1397 § 1. - 28 can. 1397 §§ 2-3. - 29 can. 1397 § 4 as regards substance and from the same canon § 5. - 30 can. 1395 § 1 and § 3. - 31 can. 1391 § 2. - 32 can. 1387. - 33 can. 1389. - 34 is omitted; it is clear of itself. - 35 is confirmed by can. 1385 § 2. - 36 by the same canon § 3; it is now said: religious, by which word all are comprehended from can. 488 n. 7. - 37 no further mention is made of authors who dwell at Rome; therefore for them henceforth the common law has force. - 38 is confirmed by can. 1393 §§ 1 and 3. - 39 by the same canon § 2. - 40 can. 1394 § 1. - 41 can. 1385 § 1 nn. 1 and 2. - 42 can. 1386 § 1. - 43 this prescription has been suppressed. - 44 is confirmed by can. 1392 §§ 1-2. - 45 can. 1396. - 46 can. 1404. - 47 can. 2318 § 1. - 48 can. 2318 § 2, and 49 is clear of itself.