

Institutiones Morales Alphonsianae, Volume II - Part IV: On Particular Precepts

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Institutiones Morales Alphonsianae, Volume II - Part IV

On Particular Precepts

Part IV

On Particular Precepts

Prologue

2127. The order of matters now demands that we approach the FOURTH PART of moral theology, which we have inscribed *On Particular Precepts*. For, after the general principles of Christian Ethics have been unfolded in the FIRST PART, after the laws of natural right which regard all human beings and which human law has sanctioned more or less have been declared in the SECOND, and after finally the positive divine laws which Christ the Lord, by instituting the Sacraments, established and proposed to us to be observed have been set forth in the THIRD, this one thing remains: that we institute a discourse concerning those laws and obligations to which some human beings bind themselves when they freely undertake a particular manner of living, namely a state or a public office.

Nor indeed should this Fourth Part be judged to be of small moment; for just as all the faithful are held to have a sufficient notion concerning the precepts of the Decalogue and concerning the Sacraments to be received, so likewise every human being is held to know the other precepts which pertain to his own state or office, in such wise indeed that vincible ignorance itself of them, although no transgression follows, already involves mortal sin in itself¹ (recall the things said in n. 319).

Moreover, according to the threefold perfection to be pursued in human society, there is distinguished a THREEFOLD species of states and particular offices, namely: 1. The Religious State, whose end is to lead the human being who undertakes it to his own perfection, and this a spiritual one. - 2. The clerical state, whose end is to lead spiritual society, or the Congregation of Christ's faithful, to its supernatural perfection. - 3. The lay state, whose end is, according to its diverse offices, to lead civil society to its natural or temporal perfection.

Hence there will be a THREEFOLD TREATISE: the first, On the Religious State; - the second, On the clerical State; - the third, On the lay State.

Treatise I.

On The Religious State

There are five things concerning which we must treat in this Treatise, namely: 1. On the nature of the religious State; - 2. On entrance into Religion; - 3. On the obligations of Religious; - 4. On the privileges of Regulars; - 5. On Religious in a state of dispersion.

Chapter I.

On The Nature Of The Religious State

2128. Three things must briefly be weighed, namely the notion, origin, and distinction of the RELIGIOUS STATE.

1. Notion Of The Religious State.

DEFINITION. In general, State is a certain condition of life in which someone persists perpetually, or for a time. - Of this kind is the state of innocence, the state of fallen nature, the state of grace, the state of sin, the ecclesiastical state, the lay state, etc.

In a stricter manner, STATE is an immovable condition of life by which someone is firmly bound to another. Immovable absolutely, or movable only with difficulty; for state signifies persistence and a certain stability. - A state of this kind is THREEFOLD: episcopal, religious, and conjugal. For Bishops are obliged to service of their Church; Religious to divine service; married persons to mutual service. The two prior states are spiritual; and the first of them is the state of perfection acquired, the second of perfection to be acquired, but the third is a secular state.²

Now then,

The RELIGIOUS STATE is incomplete or complete, namely according as it is taken in a broad or strict sense.

¹St. Alphonsus, book IV, Prooem.

²Polman, 2.2, n. 864 and 865.

The INCOMPLETE religious state, and taken in the broader sense, is the state of the faithful tending to the perfection of divine charity. - Under this definition not a few Institutes called Religious improperly are comprehended, as will be clear from the things to be said.

The COMPLETE religious state, and strictly so called, is defined: A stable manner of living by which one tends to the perfection of divine charity through the three perpetual vows of poverty, chastity, and obedience, under a rule of common life approved by the Church.³

It is said 1. a stable manner of living; otherwise it would not be a state properly so called, as we have already noted.

It is said 2. by which one tends to the perfection of divine charity; for the end of the religious state is CHARITY, not indeed that common charity which belongs also to imperfect Christians who are in the state of grace, but that eminent charity by which someone is proximately disposed to act easily and ordinarily according to the precepts and counsels of God,⁴ namely in imitation of Christ the Lord saying (John 8:29): I always do those things which are pleasing to Him (cf. n. 467, III, and 690).

It is said 3. through the three perpetual vows of poverty, chastity, and obedience; because, according to all theologians, a complete religious state is not understood unless it makes one tend completely and permanently to perfection. But indeed, that a human being tend completely to perfection, it is required both that he remove from the midst all things which forestall this perfection, namely the concupiscence of the eyes, the concupiscence of the flesh, and the pride of life, and that he offer to God in perpetuity as a holocaust all that he has, namely external and internal goods, body and soul. But each is done, as is clear, through the observance of the three evangelical counsels, namely of voluntary poverty, chastity, and obedience. Then, that he tend permanently and firmly to perfection, a VOW is required; for since the prementioned perfection is of free election, scarcely any other means of stability can be thought of than a perpetual vow, which, from the virtue of religion, establishes a truly perseverable law.⁵

Hence, those are not Religious properly so called who indeed observe the three evangelical counsels, but who have pronounced no vow concerning them; nor those who have vowed only one or two of the three; nor those who have vowed all three, but only for a time. - Suarez indeed dissents,⁶ teaching that with the vow of conjugal chastity alone there can exist a religious state properly so called, so that the essence of the religious state remains in the case in which the Supreme Pontiff should dispense someone, in part, from the solemn vow of chastity, with the faculty of using matrimony already contracted, or of contracting future matrimony. But Doctors more commonly oppose this doctrine.⁷

It is said 4. under a rule of common life. And in this consists the accidental or secondary element by which the religious state is constituted. - For although the three vows by which the observance of the evangelical counsels is promised, accepted in the name of God by someone having power for this, suffice of themselves for the essence of the religious state, nevertheless, considering present ecclesiastical law, that state does not exist before the Church except in common or cenobitic life, under one head and under one rule which fittingly conduces to pursuing perfection.

Hence: "Those are not Religious who, after the vow of perpetual poverty and chastity has been made, vow obedience to a confessor or Bishop;⁸ nor are Hermits reputed such, unless they have a common prelate and rule with other members of the same Institute, according to the present custom of the Church."

It is said 5. approved by the Church, namely by the Holy See, to which today the matter is reserved, as being of greater moment. For although this approbation is not of itself of the essence of the religious state, as most theologians think against some, nevertheless it is required from ecclesiastical law. In antiquity indeed, for founding religious Institutes, e.g. of St. Basil, St. Augustine, St. Benedict, etc., the express institution and approbation of the proper Bishops sufficed, the Roman Pontiff not opposing but rather commending; but in the Fourth Lateran Council,⁹ and then in the Council of Lyons,¹⁰ it was established that a new Order could not be introduced, nor the habit taken in it, unless it had been expressly approved by the Supreme Pontiff.

Now the approbation of the Church imports two things, namely judgment concerning the honorableness and utility of the Order or rule, and power conceded to Superiors of receiving Candidates to the habit and profession, and of performing

³Cf. Book IV, n. 1; *H. A.*, XIII, 1.

⁴Cf. St. Thomas, 2.2, q. 184.

⁵Ibid., 2.2, q. 186, a. 7.

⁶*De religione*, tr. 7, lib. 9, cap. 26, n. 7.

⁷Cf. Bouix, *de jure Regularium*, tom. 2, pars 6, sect. 2, cap. 1, Propos. 4a and 5a.

⁸Book IV, 1, 3.

⁹Cap. fin. *de religiosis domibus*.

¹⁰Cap. un. ejusdem tit. in 6.

the other things which are according to the Rule or Institute.¹¹

Hence: 1. Those are not Religious properly so called who, although they emit the three vows and lead life in common, nevertheless do not profess a rule approved by the Holy See; such are the pupils of various Congregations which Bishops have instituted by their own authority alone. Although their merit before God can be plainly the same as the merit of the others who are properly Religious, since they exhibit to the Lord the same abnegation of themselves.

2. An Institute which would be reprov'd or prohibited by the Holy See would by that very fact be void and would exclude the essence of the religious state. For it would no longer be a state of perfection, but rather a state of rebellion, since God can never hold as accepted what the Church disapproves.

2129. Questions. QUESTION 1. What is the difference between SOLEMN and SIMPLE vows, and do simple vows SUFFICE for the essence of the state of religion?

Resp. 1. Authors do not agree concerning the difference which intervenes between solemn vows and simple vows. According to the opinion of St. Thomas,¹² Bellarmine, etc., which St. Alphonsus teaches as the more probable,¹³ the solemnity of the vow of chastity is from ecclesiastical law as regards the rite, i.e. the form essentially required that it be held by the Church as solemn, but from positive divine law as regards the essence and effect, i.e. of invalidating matrimony. The reason is, "because in a simple vow the body is promised only to God, but in a solemn vow through the legitimate acceptance of Prelates, the body is besides handed over to God." These are the words of St. Alphonsus.¹⁴ And a similar reason can be adduced for the vow of poverty and obedience.¹⁵ Nevertheless, the contrary opinion seems today to have become the more common among canonists. Philip de Angelis testifies to this,¹⁶ saying: "This is the canonical doctrine, that solemnity is not intrinsic or essential to vows, so that the simple and solemn vow differ in species; but that it is extrinsic and accidental to vows, proceeding from the disposition of the Church." And a demonstration having been added from various documents, the distinguished Canonist concludes "that the SOLEMNITY of the three vows consists in the force added to them by the disposition of the Church, of making void, or at least voidable, certain acts contrary to the accidental perfection of the vows of a Religious." But whether this opinion is also intrinsically more probable, let others judge. Cf. the things to be said in n. 2156, 2160, 2176.

Resp. 2. "For the essence of Religion solemn vows are not required. The reason is that those who in the Society of Jesus make simple vows are true Religious, as Gregory XIII defined in the Bull *Ascendente Domino*."¹⁷ And Benedict XIV writes: "By the authority of the Roman Pontiff it can be brought about that that also is a true Religion in which only simple vows are emitted."¹⁸

Nor does it stand in the way that the bond of solemn vows is greater; because, as Suarez rightly observes,¹⁹ greater and lesser do not vary species. And indeed, although simple vows do not induce of themselves, as solemn vows do, inability for matrimony, incapacity of dominion, and absolute or immutable stability, nevertheless they render matrimony illicit in perpetuity, strip the one vowing of every independent use and every arbitrary disposition of temporal things, which is the same as if the Religious possessed nothing at all; finally, they induce sufficient stability, while it is established that the professed can never withdraw by his own will, and the Order ought not to dismiss him except for a grave and just cause.²⁰

QUESTION 2. Whether for the essence of the religious state strictly taken, there is required a HANDING OVER OF ONESELF made to God and ACCEPTED in the name of God by some human being?

Resp. Affirmatively, according to the common opinion of authors. For the religious state properly so called has always been held in the Church of God as a true handing over or donation, by which a human being wholly binds himself to God, namely by abdicating that natural right which each one, the precepts being observed, has of disposing of himself and his things according to his will. And although the aforesaid handing over is customarily joined to the very emission of vows, nevertheless it is something different from the vows, which is superadded to them. For a vow, by its nature, is nothing

¹¹Cf. Lucidi, tom. 2, p. 255, *De disciplina quam servat S. C. Ep. et Reg. in Institutorum approbatione*.

¹²2.2, q. 88, a. 7.

¹³Op. in Trid. sess. 24, n. 21.

¹⁴Book VI, 1025.

¹⁵Cf. Suarez, *De religione*, tr. 7, lib. 2, cap. 14, n. 4; likewise Gregory of Valencia, disp. 6, q. 4, p. 8.

¹⁶L. III, tit. 31, n. 4.

¹⁷Book IV, 1, 1.

¹⁸*De Synodo*, lib. 13, c. 11, n. 29.

¹⁹Loc. cit.

²⁰Cf. Gury-Cretoni, tom. I, p. 578.

except a promise, by force of which not the dominion of the thing itself, but only a right to having it, is conferred; but a handing over which is legitimately accepted in the name of God by someone is a true and perfect donation, which effects that the thing or person offered is irrevocably transferred under the dominion of the one accepting.

But that an acceptance of this kind is necessary is gathered from this, that through a donation of goods, right is not yet transferred to another unless the donation is accepted by the donee, as we saw in the Treatise on Contracts (n. 1063 sqq.). “But indeed a handing over or donation, although it can immediately be made in view of God, nevertheless is not accepted by Him, nor is it pleasing to Him, unless it is made to some human being by whom it can be accepted or repudiated, and who acquires a right over the thing handed over for using it or for commanding it and for bearing care of it. The reason of this is that God, according to His ordinary providence, does not assume the peculiar care of governing a private person immediately by Himself, nor does He need sensible things, so that He may use them immediately and without the intervention of secondary causes. And therefore a donation thus made to God would either be vain and odious, or as though tempting God by demanding immediate governance from Him; and for that reason it is not pleasing to Him, nor is it immediately accepted by Him.”²¹

2130. From these things you will gather: 1. Vows which are made to God alone and are accepted by no one do not induce the essence of the Religious State. - And hence it was why Pope Alexander VII, in the Constitution *Ex commissa* issued on 22 Sept. 1655 in favor of the Congregation of the Mission, or Lazarists, which, although it intended to emit three vows, and these perpetual, nevertheless did not wish to be numbered among religious Orders, established these things most worthy of note, namely: “that, in the emission of their vows, no one be present who accepts them in the name of the Congregation, or in Our name and in the name of the Roman Pontiff existing for the time ... And that the said Congregation not on this account be judged among the number of religious Orders, but be of the body of the secular clergy.” But unless the Pontiff had added this clause, the Congregation of the Lazarists would not be secular, but properly religious, namely having the essence and truth of the Religious State.²²

2. The handing over of oneself, concerning which we have spoken, does not necessarily presuppose the emission of solemn vows. And this is confirmed from the Bull *Ascendente Domino* of Gregory XIII, § 18, where the Pontiff notes: “that the three vows of the Society, i.e. of Scholastics, although simple, have been admitted by this See as substantial vows of Religion, and that those emitting them are truly constituted in the State of religion, since by them they dedicate and actually hand over themselves to the Society, and bind themselves to divine service in it.”
3. On the part of the Order there can be some acceptance, without for that reason a reciprocal obligation arising between it and the Religious. - To the point, Schmalzgruber speaks thus:²³ “It must be said that, for someone to be truly and properly a Religious, it suffices if at least on the part of the one vowing there is given the obligation of remaining perpetually in Religion, although Religion does not have in turn the absolute obligation of retaining him perpetually.” - And this is confirmed by the example of the Society of Jesus, in which “Scholastics bind themselves by vows to remain perpetually in the Order; but the Society reserves to itself the power of dismissing them, if this seems more expedient to it.”²⁴

2. Origin Of The Religious State.

2131. - Some writers have taught that the religious State is of merely ecclesiastical institution, and consequently belongs in no way to the essence or integrity of the Church. Thus especially the Innovators, most hostile to Religious, against whom we establish the following:

Principles. I. The religious State, AS TO SUBSTANCE, although not as to accidental forms, was instituted by Christ the Lord; whence it must be said to be of DIVINE LAW, not commanding but COUNSELING.

“This,” says Suarez,²⁵ “is the opinion of all Catholics who think rightly” (cf. n. 133). And in truth Christ must be called the author of the religious State as to substance, if He Himself is the author of religious perfection, to be acquired through the observance of poverty, chastity, and obedience; for the whole matter or substance of the religious State consists in this. Now then, that the matter is so is clear from the three oracles of the Lord; the first of which is: “If thou wilt be perfect, go, sell what thou hast, and give to the poor, and thou shalt have treasure in heaven” (Matt. 19:21); - the second: “And there are eunuchs who have made themselves eunuchs for the kingdom of heaven. He who can take, let him take it” (ibid.

²¹Suarez, *de Religione*, tr. 7, lib. 2, c. 4, n. 7, 8.

²²Cf. Bouix, *de jur. Reg.*, tom. I, p. 228 and 236; Craisson, n. 2538.

²³Lib. 3, tit. 31, n. 18; cf. Suarez, loc. cit., L. 2, c. 14, n. 12.

²⁴Bouix, l.c., tom. I, p. 65.

²⁵Loc. cit., L. 3, c. 2, n. 3.

19:12); and the Apostle explains the mind of the Savior (1 Cor. 7); - finally the third: "If anyone wishes to come after Me, let him deny himself, and take up his cross daily, and follow Me" (Luke 9:23); which same counsel of obedience was given also in these words: "And come, follow Me" (Matt. 19:21).

The same is proved from the Holy Fathers; for they, Suarez bearing witness,²⁶ commonly teach that the state of Christians was distributed by Christ into two orders: into the order of those professing the common life of the commandments, i.e. the conjugal or secular life; and into the order of those professing the higher and angelic life of the more sublime counsels, i.e. the religious life. - And this was the life which the Apostles professed, as St. Thomas testifies,²⁷ writing: "The Apostles are understood to have vowed the things pertaining to the state of perfection, when, having left all things, they followed Christ."

From these things you will gather: 1. Although the Pope, as Vicar of God, can dispense in the vows of Religion, he nevertheless cannot effect that someone be at once a Religious and loosed from the substantial vows; because these belong to the essence of the religious State divinely instituted.²⁸

2. No Authority on earth is able to abolish the religious State without by that very fact wounding divine right.²⁹

2132. II. The religious State is, as to substance, connatural to the Church and so NECESSARY that it must be said to belong to her integrity. - This is drawn not only from the evangelical words, but from the very nature of the Church. For Christ implanted in His Church the property and note of sanctity, namely so that she would be adorned not only with internal sanctity through sanctifying grace and the gifts of the Holy Spirit, but that she would shine also with external and public sanctity, by which she could easily be discerned from all false and spurious religions. Now then, this note of Sanctity comprises not only the exercise of those virtues which suffice for attaining salvation, but also the observance of the counsels and public profession, or the religious State. - Another argument can be taken from the necessity of evangelical workers; for St. Alphonsus³⁰ does not hesitate to assert that Bishops and parish priests are unequal to supplying all the spiritual necessities of peoples. Hence, if God did not send to them other priests by whom they might be helped, He would not have sufficiently provided for His Church.

Hence: 1. In every age Religious have existed in the Church, although perhaps they were bound by no peculiar and common discipline during the first two centuries.

2. The religious State is indefectible in the Church, although some Order or Congregation in particular can fail.³¹

Note. The Ascetical writers discuss the EXCELLENCE of the religious State.³²

3. Distinction Of The Religious State.

2133. - For the greater decorum and utility of the Church, various religious Orders have been raised up by God, which for that reason can be divided into various species.

I. By reason of their PECULIAR END, Religious are said to be contemplative, who principally tend to their own sanctification through prayer and solitude; - active, who principally apply themselves to works of charity toward the neighbor; - mixed, who with equal zeal tend to attaining both ends.³³

The CONTEMPLATIVE life excels the ACTIVE, according to that word of Christ the Lord: Mary has chosen the best part. But the MIXED LIFE is most perfect, in which a Religious so gives himself to contemplation that, from the fullness of this, those things flow forth which through doctrine and other spiritual offices he expends in helping neighbors. For just as it is more excellent both to shine and to illuminate: so it is more excellent to join action with contemplation, and from charity to pour out into others, for procuring their salvation, the things which are drawn in contemplation. This was the life of the Apostles and of our Lord Jesus Christ Himself, than which none more perfect can be thought.³⁴

2134. II. By reason of VOWS, they are divided into Religions, into religious Congregations, and into Religious Institutes.

²⁶Ibid., n. 4.

²⁷2.2, q. 88, a. 4, ad 3.

²⁸Book IV, 1, 4.

²⁹Cf. Pius VI, Brief *Aliquantum*, 10 March 1791; and Pius IX, Letter to Card. Antonelli, 16 June 1872 (*Acta S. Sed.*, VII, 3).

³⁰*Selva*, p. 1, c. 9, n. 7 (*Opp. ascet.*, III, 67).

³¹Cf. Craisson, n. 2509 sqq.; Bouix, *de Regul.*, tom. 1, p. 165.

³²Cf. St. Alphonsus, *Vera Sposa*, cap. 2; and Opusc. *De Vocatione religiosa*.

³³Cf. Craisson, n. 3104.

³⁴Cf. St. Thomas, 2.2, q. 182.

1. A Religion, or religious Order, in the canonical and stricter sense, is constituted by solemn vows alone, so that only those who emit vows of this kind are strictly to be called Regulars.
2. For a religious Congregation there is required and suffices the essence of the religious State with simple vows, as is clear from what was said in n. 2129, q. 1. The members of such Congregations are sometimes comprehended under the name of Religious in Pontifical documents.
3. The word religious Institute extends more broadly than religious Congregation; for it is extended even to those modes of living which imitate the religious State without vows, e.g. the Oratory of St. Philip Neri.³⁵

From these things the manner of SPEAKING of the Supreme Pontiffs becomes clear, who name religious Institutes with simple vows sometimes religious Congregations, religious families, etc.; sometimes secular Congregations, according as they use those words either in the natural sense or in the canonical sense. - But the canons by which the common law of Regulars is constituted suppose and regard Religions properly so called, so that neither the laws nor the privileges given to Regulars belong of themselves to Institutes of simple vows.

2135. III. By reason of the Rule, there are FOUR principal SPECIES of Orders, according as they follow the rule of St. Basil, or of St. Augustine, or of St. Benedict, or of St. Francis. Most founders of religious Orders have embraced one of these four, with peculiar statutes added, by which each might direct his Institute more fittingly to its proper end.

2136. - Note. Religious Orders strictly so called, in which SOLEMN vows are emitted, are reduced to these supreme species:

1. MONASTIC Orders, which, by force of their own institute, are not ordered to the ministries of clerics, but profess in the first place a contemplative and solitary life. - Of this kind are: Basilians, Cassinese, Camaldolese, Vallumbrosans, Cistercians, Trappists, Olivetans, Sylvestrines, Hieronymites, Carthusians, Antonians, etc.
2. CLERICAL Orders, which by their own institute are held to spiritual ministries, to which they are deputed by ecclesiastical ordination. Such are: Canons Regular, e.g. of the Lateran Basilica, and Clerks Regular, e.g. Theatines, Barnabites, Somaschans, Jesuits, Minor Clerks, Ministers of the Sick, Clerks of the Mother of God, and of the Pious Schools.
3. MENDICANT Orders, under which name are comprehended those to whom, from the rule or constitutions approved by the Apostolic See, it is forbidden to have revenues and possessions in common, although they have them by dispensation of the Pontiff, as today, from Trent, sess. 25, de Regul. cap. 3, a dispensation is made with all Mendicants, except the Minors of the Observance and Capuchins. - Wherefore, to the Orders of Mendicants belong the four more ancient Orders of St. Dominic, the Minors, the Hermits of St. Augustine, and the Carmelites, of whom mention is made in cap. unic. § sane, de Relig. domibus in 6; and besides these the Orders of the Servants of Mary, of the Minims of St. Francis of Paola, of St. Jerome, as St. Pius V declared in Constit. 35a *Romanus Pontifex*, and 48a *Apostolicae Sedis*; the Society of Jesus, from the Bull *Dum indefessae*. Likewise, the Trinitarians reformed by Blessed J. B. of the Conception (Paul V, 15 Dec. 1609); the Mercedarians (Benedict XIII, 8 July 1725); the Discalced Carmelites (Clement VIII, 20 Aug. 1603), etc.³⁶
4. MILITARY Orders, as the Knights of St. John and the Teutonic Knights, who are ordered to military service for the defense of the Church against Infidels and other enemies of the same.
5. HOSPITALER Orders, e.g. St. John of God, who from the scope of the Institute are ordered to the exercise of hospitality, as regards the reception of pilgrims, care of the sick, etc.³⁷

NB. To various Orders, especially those of St. Francis, St. Dominic, and the Blessed Virgin Mary of Mount Carmel, are joined Tertiaries, who live either in common under a rule, or privately in the world. - Concerning the Third Order of St. Francis of Assisi, see the Constitution of the Most Holy Pope Leo XIII, *Misericors Dei Filius*, issued on 30 May 1883.³⁸

³⁵Cf. Suarez, *de Relig.*, tr. 7, lib. 2, c. 16, n. 22, where he explains the Decree of Gregory X prohibiting a new Order or Religion.

³⁶*Acta S. Sed.*, I, 727; Konings (Edit. 5a), I, p. 477.

³⁷Cf. De Angelis, lib. 3, tit. 31, n. 6.

³⁸Cf. *Acta S. Sed.*, vol. XV, p. 513.

Chapter II.

On Entrance Into Religion.

In this chapter we shall treat: 1. of those who can enter; 2. of those who are bound to enter; 3. of the Novitiate; 4. of Profession.

Article I.

On Those Who Can Enter Religion.

2137. - Principles. I. "All and only those can enter Religion who are of their own right and not bound to others; but those who are bound to others CANNOT do so without their consent."³⁹ Each is clear of itself.

Hence: 1. Entrance is not licit for IMPUBERES, because they are subject to parents or guardians as regards the disposition of life. To them are to be numbered servants properly so called, if their masters refuse; and in many places, on account of civil laws, minors, unless with the consent of parents, which, for preventing future troubles, is prudently required to be set down in letters.

2. Entrance is not licit, regularly, for CHILDREN, even those bound by a vow of Religion, who would have to leave parents constituted either in extreme necessity or merely grave necessity. - But otherwise, if their necessity were common, or if they would suffer only a moderate diminution of state, or if the son, although he should remain in the world, nevertheless could in no way aid their necessity; otherwise also, if he himself could not remain in the world without grave and proximate danger of sin; because his spiritual salvation must be preferred to the temporal life of the parents.⁴⁰

You will ask: Is a son already professed bound TO LEAVE Religion ON ACCOUNT OF THE NECESSITY OF PARENTS? - Resp. 1. If the necessity is only grave, he is not bound, nor can he; because just as a wife already taken, so also Religion already assumed must be preferred to parents. - 2. But if the necessity is extreme, he is bound, in the case in which he cannot aid them from the cloister. In doubt concerning the gravity of the necessity, judgment belongs to the Superior.⁴¹

"Outside the case of necessity," Luther used to say, "children sin by entering Religion without the consent of parents. - But the opposite has been taught by all the Holy Fathers and all Catholics, while it is certain, as the Angelic Doctor says,⁴² that children are free concerning the election of State. And although it is fitting, as the Doctors say, that children not depart unless they have first received the father's blessing; nevertheless this is understood when there is no danger that the father will turn them aside from a holy purpose; but because this danger is almost always present, therefore St. Thomas absolutely exhorts children not to use the counsel of blood-relations when the matter is about a religious vocation. But from this counsel, says the Saint,⁴³ first indeed relatives of the flesh must be removed. But relatives of the flesh in this proposal are not friends, but rather enemies."⁴⁴

3. Entrance is not licit for PARENTS who have children constituted in grave necessity or destitute of sufficient education, "unless it has been provided how they can be educated," as St. Thomas speaks.⁴⁵ But this is not understood of emancipated children, unless they are in grave necessity.⁴⁶
4. Entrance is not licit for THOSE who would have to leave brothers or sisters in extreme necessity. If their necessity is only grave, in this case, a brother who has vowed Religion needs dispensation so that he may defer entrance for a long time. - Otherwise, if he has not vowed; because "by reason of charity someone could defer and even omit the state of Religion in order to aid brothers gravely in need."⁴⁷
5. Entrance is not licit for SPOUSES, when matrimony has already been consummated, unless with the consent of the other party, or unless because of his or her notorious adultery; for the matrimonial bond belongs to the order of justice, against which the virtue of religion does not prevail. That a ratified marriage is dissolved by solemn

³⁹Book IV, 65.

⁴⁰H. A., XIII, 23; Book VI, 65-66.

⁴¹Book IV, 67.

⁴²2.2, q. 104, a. 5.

⁴³Opusc. 17, cap. 9, v. fin.

⁴⁴H. A., XIII, 24; cf. Book IV, 68.

⁴⁵2.2, q. 189, a. 6.

⁴⁶Book IV, 69.

⁴⁷Book IV, 70; H. A., *ibid.*, 24.

profession, and that two months are conceded to spouses for deliberating concerning entrance into Religion, or into an Order strictly regular, we have already said in the Treatise on Matrimony, n. 1981.⁴⁸

6. Finally, entrance into Religion is not licit for BISHOPS. - For they cannot, without a just cause, leave their Churches, both on account of the vow which they emitted in accepting them, of serving them perpetually, and on account of the spiritual marriage with their own Church, which, as Innocent III says, “is dissolved not by human, but rather by divine power.” But if a just cause intervenes, the Supreme Pontiff certainly can permit them entrance into Religion.⁴⁹

2138. - II. All clerics, parish priests, or beneficiaries CAN licitly enter Religion, even if the Bishop contradicts, unless they are held by another bond. This is clear both from the canon *Duae sunt leges*,⁵⁰ in which Pope Urban II established: “If any of these clerics holds people in his church under a Bishop and lives secularly, if, inspired by the Holy Spirit, he should wish to save himself in some monastery ..., even with his Bishop contradicting, let him go free by our authority”; and from the unanimous opinion of the Canonists, which Benedict XIV reports in the Bull *Ex quo dilectus*.⁵¹

Nor does the obedience promised to the Bishop stand in the way; because this is promised according to the liberty given by Christ the Lord and according to the laws of the Church. Nevertheless a parish priest, because he is about to resign his office, is bound, from natural law, to make the Bishop more certain concerning the counsel he has taken up, lest the flock be abandoned without a keeper. Clerics and other Beneficiaries are held to the same from decency and office, unless they are excused on account of reverential fear.⁵² Yet the benefice is not vacant except after profession. Indeed, if the benefice is not residential, it can be retained, but without use and administration, by those who emit simple vows.⁵³

We have said: unless he is held by another bond, e.g. of justice, by which that cleric would be held who had been educated gratuitously under the condition that afterward he would exercise ministry in the diocese for a determined time; or by the bond of charity, for example if the Church would suffer grave damage from his departure; indeed, in such a case, the Bishop could recall a priest of this kind from Religion.⁵⁴ Thus likewise those are prohibited from deserting missions who were ordained by title of mission with an oath (cf. n. 1923).

2139. - IT IS ASKED. Can those burdened by DEBT enter Religion?

Resp. 1. Considering natural law, the opinion which seems more probable to St. Alphonsus teaches that such persons cannot licitly enter if there is probable hope that in a short time, e.g. within two years, they will be able to satisfy creditors. - But if this hope is absent, or if from that brief stay in the world there threatens a probable danger of falling into grave sins or of losing vocation, they can enter immediately, a cession of their goods having been made to the creditors. “The reason is that the natural precept does not oblige when the debtor cannot satisfy except with so great a detriment to his liberty, and with the burden of undergoing danger to eternal salvation.” But if the debts are uncertain, so that they can be restored to the poor or to pious places, he is not bound to wait even the least little while, since nothing is so pious as to dedicate oneself and all one’s own things to God in Religion.

Resp. 2. From canonical law, the profession of those who, through the squandering of their goods, have fallen into enormous debt is indeed valid, but illicit; and also that of those who must render accounts, e.g. guardians, procurators, executors of a testament, if the accounts to be rendered are very litigious, intricate, fraudulent, and about to furnish occasion for lawsuits.

Article II.

On Those Who Are Bound To Enter Religion.

2140. - Principles. I. In the first place, he is BOUND to enter Religion who has promised this by a LEGITIMATE vow.⁵⁵ It is clear from what was said concerning the obligation of a vow in general (n. 627). Hence it follows:

1. He who has vowed Religion in general, i.e. not determining Order, or place, or discipline more lax or more severe, is bound to seek by ordinary means some Order or some approved religious Congregation in which discipline is

⁴⁸Book IV, 65, fin.

⁴⁹Ibid., 65 and 76; *H. A.*, ibid., 28.

⁵⁰Can. 2, caus. 19, q. 2.

⁵¹Book IV, 74; cf. Craisson, n. 2616 and 2617.

⁵²Book IV, 75.

⁵³Bizzarri, p. 475.

⁵⁴Book IV, 74, 75; *H. A.*, ibid., 29.

⁵⁵Book IV, 72; cf. Book III, 221, as regards causes of delaying.

flourishing, at least as regards the more principal observances; and if he is repelled from that Order, he is bound, more probably, to enter some other Religion; because by a general vow he is bound to entrance into some Religion.

2. He who has vowed Religion in species is bound to enter some house of that Order, and after being repelled from one he must use ordinary means so that he may be admitted into another. - But after the third or fourth repulse, he is now free from fault if he remains in the world; because fulfillment of the vow has become impossible.
3. He who has vowed Religion individually, so determining the place that he intended no other, is free from his vow if he is not admitted into that house; because he bound himself under this condition only.
4. He who has vowed Religion and has entered it is bound to PERSEVERE in it; "because the vow of Religion obliges not only to taking up the religious habit, but also to serving God for the whole time of life."⁵⁶ - Whence he sins gravely if he withdraws without a just cause; "unless he had understood only that he would make trial of it. Moreover, there would be a just cause of going out if he should find there such a manner of living to which his powers were not equal; or if there he should experience grave and long sadness. - But if he had also vowed to profess, he is bound to execute this even with grave inconvenience to himself, provided the religious State does not turn out wholly intolerable to him."⁵⁷

2141. II. Everyone who is morally CERTAIN OF HIS VOCATION to the religious life is bound to enter Religion, nor can he, with conscience safe, remain in the world. Certainly, not to obey a divine vocation, speaking of itself, is not a sin; for counsels do not of themselves bind to fault. - Nevertheless, unhappy is he who neglects such a vocation! For "if anyone gravely sins who draws another away from vocation on account of the harm which he inflicts on him: how will he be immune from fault who knows that he is certainly called by God to Religion, and wishes to remain in the world with danger to his eternal salvation? To expose oneself to such danger, the Holy Doctor adds, I will never be able to persuade myself is free from fault. But whether this fault is grave or light, I leave to the judgment of the wise."⁵⁸

2142. For the fuller explanation of the matter, it will not be beside the point to add here some general questions ON DIVINE VOCATION to some state of life.

Questions. QUESTION 1. What is VOCATION to some state?

Resp. Vocation can be defined: An act of supernatural providence, by which God elects each human being to some kind of life, and adorns him with suitable gifts and helps for worthily and laudably fulfilling the offices which are proper to that kind of life. Certainly, many states, e.g. of advocate, of judge, etc., if they are considered in themselves, do not transcend the merely natural order; but if they are considered insofar as they are states of men destined to a supernatural end, there is none which is not subject to the supernatural order. Whence St. Paul says: "Each one has his proper gift from God" (1 Cor. 7:7).⁵⁹ And St. Cyprian: "By His order, not by our judgment, the virtue of the Holy Spirit is administered."

QUESTION 2. What are the SIGNS of a divine vocation to some state?

Resp. THREE especially are enumerated, namely: 1. A certain constant and deliberate PROPENSION to that condition of life about which one is deliberating: a propension, I say, constant; for him whom God destines to some kind of life, He sweetly and strongly draws in a permanent manner to it, although at the same time there can be present a certain natural repugnance; then a propension deliberate, so that in the intellect of the one called there is an illumination of divine grace, in which he looks upon the state to be entered as going to be suitable for him for attaining his eternal salvation. - 2. SUITABILITY, or APTITUDE for fittingly fulfilling the offices of that state. This aptitude for the religious state consists chiefly in right judgment, in a good disposition, in a soul submitted to the yoke of obedience, in relatively sufficient knowledge, and in the absence of defects of body and soul which are opposed to the religious life or to the end of the Institute. - 3. ABSENCE OF IMPEDIMENTS, such as would be want of parents, bad health of body, etc. This last sign, although negative, is nevertheless of the greatest moment, since God is accustomed to manifest His will also through the circumstances of things and external events.⁶⁰ Recall what was said n. 1849, 3.

QUESTION 3. How does one sin who, not called, embraces the state of Clericate or Religion?

Resp. 1. If he embraces the sacerdotal state, especially while intending to dwell in the world, without vocation, i.e. without aptitude or without right intention, he sins most gravely, because he casts himself and others into great danger of salvation.

⁵⁶Book IV, 72.

⁵⁷H. A., V, 34.

⁵⁸H. A., XIII, 26; cf. Damanet, *Manuale per eleggere uno stato di vita* (Venice, 1869).

⁵⁹Cf. St. Alphonsus, opusc. *De vocatione religiosa*, § 1 (*Opp.*, IV, 396).

⁶⁰Cf. *Praxis*, n. 92.

Resp. 2. If he embraces only the religious state, he is certainly to be accused of great temerity, because he takes up obligations which he will be able to satisfy with difficulty, on account of the defect of special helps which are granted by God to those alone who are called. Whence Christ the Lord said (Matt. 19:11): "Not all take this word." Nevertheless, if one not called has a firm will of satisfying his obligations, he does not seem to sin gravely; because the religious state, by its own nature, will supply him with such helps by which he will be able to execute this will of his.⁶¹ Except if he knows that he lacks those conditions of soul or body without which he certainly will not be able to observe the vows and rules, or in fact will not observe them.⁶²

QUESTION 4. What is to be done by him who has certainly ERRED in the election of state?

Resp. If it is still licit, let him choose for himself another suitable state by the counsel of his confessor. - But if Religion prohibits this, let him consider that word of St. Augustine said to him: "If you are not called, make yourself be called," i.e. live in such a way as if you had been called to the present state of life. Namely, necessity is to be converted into virtue, and special helps must be obtained from God through prayer; for God will never be lacking to one doing what is in him.⁶³

QUESTION 5. Whether and how does one sin who DRAWS ANOTHER BACK from the religious State?

Resp. 1. If he draws him back by unjust means, namely by force, fraud, or grave fear, he offends gravely by a sin of injustice, both against that private person, whom he unjustly deprives of a great good, and against Religion, which has the right that it not be impeded by force or deceit from attaining its good. - Hence, he is held to reparation, both of the scandal which he gave and of the damage which he inflicted, according to what was said n. 514 and 921.

Resp. 2. If he draws him back by prayers or counsels, he indeed does not sin against justice, but he sins of himself gravely against charity, unless a just cause is present. Parents, however, can be excused from mortal sin, at least for some brief time, "by reason of ignorance or inadvertence, which can easily be in them on account of vehement carnal affection toward children."⁶⁴

Article III.

On The Novitiate.

2143. - The NOVITIATE is the probation of religious life, or the mutual experiment, by which Religion examines the qualities and disposition of the Novice, and the Novice examines the austerity or observance of the Order. - Hence there are diverse obligations, looking on the one side to the Superiors of the Order who admit novices, but on the other side to the novices themselves who ask to be admitted. Concerning these obligations only a few things are to be said. For it suffices here briefly to explain the common principles of the Law of Regulars, which can be modified by particular Statutes or Indults.⁶⁵

I. The RIGHT OF ADMITTING novices belongs to the ORDER which one desires to enter, in such a way namely that it is to be exercised not by the Prelate alone, but by the Convent, or capitularly. Now then,

1. As regards MEN, it is of common law that Religions approved by the Holy See, even those not exempt, do not depend on the Bishop in admitting novices; for the faculty of admitting them is contained in the approbation itself.⁶⁶

But in the decree of the Sacred Congregation SUPER STATU REGULARIUM (25 Jan. 1848, *Romani Pontifices*)⁶⁷ Pius IX established, and indeed under penalty of privation of offices, though not under penalty of nullity of profession, that: "In any Order, Congregation ... whether solemn vows or simple vows are emitted in them, no one be admitted to the habit without testimonial letters both of the Ordinary of origin and also of the Ordinary of the place in which the postulant, after the completion of the fifteenth year of his age, has stayed beyond a year; after they have diligently inquired concerning the qualities of the postulant, the Ordinaries must report concerning his birth, age, morals, life, reputation, condition, education, knowledge." And it is added: "Let the Ordinaries know that their conscience remains burdened concerning the truth of the things set forth, nor is it free to them to deny letters of this kind."

⁶¹Cf. *Praxis*, n. 93.

⁶²Konings, I, p. 483, Not. s.

⁶³Cf. Scavini, IV, 493; cf. St. Alphonsus, *Vera Sposa*, cap. 24, § 8.

⁶⁴Book IV, 77; cf. III, 662.

⁶⁵Cf. Lucidi, *Visit. sacr. liminum* (edit. 3a), vol. III, doc. XLVII, XLVIII.

⁶⁶Craissan, n. 2641.

⁶⁷Ap. Bizzarri, p. 882.

If the Ordinary refuses to testify concerning the qualities of the postulant, either because he does not know him, or because he is impeded by the civil authority, etc., it must be supplied by another accurate information, and the postulants, before they are admitted to the habit, are to remain at least for three months in the Convent, and there they are to be diligently proved. Thus the Sacred Congregation super Statu Relig., on 1 May 1851.⁶⁸

But in another Decree of the same day (*Regulari disciplinae*), the same Supreme Pontiff enacted a twofold law concerning things to be observed: 1. in proving those who ask to be admitted to the Religious habit; 2. in admitting Novices to Profession. - The reason for the decree is that "it seemed necessary that in the admission of Novices to the habit and profession the parts to be conceded should belong not only to inferior Prelates and Superiors general, but also to certain other Religious men ... outstanding in counsel and gravity, so that they might accurately examine the disposition, talent, morals, and other necessary gifts of those who are about to give their name to the religious family," etc.

This second decree was issued only "for Italy and the adjacent islands"; but it furnishes an excellent norm also for other regions.

2. As regards NUNS, the Tridentine law (Sess. 25, de Regul.) continues to have force. - Therefore the Bishop, either by himself or through another, is bound, both before the reception of the habit and before profession, even in exempt monasteries, to examine the will of the virgin: "whether she has been forced, whether she has been seduced, whether she knows what she is doing, whether she is suitable for the monastery, whether this monastery is suitable for her."⁶⁹ - This EXAMINATION is indeed commanded under grave obligation, at least before profession. Nevertheless, profession, if the examination has been omitted, is valid.

And here it must be NOTED that the aforesaid examination binds only nuns of solemn vows; but it is expedient that it also be instituted with nuns who pronounce only simple vows, although, at least from positive law, it is not commanded under grave obligation.

Furthermore it must be noted that nuns, although not exempt and professing only simple vows, can never be compelled by the Ordinary to admit some novice; nor can they be compelled to manifest the cause why they have not admitted someone.⁷⁰ But they themselves sin, and indeed gravely, if they admit someone evidently not suitable; or if they exclude someone who "has had the conditions required according to the rule of the monastery and Order."

Note. From Trent, loc. cit., novices could be admitted to the habit when the twelfth year had been completed. - But today, from the decree of the Sacred Congregation of Bishops and Regulars issued on 23 May 1659, it is required that the fifteenth year be completed. Then indeed a name of a saint, not of a gentile woman, must be imposed on a nun ...; likewise, she is to be called by the title of sister, and not lady.⁷¹

2144. - II. NOVICES, before they are admitted to profession, must stand in probation for at least ONE YEAR, and this whole and continuous, and indeed in the religious habit and in houses destined for this, under penalty of nullity of profession. - Thus from Trent.⁷²

A novice must observe the rule of Religion during the time of probation, at least from decency; he enjoys the privileges of Religion; nor can he be dismissed without a just cause, although he himself always enjoys full liberty of abandoning the proposal begun and returning to the world.⁷³

Indeed, to provide for his liberty, the Council of Trent, under penalty of anathema, PROHIBITS that he himself, and his parents and relatives, give anything to the monastery, except food and clothing; and at the same time it commands that, to him when he departs, all things which were his be restored. - It further forbids, under penalty of nullity, that after vestition he make any irrevocable renunciation or contract an obligation, even in favor of whatever pious cause and even if an oath has been added, unless with the license of the Bishop, within the two months immediately before profession, and provided that profession follows. - And these things were most wisely established, lest on account of the said renunciations and obligations he be despoiled of his goods, and so be compelled against his will to dwell in the monastery, when, despoiled, only begging would remain for him in the world.⁷⁴ See more among the Canonists.

2145. - IT IS ASKED. When is the year of probation judged to be INTERRUPTED?

⁶⁸Ibid., p. 891.

⁶⁹Cf. Trid. sess. 25, de Regul., cap. 17.

⁷⁰Ferraris, v. Moniales, art. 1, n. 107.

⁷¹Ibid., art. 1, n. 72-75.

⁷²Sess. 25, de Reg., cap. 15.

⁷³Cf. Bouix, *de jur. Reg.*, tom. I, p. 600.

⁷⁴Loc. cit., cap. 16.

Resp. 1. It is judged to be interrupted chiefly when the novice goes out from the monastery without license, with the intention of not returning, even if he immediately returns, as is clear from a decree of the Sacred Congregation of the Council;⁷⁵ when he is dismissed absolutely by the Superiors and afterward is again admitted; when he departs by private authority so that he may enter another house, or another province, although of the same Order.

Resp. 2. But it is not judged to be interrupted if the novice is sick in the monastery, even for a notable time, although he can by no means take part in the exercises of novices; - if he departs from the monastery compelled by violence; - if, license having been received, he goes aside to parents or others for a brief time for the sake of recovering health or conducting business; - if he is dismissed on account of a false accusation, and afterward, the truth having been known, is again admitted; - if he makes a journey ordered by his Superiors, because then he remains under their dependence.⁷⁶

Article IV.

On Religious Profession.

2146. - DEFINITION. Religious profession, in the canonical sense, is customarily defined: "A promise freely made and legitimately accepted, by which someone constituted in due age, the time of probation having been completed, binds himself perpetually to a certain Religion approved by the Church, with solemn emission of vows." In a broader and improper sense, even the emission of simple vows is called Profession.

DIVISION. Profession is either express, which is enunciated by words; or tacit, which is expressed by deeds, e.g. when a novice, the time of probation having elapsed, knowingly wears the habit of profession and exercises acts proper to the professed. Today this is almost unusual; indeed, it has been expressly abrogated, if there is question of the emission of solemn vows to be made by male Regulars.⁷⁷

2147. I. For the VALIDITY of the profession either of Religious or of Nuns, THREE things are required, namely the aptitude of the one vowing, free consent, and the acceptance of the Superior.⁷⁸

There is required 1. the aptitude of the one vowing, namely: that he not be of another's right, that he have completed the sixteenth year to the moment of the hour, that he have stood in probation for a whole year (in a leap-year the lapse of 366 days must altogether be awaited); that he have no impediment which, by Statutes confirmed by the Roman Pontiff, is judged substantial in that Order.⁷⁹

There is required 2. free consent, i.e. that there be present in the one vowing the intention of making profession, free from every deceit, fraud, or error concerning substantial things; and that force or grave fear be absent, both on the part of the one professing and on the part of the monastery accepting (cf. n. 1044 sqq.). - And here there comes to be noted the Tridentine decree, by force of which they incur excommunication reserved to no one "whoever shall have forced some virgin, or widow, or any other woman, except in the cases expressed in law, to enter a monastery, or to receive the habit of any Religion whatever, or to emit profession"⁸⁰ (cf. n. 1359, where concerning cases expressed in law, or excepted).

There is required 3. Acceptance of the Superior of the Order, with the consent or at least with the counsel of the Chapter, according to the Statutes of each Religion; for religious profession consists in a certain bilateral contract, for which true and legitimate consent is necessary on each side.⁸¹

In ITALY, the Decrees of the Holy See, concerning which n. 2143, must moreover be observed.

Further, a Religious unjustly denying a vote to a novice not only sins, but besides is held to restitution, as they most commonly say, unless there is present a grave cause for reproving, namely a cause of infirmity, bad disposition, defect of talents, and the like, so that the novice is thought going to be grave, i.e. burdensome, to Religion. Thus St. Alphonsus.⁸²

2148. II. For the validity of the profession of MEN with SOLEMN vows, there is further required, according to the present discipline, that they first have emitted SIMPLE VOWS. - Namely, from the decrees of Pius IX (19 March 1857 and 7

⁷⁵Cf. *Thesaur. Resol.*, tom. 6, p. 393.

⁷⁶Gury, II, 141.

⁷⁷Cf. Declarations, 12 June 1858, n. XI, ap. Bizzarri, p. 907.

⁷⁸H. A., XIII, 3.

⁷⁹Book IV, 5; cf. Craisson, n. 2639.

⁸⁰Book VII, 212, where the law is explained.

⁸¹Cf. Panzuti, lib. 3, c. 1, n. 2.

⁸²In *Indice theol. mor.* (edit. 7a), v. Novitius.

Feb. 1862).⁸³ all Religious of those Orders in which solemn vows are emitted, in the future, the tyrocinium having been completed, emit only simple vows, at least for three years; then, after at least the nineteenth year of their age has been completed, they are admitted to solemn vows, if they are found worthy by their Superiors. But for just causes solemn profession can also be deferred longer, although not beyond the age of twenty-five completed years. The decree does not regard nuns.

But from the declarations of the Sacred Congregation SUPER STATU REGULARIUM given on 12 June 1858, and regarding the aforesaid decree of 19 March 1857, the simple vows of which there is question are perpetual on the part of the one vowing, and dispensation from them is reserved to the Supreme Pontiff. - On the part of the Order, however, they can be dissolved by dismissal of the Professed, so that, dismissal having been given, by that very fact the professed become free from every bond of the said vows. But no one can be dismissed because of infirmity arising after profession of simple vows. - Moreover, the professed of these vows become participants of all the graces and privileges by which the solemnly professed in the same Order enjoy.⁸⁴

2149. III. Concerning the profession of NUNS, the following things especially must be noted:

1. A novice CANNOT LICITLY be admitted to profession: 1) If the Bishop, by himself or by a delegate, even in an exempt monastery, has not examined her beforehand; wherefore the Superiorissa is bound, under penalty of suspension from office, to warn him at least one month before profession; but the Ordinary is bound, within fifteen days from the day of notification, to institute the examination according to the Tridentine rules (cf. n. 2143, 2).⁸⁵ - 2) If, the year of probation having been completed, the Ordinary has deferred profession from a just cause. - 3) If the dowry of a choir nun, assessed by the Bishop and which is to be paid in money, has not been furnished (cf. n. 589, 5). But the dowry cannot be alienated, nor, if the nun is transferred into another monastery, be transferred to the same, unless this monastery is compelled to admit the nun. But it is to be restored to one departing from the monastery if only simple vows are emitted in it. - Nevertheless it is equitable that expenses incurred be deducted (cf. n. 2144).⁸⁶
2. Profession is INVALID if a novice, having departed from the monastery because of infirmity, and, after she has recovered, having returned, has not begun the novitiate anew. - If a novice of sixteen years and constituted in danger of death wishes to emit profession, she can certainly emit it; but if she recovers, once the year of her profession has been completed, she must profess anew.⁸⁷
3. The profession of nuns must be made principally into the hand of the Ordinary or his delegate, not into the hand of the Superiorissa. - Nevertheless it is valid if it is made into the hand of the Superiorissa, with the consent of the greater part of the Chapter. Except if custom or approved Statutes of the Order require something else.⁸⁸

2150. Questions. QUESTION 1. Can one RECLAMATE who has emitted an INVALID profession?

Resp. He can, from the Council of Trent,⁸⁹ provided he does this within a five-year period; once this has elapsed, he is no longer heard, unless he is restored in full by the Apostolic See. - But the process must be made both by the local Prelate and by the Ordinary of the diocese, with the assistance of a defender of profession. Further, the professed, although he has the first sentence in his favor, cannot therefore withdraw from Religion, but must await the second, if an appeal is pending. But if he has already taken flight, he is repelled from judgment until he has resumed the habit of Religion. Thus Benedict XIV, Bull *Si datam hominibus*.⁹⁰ See more among the Canonists.

QUESTION 2. What are the EFFECTS of valid profession?

Resp. The principal effects are the following:⁹¹

1. Remission of sins as regards penalty, if the professed is in grace and immune from every depraved affection, even lightly sinful; for profession is a holocaust offered to God, and exceeds every kind of satisfaction.⁹² 2. Extinction

⁸³ Ap. Bizzarri, pp. 904 and 912.

⁸⁴ Bizzarri, p. 906, n. I-VI.

⁸⁵ Cf. Craisson, n. 2725 sqq.

⁸⁶ Cf. *ibid.*, n. 2733 sqq.

⁸⁷ Craisson, n. 2649.

⁸⁸ *Ibid.*, n. 2706.

⁸⁹ Sess. 25, c. 19, de Reg.

⁹⁰ *H. A.*, XIII, 3, fin.; Book IV, 8, where there is more.

⁹¹ Cf. Bouix, I, p. 416 sqq.; Craisson, n. 2707 sqq.; De Angelis, L. III, tit. 31, n. 12.

⁹² St. Thomas, 2.2, q. 189, a. 3, ad 3.

of vows previously emitted, as though through a certain commutation into something better.⁹³ 3. Liberation from paternal power, notwithstanding civil law; whence it happens that parents who, relying on secular law, draw a son or daughter from the convent after profession has been emitted, stain themselves with grave sin. - 4. Dissolution of betrothals, according to what was said n. 1957. 5. Dissolution of a ratified marriage already contracted, and inability for contracting matrimony, if the profession is solemn (cf. n. 1981). 6. Cessation of irregularity from defect of birth; but only to the effect of receiving Orders, not however as regards obtaining Prelatures or Dignities (cf. n. 1935). - 7. Vacancy of Benefices, according to what was said n. 2138. 8. Participation in all privileges of Regulars, especially exemption, if the monastery has the required conditions (cf. n. 2183). 9. The obligation of tending to perfection and of observing vows, concerning which now at greater length.

Chapter III.

On The Obligations Of Religious.

2151. - The obligations of Religious are: 1. to tend to perfection; 2. to observe the vows emitted; 3. to observe the rule of their own Order; 4. to persevere in the institute of life undertaken. Concerning the obligation of reciting the canonical Hours, see n. 2204, 3, and 2205.

Article I.

On The Obligation Of Tending To Perfection.

2152. - Principles. I. A Religious is held, UNDER GRAVE obligation, to tend to perfection. - For by force of his profession he is bound to wish to preserve his State, which is a state of perfection, or a state of those tending to perfection; although this perfection, of itself, is not of precept but of counsel.⁹⁴

2153. - II. A Religious is bound to strive toward perfection: - 1) through ESSENTIAL means, which are the exercise of virtues, assiduity in prayer, and frequentation of the Sacraments; - 2) through the GENERAL means of regular life, i.e. through observance of the vows, for by these the roots of worldly life are cut away; - 3) through the SPECIAL means of his Order, i.e. through at least imperfect observation of the rules, which are not only as it were the outer wall of the vows, but also means necessary for attaining the special end which each Religion has proposed to itself for serving God and perfecting its own members.⁹⁵

Hence, a Religious sins gravely against the obligation of tending to perfection: 1. If he casts aside all the means of perfection; for then he is not in the way of salvation. 2. If he frequently infringes the vows in a grave matter; because the vows are to be observed not only by reason of themselves, but also insofar as they are essential means of perfection. - 3. If he violates the rules of the Order from contempt, or with grave detriment to common discipline, as will be explained below (cf. n. 2170).

2154. IT IS ASKED. Does a Religious sin gravely who wishes to observe only those rules which oblige UNDER MORTAL sin, and to neglect the others?

Resp. St. Alphonsus: "Many excuse him; but many do not. But Sanchez says knowingly that it will happen with difficulty that such a one be excused from mortal sin, at least from other heads, namely on account of the danger to which he exposes himself, either of offending against the vows or of inducing relaxation of the rule in the Community"⁹⁶ (cf. n. 343).

Article II.

On The Obligation Of Observing Vows.

2155. - A Religious by force of the vows is bound to poverty, chastity, and obedience; and if he emitted other vows in profession, he is held to those similarly, according to the prescription of the rules and the custom of the Order.

§ 1. On The Vow Of Poverty. DEFINITION. Religious poverty is placed in a certain abdication of dominion, whether radical or useful, over temporal goods.⁹⁷

⁹³Cf. Salm., tr. 15, c. 4, n. 50.

⁹⁴Book IV, 9, 10; *H. A.*, XIII, 2.

⁹⁵Cf. Panzuti, lib. 3, n. 1; cf. St. Alphonsus, *Vera Sposa*, cap. 3-6.

⁹⁶*H. A.*, XIII, 2; Book IV, 11.

⁹⁷Cf. St. Alphonsus, *Vera Sposa*, cap. 9.

DIVISION. A FOURFOLD grade is distinguished by which evangelical poverty can be vowed: the first grade excludes the use of superfluous things; the second, the free and independent use of temporal things; the third, dominion over these things; finally the fourth, the very capacity of dominion. - This last grade is proper to Regulars who have bound themselves by solemn vow. But for the essence of the vow of poverty, in the religious state properly so called, the second grade is required and suffices, as is clear from the practice of the Church in approving various Institutes.⁹⁸ Hence we establish the following:

2156. - Principles. I. A Religious, through the SOLEMN vow of poverty, so ABDICATES the right of ownership over every temporal thing estimable by price, that 1) he can licitly have neither independent use nor independent disposition; 2) nor can he possess anything as his own; 3) nor does he retain the very capacity of possessing. This is clear both from cap. *Cum ad monasterium* 6, de Statu monach., and from Trent, sess. 25, c. 2, de Regul., and from the common interpretation of Canonists as regards the capacity of dominion. - But he retains dominion over spiritual goods, e.g. reputation, honor, etc. And the same is commonly taught concerning sacred Relics enclosed in cases of small value, and concerning manuscripts whether his own or received from another: both because they are fruits of genius, although of another, and therefore something spiritual; and because they pertain to knowledge, which does not fall under the vow of poverty; and because such is the common custom. But otherwise if the work has in any way been printed by type.⁹⁹

It is said 1. neither independent use nor independent disposition...; for this is first and essential in every vow of poverty, whether solemn or simple, that it take away the free use of goods; and consequently the one vowing cannot, without the consent of the Superior, use any thing, or dispose of any thing, even if conceded to him for his own use. - Indeed, in order that Regulars and Nuns can, after solemn vows have been emitted, make a testament, cede their leases or a sum of money to blood-relations, or in turn receive rich revenues from them, they need not only the license of the Superior, but also of the Holy See.¹⁰⁰

But it must be NOTED: 1) Although a Religious can neither donate nor remit the things which are owed to him, e.g. legacies left to him, the wage owed for his labors, an annual pension to be paid by parents, because the right to these is with the monastery; nevertheless he can refuse gifts offered to him without wounding the vow of poverty; but one refusing without a just cause sins against charity, namely by impeding the good of his Religion. - 2) It is not prohibited to Religious to invite outsiders to banquets, and to bestow gifts on them moderately, if a just cause suggests this: e.g. so that they may free the monastery from some vexation, so that they may conciliate benevolence toward it, indeed so that they themselves may testify their benevolence to friends.¹⁰¹

It is said 2. nor can he possess anything as his own. For the Council of Trent, loc. cit., c. 2, decreed thus: "Let it be licit to no one of Regulars, both men and women, to possess or hold immovable or movable goods as their own, or even in the name of the Convent; but let them immediately be handed over to the Superior and incorporated into the Convent." - And this is the ancient rule: that no one be reputed an owner, but that all ownership pertain to the monastery itself. - Nor indeed is it opposed to the vow of poverty if Religious have goods, even immovable, in common. Except Capuchins and Minors of the Observance, from Trent, l.c., c. 3, de Reg. (cf. n. 2136, 3).

It is said 3. nor does he retain the capacity of possessing. For this, by unanimous consent of the Doctors, is imported by the very solemnity of the vow: not that one professed with solemn vows cannot acquire, e.g. from labor, from donation, or even from inheritance, for he is capable of acquisition; but that he acquires not for himself, but for the monastery or Religion, according to that celebrated saying of law: "Whatever a monk acquires, he acquires for the monastery."

And this incapacity of dominion in a solemnly professed Religious is indeed so absolute and immutable that it can never be taken away by the Superior of the Order; because it is annexed, by the law of the Church, to the very solemnity of the vow, whose effects can be taken away by the Supreme Pontiff alone, through dispensation from a most urgent cause¹⁰² (cf. n. 2176).

2157. II. A Religious, through the SIMPLE vow of poverty, circumscribes the right of ownership for himself by such limits that, although he retains direct dominion of his goods, nevertheless he cannot licitly dispose of them or use them according to his own will and without legitimate license. This is clear from various Rules approved by the Holy See, and from the Declarations already cited (n. 2148) made on 12 June 1858, in which¹⁰³ these things are read: "The professed of simple vows will be able to retain radical dominion, as they say, of their goods, but administration of them and expenditure and

⁹⁸Cf. Suarez, *de Relig.*, tr. 7, lib. 8, cap. 7, n. 7.

⁹⁹H. A., XIII, 5; Book IV, 14.

¹⁰⁰H. A., *ibid.*, 7; Book IV, 22; cf. Bouix, *de jure Reg.*, p. 1, sect. 3, cap. 3, fin., and p. 3, c. 3.

¹⁰¹H. A., 9-10; Book IV, 20-21.

¹⁰²Cf. De Angelis, lib. 3, tit. 35, n. 4, concerning faculties conceded by the Holy See.

¹⁰³Ap. Bizzarri, p. 907, n. IX.

use of revenues are altogether forbidden to them. Therefore before profession of simple vows they must cede, for the time in which they shall have remained in the same profession of simple vows, the administration, usufruct, and use to whomever they please, and even to their own Order, if they shall have judged thus according to their choice.”

We have said 1. although he retains direct dominion: which dominion indeed extends: 1) to temporal goods which he possessed before the vows; 2) to the fruits or revenues of the same goods; 3) to those things which come to him by right, as paternal inheritance, legacies of relatives, etc.; 4) to all goods which he receives from parents, kin, friends, with the license of Superiors and of the Constitutions.¹⁰⁴ But such dominion is retained by Religious especially for this end, that the Institute may be able with greater liberty to dismiss them when it shall have been necessary, as Gregory XIII said in the Constitution *Ascendente Domino*.¹⁰⁵ Today another end also has been added, namely the end of avoiding difficulties which civil law creates when it does not recognize religious vows.

We have said 2. they cannot dispose according to their own will; for the things said in n. 2156 concerning Regulars and Nuns are also valid concerning Religious emitting simple vows; with this difference, however, that the former dispose both illicitly and invalidly without license, but the latter only illicitly. Nevertheless dispositions of this kind seem to be avoidable through the Superior, because all Religious are subjected to the dominative power of Superiors.¹⁰⁶

We have said 3. nor can he use according to his own will; for to Religious of whatever Order or Congregation there is forbidden the active use of any thing, or use as of one's own thing; but to them there is conceded only use of fact, and indeed precariously, that is, as long as it shall seem good to the Superior. Hence a Religious sins when he uses a thing as his own, or beyond the use legitimately conceded to him.¹⁰⁷

2158. Questions. QUESTION 1. What is the PECULIUM of Religious, and is it licit?

Resp. 1. By PECULIUM is understood whatever from stable or movable goods, e.g. from leases, pension, alms, sermons, Mass stipends, is conceded by the Superior to some member of the Community, and is permitted to him to have, without any right of ownership (in those solemnly professed), and for mere use of fact, and therefore revocably at the nod of the one conceding.

Resp. 2. The Council of Trent indeed prohibited it, by forbidding that a Religious possess, etc., even in the name of the Convent; likewise Clement VIII, Const. *Nullus*, 25 July 1599. But from a custom long since tolerated by the Apostolic See, it is licit, in some Religions, to have a moderate peculium for necessary and honest uses, e.g. for obtaining food, clothing, and books; provided the subject does not hold it hidden, and is ready, at the nod of the Superior, to deprive himself of it. For thus the use of a temporal thing is not independent, and the substance of poverty remains safe.¹⁰⁸

But St. Alphonsus admonishes, saying:¹⁰⁹ 1) “In practice, let all Prelates persuade themselves as certain, that if they introduce the use of peculium anew in monasteries, scarcely the name of poverty will survive there, and from this innumerable evils will supervene upon the Community as regards observance. - Wherefore, even if they themselves can be excused from grave sin by conceding the use of peculium with respect to the vow of poverty, nevertheless they will not be excused on account of the relaxation of the rule, to which by this concession they will without doubt give their work.” 2) Subjects cannot refuse common life if Superiors wish to erect it; because although not to observe common life is not against the vow of poverty, nevertheless it is against the vow to reject common life, when nothing which is necessary is denied by the Convent; because this is to have goods independently of the will of Superiors.¹¹⁰

Nor must there here be passed over in silence what Pius IX, in the decree of 22 April 1851, enacted on this matter:¹¹¹ “In all novitiate houses let perfectly common life be introduced; but in other houses let money be deposited in the common chest.”

QUESTION 2. Of what kind must the Superior's LICENSE be, so that a Religious can legitimately use it?

Resp. 1. License expressly conceded can bring with it no difficulty, provided it is true and reasonable: true, i.e. conceded by a legitimate Superior, immediately or mediately through another, and neither extorted from the one conceding by fear nor by fraud; reasonable, i.e. conceded for honest uses. But whether one conceded for illicit or vain uses is valid? - The

¹⁰⁴Gury, II, 155, q. 3.

¹⁰⁵Cf. Lugo, *de Justit.*, disp. 3, n. 74-77.

¹⁰⁶Craisson, n. 2778.

¹⁰⁷Book IV, 19.

¹⁰⁸H. A., XIII, 6; Book IV, 15; cf. Panzuti, lib. 3, n. 14-16.

¹⁰⁹Book IV, 15, v. Caeterum.

¹¹⁰H. A., XIII, 6, fin.; cf. Lucidi, vol. 2, p. 176.

¹¹¹Ap. Bizzarri, p. 903; cf. De Angelis, lib. 3, tit. 35, n. 3.

absolutely more probable opinion denies this, since the Superior is not the owner of the goods of the monastery, but only the administrator of them, nor is Religion ever to be judged to wish to concede anything unto the spiritual ruin of its own members. Whence, if a Prelate concedes to some Religious a general license of spending a sum of money at will, he can by no means spend it for illicit or vain uses. - Nevertheless he can validly, from that license, expose it to play, provided the game is licit and not of mere chance, and the sum moderate, and provided he himself does not belong to an Order of stricter observance.¹¹²

2. They commonly say that tacit license, or presumed license concerning the present, suffices: namely when the Superior knows and sees the subject receive, give, spend something, etc., and does not prohibit it, although he easily could; for then by being silent he is judged to consent. - Except if something else must be gathered from the circumstances.¹¹³
3. It is indeed doubted whether interpretative license, or license presumed concerning the future, is valid, namely that to which the Superior is presumed going to consent if he were asked; but the more probable opinion holds that it suffices whenever the presumption is reasonable, "because then the subject already proceeds with dependence on the will of the Superior, and this effects that he himself is freed from the fault of ownership."¹¹⁴ And St. Thomas favors this opinion, when he teaches: "A monk ought not to give alms, except in extreme necessity, or, the Abbot being absent, something small under hope of ratification."¹¹⁵ "Moreover," says St. Alphonsus, "such dispositions by subjects from presumed license, for the most part, are illicit at least venially; because the Superiors, at least as regards the manner, are unwilling, and not rarely even gravely, and especially when those dispositions have been expressly prohibited by them."¹¹⁶
4. License sought and undeservedly denied does not excuse from transgression of the vow, unless there is danger of grave harm in delay; because in such a case at least the license of major Superiors is presumed to be present, or one can act from epikeia, because necessity has no law.

QUESTION 3. What things are commonly permitted to a Religious from PRESUMED license?

Resp. Generally the following things are permitted: - to succor a poor person reduced to great want, when access to the Superior is not open; - to bestow moderate alms on the needy, if he is staying outside the Convent with due license; and if he is in the Convent, to give them something of food; - to make slight donations to friends and blood-relations as a sign of gratitude, or of due friendship, or for conciliating benevolence toward Religion; - likewise, to make remunerative donations from goods conceded to him for use, because they are as it were payments of debts; - to donate, according to the more probable opinion, those things which he subtracts for himself by living more sparingly, if a certain quantity is assigned to individual subjects, in such a way that neither the monastery must furnish more, nor are the subjects bound to render an account of the assigned thing; - to accept from outsiders, unless it is clear concerning the contrary will of the Superior, a thing to be handed over to the Superior; - to buy a thing which he judges will be pleasing to the Superior, if recourse to him is not easy, e.g. on a journey; - to give something to Peter, if he has license to give to Paul, unless the Superior gave license for Paul because of a peculiar reason and would have denied it if it had been sought for Peter. - Thus commonly.¹¹⁷

NB. Concerning the LICENSE of the Superior, it is also helpful to note the following: - 1. In obtaining or conceding it, account must be taken of each Institute; for what is permitted in one is often reprov'd in another. In stricter ones certain general and tacit faculties are not admitted which are tolerated in mitigated ones. 2. When the Superior gives license to one to give, although in the rigor of law license to receive is also required in the one receiving, in fact he is judged to give it to his own subject. 3. License conceded by one Superior perseveres under his successor, unless it has been explicitly or implicitly revoked by this successor.¹¹⁸

QUESTION 4. What QUANTITY is required for GRAVE sin against the vow of poverty?

Resp. 1. As regards the goods of the monastery or of others, this is the rule: that quantity which suffices in theft for constituting mortal sin against justice also suffices for constituting mortal sin against Religion, or against the vow. Nevertheless it must be noted that more is required in these thefts than in thefts from outsiders, but less than in thefts by children; for

¹¹²H. A., *ibid.*, 13, 14; Book III, 873; Book IV, 30, 31; I El. qq. ref. 44.

¹¹³H. A., *ibid.*, 11; Book IV, 17, 18.

¹¹⁴H. A., *ibid.*

¹¹⁵In 4, dist. 15, qu. 2, art. 5, in fine.

¹¹⁶H. A., *ibid.*, 11; Book IV, 18, where more fully.

¹¹⁷Book IV, 21-23; Konings, n. 1163.

¹¹⁸Cf. Lugo, Disp. 3, n. 163-165; Croix, L. 4, n. 115.

these have at least hope of dominion, but Religious do not; and Prelates are certainly more unwilling than parents, because the detriment which is inflicted on the monastery is at once temporal and spiritual. - Account must besides be taken of the very material harm really inflicted, which indeed is had less: 1) if the monastery is wealthy; 2) if the Religious does not give a thing of the Community to outsiders, but converts it to his own use; or if the thing is bestowed on Religious of the same monastery, because thus the thing remains at home;¹¹⁹ 3) if there is question not of money, but of eatables, or of other things consumable by use; for minute thefts in this last case do not coalesce unless they bring great detriment to the monastery.¹²⁰ And “regularly a Religious does not sin gravely by secretly receiving, for example, a book for temporal use, even for a long time, but not in perpetuity; because then the Prelate is not judged unwilling as regards the substance, but only as regards the manner.”¹²¹

2. As regards goods whose dominion a Religious with a simple vow retains, grave matter for violation of the vow is not easily determined; for in this case not justice itself, but only the vow is violated. Concerning this matter St. Alphonsus speaks thus: “But if something is received from outsiders, to be furnished to others, and therefore without wounding justice, still more is required; for then Jerome Garcia with others among the Salmanticenses assigns for grave matter a value greater than sixty silver pieces.”¹²² Today we would say: greater than 60 francs.

QUESTION 5. Does a Religious violate the vow of poverty who expends money IN ANOTHER’S NAME?

Resp. Distinguish. 1) If he has received money with at least some designation of the persons to whom it is to be distributed, he does not violate the vow, because then he is a naked minister and like a servant; nevertheless he can offend against the rule of his Order. - 2) If he has received it with an indeterminate faculty of expending, so that he can confer it, according to his own judgment, on any good work whatsoever or on any needy person whatsoever, he violates the vow: “for, as Azor says,¹²³ even to the vow of poverty there is opposed a use or administration from which the Abbot cannot remove the monk by his nod.”¹²⁴

QUESTION 6. Whether and when must RESTITUTION be made to the monastery?

Resp. 1. He who without license, in a grave matter, donates or consumes, etc., goods of the monastery is certainly bound to restitution; nevertheless he is not bound to restore from the things given to him for use, unless they are superfluous; because the Prelate is not presumed to wish to oblige the subject with so great an inconvenience.¹²⁵

Resp. 2. One receiving from a Religious a gift of great moment is bound to restore it, not indeed to the Religious from whom he received it, but to the monastery (cf. n. 1772 concerning the case reserved to the Supreme Pontiff).

2159. From what has been said you will resolve: 1. A PRELATE sins against the vow of poverty “if he permits a subject to expend goods coming from whatever cause or title for vain or illicit uses; or to have with him things superfluous, precious, and indecorous to his state.”¹²⁶ Indeed, it is more probable that this license is of itself invalid, according to what was said n. 2158, q. 2. - Likewise a procurator, economus, administrator, or official sins if he expends anything against the statutes or custom of the Order, or against the will of the Superior.¹²⁷

2. A RELIGIOUS sins: - 1) By receiving or possessing illicitly: namely if he receives, possesses, or retains as his own something estimable by price, even something pertaining to food or clothing; or if he receives gifts, if he is a Religious not solemnly professed, without due license; - likewise, if without license he receives from outsiders, by loan or commodate, money or other things estimable by price; - likewise, if he retains a peculium, or things obtained from it, as owner, against the legitimate will of the Superior; - likewise, if he hides anything for the end of withdrawing it from the disposition of the Superior: nor can he be excused in this by the fact that he had previously obtained license.
- 2) By disposing illicitly: namely, if without the license of the rule or Superior he alienates, exchanges, lends by commodate, or donates anything estimable by price; - if he remits to others things owed to him, e.g. the wage of his labor, or, if he has solemn vows, an inheritance, a legacy left to him; - if he culpably loses or destroys things conceded to

¹¹⁹Book IV, 24; *H. A.*, XIII, 10.

¹²⁰Book IV, 25.

¹²¹*Ibid.*, 24, fin.; cf. Craisson, n. 2784.

¹²²*Ibid.*, 24, v. fin.

¹²³P. 1, L. 12, c. 9, v. Hoc posito.

¹²⁴Cf. St. Alphonsus, *Circolare*, 3 Oct. 1757 (*Opp. ascet.*, vol. 4, p. 830); *H. A.*, XIII, 7.

¹²⁵*H. A.*, *ibid.*, 13, v. fin.

¹²⁶Book IV, 29.

¹²⁷*Ibid.*, 28.

him for use; for it is the act of an owner to neglect a thing, or to make it worse at will; - if he gives things given to him for use to others by commodate or loan; this, however, is a light sin if he is certain concerning restitution, and there is not question of a thing necessary to the Community here and now.

- 3) By using illicitly: namely if he uses things against or apart from the will of the Superior, e.g. by retaining a thing beyond the limits of time fixed by the Superior; - by applying a thing determinately conceded for one use to another, even honest, use: for with respect to the other use, license is lacking; - much more by expending it on vain, base, or indecorous uses for a Religious. - Likewise he sins against the vow if he eats or drinks among outsiders without the permission of the Superior; if, while making a journey, he turns aside from the straight way to see curious things, unless perhaps the distance is brief and no expenses, or very moderate expenses, must be incurred.¹²⁸

Note. A Religious sins against the VIRTUE of poverty, although the vow remains uninjured, if toward the things which he holds from legitimate license he fosters excessive affection; if he indulges his own comforts more than is fitting, etc. Concerning this we note that the vow, of itself, regards external acts alone; but the virtue, which is the end of the vow, is extended even to internal acts, and labors for the extirpation of every inordinate affection toward earthly things. - We have said that the vow regards only external acts; nevertheless, if someone should conceive a desire or purpose of acting externally against the vow, he would violate this very vow:¹²⁹ as is clear from what was said concerning Internal Sins (n. 347 and 348).

§ 2. On The Vow Of Chastity. 2160. - By the VOW OF CHASTITY a Religious forbids to himself every voluntary venereal delight, even that which could become licit in legitimate matrimony.¹³⁰ Hence,

I. By force of the vow of chastity, a Religious is held UNDER GRAVE obligation to abstain from every voluntary act of luxury, both internal, as from base joy, desire, morose delectation; and external, as from immodest speech, sight, touch, etc.; and at the same time from probable danger of sinning against chastity. For he has vowed chastity both of mind and of body; and therefore, as often as he offends against this vow, he incurs the guilt of a twofold malice to be opened in Confession, namely guilt against the virtue of chastity and guilt of sacrilege against the virtue of religion.¹³¹ "And most probably he also sins against the common good, if there is danger that by his sin Religion be defamed."¹³²

Two things WORTHY OF NOTE are to be added here, namely: 1) From the simple vow of chastity, subsequent matrimony is prohibited, but is not invalidated; whence if a Religious, notwithstanding this vow, should enter nuptials, he would commit only one sin, namely against religion, in the petition of the conjugal debt. - 2) From the solemn vow, matrimony is both prohibited and invalidated, and therefore one bound by such a vow, in the use of an attempted marriage, would be stained by a twofold sin, i.e. the sin of fornication and the sin of sacrilege.

- II. For the custody of chastity, the LAW OF ENCLOSURE has been established for monasteries, both of men and of nuns.

I. On The Enclosure Of Male Regulars. 2161. - The law of ENCLOSURE, insofar as it affects monasteries of Regulars, prohibits two things: namely the going out of Regulars, and the entrance of women.

1. The going out of male Regulars is not licit, except by legitimate license of the Superior. For thus Clement VIII established: "Let no one dare to go out from the Convent except from a cause, and with a companion, and with license obtained from the Superior each time; who is not to concede it otherwise than once the cause has been proved, and is to join a companion to the one going out, not at the request of the petitioner, but by his own judgment, nor the same one too often. But general licenses of going out are to be conceded to no one."¹³³

Authors commonly say that the transgression of this precept is grave if the going out is done at night, furtively, and this case is reserved in several Religions, or repeatedly through the day with scandal; but venial, if it happens once or twice without scandal and contempt.¹³⁴

¹²⁸H. A., *ibid.*, 7; cf. Gury, II, 161-163.

¹²⁹Cf. St. Alphonsus, *Vera Sposa*, cap. 9, n. 4.

¹³⁰Concerning the MERIT of this holy virtue, see *ibid.*, *Vera Sposa*, cap. 1.

¹³¹H. A., XIII, 15.

¹³²Book IV, 37.

¹³³Book IV, 37.

¹³⁴H. A., *ibid.*, 15.

2. The ENTRANCE of women into the precincts of a monastery of male Regulars is prohibited under penalty of excommunication reserved to the Supreme Pontiff, which both the women themselves violating enclosure, under whatever pretext, and Superiors and others admitting them incur. In the Const. *Apostolicae Sedis* of Pius IX (cf. n. 1334).

It is said 1) entrance of women, of whatever condition they may be. Only Queens, Electresses, and similar women are excepted, and their daughters; likewise Foundresses, provided from the Constitution *Regularis disciplinae* of Benedict XIV¹³⁵ they have a privilege from the Apostolic See in the form of a Brief, and exhibit it to the Ordinaries or prelates of the monastery. 2) Into the precincts of a monastery of Regulars, i.e. of those emitting solemn vows. For the penalty of excommunication does not regard other convents unless in them there is enclosure constituted by privilege after the likeness of regular enclosure.

But as regards the MANNER of observing enclosure, St. Alphonsus notes¹³⁶ that legitimate and reasonable customs, approved by the authority of Superiors, are to be attended to; but not those which should rather be called abuses and corruptions.

II. On The Enclosure Of Nuns. 2162. - The custody of nuns is stricter than that of Regulars; for,

I. AS REGARDS GOING OUT, they incur excommunication reserved to the Roman Pontiff if they go out from the monastery without most urgent necessity, even if this were done secretly. Thus from the Constitution *Decori* of St. Pius V, and from the Const. *Apostolicae Sedis* of Pius IX (cf. n. 1333).

It must be noted: 1. that this penalty by common law is not incurred except from violation of papal enclosure, which from the decrees of the Council of Trent and of the Supreme Pontiffs has been prescribed for nuns emitting solemn vows. Nevertheless episcopal enclosure also, as well as papal enclosure by special decree, can be imposed on nuns pronouncing simple vows under a similar penalty and in the same form.¹³⁷

It must be noted 2. that in this violation of enclosure there is not given smallness of matter, even if the going out is done by only one step, or onto the roof, outside the window, in the turn turning outward, or in the exterior church, provided the whole person comes outside.¹³⁸

It must be noted 3. that nuns are excused both from censure and from sin in a case of urgent necessity, as of great fire, great flood, incursion of soldiers, ruin of the building, infirmity of leprosy, epidemic, i.e. pestilence or some contagious disease, as St. Pius V speaks; but it is required, if time permits, that there be license of the Bishop in writing, and also of the regular Prelate if the monastery is exempt.¹³⁹

2163. - II. AS REGARDS ENTRANCE. - All the faithful, of whatever class or condition, sex, or age they may be, entering monasteries of nuns without legitimate license incur excommunication reserved to the Pope; and likewise nuns, or others, introducing or admitting them, even if not to an evil end. Thus from the Const. of Pius IX (cf. n. 1333).¹⁴⁰ - Nevertheless,

1. The following CAN ENTER monasteries: 1) Bishops in a case of necessity or visitation, but accompanied by a few mature persons. - 2) Regular Prelates, once in a year, for the cause of visitation. - 3) The confessor, for administering the Sacraments in necessity, with a license, namely general, unless the necessity is extreme, and dressed in surplice and stole. But he can minister the Holy Eucharist to the sick as often as he ministers it to the healthy.¹⁴¹ - 4) A physician, or ordinary surgeon. But his license, although general, is to be renewed every quarter, and two of the senior nuns must always accompany the one entering. Likewise an extraordinary physician in default of an ordinary one, just as also other physicians with whom counsel is to be entered. - 5) A notary, with special license, for seeking some necessary writing in the archive, or for making the testament of some girl. - 6) Craftsmen, gardeners, masons, bakers, porters, and others of that kind, for furnishing some necessary work, with the same special license. But once the work has been furnished, they must go out without delay; for every useless stay which is notably protracted is forbidden under grave obligation.¹⁴² Nor is entrance licit if they can exercise their art outside the enclosure.

¹³⁵3 January 1742, § 8.

¹³⁶Book VII, 231, fin.

¹³⁷Cf. *Analecta J. P.*, Series 3, pp. 80, 101, 193 sq.

¹³⁸*H. A.*, XIX, 46; Book VII, 229; cf. Const. *Apostol. Sedis* ... commentariis illustratam, published at Clermont-Ferrand (anonymous author), n. 220.

¹³⁹*Ibid.*; *ibid.*; cf. *Acta S. Sed.*, vol. XVII, p. 255.

¹⁴⁰Cf. the cited Anonymous author, n. 211 sqq.

¹⁴¹Book VII, 227.

¹⁴²*H. A.*, XIX, 37-39; Book VII, 226-228.

2. The license is LEGITIMATELY GRANTED, by himself or through another, e.g. the abess or confessor: 1) by the Bishop, or his Vicar, if the monastery is subject to the Bishop; 2) by the Bishop alone, or another expressly delegated by the Holy See, if the monastery is subject to the Apostolic See; 3) by the regular Prelate, if the monastery is subject to him and custom does not oppose.¹⁴³ - Formerly, from the Tridentine decree, license had to be given in writing. Today, from the common interpretation of the Const. *Apostolicae Sedis* of Pius IX, one given orally suffices, at least for avoiding censure.
3. For legitimate license a REASONABLE CAUSE is always required, and probably a just one, i.e. moral necessity on the part of the monastery; nevertheless less for a woman than for a man, for daytime entrance than for nighttime entrance, for the first buildings than for the interior ones.¹⁴⁴ The cause of learning some art does not suffice, unless the art would be necessary to the monastery; nor the cause of carrying out the funeral of a deceased nun, even if such a custom had already grown strong; nor the cause of blessing cells, or of exorcizing some nun; nor the cause of consecrating a virgin; nor the cause of clothing a novice, or of forming a painted image of a nun or girl; nor the cause of placing in a safe place a married woman separating from her husband.¹⁴⁵ Finally, without license of the Holy See to be obtained each time, girls cannot be received into the enclosure for the sake of education.¹⁴⁶
4. In a case of sudden necessity, e.g. danger of death, fire, etc., no license is required, because human law does not oblige in so great a crisis.¹⁴⁷

2164. - IT IS ASKED. What concerning CONVERSATION at the grates with nuns?

Resp. 1. For protecting nuns in every better way, besides the most strict law of enclosure, laws have been issued by which 1) Lay persons frequenting monasteries of nuns without license of the Ordinary incur excommunication *ferendae sententiae*; but Clerics incur suspension to be imposed by the Bishop. Further, frequency consists in this, that someone approaches the monastery on three continuous days, or once in individual months for about a year, or four times in a week.¹⁴⁸ 2) But Regulars undergo privation of active and passive voice and of office, and sin gravely, even if the conversation is held only once, for whatever honest cause and through whatever small space of time, according to the Decree of the Sacred Congregation of the Council issued on 11 May 1669.¹⁴⁹

Resp. 2. The following are EXEMPTED from this prohibition: 1) Relatives joined in the first and second degree of consanguinity, except on forbidden days, and except also Regulars, who can never speak with nuns or other persons dwelling in enclosure without license of the Ordinary. 2) Confessors, whether ordinary or extraordinary. - 3) The poor and public beggars, from tacit license of Superiors; likewise servants bearing gifts and quickly dispatching themselves. - 4) Those speaking with the Abbess alone, because she, in odious matters, is not comprehended under the name of nuns.¹⁵⁰

It must moreover be noted that these laws are not in force except in places where the law itself concerning papal enclosure most fully has force.

§ 3. On The Vow Of Obedience. 2165. "Poverty indeed is great, but integrity is a greater good; obedience is greatest, if it is kept uninjured. For the first dominates things, the second the flesh, but the third the mind and soul." Thus John XXII, in Extrav. *Quorundam*, de verbor. signif., v. f.¹⁵¹

Principle. A Religious from the vow of obedience is obliged to all things which the Superior commands according to the Rules and Constitutions of the Order, whether directly and expressly, or indirectly and implicitly.¹⁵² The reason is that a Religious has subjected himself by vow to the power of the Superior, namely both of jurisdiction, which the Superior has as quasi-episcopal from the Pope, Vicar of Christ, in exempt Orders; and dominative power, which the Superior has in every Institute, as father of a family, for the political governance of the house. Hence, a professed Religious, acting against a precept of obedience, more probably commits two sins: one against RELIGION by reason of the vow, the other

¹⁴³H. A., *ibid.*, 35; Book VII, 224.

¹⁴⁴H. A., *ibid.*, 36; Book VII, 225; cf. *Vera Sposa*, c. 23, § 1, n. 2.

¹⁴⁵Book VII, 225; cf. Lucidi, vol. 2, p. 143 sqq.

¹⁴⁶Benedict XIV, Const. *Per binas*, 24 Jan. 1747.

¹⁴⁷Book VII, 225.

¹⁴⁸*Ibid.*, 232-237; H. A., XIX, 40-41.

¹⁴⁹Cf. Lucidi, vol. 2, p. 75.

¹⁵⁰H. A., XIX, 41-42; Book VII, 238-243.

¹⁵¹Concerning the MERIT of religious Obedience, see Lessius, *De jure et just.*, lib. 2, cap. 46, n. 37.

¹⁵²Book IV, 38.

against the VIRTUE OF OBEDIENCE, by reason of the promise and handing over made concerning himself in profession, on account of which, of itself, even without a vow, he is bound to obey a legitimate Superior¹⁵³ (cf. n. 690).

It is said 1. He is obliged to all things which the Superior COMMANDS; for a precept is the proper object of obedience, nor can sin be committed where there is not a law or precept. - Whence: 1) If the Superior manifests his will or his desire only by optative words, there is of itself NO obligation of obeying; although the subject can sin from another source, for example by saddening him, by not preserving the reverence owed to him, by omitting a thing already prescribed of itself, etc. - 2) If the Superior commands simply, e.g. by using these words: I order, I command, the subject is held UNDER VENIAL sin to obey; because there is now a precept, although the Superior does not intend to use his whole power. - 3) If the Superior, in commanding in matter certainly or doubtfully grave, uses these words: in virtue of holy Obedience..., in the name of the Lord..., in the name of Jesus Christ..., under formal precept..., under penalty of excommunication *ipso facto*, or similar words, the subject is held, and indeed UNDER GRAVE sin, to obey; because from formulas of this kind it becomes known that the Superior wishes to use his whole authority.¹⁵⁴

It is said 2. according to the Rules and Constitutions; for a Religious, by vowing obedience, wished to oblige himself only to living and obeying according to the Rules of the Order to which he freely consecrated himself. Whence the Superior CANNOT command things which are against the rule, unless he can dispense in it and a just cause of dispensing is present;¹⁵⁵ or above the rule, i.e. graver things, e.g. that the subject accept an Episcopate, a benefice with cure, or even a simple benefice, or exercise himself in great austerities, etc.; or below the rule, i.e. more lax or vain things. - Nevertheless, he CAN command things which pertain only indirectly to the rule, or which make for fuller observance of it. Indeed, at times he can, if necessity or the spiritual or bodily utility of the subject himself requires it, command things which are against or above the rule: e.g. fasting as a punishment for some fault, assistance to be furnished to the sick of his own Order infected with a contagious disease; or even to outsiders, if those are lacking who would minister the necessary Sacraments to them¹⁵⁶ (cf. n. 155).

2166. St. Alphonsus further NOTES the following: 1. A Prelate can probably command internal acts under sin, although this is not customary nor advisable;¹⁵⁷ likewise, "he can command under grave sin what has been commanded by the rule only under light sin, if it is feared that otherwise the rule will not be observed."¹⁵⁸ - 2. He can prohibit subjects from emitting vows without himself having been consulted; nevertheless vows emitted within the limits of the rule are not of themselves invalid, although they can be irritated; for the matter of the vow is accepted by God, although the mode displeases Him (cf. n. 638).¹⁵⁹ - 3. He cannot command the revelation of a secret committed to some Religious, unless such revelation is necessary for averting harm to oneself, or to the monastery, or to a third party (cf. n. 1187, q. 2).¹⁶⁰ - 4. LICENSE denied by a Prelate but conceded by a Superior of lower order is probably valid as often as the Prelate has not expressed that he wishes to derogate from the authority of the inferior; indeed it is licit if he has not positively prohibited the subject to execute the thing and the inferior Superior to give license (cf. n. 2158, q. 2).¹⁶¹

2167. - Questions. QUESTION 1. Whom are Religious and nuns bound to obey?

Resp. By force of the vow, they are bound to OBEY: - 1) The Supreme Pontiff, as supreme Prefect of all Religions, from whom all power of religious jurisdiction emanates. 2) Their own Superiors, namely the Superior General, Provincial, and local Superior; but nuns, the Abbess: with this order being observed, that if different Superiors command, they obey rather him who is of higher grade.¹⁶² - 3) The Ordinary of the place, if they are not exempt, but according to the rules approved by the Holy See (cf. n. 2190).

QUESTION 2. What power belongs to an ABBESS or SUPERIORISSA over nuns?

Resp. 1. An Abbess, or Superiorissa, CAN, by reason of the dominative power handed over to her by vow, or at least as minister of regular observance, demand, even in virtue of obedience according to the absolutely more probable opinion, that nuns fulfill that which is commanded by the rule, or that which conduces to their progress according to the rule.

¹⁵³Ibid., 46.

¹⁵⁴Book IV, 38; H. A., XIII, 16-17.

¹⁵⁵Book I, 194.

¹⁵⁶Book IV, 40.

¹⁵⁷Ibid., 45.

¹⁵⁸Book I, 141.

¹⁵⁹Book IV, 48.

¹⁶⁰Ibid., 49.

¹⁶¹Ibid., 50, Qu.; H. A., XIII, 20; concerning the Conditions of a good Superior, see Nic. Lancicius, opusc. 12.

¹⁶²Cf. Can. *Quae contra*, Dist. 8.

Likewise, although she is not capable of jurisdiction, nor can she, in an authoritative manner, dispense concerning vows and observances of Religion against the rule; nevertheless she can dispense in these from commission of the Prelate, or even, from a just cause, declare in her own name that such a precept, say fasting, is not obligatory on such a day or hour. Finally, by reason of dominative power, if she truly possesses this, she can irritate the vows of nuns, whether concerning supererogatory matter or concerning a thing about the rules; but the vows of novices she can suspend as regards execution, if they are an obstacle to probation.¹⁶³

2. She CANNOT oblige nuns to receive Holy Communion more frequently or more rarely than has been defined by their ordinary confessor. Nevertheless she can, e.g. on account of some scandal given and not yet repaired, forbid them Holy Communion on some day, "if otherwise a penalty of this kind, as Suarez speaks,¹⁶⁴ is conformable to her rule, does not exceed the ordinary mode of religious discipline ... and is not inflicted properly as a spiritual privation, but as it induces some mark or shame."¹⁶⁵ - If, by force of the rules, she exacts from them an account of conscience, they are not bound to manifest to her their sins, whether present or past. Further, the Sacred Congregation of BISHOPS AND REGULARS (10 March 1860), "on account of abuses which have crept in, at present is by no means accustomed to approve the opening of conscience to the Superiorissa; but it is only permitted that Sisters, if they wish, can disclose defects in the observance of the rule and progress as regards virtues; for concerning other things they must treat with their own confessor."¹⁶⁶

In various Institutes, with the Holy See approving, the Moderatrix general "must seek the deliberative vote of the Consultors in graver matters; especially for foundations and suppressions of houses, for contracts, for the vestition and profession of members, and other things of this kind."¹⁶⁷

QUESTION 3. Is a subject bound to obey IN DOUBT concerning the power of the Superior, or concerning the licitness of the thing commanded?

Resp. 1. If the doubt is concerning the legitimacy of the Superior, he is not bound to obey unless that one is in peaceful possession, and is commonly held as Superior. - And the same must be said if there is doubt concerning the imposition of the precept (cf. n. 52, 693).

2. If it is doubted whether the thing commanded is licit or not, or whether it exceeds the power of the Superior, he is bound to obey, even if the opposite opinion seems to him more probable.¹⁶⁸ EXCEPT 1) "if the thing is very difficult and troublesome; because then the difficulty of the work together with the probable opinion that the thing commanded is illicit, or that the precept exceeds the power of the Superior, prevails over that one's possession. - 2) If by obeying the subject would expose himself or another to danger of undergoing grave inconvenience in life, reputation, honor, or goods. The reason is that the subject is not then bound to deprive himself of his certain right which he possesses concerning such goods of great moment, lest the Superior be deprived of his possession, which in that case is in some way uncertain."¹⁶⁹

2168. - From these things you will resolve: 1. A professed Religious SINS gravely against the VOW of obedience: 1) when he refuses to obey, in a grave matter, a Superior commanding in virtue of holy obedience, according to what was said n. 2165; 2) when he responds to a commanding Superior: I do not wish to obey, I do not wish to do it, I will not do it, or something else similar, which smells of formal contempt of the authority commanding; 3) when from disobedience there follows grave scandal, whether of subjects or of seculars, or grave inconvenience, whether for the community or for others, e.g. for the salvation of souls, etc. - In other cases, disobedience does not exceed venial fault¹⁷⁰ (cf. n. 693, q. 2).

2. A Religious SINS only against the VIRTUE of obedience, generally only venially: 1) when he refuses to obey Superiors of lower grade with whom there is not power of commanding from the vow; 2) when in the external execution of a precept he murmurs in heart, or internally does not submit himself. - Likewise, novices, oblates, and all others who live common life in pious Institutes without the bond of vows offend against the virtue of obedience alone, gravely or lightly according to the gravity of the precept¹⁷¹ (cf. n. 690 sqq.).

¹⁶³Book IV, 52-55.

¹⁶⁴*De relig.*, tr. 8, L. 2, c. 9, n. 10.

¹⁶⁵Craisson, n. 3043; Sabetti, n. 702.

¹⁶⁶Bizzarri, p. 832, n. 4.

¹⁶⁷Ibid., p. 848; cf. Meynard, *Rep. can. et pratiq.*, 1re Partie.

¹⁶⁸Cf. Book I, 98-100.

¹⁶⁹Book IV, 47, v. Limitant.

¹⁷⁰Gury, I, 171.

¹⁷¹St. Alphonsus discusses the virtue of obedience in op. *Vera Sposa*, cap. 7, § 2 sqq.

3. If the rules order that in all things one obey the Superior, or in all things in which sin does not appear, “this is understood not of the obligation of the vow, but of the perfection of obedience.”¹⁷²

Article III.

On The Obligation Of Observing The Rule.

2169. - A RULE is that norm of living by which Religious are so directed in their operations that, in a due and congruent manner, they may strive toward the perfection of their state. - Under the name of RULE are also understood the Constitutions and Statutes which emanate from the Founders or Chapters of Religions.¹⁷³

Now indeed: 1. Rules which define the matter and conditions of vows impose the same obligation as the vows themselves: concerning these we have already said enough above. 2. Rules which regard regular discipline can oblige in various ways. Hence the following:

2170. -

Questions. QUESTION 1. How great is the OBLIGATION of rules which regard discipline?

Resp. 1. “A rule,” says Suarez,¹⁷⁴ “is not a mere counsel,” since its violation can be punished by the Superior. - Except, however, those rules which are expressed by way of counsel or exhortation.

Resp. 2. There can be rules which oblige under mortal sin; others, which oblige under venial sin; finally others, which oblige to a penalty. 1) If a rule obliges under mortal sin, its transgression is against the vow and is sacrilegious: the reason is that such a rule is not less preceptive than the voice of the Superior; whence, for example, a Carthusian eating flesh meats, or a Franciscan not fasting on Friday, sins against obedience and against temperance.¹⁷⁵ - 2) If a rule expressly declares that it obliges as much as it can, its transgression is a mortal or venial sin according as the matter is grave or light; because the rule is not less obliging than the voice of the Superior; but the Superior can oblige according to the gravity of the matter.¹⁷⁶ - 3) If a rule declares that it does not oblige under sin, its transgression is of itself neither mortal nor venial; because a rule which is not preceptive is judged to be only an ordinance or admonition, obliging only to a penalty, if one is imposed.¹⁷⁷ - Yet many Doctors rightly note that transgressions of this kind are rarely free from every fault, on account of negligence, contempt, or some other disordered affection; indeed, he would sin gravely who frequently and as it were by custom transgressed the rule, gravely disturbing religious discipline: e.g. if he “would never wish to observe silence, nor pray, nor walk modestly; if he entered the rooms of all the Religious, and transgressed similar statutes of Religion.”¹⁷⁸ He also sins GRAVELY who violates the rule from formal contempt of the Superior, as, for example, to show that the Superior is despised by him and held for nothing; likewise, if he does this from hatred against the Religion or its persons, or from the will of resisting the Prelate; likewise, if he exposes himself to proximate danger of falling into mortal sin, or if he foresees that he will therefore be expelled. But if someone proposes never to observe the rule, it can scarcely happen that contempt is not present. Thus Suarez (apud D. Bouix¹⁷⁹) and St. Alphonsus.¹⁸⁰ - But the mere frequency of infractions does not seem sufficiently to prove contempt; since this frequency can arise from great sloth, in which nevertheless the slothful person can still esteem the rules, Superiors, and Religion highly¹⁸¹ (recall what was said n. 2153).

QUESTION 2. Are Religious bound to submit themselves to a REFORMATION of the Rule?

Resp. 1. Affirmatively, if the reformation regards substantial things; because everyone must obey in those things which are necessary for salvation; nor can any custom prevail against natural or divine law. Whence the obligation of submitting oneself would press, if the Religion were such that, “unless it were reformed, it would be rather for harm to Religious than for utility.”¹⁸²

¹⁷²Book IV, 40; cf. Salmant., tr. 15, c. 6, n. 55.

¹⁷³Cf. Salmant., tr. 15, cap. 4, n. 54-55.

¹⁷⁴*De Relig.*, tr. 8, L. 1, c. 2, n. 2.

¹⁷⁵Book IV, 41.

¹⁷⁶Craisson, n. 2813.

¹⁷⁷Book IV, 42.

¹⁷⁸Book IV, 10.

¹⁷⁹*De jur. Regul.*, P. 6, sect. 5, cap. 4, § 3 (tom. 2, p. 576); cf. Suarez, *De Relig.*, tr. 8, L. 1, c. 4.

¹⁸⁰Book IV, 11, 42.

¹⁸¹Konings, n. 1176.

¹⁸²*H. A.*, XIII, 17.

Resp. 2. If the reformation does not regard substantial things, a **DISTINCTION** must be made: either the mitigation was introduced by the Supreme Pontiff, and in such a case each one can conform himself to it, for it is a new law; or it was introduced by custom, and in this case, although those introducing it sinned, nevertheless their successors can follow it with a safe conscience. - But if the general Chapter or the greater part of the professed should establish a reformation, there are Authors who deny that private persons are bound to submit themselves to such a reformation; because they emitted profession according to the state of the rule as it was at the time of their profession, and therefore they are judged not to have wished to oblige themselves to more than the relaxed rule. This opinion is indeed probable; but the more probable opinion teaches that they are bound to obey.¹⁸³

QUESTION 3. Does a Prelate, sometimes neglecting to correct the **LIGHT DEFECTS** of subjects, sin gravely?

Resp. "Affirmatively (against Lorca) with Lugo and others commonly, in the case in which the defects are many and such (e.g. concerning silence, fasting, etc.) that they can relax discipline. The reason is that, although each Religious fails in a light thing by transgressing a light rule, nevertheless the Superior, neglecting to impede, when he can, the relaxation of observance, fails in a grave matter. And therefore he is bound not only to correct, but also to inquire into, defects of subjects which tend to the harm of the whole Community, so that he may correct, as St. Thomas teaches, yet without excessive solicitude.... But it is expedient that he sometimes dissemble in correcting, if the defects do not bring scandal, or if he foresees that the subject will become worse from the correction, or if a more opportune time must be awaited. And here it must be adverted that, if it is necessary for correcting, the Superior can even strike the subject and rebuke him with reproaches, from St. Thomas,¹⁸⁴ provided he does not act from anger, or before seculars or novices. And just as the Superior is bound to correct, so he who has the office of zealator is bound to admonish him concerning the transgressions of others."¹⁸⁵

Note. At the time of a **CANONICAL VISITATION** Religious (or nuns interrogated by the Bishop or by the Prelate of the Order) are bound to open the truth to the visitor concerning the observances of the rule, even if the transgressions are light; because ordinarily from these begins the relaxation of the whole rule. - "Except if the delinquents have already come to their senses, or if the offense is occult, or known under a natural secret, or could be hidden without common harm, or if it has already been manifested by others, or if it is foreseen that the revelation would not be profitable or would be harmful to himself, and the concealment would not be to the harm of the Community"¹⁸⁶ (cf. n. 1198).

Article IV.

On The Obligation Of Stability.

2171. - The obligation of remaining in the religious state arises both from the nature of the thing (for state is so called from standing); and from the perpetuity of the vows; and finally from canon law, as regards Regulars and nuns of solemn vows. Hence that saying: once a monk, always a monk. - But as regards Institutes of simple vows, the firmness which is not had from canon law is sometimes supplied, as in the Congregation of the Most Holy Redeemer, by the vow and oath of perseverance. For by this vow and oath a peculiar mutual contract is entered upon, by force of which the Religious binds himself to persevere in the Congregation until death; and conversely, the Congregation obliges itself not to dismiss the professed member except from a supervening cause which would be most grave.¹⁸⁷

To stability are opposed, or seem in some way to be opposed: 1. Apostasy and flight; 2. ejection; 3. dispensation from vows; 4. transfer to another Religion; 5. translation to the Episcopate. - Concerning each, now a few things.

1. Apostasy And Flight. 2172. - An apostate (from Religion) is he who departs from the monastery or Religion with the intention of totally deserting the Order and not returning to it. But he is called a fugitive who departs without license with the intention of returning. Whence, from Trent (sess. 25, c. 4, de Regul.), among fugitives are also numbered those who, without license of the local Superiors, flee to the major Superiors, unless they have been sent or called by them.

I. **APOSTATES** and **FUGITIVES** (whether the habit has been laid aside or retained, according as provision is variously made by the constitutions of Religions), incur, besides the guilt of lethal sin, excommunication *ipso facto*.¹⁸⁸ - They are deprived besides of all privileges of Regulars, and are subjected to the Ordinaries of places, from Trent, l.c., cap. 19, de

¹⁸³Book IV, 44; H. A., *ibid*.

¹⁸⁴2.2, q. 72, a. 2, ad 2.

¹⁸⁵Book IV, 13; H. A., XIII, 2.

¹⁸⁶H. A., *ibid*, 21; concerning the Offices of Lay Brothers in particular, see Lancicius, opusc. XV.

¹⁸⁷Book III, 255; IV, 50.

¹⁸⁸De Angelis, lib. 3, tit. 31, fin.

Reg. - Yet they are not released from the obligations of the state deserted, but are bound to observe their vows and all the constitutions of their Order, namely lest they obtain an advantage from fraud. - See the other things among the Canonists.¹⁸⁹

II. Prelates ARE BOUND to SEEK OUT fugitives and apostates, because by divine and natural law they must provide for their salvation. - Except if this could not be done without grave harm of the Order, or if they were incorrigible; "because, if for a just cause they can be ejected, for the same also, after they have gone out, they will be able not to be received."¹⁹⁰

2. - Ejection Or Dismissal. 2173. - By the name of ejection or dismissal is understood the perpetual separation of a Religious from his Order, made by the authority of a competent judge. The process of ejection must be made both according to the Canons and according to the Constitutions and style of each Order.¹⁹¹

I. Regulars solemnly professed can be ejected for three causes: 1) if in admission they concealed a very grave impediment, e.g. leprosy; 2) if they can no longer be tolerated without infamy of the Order; 3) if they are notoriously incorrigible in a grave and pernicious crime. Formerly it was lawful to eject Religious from the Order on account of any grave offense, even if admitted once; but Urban VIII (21 Sept. 1626, § 6) declared that no one (except a member of the Society of Jesus), unless he is incorrigible, can be ejected; but that those throwing off discipline can be punished by fasts and prison: which must always be observed with incorrigible nuns, where civil power does not obstruct.¹⁹²

The one ejected remains always a Religious and bound by vows, which he must observe, insofar as circumstances permit it. - Hence, 1) as regards poverty, he has only the use of the things which he acquires, but not dominion, which remains with the monastery, if this is capable of dominion;¹⁹³ otherwise, with the Apostolic Camera. - 2) As regards obedience, the Divine Office (if he is not in Sacred Orders), and the other rules, he is now bound by no obligation, since he has been juridically dismissed by the Prelate. But he is bound to obey the Bishop, by whom nevertheless he cannot be ordained; indeed he remains suspended from every exercise of Orders, nor can he preach, nor teach (cf. n. 1365). - 3) He is bound to amend himself, so that he may merit being admitted again; for since he is held by vows, he must seek again that state in which he can carry out his vows. Yet if, although amended, he is not admitted, he can remain in the world with a safe conscience, and receive the Sacraments in the manner of clerics.¹⁹⁴

2174. - II. Religious of simple vows can be ejected for several causes, which are determined both by natural law and by the approved rules of each Institute. - Those ejected or dismissed in this case are commonly exempted from the obligations of the religious state, whether these come from a vow or from a rule, and are reduced to secular life; they belong to the jurisdiction of the Bishop to whom they were subject before inscription in the Institute.¹⁹⁵ - See concerning the Dispensed (n. 2177).

2175. - IT IS ASKED. Can Religious of simple vows be licitly and validly dismissed WITHOUT CAUSE?

Resp. 1. If in the Institute at least the essentials of the religious State are found, a professed subject can never be dismissed without grave cause, even if he himself should consent to his own dismissal; because, where the religious state exists, there intervenes in profession a handing over: by which, on the one part, the Religious has devoted himself to God and to the Institute in perpetuity, and by which, on the other part, the Institute in turn, through the acceptance of profession, has obligated itself, at least implicitly and from a quasi-contract, never to dismiss him without a just cause. But a just cause is not had in this alone, that the Religious acquiesces in his own dismissal. Although in this case a lesser cause will be able to suffice; for the subject can yield his own right.¹⁹⁶

Resp. 2. If in the Institute there are not found those things which are of the essence of the religious State, and the subject consents to his own dismissal, it seems that he can be dismissed without grave cause: e.g. on account of weak health; because in the circumstances of such things, neither the religious state nor the reclamation of the subject stands in the way.¹⁹⁷ - Yet advert that a just cause is always required if the Religious himself wishes to be dispensed from his vows, as

¹⁸⁹Cf. Lucidi, vol. 2, cap. IV, n. 12-29; Grandclaude, *Jus canon.*, tom. 3, p. 341 sqq.

¹⁹⁰Book IV, 82; cf. Craisson, n. 1077-1084.

¹⁹¹Cf. Ferraris, verb. *Ejecti*.

¹⁹²*H. A.*, XIII, 4; Book IV, 79.

¹⁹³Thus *H. A.*, *ibid.*, 4, against Busenbaum; cf. Ferraris, v. *Ejecti*, n. 67 sqq.

¹⁹⁴Book IV, 81.

¹⁹⁵Lucidi, vol. II, p. 644.

¹⁹⁶Craisson, n. 3093.

¹⁹⁷Cf. Bouix, *De jur. Reg.*, tom. 2, p. 517, Qu. V.

is known.

Resp. 3. If a vow or oath of perseverance is emitted by the one vowing, there arises a special obligation on both sides of standing by the promises, whether a true religious state is found in the Institute or not; because such a vow or oath, accepted by the Congregation, has the character of a true bilateral contract: from which it happens that, just as the subject cannot, upon any new circumstance whatsoever arising, leave the Institute (unless for passing over into a stricter Order), so neither can the Institute, while the subject stands by his promises, dismiss him.¹⁹⁸

3. - Dispensation From Vows. 2176. - I. As regards SOLEMN vows. Formerly, indeed, many thought that no one could be dispensed from solemn vows, and that the bond of religious profession was indissoluble by divine law. But this opinion has become less probable; for the common opinion today teaches that a Religious, even solemnly professed, can be released from his obligations, either in part or in whole. And the practice of the Supreme Pontiffs favors this opinion; for more than once, although generally only on account of a public cause, they have granted a dispensation of this kind (cf. n. 135, 642).¹⁹⁹ - Thus the Roman Pontiff sometimes dispenses Religious even solemnly professed, so that true dominion of temporal goods may be in their possession; or so that at least they may be able to exercise acts of proprietors, namely when their incapacity is not recognized by the civil power. Yet in Indults of this kind the substance of the vow always remains safe, for the reason that the dispensed cannot do more than what is permitted by the Pontiff, and they need besides the permission of Superiors.²⁰⁰ Thus likewise, in the time of the French disturbance, the Pope dispensed not a few priests, both secular and regular, from the vow of chastity, at least in part. We say in part, i.e. in order to a marriage already contracted invalidly; for generally clauses of this kind were added to the dispensation: "with the same woman only, but not for contracting with another, nor for entering upon second nuptials, and if... outside the licit use of marriage he shall have offended, let him know that (the petitioner) will act sacrilegiously against the sixth precept."²⁰¹

By common law, when there is dispensation in the solemnity of one vow, the other solemn vows cease to be solemn, unless the Pope shall have established otherwise.²⁰²

2177. - II. As regards SIMPLE VOWS. These vows are emitted either in Institutes approved by the Holy See, or in Institutes approved by Bishops. - If the first, dispensation is granted by the Roman Pontiff alone, although, from apostolic privilege, the same power can also belong to the Superior General, if there is question of a Congregation of men. The reason is that the vows were made as it were into the hand of the Pontiff.²⁰³ If the second, either those Institutes, distributed into various houses, are subject to a general Superior or Superiorissa; and in this case the several Bishops cannot dispense in the houses subject to themselves, because they would violate the right of the general Superior; or the individual houses subsist by themselves, and in this case the Bishop can release subjects from the vows of poverty and obedience, but not from the vow of perpetual chastity, as being reserved to the Holy See. - From the Response of the Sacred Penitentiary, 2 Jan. 1836²⁰⁴ (cf. n. 2190 and 2194).

It MUST BE NOTED: 1. For a valid dispensation of simple vows a lighter cause is required than for a dispensation of solemn vows; likewise, a lighter cause on the part of the Institute than on the part of the subject: either because in many Institutes the bond is not obliging equally on both sides, or especially because the common good of the Institute must always be preferred to the private good of the subject.

2. If any alumnus of such an Institute, without just cause, has sought and obtained dispensation from vows, the dispensation must be judged valid, although it was illicitly sought. The reason is that although a just cause was lacking on the part of the one seeking, nevertheless an excellent one was present on the part of the one granting, to whom belongs the right and office of procuring the common good by dismissing subjects who are not of good example to the others.²⁰⁵

4. - Passage To Another Order. 2178. - Let only the following be NOTED: 1. By common law (i.e. from the Decretal *Licet* of Innocent III) passage from a more lax Religion to a stricter (or more austere) one is licit; provided it is done from

¹⁹⁸Cf. *H. A.*, XIII, 19; Book IV, 50, v. *Et idem*.

¹⁹⁹Book III, 256; cf. Bouix, P. 6, sect. 2, cap. 1 (II, 481).

²⁰⁰Cf. De Angelis, lib. 3, tit. 35, n. 4; cf. also *Nouv. Rev. théol.*, tom. X, p. 610.

²⁰¹Cf. Roskovany, *Caelibatus*, tom. 3, p. 184, Monum. 1969, fin.; cf. also *Nouv. Rev. théol.*, tom. XVI, p. 441.

²⁰²Craisson, 3067 and 2504; Lucidi, vol. 2, cap. 5, n. 298.

²⁰³Cf. Gury, II, n. 180; cf. Lucidi, l.c., n. 333-351.

²⁰⁴Bouvier, *De Decal.*, cap. 2, art. 4, sect. 6.

²⁰⁵Cf. Gautrelet, tom. II, p. 141 sqq.; Craisson, *Communautés relig.*, cap. 21, n. 898 sqq.

a just cause, without grave harm of the Religion to be left, and provided that the license of the Superior or of the Pope is sought, indeed also (if the Order which is left enjoys a privilege specially conceded for this) provided that it is obtained.²⁰⁶

2. Passage to an Order of equal rigidity is also licit, but with a greater cause and with the license of the Superior; or, if this greater cause is lacking, with the permission of the Supreme Pontiff;²⁰⁷ which must always be had if the passage is made to an Order of more lax observance, or if there is question of a cloistered nun.²⁰⁸

In any of these cases, from the Constitution *Pastor bonus* of Benedict XIV, the Major Penitentiary can grant the passage, “for just and grave causes respectively, however, to be approved by the same Major Penitentiary; the Superior of the Order from which the passage is to be made having first been heard, and with the consent of the Superior of the Order to which it is to be made.”²⁰⁹ - Recall what was said n. 638. Hence 1 and 642, 3.

5. - Translation To The Episcopate. 2179. - A Regular assumed to the Episcopate (or Cardinalate)²¹⁰ is not exempted from profession, nor from all rules generally; but only from those obligations which do not agree with his new office or dignity. For to the question, “whether and how a Regular Bishop is bound to observe the rule which he has professed:” - the Sacred Congregation of BISHOPS AND REGULARS, on 6 May 1864, judged that it should respond: “Affirmatively, according to the prescription of the Constitution of Benedict XIII beginning *Custodes*, namely, a Regular Bishop is bound to observe the Rules of his Religion which determine the matter of the vow of poverty. Likewise he is bound to observe the other rules and observances not repugnant to episcopal dignity and office, with the same grave or light obligation by which he was held before he obtained the episcopal dignity: yet so that in particular cases he can prudently make a judgment whether those things agree with episcopal dignity and office.”²¹¹

Hence. - 1. A Regular Bishop cannot, except by license of the Pope, make a testament, and take inheritances or legacies for himself. Yet he can legitimately acquire goods; namely, the use for himself, but the property for the Church over which he presides and of whose goods he is the dispenser.²¹² Nor does the vow of obedience cease in him, since he obtains the Supreme Pontiff himself as Superior.

2. If he is of the Family of the Minims, he is still bound to the vow of Lenten diet; if of the Family of St. Francis, to the fast of Friday, etc., unless he has been specially dispensed by the Apostolic Holy See.
3. As regards the Divine Office, he is bound, from the declaration of the Sacred Congregation of Rites made on 11 June 1605,²¹³ to recite it, not indeed according to the rite of his Religion, but according to the rite of his diocese.
4. As regards the habit, he must indeed preserve the color of his Order; but in the form of the habit he can be vested in the manner of secular Bishops, as Clement VIII conceded.²¹⁴

NB. Decisions of the Sacred Congregation of BISHOPS AND REGULARS issued for Regular Bishops must be extended to Religious Bishops of simple vows, yet with the due restrictions being made, e.g. as regards poverty.²¹⁵

Chapter IV.

On The Privileges Of Regulars.

We shall treat: 1. Of the privileges of Regulars in general; 2. of the privilege of exemption; 3. of various privileges of Regulars (recall what was said n. 249-254).

²⁰⁶Book IV, 73, where there are many things (from the 6th ed.).

²⁰⁷Craisson, n. 3098.

²⁰⁸Craisson, n. 3097, 3100.

²⁰⁹Cf. De Angelis, L. III, tit. 33, n. 14.

²¹⁰Cf. Bouix, P. 5, sect. 1, cap. 8 (II, 65).

²¹¹Bizzarri, p. 774.

²¹²*Acta S. Sed.*, I, 227.

²¹³Gardellini, n. 265.

²¹⁴Cf. *Caeremoniale Episcop.*, L. 1, c. 1, n. 4; Sanchez, *Decal.*, L. VI, c. 6, n. 22.

²¹⁵Cf. *Acta S. Sed.*, vol. I, p. 466.

Article I.

On The Privileges Of Regulars In General.

2180. - I. Privileges GRANTED to Regulars are either DIRECTLY, by writing or by an oracle of the living voice, or INDIRECTLY, by communication with other privileged persons.

But communication either is made in COMMON form, and embraces only those things which are commonly and without difficulty accustomed to be conceded; or it is made in SPECIAL form, and comprehends also unusual things and those which are of rare and difficult concession: excepted however (unless they are expressed by name) 1) indulgences, under which privileged altars also come; 2) Offices, both proper ones, which are not communicated to Religious using the diocesan Directory, and new ones, for which those who have a proper Calendar need an Indult; 3) exemption from the jurisdiction of Ordinaries.

It MUST BE NOTED: In no communication, however broad, are comprehended: - 1. Certain prerogatives entirely specific, which the Holy See conceded exclusively and privatively to certain Orders, with the faculty made to their Superiors General of communicating them to other Religions, Congregations, or even priests in particular. Thus, for example, the Superior General of the Dominicans communicates to priests petitioning the faculty of blessing rosaries, roses of St. Dominic, girdles of St. Thomas. - 2. Odious privileges, and those which are contrary to proper statutes. - 3. Privileges or Indults conceded for a determined time. - 4. Privileges conceded on account of a special motivating cause with a condition, whether expressed or tacit: as long as the cause perseveres. - 5. Privileges conceded to some convent, province, or to Religious of some Institute existing in certain lands, unless the same or a similar reason militates for the other Religious, convents, provinces, of the same or another Institute. - 6. Privileges generally revoked by Trent or by Apostolic Constitutions, unless they have been conceded anew. Yet advert that only those privileges were revoked by Trent to which a Decree of the Council is contrary with that expressed clause: *notwithstanding any privileges whatsoever*.²¹⁶ - 7. Privileges conceded with the clause: *that they not be communicated to others*, or declared incommunicable; unless some succeeding Pontiff, or the same one later, has conceded a very broad communication with all other Religions, in special form, with effective clauses added, by which all Constitutions and Apostolic Ordinations to the contrary, and all other derogatory clauses, are derogated.²¹⁷

2181. - II. Direct or indirect concessions of privileges are sometimes CONFIRMED by the Holy See, and that either in common form, which does not bestow a new right and leaves individual privileges in that state in which they were before; or in special form, which not only, as the common one, strengthens valid things, but also revalidates invalidated things, and indeed in such a way that lost privileges, or those conceded with the clause "that they not be communicated to others," are judged to have been acquired anew. But if privileges are confirmed more often, and in one confirmation certain things are omitted which are had in another, the omitted things are by no means judged to have been revoked, unless perhaps they were opposed to Trent or to some Apostolic Constitution which had revoked privileges of this kind generally.²¹⁸

2182. - III. Whatever has been conceded to the Superiors of one Religion is understood also to have been conceded to all Superiors of other Religions which communicate with them, although the denominations of offices are various.²¹⁹ - Similarly, privileges conceded to inferior Prelates are also understood to have been conceded to Superior Prelates; but not vice versa.

2183. - Let it be noted: 1. If a privilege conceded to some Religion is not accepted by it, or is not brought into use, or if it ceases by renunciation or special revocation, no prejudice is thereby created for another Religion which communicates with it.²²⁰ And this runs even if the Religion originally privileged were extinguished.

2. A Prelate can, for a just cause, LIMIT for his individual subjects the use of one or another privilege; indeed, the Superior General can extend a limitation of this kind to the whole Order. But if no limitation or prohibition intervenes, and no condition has been added in the Indult, subjects can bring their privileges into use without delegation or license of Superiors.²²¹
3. Privileges 1) communicated to subjects generally (i.e. not for a case) by the Superior General, whether by himself or through subaltern Superiors, ENDURE until they are revoked by him or by his successor; - 2) those communicated

²¹⁶Cf. Reiffenstuel, *De Privilegiis*, n. 135 sqq.

²¹⁷H. A., XX, 11, 12.

²¹⁸Ferraris, v. *Privilegia*, art. 2, n. 7-14.

²¹⁹H. A., XX, 11.

²²⁰H. A., *ibid.*, 9.

²²¹H. A., *ibid.*, 6; Book IV, 64.

by subaltern Superiors by their own right expire when the time fixed for their office has ended, i.e. when a new Superior has entered upon his office; - 3) those to be conceded for a certain number of cases cease only when the number has been exhausted, but not when the office of the one granting has ended.

4. Regulars are bound to EXHIBIT to the Ordinaries of places: 1) even if not required, and before they can use them, privileges with the clause: *the Ordinaries of places having been notified*; likewise new indulgences, before they are published; 2) if required, yet without meanwhile being able to be interdicted from the use of the privilege, special privileges of exemption, i.e. those which are not contained in the common and notorious law of all Regulars.²²²
5. "All Regular Orders COMMUNICATE in the privileges of other Orders, whether Mendicant or not",²²³ and this communication is sometimes extended also, by special concession, to Congregations of simple vows.

Article II.

On The Privilege Of Exemption.

2184. - EXEMPTION is a privilege by which either some place or person (physical or moral), or a place and person at the same time, within the territory of some ordinary jurisdiction, is withdrawn from the same.

Some exemptions have been conceded by the Supreme Pontiff, others by Bishops. Some exempt from episcopal jurisdiction, others from parochial jurisdiction, or even from inferior jurisdiction. - Some are personal, others local, others personal and local at the same time.

The exemption of Regulars: 1) has been conceded by the Supreme Pontiff; 2) exempts from jurisdiction, both episcopal and parochial; 3) is at once personal and local. - Moreover it is conceded most justly: both so that religious Orders may enjoy greater tranquility, unity, and vigor of discipline under the single governance of their own Prelates; and so that particular Churches may be bound by a stronger bond to the center of unity, i.e. to the Apostolic See.²²⁴

With these things having been premised, there comes to be explained: 1. what the exemption of Regulars comprehends; 2. what it does not comprehend.

§ 1. What The Exemption Of Regulars Comprehends. 2185. - The exemption of Regulars, provided there is question of a canonically erected Convent, generally comprehends the following:

I. AS REGARDS PLACES. Their churches, to which no parochial or quasi-parochial care of souls is annexed, are not subject to the Visitation of the Ordinary; nor their houses and oratories, whether public or private, joined to their houses; nor their chapels and altars of laymen or local Confraternities erected in these churches or oratories.²²⁵

But it must be noted what is read in the Constitution *Romanos Pontifices* of LEO XIII, 8 May 1881: "It has been established by common law... that houses which do not hold at least six religious members (of whom four are priests) must be entirely in the power of Bishops." - But Regulars dwelling in mission residences, although they may have been few, are not subject to Bishops "except in cases expressly named by law, and generally in those things which concern the care of souls and the administration of the Sacraments" (same Constitution).²²⁶

2186. - II. AS REGARDS PERSONS. Regulars are subject to the ordinary and exclusive jurisdiction of their own Prelates, insofar as no exception is established by the sacred canons or Apostolic Constitutions which declares in express words that they are subject in certain cases to the ordinary jurisdiction of Bishops or to jurisdiction delegated by the Holy See.²²⁷

Now it must be adverted: - 1. In odious things, under the name of subjects there come, generally, only professed Religious, both priests and lay brothers. 2. But in favorable things there come also novices, candidates admitted to probation, Oblates or Tertiaries dwelling in the monastery, and secular familiars, provided they are continuous table-companions, dwell within the enclosures of the Convent, and live under the obedience of Superiors²²⁸ (see what was said n. 1763, q. 2, concerning boarders).

²²²Konings, n. 1192.

²²³H. A., XX, 9; Book IV, 60.

²²⁴Cf. Bouix, P. 5, sect. 2, cap. 2, § 3 (II, 110).

²²⁵H. A., XX, 79, 88.

²²⁶Cf. Lucidi, vol. II, p. 8.

²²⁷H. A., *ibid.*, 72.

²²⁸*Ibid.*, 74.

2187. - Consequences. By force of this jurisdiction, which is called quasi-episcopal:

1. General Superiors can and must, either by themselves or through their Visitors, and provincial Superiors by themselves, VISIT the individual houses, persons, and churches subject to them: with every visitation of Bishops excluded, except in the cases to be excepted below (n. 2189).
2. The same Superiors can BRING against their professed subjects all those CENSURES which it is licit to inflict upon persons. The local Superior also can do the same, at least with the consent of the major Superiors (cf. n. 1256, 7, and 1774).²²⁹
3. All Superiors can DISPENSE with their subjects, in those things and in that manner in which and according to which Bishops can by law dispense with their own diocesans, namely: 1) as regards servile works on feast days and Sundays; 2) as regards fast and abstinence from flesh meats: concerning which “they can also accept for themselves and their own house those dispensations which the Bishop grants generally for the whole diocese”,²³⁰ - 3) as regards the Divine Office, in the manner of Bishops, in particular cases, for a brief time and from a just cause, e.g. if there is doubt concerning moral impotence of reciting.²³¹ (Moreover, from the concession of Clement VII, in favor of the sick and of those serving the sick who would not be excused of themselves, they can commute the Office into six or seven Psalms to be assigned by themselves, and seven *Our Fathers* and two *Creeds*);²³² - 4) as regards prohibited books, in the manner of Bishops (i.e. in a case of great necessity, another privilege being set aside) (cf. n. 454, q. 2); - 5) as regards irregularities from an occult delict, and certain ones from defect, in which Bishops can dispense with diocesans, and even in the case of occult homicide, or one consummated outside the cloisters; in defect of body, “if someone should lack a foot or an eye, even the left”; in defect of birth (to dignities inferior to the Generalate), in bigamy, in defect of mildness, etc.;²³³ - 6) as regards inabilities and penalties contracted from delict, such as privation of office, benefice, voice, place, etc., even if these have been reserved to the Roman Pontiff;²³⁴ - 7) as regards all vows not reserved to the Pope; but reserved vows, if there is question of the vows of the three pilgrimages, they can irritate with professed members and suspend with novices, even if they themselves, or a predecessor, or a subaltern Superior, consented to their emission (cf. n. 638-640); - 8) as regards rules, in particular cases, unless dispensation has expressly been interdicted to them.²³⁵
4. It belongs to Superiors to ADMINISTER THE SACRAMENTS to any persons subject to themselves, or to see that they are administered; likewise, to approve confessors for their respective subjects, and to concede to them jurisdiction over the same, in the name of the Supreme Pontiff (cf. n. 1762-1763). - But these CONFESSORS, although they cannot absolve them, as formerly by privilege, from censures and cases specially or simply reserved to the Pope; nevertheless they can do this, with the special delegation of Prelate Superiors, by common law, insofar as Religious are impeded from going to Rome: according to what was said n. 1280, 3, and 1283. - Similarly the same confessors can absolve all their own, even novices, candidates, and familiars, from episcopal cases, unless there is question of a case brought before the contentious forum before their entrance²³⁶ (cf. n. 1762).
5. Superiors General and Provincials can give dimissorial letters to their subjects, yet professed ones, so that they may receive ORDERS, even outside the times, with the interstices not observed, on Sundays and feast days of precept (even suppressed ones), even continuously (cf. n. 1910).²³⁷
6. Regulars, by force of personal exemption, are not bound to intervene in DIOCESAN SYNODS. Except Abbots who are not subject to general Chapters of the Order, and those Regulars who exercise the office of pastors or quasi-pastors.²³⁸ Nor similarly are they bound to assist at conferences of cases of conscience, unless they exercise the care of souls (cf. n. 2254, end).

²²⁹Cf. *Acta S. Sed.*, I, 98, where there is discussion of the Exemption conceded to the Passionist Fathers and to the Congregation of the Most Holy Redeemer.

²³⁰*H. A.*, XX, 106; Book I, 194.

²³¹Lehmkuhl, I, n. 165.

²³²*H. A.*, XX, 107.

²³³*H. A.*, XX, 104, 105; Book VII, 396.

²³⁴*H. A.*, *ibid.*, 105, *fin.*

²³⁵Book I, 194.

²³⁶*H. A.*, *ibid.*, 95.

²³⁷Book VI, 797, dub. 3; *H. A.*, XX, 117; cf. Rotarius, *Theol. mor. Regul.*, P. I, c. 2, p. 13, n. 7; Rossignoli, *De Ord.*, P. I, q. 11, art. 8, n. 4; and Const. Greg. XIII *Pium et utile*, which Gregory XIV (Const. *Illius qui*) and Urban VIII (Const. *Redemptoris nostri*) extended.

²³⁸*H. A.*, *ibid.*, 78; cf. Const. *Romanos Pontifices*, v. *De officio*. - Cf. Bouix, tom. II, p. 149; also the cited Const., v. *Praecipuum*.

7. In administering TEMPORAL GOODS, male Regulars do not depend upon the Bishop.²³⁹ - Hence, when an inheritance has been left to an Order with the burden of Masses, or of pious works to be fulfilled either within or outside the Order, the Bishop cannot inquire concerning their execution. And the same must be said concerning Masses, whether founded or manual, even in those churches of Regulars to which the care of souls is annexed²⁴⁰ (cf. n. 1617, 1).

2188. - From these things you will resolve, FOR PRACTICE: the right of Regulars is composed with the right of pastors in the following manner.²⁴¹

1. Regulars can, without the pastor being able to stand in the way, celebrate in churches at an hour that seems good to them, preach, announce the feasts, vigils, and fasts of the following week, and also distribute the Holy Eucharist on all days (Easter day excepted) (see also n. 677, 678).
2. Regulars, approved by the Bishop for confessions, can throughout the whole year, even in Paschal time, hear confessions of seculars, even of the sick. But after the confession of some sick person has been heard, they must notify the matter to the pastor at least by a writing left with the sick person: to which they can be constrained by the Bishop, under penalty of suspension from hearing confessions.
3. All the functions of Holy Week can freely be performed by Regulars in their own churches. Yet on Holy Saturday they cannot ring the bell before it is rung in the more dignified church, unless a contrary custom is in force, or unless the churches are very distant.
4. They can perform all blessings in their own churches: except the blessing of the baptismal font, and the nuptial blessing, and, where contrary custom or synodal statutes stand in the way, the blessing of women after childbirth.
5. Funeral Masses and burial, in the case in which someone has chosen it among Regulars, are not among parochial rights strictly so called. But the funeral fourth, or the candles lit at the exposition and association of the corpse, must be paid to the pastor in this case, unless a contrary custom is in force. But the bodies of the dead to be buried in cemeteries of Regulars must be carried by the direct path, and by the way to be declared by the pastor, to the churches of the Regulars themselves, but not first to the parish church, even if the heirs contradict. Thus the Sacred Congregation of Rites, 19 December 1671, in Savonen.²⁴²
6. Although processions generally cannot be made by Regulars and by Confraternities which have been erected in their churches outside the cloisters without license of the Bishop, nevertheless that license suffices without the consent of the pastor. Indeed, during the Octave of Corpus Christi, a procession can be made outside the limits of the Convent without the permission of the pastor or even of the Bishop being sought.
7. Strangers, even if they should fall into sickness among Regulars, cannot receive Paschal Communion, Viaticum, or Extreme Unction from them without the pastor's license; for only familiars and boarders of Regulars enjoy this privilege, as we said above (n. 2186). - And the same holds for obsequies (cf. n. 2193, end).²⁴³

§ 2. What The Exemption Of Regulars Does Not Comprehend. 2189. - In general, Regulars ARE SUBJECT to episcopal jurisdiction in their operation *ad extra*, and in the exercise of sacred ministry to be furnished to seculars. - But in particular let the following be NOTED:

1. As regards the erection of houses. Regulars cannot erect a regular house, or even a hospice broadly so called, or one which has a church or public oratory, unless with the consent of the Ordinary. Thus from Trent, sess. 25, de Regul., cap. 3. - Yet (in this our time) the consent of the pastor is not required, who has only the right that he be heard in certain cases, namely when his strict and exclusive rights would be injured. Nor similarly is the consent of other Religious required, unless the house is erected outside the city in the vicinity of Mendicant Friars.²⁴⁴

But by common law it is free for Regulars, even with the Ordinary unwilling, to abandon their houses and churches; and if they have built them from their own revenues or alms, freely to dispose of them (cf. n. 1353). - They can likewise, without new license, provided the rights of another are not injured, either return to their abandoned houses, or transfer a Convent

²³⁹H. A., XX, 81.

²⁴⁰Cf. Benedict XIV, *De Syn.*, lib. 13, cap. 25 (ult.), n. 5 and 6; and as regards alienation cf. Bizzarri, p. 331.

²⁴¹Cf. Konings, n. 1196.

²⁴²Gardell., n. 2574.

²⁴³Cf. Craisson, n. 611 sqq.

²⁴⁴H. A., XX, 88; cf. Craisson, n. 2549-2566.

into another place of the same land, or into its vicinity. Nor do they need any license for founding a hospice strictly so called, in which namely neither a church is built nor Masses are received.²⁴⁵

2. Concerning divine worship. 1) Regulars are bound to observe the Feasts and Interdicts of the diocese; - 2) to conform themselves to the statutes and ordinations of the Bishop concerning the celebration of Mass and the tax of the stipend; - 3) when asked personally by the Bishop, and not only by a public edict, to intervene in processions, they cannot refuse, unless they are exempt by privilege or by force of their rule, or unless they live perpetually in stricter enclosure; - 4) they cannot expose sacred Relics or an unusual Image in the church for public veneration without previous recognition or approbation of the Bishop; - 5) nor similarly can they (outside the Octave of Corpus Christi), unless by license of the Bishop or from legitimately prescribed usage, publicly expose the Most Holy Sacrament (i.e. with the Most Holy uncovered and the doors opened), or institute processions outside the circuit of the church.²⁴⁶
3. Concerning preaching. 1) In churches of Regulars, although approved by the Prelate of the Order, neither seculars nor Regulars of other Orders can preach unless after the license of the Ordinary has been sought and not expressly denied. - 2) In alien churches, they cannot

Regulars preach unless after license has been obtained, and, if it shall have seemed so to the Ordinary, after some moderate and discreet examination has been carried out. Yet the license of the pastor suffices, if they are staying only for a brief time in some place where the Bishop is not present. 3) The Bishop can suspend some Regular (but not all of some Convent, as regards preaching in their own churches), for "reasonable causes, although occult, yet concerning preaching," from preaching (Clement X, Const. *Superna*). - 4) If the Bishop himself is going to preach in some place, he can prohibit sermons from being had to the people at the same time in other churches, even those of Regulars; likewise, he can prohibit Regulars from preaching on some day, so that thus the whole people may come together in the cathedral.

Regulars cannot without license of the Ordinary 1) publish new indulgences; 2) commend to their hearers needy persons or families, unless there is danger in delay, or unless the church is quasi-parochial. - Moreover, they are forbidden publicly to reprove someone by expressing his name, and to preach concerning the determined time of the last judgment or of Antichrist, or to treat revelations of that sort.

It MUST BE ADVERTED: 1) The Ordinary cannot strictly command that Regulars who do not have the care of souls preach in their own churches, nor that they summon secular preachers or preachers of other Orders into their churches. 2) Likewise he cannot prohibit them from preaching in their own churches at the same hour at which a sermon is being had in the parish church, unless he himself is present at this sermon.²⁴⁷

4. Concerning the administration of the Sacraments. - 1) To hear confessions of the faithful, Regulars entirely need the approbation of the Ordinary (cf. n. 1746). - 2) They can indeed administer the Holy Eucharist in their own churches, except on Easter day, or even on Thursday in the Supper of the Lord, if the Bishop or custom (as in the kindly City) shall have so established; but, outside the case of custom, they cannot carry it publicly through the streets to the sick without license of the Bishop or pastor. But whether they can carry it secretly, in a case in which there is no question of Viaticum, is disputed. 3) It is strictly prohibited to them, and indeed under penalty of excommunication reserved to the Pope, to administer Viaticum and Extreme Unction without license of the pastor, outside the case of necessity²⁴⁸ (cf. n. 1341). Yet for the favor of professed members, novices, and familiars, they can keep holy Oil in their own churches.
5. Concerning the care of souls and Confraternities. - 1) In those things which regard parochial or quasi-parochial care of souls, Regulars are subject to the jurisdiction, visitation, and correction of Bishops.²⁴⁹ - 2) They cannot, without license of the Ordinary, erect Confraternities, except those which Generals of Orders erect by right conceded to them by the Supreme Pontiff. But Confraternities once erected are subject to the visitation of the Ordinary, to whom it also belongs to found, examine, correct, and renew their statutes, unless these have been confirmed by the Holy See or founded in the form of a contract.²⁵⁰
6. Concerning synodal Statutes. Regulars are bound by synodal Statutes: 1) as regards directive force, if their observance is necessary for avoiding scandal; - 2) as regards coercive force, if there is question of Feasts to be observed

²⁴⁵ H. A., *ibid.*, 89; cf. Salmant., tr. 18, cap. 3, n. 132 sqq.; cf. Konings, n. 1197 and 1205, IV.

²⁴⁶ H. A., XX, 75; Book VI, 424; cf. Konings, n. 1199 and 1201-1202.

²⁴⁷ H. A., XX, 124-128.

²⁴⁸ *Ibid.*, 123.

²⁴⁹ H. A., XX, 79, where there are many things; cf. LEO XIII, cited Constit. *Romanos Pontifices*.

²⁵⁰ Cf. Craisson, n. 902-909 and 4656 sqq.

(the rite, however, excepted); or of Interdicts to be published and observed; of the celebration of Masses; of the first Communion of children; of exercising a non-exempt office, as of preacher, confessor, pastor.²⁵¹

7. Concerning the coercive power of Bishops. - Regulars are subject to Bishops, as delegates of the Apostolic See, in the following: 1) In a cause of heresy, and in other matters belonging to the tribunal of the Holy Office. 2) If they gravely offend them, or impede their jurisdiction. 3) If they gravely offend in the preaching of the word of God, in hearing confessions, in the administration of the Sacraments, or in some matter pertaining to the enclosure of nuns. Likewise, if they admit pilgrim priests destitute of commendatory Letters to the celebration of Mass.²⁵² - 4) If they dwell outside the cloisters in a permanent manner (i.e. without license of the Superior, or in a place so distant that they cannot be punished by the Superior except after a long time), they can be visited and punished by the Bishop. - 5) If, while dwelling in the cloister (Superiors, however, are excepted), they perpetrate a notorious offense, with scandal of the people, they must be punished by their own Superior within the time to be defined by the Bishop. But if, after repeated admonition, they are not punished, the Bishop himself will be able to take measures against them (cf. n. 1260, 4).²⁵³
8. Concerning various rights. - 1) As regards the printing of books, Regulars, no otherwise than others, are subject to the Ordinary.²⁵⁴ - 2) The Bishop can settle all controversies of precedence relative to processions and in conducting funerals, for that act.²⁵⁵ - 3) Bishops can exercise Pontificals in churches of Regulars and use the baldachin. - 4) Without the consent of the Ordinary, it is licit for no one to exercise Pontificals in the said churches.²⁵⁶

2190. - Questions. QUESTION 1. What power belongs to the Bishop over Religious who are NOT EXEMPT?

Resp. 1. The general principle is that the PERSONS and PLACES of any non-exempt Institute are subject, in all things, to the ordinary jurisdiction of the Bishop, unless the Rule approved by the Holy See, or special privileges obtained either directly or indirectly from the same Holy See, expressly establish some exceptions.

Resp. 2. In fact, there exists no approved Congregation of men which does not enjoy particular exemptions of this kind. But these exemptions generally regard all acts of internal economy, namely: nominations or elections of Superiors, admission and expulsion of Subjects, expenses and accounts, administration of goods, etc. Except if there is question of alienating immovables of not small value, or precious movables, apart from money; for in these things all Institutes, both of simple and of solemn vows, depend upon the Sacred Congregation of the Council (or of Bishops and Regulars), as was said n. 1353.²⁵⁷

QUESTION 2. What is the power of the Bishop over NUNS?

Resp. 1. If the nuns are exempt and immediately subject to the Holy See, the Bishop, as delegate of the Holy See, can and must, by himself or through another: 1) examine novices before profession, as was said above (n. 2149); 2) institute a canonical visitation once in the year; 3) preside over the election of the Superiorissa and receive the votes; but confirmation must then be sought from the Holy See itself; 4) exact each year an account of the administration of temporal goods; whence he can remove administrators, although he cannot constitute them²⁵⁸ (cf. n. 2170, Note).

2. If the nuns are exempt and subject to Regular Prelates, he can likewise examine the novices before profession and watch over the administration of goods, as in the preceding case. But he cannot visit the monastery except by reason of enclosure, nor preside over the election of the Superiorissa except directly, only hearing the votes and recognizing them.²⁵⁹ - The rest belongs to the Regular Prelates.
3. If the nuns are not exempt, he possesses full and ordinary authority over them, yet with the rules approved by the Holy See saved. Nevertheless, if, disseminated in different dioceses, they are subject to a general Superiorissa, each convent indeed depends upon the respective Ordinary as regards those things which are of episcopal jurisdiction; but not so as regards those things which are of mere economic administration, e.g. as regards elections and transfers of nuns from one house to another; for good order demands this for itself, that nuns in matters of this kind not

²⁵¹ H. A., XX, 78.

²⁵² Cf. De Angelis, lib. I, tit. 22, n. 3.

²⁵³ H. A., *ibid.*, 82, 83.

²⁵⁴ Craisson, n. 593, 743.

²⁵⁵ *Id.*, n. 641.

²⁵⁶ Cf. Konings, n. 1202. - See other things of lesser moment apud Craisson, n. 577 sqq.

²⁵⁷ Cf. Craisson, n. 2910 sqq.; cf. De Angelis, lib. 3, tit. 36, n. 4.

²⁵⁸ H. A., XIII, 22; Book IV, 49, where there are many things concerning the election of an Abbess.

²⁵⁹ Book IV, 5; likewise n. 36, where there are many things concerning the administration of the goods of a monastery.

depend upon the governance of ecclesiastical Superiors, but only upon the will of the general Superiorissa; nor does contrary custom seem to be reasonable.²⁶⁰

Here it must also be NOTED that it is generally not approved by the Holy See that some Bishop (or Priest) be Superior General of an Institute which is spread into other dioceses, lest the order of jurisdiction be disturbed.²⁶¹

Article III.

On The Other Privileges Of Regulars.

2191. - Regulars have from common law, either directly or by communication, the following FACULTIES:

1. "Generals and Provincials of Regulars can erect private ORATORIES in their Convents and Colleges, provided they are deputed only for divine worship; and in them, without another faculty of the Bishop or Supreme Pontiff, several Masses can be read on the same day, not only by Regulars, but also by secular presbyters";²⁶² likewise, in them "all the faithful can hear Mass and satisfy the precept of hearing the Sacred rite on feast days, because those oratories enjoy the privilege of a public oratory" (cf. n. 678, 1583, 1, 1627, 2185).
2. Regular Superiors, even local ones, can bless any vessels, vestments, and other things pertaining to divine worship, provided a sacred unction is not to be used; but only for their own churches and convents. Likewise, they can bless sacred places proper to themselves, namely their own churches, and their own oratories and cemeteries; and, if they have been polluted, reconcile them with blessed water mixed, according to the precept of the Roman Pontifical, with salt, ashes, and wine.²⁶³ Yet it has been counseled that they never use this faculty when the Ordinary is unwilling, nor publicly.
3. Regulars can CELEBRATE Mass one hour before dawn (or about three hours before sunrise); indeed, when some just cause accedes, two hours after midnight, even in winter time; but only in their own churches, in which this is also licit for secular priests. Besides, from a privilege conceded by Eugene IV, they can celebrate three hours after noon.²⁶⁴
4. In time of Interdict Religious are privileged, as we saw n. 1307, II.
5. Regular Confessors, approved by the Bishop, have the faculty: - 1) of dispensing with seculars, whether within or outside confession, in all simple vows (the five reserved to the Pope excepted), provided the rights of a third party are not prejudiced; 2) of dispensing in all occult irregularities from delict, except voluntary homicide; - 3) of dispensing in the inability to celebrate which confessors soliciting to shameful things incur, and also priests abusing the sacrifice of the Mass for sorceries; - 4) of dispensing with spouses in the impediment of exacting the conjugal debt, which one of the spouses has contracted, whether from incest committed with an affine, or from a personal vow of chastity emitted before or after marriage; but special license from the Superior at least of the house must be sought for this.²⁶⁵

Will you ASK whether Regulars (or others possessing the same faculty) can dispense in oaths made to God, as also in vows? R. Authors dispute, and indeed probably on both sides. Whence St. Alphonsus concludes for practice: "The negative opinion must altogether be held; for the obligation of an oath already contracted, since it is certain and is in possession, cannot be taken away by a dispensation only probably valid."²⁶⁶

Chapter V.

On Religious In A State Of Dispersion.

2192. - Principles. I. It is certain that no juridical effect can arise from those dispersions or suppressions of religious families which the civil Power decrees without the consent of the Supreme Pontiff. The reason is that the religious state

²⁶⁰Cf. Konings, n. 1189, 4.

²⁶¹Cf. Bizzarri, append. I, p. 833 sqq.

²⁶²Ferraris, v. *Oratorium*, 72, 75; cf. St. Alphonsus, Book III, 319, fin.; Book VI, 357, 424, v. *Hic ultimo*.

²⁶³Cf. Ferraris, v. *Benedicere*, art. 1.

²⁶⁴H. A., XX, 122.

²⁶⁵H. A., XV, 104, 108, 109; Book VI, 987, 1076.

²⁶⁶Book III, 190 (from the 6th ed.) and H. A., V, 43; according to these, other things previously written must be reformed, i.e. *De Priv.*, n. 108; H. A., V, 19, 20; *Conf. dir.*, V, 7, 12.

draws its origin from law, both divine and ecclesiastical. Therefore, it belongs to the Church alone to judge concerning affairs pertaining to it.²⁶⁷

II. The dispersion or suppression of religious families can bring it about that something is diminished in the obligations of the regular state, and that the use of privileges is interrupted for some time. This is established from various responses of the sacred Congregations, from which we judge it opportune to excerpt the following decisions.²⁶⁸

1. Vows among Religious dispersed by force remain in their perfect vigor. This is established from the Brief of Pius VI to the Bishop of Brunn, the day before the Ides of April, 1782, and from the response of the Sacred Penitentiary, 18 April 1867.²⁶⁹
2. Remaining bound by the vow of poverty, dispersed Religious cannot possess goods in their own name, accumulate monies,

spend expenses upon useless things, nor make testaments (but see n. 2176).

3. As regards the vow of Obedience, the Sacred Penitentiary, 18 April 1867, declared to all Regular Superiors: "their jurisdiction over their own suppressed subjects, even those dwelling outside the cloisters, has by no means ceased. For although each Regular dwelling outside the cloisters, as regards polity and ecclesiastical discipline, is not exempt from the jurisdiction of the Ordinary of the place in which he dwells: nevertheless, as regards regular discipline and the obligations which flow from religious profession and are compatible with his new state, he is subject to his own Superiors and is bound to obey them."²⁷⁰ - If he dwells outside his own Province, he is subject both to the local Superior and to the Provincial in whose territory he is staying. Thus from the decree of the Sacred Congregation ON REGULAR DISCIPLINE, 5 Aug. 1872.²⁷¹
4. "Care must be taken that Regulars expelled from their own houses, insofar as they cannot be received into another monastery, come together into some particular house to be designated by their Superiors; and there they must not omit to observe the rule which they have professed, in the better manner in which it can be done, with prohibition made to each one of departing without due license." Thus the Sacred Penitentiary, 18 April 1867.²⁷²

Note. An indult of secularization, or license of dwelling in the world for a time or in perpetuity, from a just cause, e.g. for assisting parents, for caring for one's own health, etc., is sometimes conceded by the Sacred Congregation of BISHOPS AND REGULARS. But ordinarily it is required that the Religious observe the substantial things of the vows compatible with the new state, that (having been provided with a suitable patrimony, if he is a priest) he live under the obedience of the Ordinary of the place even by force of the religious vow, and that he continually wear some trace of the religious habit. Hence, if he has been solemnly professed, he cannot (without another special Indult) make a testament; and when he has died, the pensions or goods which he was holding belong by right of spoils not to his heirs or legatees (unless by permission of the Holy See), but to his Order or to the Holy Camera: to the Order, if he had been restored to the world for a time; to the Camera of spoils, if in perpetuity.²⁷³ Thus Pius VIII, 26 June 1829.²⁷⁴

For the whole time of the Indult, such a Religious must confess before a Confessor approved by the Ordinary of the place, by whom nevertheless he can be absolved even from censures and cases reserved in his own Order, if they are by no means reserved in the Diocese. Thus PIUS IX, 27 Aug. 1852.²⁷⁵

2193. - IT IS ASKED. Whether Religious DISPERSED by force enjoy all the PRIVILEGES of their own Religion?

Resp. 1. If several live together IN COMMUNITY and form a family, although an imperfect one, they retain all the rights and privileges of Regulars. - And hence it is that the Sacred PENITENTIARY, on 18 April 1867, declared: 1. "that houses, provided at least three Regulars have come together into them to dwell there, of whom at least one is a priest, will be subject to the jurisdiction of the Provincial Minister, and must be governed through a particular Superior to be constituted there. - 2. In houses, provided at least four Regular priests dwell in them, a private oratory can be erected, with those things being observed which must by law be observed, first to be visited and approved by the Provincial Minister..., in

²⁶⁷ Cf. Bouix, *De Jure Regul.*, tom. I, p. 354 sqq.

²⁶⁸ Cf. *Acta S. Sed.*, III, 151 sqq.; G. a Varceno, t. II, append. IV, where there are various Responses and Indults.

²⁶⁹ Cf. Pius VI, *Acta*, tom. I, p. 46.

²⁷⁰ *Acta S. Sed.*, III, 152, n. 2.

²⁷¹ *Ibid.*, VII, 407.

²⁷² *Ibid.*, III, 152, n. 1.

²⁷³ Cf. *Monit. eccles.*, vol. IV, P. I, p. 33, where there is the formula of the Indult.

²⁷⁴ Apud Bizzarri, *Collect.*, p. 76.

²⁷⁵ *Monit. eccles.*, loc. cit., p. 37.

such a way that in it Mass can be celebrated by Regular priests, the Most Holy Eucharist reserved, and Holy Communion received by Religious and Oblates only, and the precept of hearing the Sacred rite satisfied. - 3. The Apostolic See grants besides that in Oratories so erected the Regulars themselves can enjoy all Indulgences conceded to the churches of their own Order.”²⁷⁶

Resp. 2. Dispersed Regulars who live SEPARATELY in their own houses retain only personal privileges conceded to Religious, but not real privileges; because the subject of these privileges no longer exists. And hence it is, e.g., that, short of a special Indult of the Bishop, they are subject to the pastors of places as regards Paschal Communion, as regards the last Sacraments, and as regards funeral right.²⁷⁷

Response of the Sacred Congregation of BISHOPS AND REGULARS. - Whether and to whom belongs, in the case, the right of funerals as regards Religious dispersed by force of present circumstances? - R. The Sacred Congregation, on 11 March 1881 (in Casertana), responded: “Affirmatively in favor of Regulars, whenever Religious live together under a legitimate Superior at least in the number of three, and others dwelling outside depend upon the same; otherwise, in favor of pastors.”²⁷⁸

Scholium.

On The Condition Of Nuns In France. 2194. - Concerning the actual state of Nuns in France we shall note these few things:²⁷⁹

1. Today, in France (Savoy excepted), in Belgium, and in the other places where the same Code of civil laws is in force, the vows of nuns are not held as solemn, as has several times been responded by the Sacred Congregation of BISHOPS AND REGULARS and by the Sacred PENITENTIARY.²⁸⁰ - Yet this does not run as regards men, who can still emit solemn vows in those regions: as is established from the authentic testimony of GREGORY XVI as regards the Religious of St. Benedict of Solesmes.
2. Papal enclosure does not exist in the same regions, nor therefore do transgressors incur the canonical penalties established by St. PIUS V and renewed by PIUS IX. - Nevertheless, the law of enclosure in monasteries in which, by force of the Constitutions, it ought to exist, cannot be cast off without fault of itself mortal; because thus it seems to be commonly apprehended, and Bishops are judged to wish to oblige thus, since this discipline has always been held as supremely necessary. Thus Bouvier.²⁸¹
3. The obligation of the Divine Office does not press, for the aforesaid nuns, from a law of the Church; but only from the respective Constitutions of the Orders, which generally do not oblige under grave sin. - Thus the Sacred PENITENTIARY to the Bishop of Perigueux, 26 Nov. 1852.²⁸²
4. As regards entrance into Religion, “the vow of a woman whose intention had regard to monasteries as they now exist in France is not reserved; namely because the same monasteries, by the Apostolic Holy See, with attention given to the peculiar circumstances, are not regarded as Orders truly and properly religious, but as families of very pious women.” Thus the Sacred PENITENTIARY to the Bishop of Le Mans, 23 Dec. 1835.²⁸³
5. To the same Bishop asking “whether the Ordinary can DISPENSE concerning vows emitted by nuns, a sufficient reason having been given, with the vow of perpetual chastity remaining,” - it was responded: “From the declaration of His Holiness, Bishops of France, while things stand thus, can dispense.”²⁸⁴

But it must be adverted: 1) this Indult has regard only to Institutes in which formerly solemn vows were emitted, say the Order of the Visitation of the Blessed Virgin Mary; but not to Congregations in which simple vows are emitted from a law of the Institute approved by the Holy See; nor to nuns who emit vows accepted by a third party, or a vow of perseverance or stability (cf. n. 2175, 3). - 2) It is not customary for an absolute dispensation concerning the simple vow of perpetual

²⁷⁶ *Acta S. Sed.*, *ibid.*, n. 3-5.

²⁷⁷ Cf. *ibid.*, I, 168; V, 569; VII, 147.

²⁷⁸ From an authentic copy; cf. *Nouv. rev. théol.*, t. XIII, p. 571.

²⁷⁹ Cf. Gury, II, n. 177.

²⁸⁰ Cf. Bizzarri, p. 94 and 503.

²⁸¹ *De 2 Praec. Decal.*, at the end.

²⁸² Gury, l.c., n. 183; cf. Bizzarri, p. 77, Lugdunen.

²⁸³ Bizzarri, p. 505.

²⁸⁴ *Ibid.*

chastity to be conceded by the Holy See; but only a commutation mixed with dispensation: especially under this condition, that if the woman survives her husband, she cannot enter other nuptials without a new commutation of the Holy See²⁸⁵ (cf. n. 2176).

6. In some Institutes SIMPLE VOWS (the vow of chastity not excepted) are so emitted that they endure as long as the professed woman shall have remained in the Institute: in which case the vows of those who either depart spontaneously or are dismissed by Superiors cease without any dispensation. - Yet generally "in Congregations of women it is by no means in use that simple vows are perpetual on the part of those vowing and are dissolved on the part of the Institute. Rather, vows are customarily emitted first for a time, and then perpetual, for whose dispensation recourse must be had to the Apostolic See."²⁸⁶

"But it is established that the Sisters or girls of Charity, instituted by St. Vincent de Paul, pronounce only simple vows, whose obligation is not extended beyond a year; so that, if they wish to remain in the Congregation, they must renew the same vows each year when the time of the Chapter recurs: and this practice, while it opens to each one the liberty of deserting the Congregation, also leaves to Superiors the liberty of dismissing sisters giving bad examples and the unteachable, by which it happens that the individual Sisters are more easily contained in duty."²⁸⁷

Treatise II.

On The Clerical State.

2195. - What the nature of the clerical State is and what its origin is has been set forth above, in the Treatise on Order (n. 1885 sqq.), where we saw that it was instituted partly divinely and partly canonically. It remains, therefore, that we discuss the Obligations of CLERICS, both by reason of state, - and by reason of benefice, if they possess any, - and by reason of sacred office.

Chapter I.

On The Obligations Of Clerics By Reason Of State.

The obligations by which Clerics are held by reason of STATE can conveniently be reduced to these TWO, namely: 1. that they perform all things which are specially prescribed to them; 2. that they avoid those things which are forbidden to them.

Article I.

On Those Things Which Are Prescribed To Clerics.

2196. - To Clerics are prescribed: 1. Holiness of life; 2. Celibacy; 3. Recitation of the canonical Hours; 4. Wearing of the habit and tonsure.

§ 1. On Holiness Of Life. "Whoever professes some state," says St. Thomas,²⁸⁸ "is held to those things which befit that state." From which, for the clerical state, the following are deduced:

Principles. I. Clerics are held, in a peculiar manner, to HOLINESS OF LIFE. This is proved 1) from several places of Sacred Scripture, and especially from the Epistles to Timothy and Titus, in which the Apostle is wholly intent on this, that he impel both priests and Bishops of the New Law, and the ministers of priests, i.e. deacons, to the pursuit of virtue and holiness. - 2) From the doctrine of the Holy Fathers, who everywhere affirm this primary obligation of clerics and gravely exhort them to it.²⁸⁹ "For the suitable execution of Orders" (says St. Thomas, resuming the common doctrine of ecclesiastical writers on this matter), "not just any goodness suffices, but excellent goodness is required: so that, just as those who receive Order are placed above the people by the grade of Order, so also they may be superior in merit of

²⁸⁵Ibid., p. 505, fin.

²⁸⁶Ibid., p. 843, XIII, Animadvers. 4.

²⁸⁷Ibid., p. 456, in Gandaven; cf. Meynard, *Réponses canon.*, P. I, Liv. 2, where there are many things useful for practice.

²⁸⁸2.2, q. 186, a. 2, in princ.

²⁸⁹See the principal testimonies of the Fathers apud St. Alph., *Selva*, P. 1, c. 2.

holiness.”²⁹⁰ - 3) From very many Councils, and especially from these words of Trent:²⁹¹ “It is wholly fitting that clerics called into the lot of the Lord so compose their whole life and morals that in habit, gesture, gait, speech, and all other things they show forth nothing except what is grave, moderated, and full of religion.” - The same is evinced from what was said concerning the one to be Ordained (n. 1912 sqq.).

2197. - II. Clerics IN SACRED ORDERS are held to a holiness SO MUCH GREATER as the GRADE of the sacred hierarchy in which they are placed is higher. - The reason is taken both from the excellence of the office which they perform, by ministering at the altar and praying for the people; and especially from the necessity in which they daily are placed of preaching the divine word and ministering the Sacraments. Whence St. Thomas:²⁹² “Because through sacred Order someone is deputed to the most worthy ministries, by which Christ Himself is served in the Sacrament of the altar: for this, a greater interior holiness is required than even the state of Religion requires. Whence, other things being equal, a cleric constituted in sacred Orders sins more gravely if he does something contrary to holiness than some Religious who does not have sacred Order.”

2198. - Note. Clerics and priests, who before Ordination are already supposed to have reached some grade of perfection, are bound to use those means by which holiness already acquired can be preserved and can take on new increase. Among these means the following in the first place are commended by St. Alphonsus: 1. A life so stably ordered that each thing may be done in its own time. - 2. Frequent prayer, both vocal and mental, especially before and after the celebration of Mass. - 3. Spiritual reading, and this daily, especially in the Lives of the Saints. - 4. Study of sacred theology, and especially of moral theology. - 5. Daily visitation of the Most Holy Sacrament and of the Blessed Virgin Mary. - 6. Daily examination of conscience and frequent confession. - 7. Guard of the senses and flight from conversation with seculars. - 8. Annual celebration of spiritual exercises for a full week, and monthly for one day. - 9. Pious and constant devotion toward the Blessed Virgin, which effectively impels to this, that fervent prayers be recited daily to Her with the third part of the Rosary, and that every Saturday some act of mortification be exercised in Her honor.²⁹³

§ 2. On Ecclesiastical Celibacy. 2199. - For the holiness of Clerics and Priests, inviolable chastity of the body is required before all things. Hence the following:

Principles. I. The obligation of observing PERPETUAL CELIBACY is contracted, *ipso facto*, by all who receive SACRED ORDERS. This is established from various decrees of canon law; and notably from can. 1, dist. 28, where St. Gregory prescribed thus: “Let Bishops presume to make no Subdeacon except one who has promised that he will live chastely: because no one ought to approach the ministry of the altar unless his chastity has been approved before the ministry received.” Likewise from Trent, sess. 24, can. 9, where this was defined: “If anyone shall say that Clerics constituted in sacred Orders, or Regulars solemnly professing chastity, can contract marriage, and that the contract is valid, notwithstanding ecclesiastical law or vow: let him be anathema”²⁹⁴ (cf. n. 2013).

2200. - II. The obligation of ecclesiastical celibacy is not of divine law; but arises from the LAW OF THE CHURCH prescribing chastity, and the vow of chastity.²⁹⁵ The reason of the former is “because, although celibacy had its origin from the Apostles, as the Doctors prove, nevertheless only from a precept of the Church or of the Apostles (as Bellarmine proves) was it introduced and established, as is clear from the very words of Trent.”²⁹⁶ - The reason of the latter is taken chiefly from the Law,²⁹⁷ where it is said: “We therefore, attending to the fact that the Oriental Church has not admitted the vow of continence.”

But among the GREEKS, with the Church tolerating it, even to the present times there is in force canon 13 of the Trullan Council, which indeed against the institutes of the Elders permitted that deacons and presbyters can licitly come together with the wives whom they took BEFORE Ordination; meanwhile, however, those two edicts being preserved in their pristine integrity, by one of which it is prescribed that Bishops live in perpetual celibacy, and by the other that, after sacred Orders have been received, it is no longer licit for clerics to contract nuptials.²⁹⁸ - Whence it happens that SACRED ORDER is among the Greeks, as among the Latins, a diriment impediment of contracting marriage; but the use of marriage

²⁹⁰ *Suppl.*, q. 35, a. 1, ad 3.

²⁹¹ Sess. 22, cap. 1, de Ref.

²⁹² 2.2, q. 184, a. 8.

²⁹³ Cf. *Regolam. di vita per un sacerdot. secol.* (Edit. Turin, tom. 3, p. 859).

²⁹⁴ Book VI, 806.

²⁹⁵ *Ibid.*, 807, and *Exam. Ordin.*, n. 59.

²⁹⁶ Cap. *Cum olim*, 6, de cleric. conjug.; cf. Gury-Cretoni, tom. 2, p. 638.

²⁹⁷ Cf. St. Alphonsus in Trid. sess. 23, n. 40-54.

²⁹⁸ Cf. Eminent Card. Pitra, *Jur. eccl. graecorum historia et monum.*, tom. 2, p. 30.

(if married men have been ordained) is gravely illicit only to Bishops, while among the Latins it is gravely illicit to all clerics constituted in Sacred Orders (recall what was said n. 1939, 2, and 2013).

2201. - Will you ASK whether the obligation of celibacy arises immediately from the precept of the Church, or mediately, namely from the vow which is emitted in Ordination itself? - R. Both opinions, according to St. Alphonsus, are probable; but the second, which says that this obligation arises from a vow, is more common and more probable. For this is expressly said in various chapters of canon law; and moreover, if the obligation were from the law of the Church alone, the Supreme Pontiff could release all priests from it: which is against the common opinion of the Doctors.²⁹⁹

From these things you will resolve: 1. The Church can dispense in the vow of continence annexed to sacred Orders, as in all other vows.³⁰⁰ Yet it never dispenses with those constituted in Sacred Orders except under this condition, that the dispensed be altogether removed from clerical offices.³⁰¹

2. If someone, in receiving Order, expressly did not wish to vow chastity, he would nevertheless be held to celibacy: not indeed by force of the vow, which he did not emit; but by force of the precept of the Church, which would bind him to chastity from a motive of religion when the vow is lacking.³⁰²
3. If someone were ordained before the use of reason, certainly he would not be held to celibacy. But whether one Ordained before puberty would be held is disputed probably on both sides.³⁰³
4. If someone is ordained through extrinsic fear unjustly inflicted, and does not have the intention of receiving Order, he is not validly ordained, nor is he held to chastity or to the Breviary. Indeed, even if from fear he consented to Ordination, it is more probable that he is not held to the burdens; because his vow is more probably to be judged invalid. Nevertheless, it is expedient that one so Ordained seek dispensation, if he does not wish to exercise the Order but to enter marriage. But he would be held if the fear had been justly inflicted, or if the Ordained man knowingly ratified his ordination, e.g. by spontaneously exercising the Order.³⁰⁴

2202. - Note. The law of celibacy is most fitting to the clerical state, and morally necessary to the end of the Church. - The reasons are: 1) The holiness and dignity of the Eucharistic Sacrifice and of the other mysteries, which are to be handled by ministers of the altar. - 2) The office of teaching and exhorting: for a married priest cannot with perfect authority and efficacy teach the most holy truths of the Gospel, and especially opportunely exhort virgins and widows to continence. - 3) The administration of the Sacraments; for how could the Christian faithful, unless sacred ministers excelled in the vigor of chastity, be induced to open candidly to them the secrets of their consciences, and how would they show to the Sacraments themselves that highest reverence which they merit? - 4) Care of the sick, and generally ministries of charity; for souls empty of carnal cares and affections, and full of the spirit of Christ, pour themselves out into charity and into most abundant beneficence, as is everywhere established from the works of Catholic charity.³⁰⁵ - See more among the dogmatic Authors, or Canonists.

§ 3. On The Canonical Hours. 2203. - The CANONICAL HOURS are vocal prayers instituted by the Church and, from her precept, to be paid to God by persons deputed to this.

They are customarily called by various names. They are called the Breviary, either because they briefly commemorate the oracles of the Scriptures, the sayings of the Fathers, and the deeds of the Saints; or because they are a compendium of the longer prayers which in ancient times had to be recited. - They are also called: the ecclesiastical Office, because they are paid in the name of the Church; the canonical Office, because they must be paid according to the rules of the canons; the divine Office, because they have been instituted for the honor and worship of God.

The canonical Hours are numbered SEVEN, namely: Matins with Lauds, Prime, Terce, Sext, None, Vespers, and Compline. - Matins with Lauds and Vespers are called the MAJOR HOURS, the others MINOR or little HOURS.

The canonical Hours, as regards substance, repeat their ORIGIN from the very times of the Apostles, as is established from Acts of the Apostles 2:42, and more manifestly from the Apostolic Constitutions, lib. 8, can. 34, where these things prescribed to Clerics are read: "Make prayers in the morning, at the third hour, sixth, and ninth, and in the evening and at

²⁹⁹Book VI, 808; cf. Konings, n. 1085.

³⁰⁰Book VI, 807.

³⁰¹Cf. *Acta S. Sed.*, I, 221; II, 443; VI, 85.

³⁰²Book VI, 809, dub. 2.

³⁰³Ibid., 810.

³⁰⁴*Exam. Ord.*, n. 59; cf. De Angelis, lib. 1, tit. 11, n. 8.

³⁰⁵St. Alphonsus in Trid. sess. 23, n. 40 sqq.; Scavini, lib. III, n. 598.

cockcrow.”³⁰⁶ But as regards the FORM in which they are recited today, it must be said that the canonical Hours are the work of the Roman Pontiffs: first (in the fourth century), St. Damasus, using for this the work of St. Jerome; then (in the fifth century), Gelasius in the Roman Council; then (in the sixth century), St. Gregory the Great; then (in the thirteenth century), Gregory IX, who reduced them into a briefer form; afterward (in the sixteenth century), St. Pius V; then (in the seventeenth century), Clement VIII and Urban VIII;³⁰⁷ and finally (in our times), Leo XIII.³⁰⁸

With these things having been premised, there must be explained: 1. what is the obligation (whether for Clerics, or also for Religious) of reciting the canonical Hours; 2. in what form and manner they must be recited; 3. what are the causes excusing from recitation.

I. - On The Obligation Of Reciting The Canonical Hours. 2204. - Principles. I. The OBLIGATION of reciting the canonical Hours arises FROM A THREEFOLD title, namely: from the title of sacred Order, from the title of ecclesiastical Benefice, and from the title of Religion bound to choir. Thus all.

1. From the title of ORDER, Clerics constituted in Sacred Orders are bound, even those suspended and excommunicated. “For,” says Benedict XIV,³⁰⁹ “the daily task of the canonical Hours coheres with sacred Order; and the more common opinion of theologians teaches that it was received by ancient tradition and placed in custom by immemorial usage.”

This obligation begins from the Hour corresponding to the hour at which the subdiaconate was conferred; whence, if the Order is conferred at the eleventh hour in the morning, the obligation begins from Sext.³¹⁰

2. From the title of BENEFICE, all beneficiaries are bound, even if only tonsured, provided they have a right in the thing or full possession of the benefice: which must not be too slight (i.e. which reaches at least a third part of support), and from which they receive or will receive fruits.³¹¹ Thus from the decree of the Fifth Lateran Council, declaring: “We establish that anyone having a benefice, if after six months, the benefice having been obtained, he has not said the divine Office, does not make the fruits his own, in proportion to the omission.” But he who, after admonition, continues to omit the recitation of the Office can also be deprived of the benefice. - St. Pius V decreed besides, in the Constitution *Ex proximo*, that he who omits Matins restore half the part of the fruits corresponding to that day; he who omits the other Hours, the other half; but he who omits only one of the little Hours, a sixth part. - And the same must be said if someone, through several light omissions during the Office of the day, reaches grave matter. - Nor is one omitting the Office on one day excused from restitution if he supplies on another.³¹²

But this restitution must be made before every sentence; because recitation is absolutely necessary for gaining the fruits. - Further, it must be made to the poor, or to the fabric of the church, or to the house of the benefice, or for increasing its fields. Similarly, it can be applied to Masses for the dead; because souls in purgatory are truly poor.³¹³ Nor can it be supplied by any alms which the beneficiary previously made from the fruits of his benefice, as is established from proposition 33 condemned by Alexander VII. But if someone after the omission has given alms, being either forgetful or perhaps ignorant of the restitution to be made, he can probably compute them.³¹⁴

It is said in the decree: after six months; from which it follows that a beneficiary who neglects the Office during the first six months indeed sins gravely against religion, but not against justice, and therefore is not held to restitution.³¹⁵

Will you ASK whether a beneficiary ought to restore ALL THE FRUITS according to the Offices which he omitted? - R. A simple beneficiary, who has only the burden of wearing the habit and tonsure, must restore all the fruits. But other beneficiaries are held to restore only those fruits which correspond to the burden of the Office. “The reason is both because the bull of St. PIUS V has been received thus and has been explained thus by usage, as being more conformable to natural equity; and because it seems harsh that Bishops, pastors, and chaplains, who bear other burdens, should be obliged in the same manner as simple beneficiaries. Therefore they say that a Bishop or pastor is held to restore a third or a fourth (or, as others think, a fifth) part of the fruits, retaining the others for the other burdens which they satisfy; - Canons, half

³⁰⁶Book IV, 141.

³⁰⁷Cf. Thomassin, *Vetus et N. Eccl. Disc.*, P. 4, lib. 1, cap. 40 (al. P. 1, L. 2, c. 84, n. 11, 12, 13).

³⁰⁸Cf. Brief, 28 July 1882.

³⁰⁹Const. *Eo quamvis tempore*, § 43, 4 May 1745 (cf. Cap. *Dolentes*, de celebratione Missar.).

³¹⁰Book IV, 140; *Exam. Ord.*, n. 61.

³¹¹Book III, 674; *Exam. Ord.*, 67.

³¹²*Exam. Ord.*, 61; Book III, 663, 667; cf. 1 *El. qq. ref.*, n. 27, 28, 29.

³¹³Book III, 672.

³¹⁴Book IV, 153; *Exam. Ord.*, 62, 63.

³¹⁵Book IV, 145, fin.

the part (and, according to some, only a fourth); those having a chaplaincy, half or a third part (for a chaplain is held to the Office, since any chaplaincy to be conferred by a Bishop, and erected by his authority, is truly a benefice, even if it is removable at will; otherwise, if it is not erected by authority of the Bishop, although it is conferred by him). The reason is that all these receive fruits not only for the Office, but also for other burdens.”³¹⁶

3. From the title of RELIGION assigned to choir, all Regulars solemnly professed who come under the name of Choristers, although they have not been promoted to Orders nor are to be promoted to them, are bound under grave sin to the canonical Hours, whether publicly in choir or privately.

This obligation arises from custom already prescribed and having the force of law among Regulars assigned to choir. But the obligatory force of this custom is established both from the fact that it has been constantly observed by Regulars and by Nuns and with great inconvenience, and from the fact that Prelates have always gravely reprehended transgressors. But if, says St. Alphonsus, in some Religion it were established that there is no such custom, such an obligation would not be in it.³¹⁷

It was asked: “Whether Professed of simple vows, which must be premised to the profession of solemn vows according to the encyclical letters given on 19 March 1857, are held to the divine Office?” And the Sacred Congregation on the State of Regulars, at the command of Pius IX, responded, on 6 August 1858: “that they are not held to private recitation, but nevertheless must be present at Choir as those solemnly Professed.”³¹⁸

2205. - St. Alphonsus further adverts:³¹⁹ 1. “No individual Religious or Nun is held under grave sin to say the Hours in choir, provided, however, that the choir is not taken away.... But paucity of religious excuses the whole Community from choir. Therefore, unless there are present at least four available ones (i.e. neither sick nor legitimately occupied), there is no obligation of choir.”

2. Prelates sin gravely if from negligence they permit a notable part of the Office to be omitted in choir; because they are bound to protect and preserve regular observance.³²⁰
3. Religious dwelling with permission outside the cloisters are held to the Office; likewise, if they are fugitives, or imprisoned. - But otherwise, if they have been ejected, or condemned to the galleys.³²¹
4. Lay brothers ought, from the prescription of the Rule, to recite certain prayers, but not under grave obligation.

2206. - II. The obligation of reciting the canonical Hours is so GRAVE that everyone upon whom this duty is incumbent sins gravely if, without legitimate cause, he omits the whole Office of one day, or a notable part of it. The reason is because he violates a precept in grave matter, namely in matter which pertains to the most excellent virtue of religion. - Yet this omission, according to the truer opinion, is not a sevenfold sin, but only one. “But if someone omitted several Hours from intentions morally interrupted, then he would commit several sins.”³²² (cf. n. 328, Rule 32; n. 331, 3).

Furthermore, in assigning what is that notable part whose omission would be a mortal sin, there is not one opinion of all theologians. - As far as St. Alphonsus is concerned, having rejected as improbable the opinion of those who affirm that the omission of one whole little Hour is light matter, he embraces the opinion of Sanchez, who says that the matter is light whenever it does not reach the quantity of one entire little Hour. Hence it is probable that he does not sin gravely who omits all Vespers of Holy Saturday. But he sins gravely who omits one entire Nocturn, or even three Lessons with the responsories, if they are such that they equal a little Hour. - But neither would he be excused from mortal sin who recited only very little from a little Hour.³²³

2207. - Two things here come TO BE NOTED: 1. There is a grave obligation of reciting the Office of the Dead on the day of the Commemoration of all the dead; likewise, of reciting the Litanies on the feast-day of St. Mark and during the three days of Rogations.³²⁴ - 2. Today there is no obligation to recite, on the days assigned in any month, the little Office of the Blessed Virgin Mary, the Office of the Dead, the penitential Psalms, or the Gradual Psalms. Except if a custom of reciting

³¹⁶Book III, 673.

³¹⁷Book IV, 142.

³¹⁸Cf. Bizzarri, p. 908.

³¹⁹Book IV, 143.

³²⁰Ibid., 143; *Exam. Ord.*, n. 61.

³²¹Book IV, 142.

³²²Ibid., 148; *Exam. Ordin.*, n. 69.

³²³Book IV, 147.

³²⁴Ibid., 161; *Exam. Ordin.*, n. 72; *Conf. dir.*, XVI, 21; cf. *Acta S. S.*, XIII, p. 429.

them flourishes somewhere: which, however, does not oblige the individuals outside choir, but only the Community. Thus the Sacred Congregation of Rites, 10 January 1609.³²⁵

It is ASKED. What in DOUBT whether something from the Office has been OMITTED?

Resp. 1. In a STRICT doubt (i.e. negative, or positive and probable on both sides) the part about which you doubt certainly must be recited. Except if an equitable interpretation of the law, or a circumstance of fact, furnishes a legitimate excuse. Thus “the scrupulous are not to be obliged to repeat, because in these persons, for the most part, doubts are not true doubts, but empty apprehensions.”

Resp. 2. In a BROAD doubt, i.e. if you have either a unique probability, as often happens, or another founded presumption that you have omitted nothing, you are not held to repeat. “Whence the Authors teach that you are well excused from repeating if you do not remember that you said something, and you have a just conjecture for believing that you said it; for example, if you remember that you began a psalm, a lesson, or an Hour, and afterward, not distracted on purpose, or not interrupted, you find yourself at the end of the Hour, reading or reciting by memory those things in which ordinarily you are not accustomed to err.” - Likewise, “if ordinarily you are not accustomed to say a later Hour except after the prior one, you can prudently believe that you have omitted nothing”³²⁶ (cf. n. 50 and 98, 2).

II. - On The Form And Manner Of Reciting. 2208. - The canonical Hours must be RECITED: 1. according to the prescribed form; 2. according to the due order; 3. at a suitable time and place; 4. vocally, integrally, and continuously; 5. attentively and devoutly.

Now concerning each, several things.

I. The canonical Hours must be recited ACCORDING TO THE FORM PRESCRIBED by the Church; whence:

1. The GENERAL FORM must be observed by all, according to the Constitution *Quod a nobis* of St. PIUS V, given on 7 July 1568, by which the Roman Breviary is prescribed for the whole Latin Church, and all other Breviaries are abolished, unless by institution or legitimate custom they precede by 200 years. Indeed, in the other Constitution *Ex proximo*, the Pontiff declares that those obliged to the Hours will not satisfy their duty if they use another Breviary, and therefore that Beneficiaries do not make their fruits their own. (Except if a legitimate dispensation is added.)³²⁷
2. The SPECIAL FORM of one’s own Calendar or Directory must be observed, so that the Office is recited on any given day as it is prescribed there, even if the error seemed manifest, e.g. as regards the transfer of some Feast: according to the decision of the Sacred Congregation of Rites, 23 May 1835,³²⁸ in Namurcen.

But in composing the proper Calendars of dioceses, the decree of the Sacred Congregation of Rites approved by URBAN VIII must absolutely be observed: where the Ordinaries of places, both secular and Regular, are forbidden, by their own authority, to change the rite placed in the Roman Calendar or Rubrics of the Breviary into a higher rite, or to extend Offices conceded for one place to another place.³²⁹ - Likewise, proper Offices approved by the Sacred Congregation of Rites for some diocese or for a religious Order obtain the force of law, although they have the character of a privilege. Moreover, particular Offices granted only in a permissive manner become obligatory if they have once been received by use (Sacred Congregation of Rites, 2 May 1801).

2209. - Note. 1. Regulars dwelling outside the monastery are held to the Breviary of their Order; but if they are assigned to choir and are staying in another Convent of their Order, they ought to follow the Office of that Convent; “because everywhere they are held to be present in choir.”³³⁰ - 2. Canons and Beneficiaries are held to the Office of their own Church, even if they are absent from it. Likewise Masters and students dwelling in a Seminary are held to the Office of the Church attached to the Seminary, although they celebrate Mass elsewhere.³³¹ - 3. Clerics who are not beneficiaries, if they are absent from their own diocese, can conform themselves to the Office of the place where they are newcomers; but they are by no means held to this. Indeed, it is also preferable that one’s own Office be retained, lest confusion arise. (Sacred Congregation of Rites, 12 November 1831, Marsorum, to 50.)³³²

³²⁵Gardellini, n. 401.

³²⁶Book IV, 150, with 2 *Elench. qq. ref.*, n. 1.

³²⁷Cf. Gury, II, 56; and Bouix, *de jure liturg.*, P. 4, c. 2, § 4.

³²⁸Gardell., n. 4746, to 2.

³²⁹Cf. Gardellini, n. 4501, to 6 (in Corduben., S. C. R., 20 September and 12 November 1806); cf. Carpo, *Kalendar. perpetuum*, p. 134.

³³⁰Gardell., n. 1575 (S. R. C., 15 December 1646).

³³¹Ibid., n. 5145 (S. R. C., 7 September 1850).

³³²Ibid., n. 4669; Book IV, 161, q. 3.

2210. - II. The canonical Hours must be recited both according to the order of OFFICES and according to the order of HOURS.

- A) The ORDER OF OFFICES is found either in the Calendar of Feasts of each diocese or Religion, or in the Rubrics for their transfer, where several concur at the same time. He who knowingly and without reasonable cause changes this order, by reciting for the Office of the day another Office, sins, according to the diversity of Offices, either gravely or lightly: he sins gravely if he recites a notably shorter Office, as is established from proposition 34 condemned by Alexander VII: "On Palm Sunday one reciting the paschal Office satisfies the precept"; but he sins lightly if he changes the Office into an equal or almost equal one; because he satisfies the obligation as to substance; provided, St. Alphonsus adds, that this is done rarely.³³³

But the exchange is devoid of every sin if it is made on account of a reasonable cause, for example if someone cannot easily have the proper Office, or if he recites another approved Office with a companion; "because the very association excuses, provided the Office is not notably shorter."³³⁴ And thus Chaplains and table-companions of Cardinals or Bishops can conform themselves to them in the Office. The same must be said of those who undergo spiritual exercises among Religious. But otherwise, concerning the Chaplain of Nuns, from the Decree of the Sacred Congregation of Rites, 21 March 1795.³³⁵

It is ASKED. What ought he to do who notices that he has ERRED in the Office?

Resp. 1. If he notices the error after the complete recitation, he is not held to repeat; because the Church is not presumed to wish to oblige someone on one day twice to this burden. - Hence the common axiom: Office for Office. Nevertheless, if the Office had been notably shorter, he ought to supply the defect: e.g. if in place of the Office of a Sunday he had recited the Office of a Saint, he ought to add nine Psalms, taking them from the first Nocturn.

Resp. 2. If he notices the error after a recitation not complete, e.g. after Matins has been recited, he can either continue, or recite the rest from the prescribed Office. This latter is to be preferred, according to that: An error is corrected where it is detected.³³⁶

Resp. 3. He who has erred cannot, on the day on which the Office already recited occurs, say the omitted Office; but he ought to recite again the one recited, so that thus he may conform himself to others. Nor can one who has omitted an Office transfer it to another day, even one not impeded. Thus the Sacred Congregation of Rites, 17 June 1673.³³⁷

2211. - B) The ORDER OF HOURS is that which is indicated in the Breviary, prescribing namely that first Matins with Lauds be recited, then the little Hours, that is, Prime, Terce, Sext, and None, and finally Vespers with Compline. Nor ought Matins of the following day to be recited before the Office of the present day has been completed.

Inversion of this order: 1. OUTSIDE CHOIR and contempt having been set aside, is only venial, even if it is done frequently; because the substance of the precept remains preserved. - Indeed, it is devoid of every fault if it is done from a reasonable cause, e.g. so that you may conform yourself to the choir, or to a friend, etc. 2. IN CHOIR, it is controverted whether it is a grave sin (and the same controversy exists concerning a change of the time of the Hours). The affirmative opinion is probable, but the negative is more probable; because there is no certainty about a grave precept.³³⁸

2212. - III. The Hours must be recited at a suitable TIME and PLACE. - For these two complete the order.

- A) As regards TIME, thus formerly the Hours were recited: Matins after midnight, Lauds at dawn, Prime after sunrise, Terce in the morning at the ninth hour, Sext at midday, None at the third hour in the afternoon, Vespers at sunset, Compline at the twilight of night.³³⁹

But according to present discipline: the legitimate TIME, within the limits of which the precept obliges under grave sin, is from midnight of one day until midnight of the following day, so that before the aforesaid first limit no one is held to begin, and after the second no one can satisfy his obligation.³⁴⁰ But each one is free in this to follow either true time, which a sundial indicates, or mean time, which public clocks signify. Thus from the Response of the Sacred Penitentiary,

³³³ *Exam. Ordin.*, n. 70; Book IV, 161, q. 3, v. *Secunda*.

³³⁴ *Elench. qq. ref.*, n. 59.

³³⁵ *Exam. Ordin.*, n. 71; Gardellini, n. 4464, in *Conimbricen*.

³³⁶ Book IV, 161, q. 5.

³³⁷ Gard., n. 2634.

³³⁸ Book IV, 170-171.

³³⁹ Cf. Ferraris, V. *Officium*.

³⁴⁰ Book IV, 173, 174, fin.

18 June 1873.³⁴¹ But the suitable TIME, which of itself obliges under light sin, unless a reasonable cause prevents it, is determined in the following manner:

1. The time of Matins, outside choir, from privilege or already prescribed custom, begins from the hour of Vespers of the preceding day (i.e. as soon as the sun becomes nearer to its setting than to midday), and lasts until the following midday. - And this likewise holds for the Office of the Dead outside choir; but not for the Litanies, which must be recited on the very day assigned.³⁴²

But whether one satisfies by saying Matins at the SECOND HOUR after midday? - Some with the Salmanticenses affirm, saying that an anticipation of this sort, by force of a custom already introduced, is licit; but it must more truly be denied, both because there is no certainty about the aforesaid custom, and the tables which are customarily composed in various places are opposed to it; and because (if northern regions in the month of December are excepted) it is not yet the proper hour of Vespers, and therefore the ecclesiastical day has not yet begun.³⁴³ The Holy See is indeed accustomed frequently to grant the privilege of beginning the recitation of Matins at the second hour after midday, and indeed at every time of the year; but it is accustomed to add this clause: "a reasonable cause being added."³⁴⁴ Therefore, if a reasonable cause is lacking, if one endowed with the privilege anticipates the Office, he indeed satisfies his obligation, but he sins venially.

2. The time of the little Hours extends from dawn until midday. Yet they are licitly recited already from midnight; but None (and according to many also Sext) can be recited after midday without cause.³⁴⁵
3. The time of Vespers and Compline (outside choir) runs from midday to midnight. But on Lenten ferias, from the first Sunday, Vespers (not Compline) can (and in choir must) be recited before the meal: in memory of the ancient discipline according to which the fast was not broken before the recitation of Vespers.³⁴⁶

It was said above: unless a reasonable cause prevents it. But what cause must be judged REASONABLE, St. Alphonsus explains thus:³⁴⁷ "That someone may licitly anticipate or postpone the due time of the Hours, any useful or honorable cause suffices, namely a sermon to be prepared or heard, danger of a supervening occupation or labor, greater devotion or rest, a more suitable time for studying,

and the like. Yet deservedly Concina says that mere greater convenience, without another honorable motive, does not suffice for excusing."

2213. - B) As regards PLACE, the divine Office in Cathedrals, in Collegiate churches, and in the churches of Regulars assigned to choir, must be recited publicly, in the place destined for this, or in choir. - But privately it can be recited in every place, provided the recitation is made without contempt, and provided the place is not incompatible with attention and intention.³⁴⁸

It is ASKED. What concerning the POSTURE OF THE BODY in reciting?

Resp. 1. Not to observe, in choir, the posture prescribed by the Rubrics, e.g. by not standing, not genuflecting, etc., is a light irreverence, which does not exceed venial fault. - 2. Outside choir, to omit it is devoid of every fault, although it is laudable to observe it. - "Yet the Doctors think that he is not excused from venial sin who without cause would recite the Office lying in bed"; for such a posture is not free from irreverence. Otherwise, if someone recited thus because he is kept in bed by infirmity or weariness, or because he passes a sleepless night.³⁴⁹

2214. - IV. The canonical Hours ought to be recited WORTHILY, i.e. vocally, integrally, and continuously. And indeed by these words is expressed the DUTY OF THE MOUTH which, according to the Fourth Lateran Council, Cap. *Dolentes*, must be carefully fulfilled.

We said: 1. VOCALLY, and indeed distinctly: because the Office is a vocal prayer, and not purely mental. - Hence, it does not suffice to read only with the mind, or to run through with the eyes alone. Nor is it enough to recite in the throat, or between the teeth, or by syncopating, or with a stammering tongue, voluntarily abbreviating, or rushing. Yet according to

³⁴¹ *Acta S. Sed.*, vol. VII, p. 399.

³⁴² *Exam. Ordin.*, n. 74; Book IV, 174, q. 2 and 3.

³⁴³ S. R. C., 16 March 1876 (ap. Gardellini, n. 5653).

³⁴⁴ *Exam. Ordin.*, n. 74; Book IV, 174, q. 1, and 1 *Elench. qq. ref.*, n. 51 (cf. *Vindic. Alph.*, tom. 2, p. 586; and *Collect. S. Sed.*, n. 1272-1274).

³⁴⁵ Book IV, 173, v. *Tempus*.

³⁴⁶ Cf. Carpo, *Biblioth. liturg.*, P. 3, n. 106.

³⁴⁷ Book IV, 173.

³⁴⁸ Book IV, 179.

³⁴⁹ *Ibid.*, 179, qu. 4; cf. Konings, n. 1106.

the more probable opinion, it is not required that the one reciting hear himself; for, as Sylvius teaches, such an obligation is proved by no law.³⁵⁰

Therefore, if someone recites the Office with a companion, both ought to use such a voice that one hears the other, and the recitation ought to proceed so distinctly that neither begins his own verse until the other has completed his; for a companion cannot morally make his own what he does not hear, and accordingly he does not recite the Breviary integrally: which nevertheless is required. - Whence a deaf man, who in choir utters the versicles of his own part, but does not hear the versicles of the other part, ought to supply, by reciting softly what the others sing. - On the contrary, those who, while others are reciting, perform certain things necessary for the choir, even through an entire psalm, are not held to supply what was omitted; "for then through the companions that is supplied which perhaps they themselves do not sufficiently perceive, provided the omission is not too prolonged. - The same must be said of the organist, if he himself utters the versicles of his part."³⁵¹

If you recite the Office with a companion who cuts off syllables, but in such a way that the sense is not notably changed: it is probable that you are not held to repeat, unless it is clear to you that the companion omitted a notable part. "Yet I would think," St. Alphonsus adds, "that you are not excused from venial sin if of your own accord you recite with such a mutilating companion, unless some cause is present, namely if you are invited by a Superior or a very grave person, or for a similar cause."³⁵²

We said 2. INTEGRALLY. Now to integrity belong the *Pater*, *Ave*, and *Credo*, at the beginning and end of the Hours, as is noted in the Rubrics. Outside choir, the antiphon of the Blessed Virgin Mary is not to be added by precept, except at the end of Lauds and Compline. - Likewise, the *Confiteor* and *Misereatur* at Prime and Compline can be recited alternately with a companion, but they ought not to be, except in choir (S. R. C., 12 November 1831 in Marsorum to 42).³⁵³ Nor do the prayers *Aperi* and *Sacrosanctae* belong to the integrity of the Office, though they are laudably and most usefully recited.³⁵⁴

We said 3. CONTINUOUSLY, i.e. without interruption in the same Hour, unless a reasonable cause excuses. Yet the common opinion teaches that Lauds can be separated from Matins even without any cause. But when they are separated, Matins having been finished, the *Pater noster* must be said (which moreover ought to be done after any Hour whatever) with the prayer of the Office of the day; but Lauds are to be begun as in the Psalter.³⁵⁵ The Nocturns can probably be separated from one another, at least for three hours, according to the ancient rite, or even for a longer time, with cause.³⁵⁶

It must be noted: 1. Among the JUST CAUSES of interrupting the Office, especially if it is long, as the Office of Sunday, St. Alphonsus counts the following: one's own or another's utility, courtesy, devotion, execution of the commands of Superiors, the hearing of the confession of someone who would not willingly wait. - You can similarly interrupt if something suddenly seems to you to need to be done or noted down, so that you may remove distraction, or so that you may not forget the matter; and *a fortiori* it is licit to interrupt, in order to elicit some pious affection of the heart or some little prayer. We said little prayer; for long prayers would be mixed inopportunistly with the recitation of the Office.³⁵⁷

2. The interruption of some Hour made without reasonable cause, and prolonged for a notable time, cannot be excused from venial sin. - Yet the whole Hour is not to be repeated, although a great interval, for example a whole night, is interposed; because the individual psalms, indeed the individual verses, have a complete signification, and are sufficiently united either through the intention of continuing, or through the subsequent recitation.³⁵⁸

2215. - V. The canonical Hours ought to be recited with ATTENTION AND DEVOTION: in which two things is contained the duty of the mind and heart.

- A) As regards ATTENTION, it is certain that some attention is required in the recitation of the Office. A DOUBLE attention can be had, namely external and internal. 1. EXTERNAL attention consists in this, that nothing be done which is incompatible with the recitation: as it would be to chat, write, attentively listen to others speaking, and other things of this kind; but not to walk, wash oneself, gather herbs, flowers, set the fire, make the bed, comb the head, look at a hill, a river, etc., since such actions, of themselves, do not exclude attention to other things. Thus

³⁵⁰ *Resolut. variae*, verb. *Horae canonicae*, III; Book IV, 163; Gury, II, 81.

³⁵¹ Book IV, 143, note 3; and 163, qu. 2 and 3.

³⁵² Book IV, 165.

³⁵³ Gardellini, n. 4669.

³⁵⁴ Scavini, II, 207.

³⁵⁵ S. R. C. in one Marianopolit., 18 May 1883, to IV (*Vid. Nouv. Rev. theol.*, XV, p. 498); likewise, 7 February 1886 (*Monit. eccles.*, vol. IV, P. 2, p. 55).

³⁵⁶ Book IV, 167; *Exam. Ordin.*, n. 74.

³⁵⁷ Book IV, 168.

³⁵⁸ *Ibid.*, 168.

commonly with Navarro, Suarez, etc. “But Bonacina rightly adverts that some actions, with respect to one person, perhaps are distractive, but with respect to another are not.”³⁵⁹

2. INTERNAL attention is placed in the application of the mind to that which is being done; and this can be threefold, namely: to the words only, that they may be duly pronounced; to the sense of the words, that they may be rightly understood; and finally to God or to divine things, so that the mind and thought of the one reciting are fixed either upon God himself, or upon his attributes, or upon the mysteries of the Lord’s Passion, or upon the deeds of the Virgin Mother of God or of the Saints.³⁶⁰

With these things having been premised, THREE things are to be established as certain: 1. He who, while reciting the divine Office, does not have at least external attention, does not satisfy his obligation: whence, a Beneficiary voluntarily distracted in this way is held to restitution; because he certainly does not make his fruits his own. Thus all.³⁶¹ - 2. He who cares nothing about internal attention sins at least venially; because he acts irreverently toward God³⁶² (cf. n. 372, 6). - 3. Attention to the words suffices, with the general intention of worshipping God.³⁶³

2216. - It is ASKED. Whether INTERNAL attention is required under grave obligation?

Resp. 1. Very many indeed deny it with St. Antoninus and St. Thomas, teaching that it is true prayer which is made with the intention of praying and external attention. - The reason is both because prayer, according to St. Damascene, is a petition of fitting things from God: but it is not repugnant that our petitions can be represented by us to God even with an actual wandering of the mind; and because, if internal attention were of the essence of prayer, not even one involuntarily distracted would satisfy his obligation; for once the essence of a thing has been destroyed, although inculpably, the thing itself is destroyed. This opinion appears sufficiently probable, so that a Beneficiary, relying upon it, is not held to restore fruits received in good faith.

Resp. 2. But the more common and more probable opinion affirms it; because without internal attention prayer cannot consist, which is generally defined: the elevation of the mind to God; whence, by the very fact that the Church prescribes prayer, she also prescribes internal attention. And with this opinion there seem to harmonize both the words of the Lord, complaining about the Jews (Matt. 15:8): “This people honors me with lips: but their heart is far from me”; and the words of Trent, prescribing (sess. 24, cap. 12) that: “All (namely Canons) be compelled to perform the divine Offices... and in choir... reverently, distinctly, and devoutly to praise the name of God with hymns and canticles.”³⁶⁴

But St. Alphonsus NOTES that even if this latter opinion is held, two things nevertheless are required in order that someone be said not to satisfy the Office: namely, that he distract himself voluntarily, and then that he fully notice his distraction. - It is said that he fully notice it; for the Doctors commonly hold that one reciting does not sin in any way if, when he notices the distraction, he uses moderate diligence for attending to the recitation. But if he half-fully notices the distraction, and does not retract it, he indeed sins venially; but he substantially satisfies the Office, since the first will of attending always perseveres, as long as it has not been revoked with full advertence.³⁶⁵

2217. - B) As regards PIETY or devotion, at least that is required and prescribed by which the recitation of the Office becomes an act of religion. - Hence he would not satisfy the precept who read the Hours in order to acquire knowledge for himself, to accommodate himself to a friend, etc.; for the intention of praying is necessary, not indeed actual and explicit, but virtual and implicit: which then is already had when, according to custom, the breviary is taken up so that the precept may be fulfilled³⁶⁶ (cf. n. 213).

The things we have said are valid concerning the bare observation of the PRECEPT. - But St. Alphonsus earnestly commends this to all, that they pay the divine Office with the greatest ardor of piety, extolling its EXCELLENCE with these praises: “A hundred private prayers cannot have so great a price as one prayer of the divine Office includes; because this is offered to the Lord in the name of the whole Church, with the words of God himself.... Let us firmly persuade ourselves that, after the most holy Sacrifice of the Mass, no more precious treasure is found in the Church than the divine Office, from which daily we can draw rivers of graces.”³⁶⁷

³⁵⁹Book IV, 176.

³⁶⁰Ibid.

³⁶¹Book III, 669.

³⁶²*Conf. dir.*, XVI, 22, fin.

³⁶³Book IV, 176, v. fin.

³⁶⁴Book IV, 177.

³⁶⁵Ibid., v. *Caeterum*; *Exam. Ordin.*, n. 75.

³⁶⁶Book IV, 176.

³⁶⁷Opusc. *L’Officio strapazzato* (*Opp. ascet.*, III, 847).

But that this desirable piety, and due attention, may always accompany the recitation of the Office, the COUNSELS which the holy Doctor supplies in these words will help not a little: "1. At the beginning to form the intention of praising God; - 2. to renew the intention at the *Gloria Patri*, or at the beginning of each psalm; - 3. to represent to oneself some mystery of the Passion; - 4. carefully to guard the senses, and other things of this sort."³⁶⁸

III. - On The Causes Excusing From Recitation. 2218. - The principal causes which EXCUSE from the recitation of the divine Office are the following THREE: 1. impotence, 2. charity toward the neighbor, 3. dispensation.³⁶⁹

I. IMPOTENCE, whether physical or moral, excuses, because no one is held to the impossible. He who can recite a part is held to perform that; indeed, if the part is as great as a little Hour, he is held under grave obligation; for the obligation is divisible, as is established from proposition 54 condemned by Innocent XI (cf. n. 224). - But if the part which you can recite does not reach the matter of a little Hour, "not even under venial sin are you obliged to recite anything; because such a slight part, taken separately, is not judged appreciable for the end intended by the law."³⁷⁰

Hence: 1. Those laboring under grave illness are excused; likewise, those convalescing from grave illness (for some days, at the judgment of a prudent man) until their strength is restored; and this must be admitted even if they celebrated Mass, or read some book of recreation. - He who is certain that, on account of infirmity, he cannot recite the whole Office, and doubts whether he can recite a part, is excused from the whole Office, lest namely he be distressed by scruples, not knowing how far he can and is held to recite. The reason is because, in doubts of this sort, the natural law of preserving health prevails, and fear of grave harm is already a grave cause (cf. n. 223).³⁷¹

2. He is excused who in a time of persecution fears lest, from the recitation of the Breviary, he be betrayed.³⁷²

3. He is not excused who lacks the Roman Breviary, and has another at hand, for example Benedictine or the like; because by either one the substance of the precept can be fulfilled. And this, St. Alphonsus says, is the more pious, reasonable, and to-be-followed opinion. - Likewise, if, having the common Office and not the proper Office of that day, you are held to say the Hours from the common, as Croix with others more truly thinks.³⁷³

4. A blind man is not excused who knows by memory either the whole Office, or a notable part of it; but he is not held to commit to memory what he does not know, because this would be a means extrinsic to the precept. - On the contrary, one not able to recite alone is held to use a companion, if he can use him without his own grave inconvenience; because the use of a companion, in such a case, is judged an ordinary means of fulfilling the precept. - We said without his own grave inconvenience; because if a companion who would recite with you does not readily occur, or if you ought to pay him a stipend, you are not held to a means of this sort, extraordinary, unless you are a Beneficiary and wish to make your fruits certain.³⁷⁴

2219. - II. CHARITY excuses, that is, a grave occupation which cannot be omitted without scandal or notable detriment of the neighbor. The reason is because the natural precept of charity prevails over ecclesiastical law (cf. n. 682).

Hence a priest is EXCUSED, either totally or partially: 1. if through the whole day he receives confessions which he cannot defer; - 2. if unexpectedly he is summoned to a dying person, and afterward no time remains which he might spend on recitation; - 3. if he is held to prepare hastily a sacred sermon which he cannot omit without scandal or reproach; - 4. if he is occupied the whole day in settling quarrels or assisting the sick, e.g. in time of plague.³⁷⁵

2220. - III. DISPENSATION granted by legitimate power excuses. The reason is because what is of ecclesiastical law can be taken away by ecclesiastical power.³⁷⁶ Furthermore, dispensation is validly granted: 1. by the Supreme Pontiff in every case, even without cause; 2. by the Bishop

(or by a Regular Prelate, with respect to his own subjects); but only from a just cause, with someone in particular, and for a brief time. But a cause of dispensing exists when there is doubt about moral impotence, when recourse to the Pope is

³⁶⁸Book IV, 177, fin.; cf. Scavini, II, 198 sqq.

³⁶⁹Cf. Salmant., tr. 16, c. 3, punct. 6.

³⁷⁰Book IV, 158.

³⁷¹Ibid., 154, where there are more things.

³⁷²Ibid., 156.

³⁷³Ibid., 158.

³⁷⁴*Exam. Ordin.*, n. 76; Book IV, 158.

³⁷⁵Book IV, 156.

³⁷⁶Ibid., 159.

difficult, when dispensation is sought on account of a motive which recurs frequently, e.g. on account of infirmity. And the Vicar General himself can do this, provided he has received a special mandate from the Bishop.³⁷⁷

In Germany, and in distant regions, Bishops generally possess a more ample power. For there, by force of quinquennial faculties, they can grant to clerics that, in place of the divine Office, they recite the Rosary or other prayers, in the case in which they would not be able to carry the Breviary with them, or would be impeded by another cause.

2221. - Questions. ASK 1. Whether he who foresees an impediment is held to ANTICIPATE the recitation?

Resp. 1. If he foresees it on the preceding day, he is not held to anticipate Matins with Lauds; because the obligation of the precept has not yet begun, whence he is not held to use a privilege. - 2. If he foresees it on the day itself of the obligation, and can anticipate without great difficulty, he is held to this; because the precept presses for the whole day, and for any part of it; and therefore, within the latitude of the whole day, it must be fulfilled, namely at the time at which it can be done.³⁷⁸

ASK 2. What IN DOUBT, whether the cause of exemption is sufficient or not?

Resp. 1. In doubt whether the recitation will bring grave inconvenience upon you, you are not held to recite, as we have already said (n. 2218. Hence 1). - 2. In doubt whether you are excused in another way, e.g. by reason of labor, journey, charity to be exercised, etc., you are held to recite, unless a uniquely probable reason, or probable judgment, stands in your favor. But in this case it is better to remit the matter to the judgment of a prudent man, and especially to the judgment of the Superior, who can dispense in doubt.

§ 4. On Wearing The Habit And Tonsure. 2222. - I. All Clerics are held, from canon law, to carry TONSURE and the CLERICAL HABIT. This is established especially from the Council of Trent,³⁷⁹ which nevertheless left it to the judgment of Bishops to determine what garment is congruent. Therefore in this matter one must stand by the various decrees of places.³⁸⁰

Furthermore: 1. Beneficiary Clerics or those constituted in Sacred Orders sin gravely who for a notable time lay aside clerical dress, or who from contempt neglect to carry the crown and shorn hair. But what is to be understood here by a notable time cannot easily be defined. The Authors commonly do not condemn of mortal sin a priest who would go about without tonsure for six or eight weeks; but they say that one going about without clerical dress more easily sins mortally, on account namely of the scandal which, especially in certain regions, would arise from such insolence.³⁸¹

2. Clerics constituted in minor Orders do not sin gravely if they neglect to carry the habit or tonsure. Thus commonly the Doctors. Indeed, from the bull *Pastoralis* of Sixtus V (31 January 1589), he is excused from every fault who receives neither a pension nor other ecclesiastical goods exceeding the value of 60 ducats annually.

2223. - II. Clerics, even those constituted in Sacred Orders, are excused who lay aside the habit either FOR A BRIEF TIME, or FROM A JUST CAUSE of concealing themselves, e.g. to avert some grave harm.³⁸² - And hence it is that in certain regions, as in England and in the federated States of America, clerics, from the prudent concession of Bishops, neither wear the crown nor ever carry the cassock in public.

It is ASKED. What PENALTIES do Clerics not wearing the clerical habit incur?

Resp. 1. If they are in Sacred Orders or beneficed, and after the third admonition of the Bishop they do not amend themselves, they immediately lose the privilege of forum and canon³⁸³ (cf. n. 2234). - Indeed, "if, after they have been warned by their Bishop, they have not carried the habit..., they ought to be coerced through suspension from orders and office, and from benefice and fruits...; and also, if once corrected they offend again in this, even through deprivation of offices and benefices." Thus Trent, sess. 14, cap. 6, de Ref.

Resp. 2. If they are in minor Orders, and neither serve some church by command of the Bishop, nor by his permission are engaged in some school, they lose the privilege of forum even without any admonition.³⁸⁴ But where a Cleric, from

³⁷⁷Book IV, 159.

³⁷⁸Ibid., 155.

³⁷⁹Sess. 14, cap. 6, de Ref.

³⁸⁰Cf. Ferraris, verb. *Habitus*, n. 51 sqq. and V. *Clericus*, art. 1, from n. 23; cf. also St. Alph., *Notificazione* VI (*Opp.*, Edit. Taur., vol. IV, p. 719).

³⁸¹*Exam. Ordin.*, n. 49-50; Book VI, 825-826.

³⁸²*Exam. Ordin.*, n. 49.

³⁸³From cap. *Contingit* 45, de sent. Excom.

³⁸⁴Book VI, 827.

the disposition of law, loses the privilege of forum, he also loses *ipso facto* all other clerical privileges, so that he must be considered as a lay person.³⁸⁵ Thus from the Declaration of the Sacred Congregation of IMMUNITY, made on 20 September 1860, which nevertheless, according to certain Authors, extends itself only to clerics of the Pontifical Dominion.³⁸⁶

Article II.

On Those Things Which Are Prohibited To Clerics.

2224. - To Clerics generally are PROHIBITED the things which are unbecoming to their state, either because they draw the mind away too much from divine things, or because they bring chastity into danger. - Things of this kind are certain secular arts and offices, trading, games of chance, hunting and the bearing of arms, entrance into taverns, dances and comedies, and conversation with suspect women.

1. - Secular Arts And Offices. 2225. - I. As regards ARTS, by canon law every art which is judged contrary to the respectability of the clerical state is prohibited to ALL CLERICS, as the art of an innkeeper, butcher, jester, etc. - from Clement. *Dioecesis*, de vita et honest. Clericorum.³⁸⁷

Specifically, to Clerics INITIATED IN SACRED ORDER there is prohibited: 1. The public study of medicine, namely in public schools and Universities.³⁸⁸ - 2. The exercise of the medical and surgical art where there is need of incision, amputation, or cautery, and necessity is not present: and indeed under the penalty of irregularity, if mutilation or death follows from this (cf. n. 1940, 3). - Yet if an expert is lacking, and the case urges, the Cleric can without sin, and therefore without danger of penalty or irregularity, perform incision or cautery.³⁸⁹ Nor is he prohibited from giving his help to others, especially to the poor or relatives, and from aiding them with excellent counsels of the salutary art.³⁹⁰

2226. - II. As regards OFFICES, it is forbidden to Clerics in sacred Orders, or to beneficiaries: 1. that they act as judge in a cause of blood; likewise that they act as advocate or notary in secular courts: except in the case in which one's own cause had to be defended, or the cause of one's own Church, or the cause of a poor person or of a person joined by nearness (at least in the fourth degree), who would not find another defender; - 2. that they act as tutor or curator of minors, if an account must be rendered for goods administered; except in the case in which the wards or minors were near by consanguinity (or affinity); - 3. that they act as procurator of secular persons, if an account must be given concerning the procuration. The reason for all these things is that saying of the Apostle: "No one serving as a soldier for God entangles himself with secular business" (2 Tim. 2:4).

But although the office of procurator is generally forbidden, "I would nevertheless not dare," says St. Alphonsus,³⁹¹ "to condemn of mortal sin a cleric who, on account of such procuration, would not neglect his ministries; especially if he did this not for the cause of avarice, but in order to preserve more fittingly his own state and that of his family." For the law speaks only concerning him "who would so immerse himself in procurations of this kind that therefore he would be forced to neglect his ministries."

2. - Trading. 2227. - TRADING properly so called, or lucrative, is the purchase of a thing made for this end, that, the thing not having been changed, it be resold with profit. Improperly so called, or artificial, is the purchase of a thing made for this end, that, changed by art or industry, it be resold with profit, e.g. if from purchased wool cloth to be sold is made.

I. Trading PROPERLY SO CALLED is severely prohibited to RELIGIOUS, BENEFICED Clerics, and those who have been INITIATED IN SACRED ORDERS: as is established from innumerable witnesses of canon law, and especially from Trent.³⁹² Whence they sin gravely, indeed, they incur suspension and excommunication *ferendae sententiae* (and also the penalty of spoliation), if they trade frequently; but if rarely, and not in a great quantity, they are excused (at least from mortal sin) on account of smallness of matter, because the laws speak concerning one exercising it, such as he is not who posits one or another act.

³⁸⁵Cf. Scavini, I, n. 418.

³⁸⁶Piat, *Comment. in Const. AP. SED.*, p. 124.

³⁸⁷Book IV, 189; H. A., XIII, 60.

³⁸⁸Book IV, 132, v. fin.

³⁸⁹Book VII, 384, 385.

³⁹⁰Scavini, I, 427.

³⁹¹Book III, 838.

³⁹²Sess. 22, c. 1, de Ref.

But it does not matter whether the trading is exercised in one's own name, or in another's, or through others; for this is forbidden under the same penalties both by the bull *Apostolicae* of Benedict XIV, 25 February 1741, and by the constitution *Cum primum* of Clement XIII, 17 September 1759. - Whence, if business begun by a layman is transferred to a cleric by any title whatever, it must immediately be laid aside by him, even in the case in which the trading could be exercised through co-heirs or partners. But if they cannot be laid aside without detriment, continuation is indeed permitted by reason of necessity, but only for a time, and through an interposed lay person, and with the permission of the Sacred Congregation of the Council in Italy, or of the Ordinary outside Italy.³⁹³

2228. - II. ARTIFICIAL trading is not prohibited to Clerics, nor to Religious, provided they exercise it HONESTLY, and BY THEMSELVES. The reason is because to buy a thing so that, changed for the better, it may be sold more dearly is not properly to trade, but to obtain the reward of one's labor, as St. Thomas teaches³⁹⁴ with others. And this is clear from the example of St. Paul, who was of the tent-making art.

We said honestly, i.e. without scandal, without disgrace, and without detriment to one's own ministry; by themselves; because if things are changed by hired workers, another's labor is now judged to be bought and sold with profit: which is equated with trading properly so called.

From these things you will resolve: 1. It is LICIT for a Cleric to rent out his estates and animals for a pension; - to cultivate his fields by the work of laymen, and to sell the fruits; - to buy animals, and fatten them with fodder coming from his own lands; indeed probably, with fodder bought for this end, that he may sell them fattened with profit, or that he may make profit from offspring, milk, wool. - Similarly, it is licit for a Cleric to buy several things for the security of his provision, and to sell more dearly what remains; or to sell more dearly that which he had bought for his own use, if an occasion presented itself of buying another similar thing more cheaply; for these things pertain to economy.

2. It is NOT LICIT for a Cleric to lease the fields of another, so that he may cultivate them through workers, and sell their fruits; or so that he may fatten animals, and sell them fattened; nor to buy estates or animals for this end, that he may resell them with profit.³⁹⁵ - Nor is it licit, either by himself or through others, to contract active exchange, as Clement XIII decreed in the cited Constitution *Cum primum*; - nor to acquire shares of a partnership in commendam (commonly *accomandita*), as is established from the declaration of the Sacred Congregation of Bishops and Regulars made on 30 January 1846³⁹⁶ (cf. n. 1158). - But otherwise, if it is a question of mere obligations, which have only the character of a loan: such as annual revenues founded in the public treasury, and bonds of industrial companies. Yet it would not be licit to trade in them, i.e. habitually to buy them with the mind of selling more dearly when their price has increased.

To the question: "Whether it is licit for ecclesiastical persons to buy TITLES over railroads and to receive the profit coming from them?" the Congregation of the HOLY OFFICE on 1 April 1857 responded: "The Most Holy One grants faculties to be communicated to Bishops through the Sacred Congregation of Bishops, of permitting ecclesiastics to receive shares of railways, from their own money only."³⁹⁷

Whether that Response can be extended to similar cases, with respect to all industrial or mercantile companies, is not outside controversy; but it seems probably to be affirmed.³⁹⁸

NB. As regards commerce which is exercised in the Indies, recall what was said n. 1346.

3. - Hunting And The Bearing Of Arms. 2229. - 1. HUNTING is prohibited to Clerics. This is established from various places of Law, but especially from the Fourth Lateran Council, can. 15, and from Trent,³⁹⁹ which specifically enjoins upon beneficiaries that "they abstain from illicit hunts, fowling, etc."

Furthermore it must be NOTED: - 1) The Doctors commonly understand this prohibition concerning clamorous hunting, or that which is done with a great noise of arms and dogs for killing larger wild animals; but not concerning quiet hunting, which is done without noise for catching birds or smaller wild animals, such as hares, foxes, etc. Fishing is forbidden by no canon. - 2) Clamorous hunting is not a grave sin, unless it is frequent, or is done with scandal, or with great expenses.

³⁹³Book III, 831-837; *H. A.*, X, 192-194.

³⁹⁴2. 2. q. 77, art. 4, ad 1; Book III, 835.

³⁹⁵Book III, 835, 836.

³⁹⁶Bizzarri, p. 581; cf. *Nouv. rev. theol.*, t. XVII, p. 589, where there is another Response.

³⁹⁷Cf. Scavini, I, 576, 120.

³⁹⁸Cf. Gury-Dumas, II, n. 105, fin.

³⁹⁹Sess. 24, c. 12, de Ref.

- Indeed, it is probably devoid of every fault if it is rare and moderate; or is done from necessity, or for the sake of exercise, without the omission of duties.⁴⁰⁰ Diocesan Statutes must also be consulted about a matter of this kind.

2. BEARING OF ARMS, necessity having been set aside, is prohibited to clerics, just as hunting is.⁴⁰¹ This is established from cap. 2, de vita et hon. Cler., where it is said: "Clerics bearing arms are to be excommunicated." - The reason is because arms

are instruments of savagery; and therefore most alien from the meekness of Christ the Lord. Wherefore Clerics constituted in sacred Orders sin gravely who take up military service. Yet those are not to be reprehended who cooperate in a just war by counsel, exhortation, or even assistance, provided they do not bear arms, nor perform the office of commander.⁴⁰²

Note. Today, in several Kingdoms, clerics are forced to enroll in secular military service. - Concerning this violation of clerical immunity PIUS IX complained bitterly in the Letter *Singularis* given on 29 September 1864 (cf. *Syllabus* n. 32) and in the allocution held on 12 April 1875 to the Catholic international deputation. - Finally, the Congregation of the HOLY OFFICE, 16 September 1875, handed down certain norms to Bishops, that they might provide, as far as they can, for the good both of religion and also of the clerics themselves who are constrained to serve as soldiers.⁴⁰³

4. - Entrance Into Taverns. 2230. - Innocent III in the Fourth Lateran Council, concerning the life and honesty of Clerics, gravely decreed these things: "Let Clerics altogether avoid taverns, unless perhaps constituted on a journey by cause of necessity."⁴⁰⁴ And this is the universal law, to which other decrees in different dioceses have been added, which therefore must be consulted, lest one depart from the rules of decency.

As regards secular banquets, St. Jerome admonishes:⁴⁰⁵ "Let us never seek them; when asked, let us rarely accept: a cleric is easily contemned who, often called to dinner, does not refuse."

5. - The Game Of Dice. 2231. - The GAME OF DICE is prohibited to Clerics in Sacred Orders, as also to Beneficiaries, and especially to Bishops, as is established from the Fourth Lateran Council can. 16⁴⁰⁶ and from Trent.⁴⁰⁷ Now under games of dice are to be understood games of chance, which depend not on art but on chance: such are games of knucklebones, or dice; but not games of cards, unless they are of mere chance.⁴⁰⁸

Hence St. Alphonsus teaches: - 1. The aforesaid clerics sin gravely if they frequently and for a long time indulge in public games of mere chance, although in a small amount; "because a game of this kind notably disgraces the clerical state. - And the same must be said if they expose a great sum to the game, although rarely: at least when in this there would be grave scandal of others."⁴⁰⁹

2. They do not sin gravely if they play rarely, moderately, and privately, without scandal of others. Indeed, not even venially, as is probable, if this is done for the sake of recreation, in a place where the aforesaid canons are not rigidly observed.⁴¹⁰

6. - Dances And Comedies. 2232. - DANCES, COMEDIES, and generally all SPECTACLES are prohibited to Clerics. This is established from Trent.⁴¹¹ And the reason is because such amusements disgrace the clerical state, and because by them sanctity of life is brought into the utmost danger. - Yet it is not prohibited to Clerics that, for the sake of honorable recreation and exercise, they be present at those spectacles which are customarily represented in Communities. - Indeed, it is not prohibited to them that they act some parts in scenes of this kind, all the rules of modesty and temperance being surely observed.⁴¹²

⁴⁰⁰Book III, 606.

⁴⁰¹Book IV, 191.

⁴⁰²Cf. Book VII, 457-460; Gury, II, 103.

⁴⁰³Cf. Scavini, II, 247; and *Analecta J. P.*, series 15, p. 1005.

⁴⁰⁴Cap. 15, de vita et hon. Cler.

⁴⁰⁵Epist. ad Nepotianum.

⁴⁰⁶Cap. *Clerici* 15, de vit. et hon. Cler.

⁴⁰⁷Sess. 22, c. 1, de Ref.

⁴⁰⁸Book III, 900.

⁴⁰⁹*H. A.*, X, 219; Book III, 897.

⁴¹⁰Book III, 890; cf. *Selva*, P. 2, Instr. 8, n. 12.

⁴¹¹Sess. 22, c. 1, de Ref. and sess. 24, c. 12, de Ref.

⁴¹²Scavini, I, 422.

7. - Conversation With Suspect Women. 2233. - I. In the FIRST NICENE Council⁴¹³ (can. 3) these things are read: "The great Synod has altogether forbidden that it be licit, not for a Bishop, not for a Presbyter, not for a Deacon, nor for anyone at all who is in the Clergy, to have an introduced woman,⁴¹⁴ unless perhaps a mother, or sister, or aunt, or only those persons who escape suspicion." And TRENT commands that the disobedient be affected by the most severe penalties to be inflicted by the Bishop.⁴¹⁵

It is permitted, speaking in itself, to live with women who are not suspect, such as commonly are reputed: 1) relatives by blood in the first and second degree; 2) relatives by affinity in the first degree; 3) women rather advanced in age, and commendable by reputation, although they are strangers. - We said speaking in itself, that is, provided every danger and scandal are excluded, and diocesan Statutes are obeyed, which certainly, in this matter, have the force of law.

II. Not only must conversation with women be avoided by Clerics, but also, as far as it can be done, the very ACCESS to their houses, and every useless COLLOQUY with them. Whence Scripture (Ecclus. 42:12): "Do not tarry in the midst of women; for from garments proceeds the moth, and from a woman the iniquity of a man." - And lest anyone trust in past chastity for himself, thus St. Augustine admonishes, apud St. Thomas:⁴¹⁶ "I have found great Prelates of the Church to have fallen under this appearance, concerning whose fall I no more presumed than concerning Jerome and Ambrose."⁴¹⁷ (cf. n. 1791, 3).

Note. Suitably here there come to be transcribed the excellent ADMONITIONS of the provincial Council of Vienna celebrated in the year 1858:⁴¹⁸ "It befits a Priest," says the holy Synod, "to flee not only evil, but also the appearance of evil. Let him utterly abstain from more frequent companionship with women, even those who not undeservedly obtain the praise of piety and modesty. The maidservants whom he needs for managing domestic affairs should be of more mature age and of most entire reputation, chaste, sober, subject, so that he who is on the opposite side may revere, having nothing evil to say; he is not to tolerate that they dress more expensively, or frequent dances. Whatever savors of more familiar commerce, let it be far away. Let him not have a maidservant as a table-companion, nor walk with her, or go to others' houses, or ride in the same vehicle, unless perhaps public. Let him by no means allow her to involve herself in matters which do not pertain to her, or arrogate to herself the role of mistress. It is over with the authority of the Pastor, whom his people suppose to depend upon the imperious will of a woman. - Nor must anything be indulged to female relatives by blood which disgraces the priestly house, or disturbs the order of ecclesiastical affairs."

Scholium.

On The Prerogatives Of Clerics. 2234. - The PRIVILEGES of Clerics are restricted to almost THREE, which are: 1. the privilege of competence, by force of which a cleric bound by debt and unequal to paying cannot be constrained to pay unless first the things necessary for honorable support have been deducted; 2. the privilege of canon, by reason of which they incur excommunication who unjustly lay hands upon clerics (or Monks of either sex) (cf. n. 1329); - 3. the privilege of forum, by which it happens that Ecclesiastical persons (under which name Religious men and women equally come) can be summoned only in the ecclesiastical forum.⁴¹⁹

The conditions necessarily to be observed by Clerics, that they may enjoy the privilege of forum, are thus set forth by Trent:⁴²⁰ "Let him (a cleric) not enjoy the privilege of forum unless he has an ecclesiastical benefice; or, carrying clerical habit and Tonsure, serves some Church by command of the Bishop; or in a Seminary of Clerics, or in some school or university, with the permission of the Bishop, is engaged as if on the way to receiving major Orders" (cf. n. 201 and 2223).

These privileges have been derogated more or less through various Concordats, which the Holy See wishes to be religiously observed.

"Moreover, in those places in which the privilege of forum has not been derogated by the Supreme Pontiffs, if in them it is not possible to prosecute one's rights except before lay judges, individuals are held first to ask permission from their own Ordinary, that they may be able to summon CLERICS into the forum of laymen; and Ordinaries will never deny it,

⁴¹³Cf. Harduini, *Coll.*, tom. 1, col. 323.

⁴¹⁴i.e. an extraneous devout woman, concerning whom cf. Bened. XIV, *de Syn.*, lib. 11, cap. 4, n. 4.

⁴¹⁵Sess. 25, cap. 14, de Ref.

⁴¹⁶Opusc. 64, *de modo confitendi*, § (23), *de periculo familiaritatis*, at the end.

⁴¹⁷Cf. also St. Alph., *Selva*, P. 2, Instr. 3, and *Prax. conf.*, n. 119, 120.

⁴¹⁸Tit. 5, cap. 6 (*Collect. Lacen.*, vol. V, 197).

⁴¹⁹Cf. H. A., XX, 18-24; Piat, *Comment.*, p. 62.

⁴²⁰Sess. 23, cap. 6, de Ref.

especially when they themselves have given their labor in vain to reconciling controversies between the parties. - But it is not licit to summon BISHOPS into that forum without the permission of the Apostolic See. And if anyone shall have dared to drag before a lay judge or judges either a cleric without permission of the Ordinary, or a Bishop without permission of the Holy See, it will be in the power of those same Ordinaries to proceed against him, especially if he has been a cleric, by penalties and censures *ferendae sententiae* as against a violator of the privilege of forum, if they shall judge this expedient in the Lord” (Instruction of the HOLY OFFICE, 23 January 1886).⁴²¹

Chapter II.

On The Obligations Of Clerics By Reason Of Benefice.

Although the treatment of Benefices properly pertains to Canonists, nevertheless it is pleasing to hand down here, with St. Alphonsus leading, certain things more necessary to know. Therefore in few words we shall set forth: 1. the nature or notion of benefices; 2. the obligations of one conferring benefices; 3. the obligations of beneficiaries.

Article I.

On The Notion Of Benefices.

2235. - DEFINITION. An ecclesiastical benefice is a perpetual right, constituted by the authority of the Church, of exercising a spiritual office in some church, and of receiving on account of it fruits from the goods of the Church.⁴²²

It is said 1. a perpetual right, and indeed in a double sense, namely objectively and subjectively: objectively, insofar as a benefice once constituted always remains, and is not taken away by the death or removal of the beneficiary; but only becomes vacant, so that it can be conferred on another; subjectively, however, insofar as a benefice, commonly, is conferred not for a certain time, but for the whole life of the beneficiary. - Yet in favorable matters (not in odious matters) under the name of benefices there also come those things to which subjective perpetuity is lacking, such as are, e.g., manual benefices, which indeed are conferred in title, but revocably, at the pleasure of the one conferring, or of the patron.

It is said 2. constituted by the authority of the Church, namely through a formal decree of erection. Whence it happens that never (unless from Pontifical dispensation) ought it to be conferred upon a layman, but upon a cleric; and never by a layman, but by an ecclesiastical person, e.g. by the Pope, or by a Bishop, or prelate.

It is said 3. of exercising a spiritual office, at least of reciting the canonical Hours. - Whence, if ecclesiastical revenues are furnished on account of a merely temporal ministry, such as is the office of singer, of sacristan: such a ministry is by no means to be called a benefice, because this spiritual cause is lacking.

It is said 4. and of receiving on account of it fruits: by which words two things are signified, namely: 1) that this temporal right is annexed to a spiritual office, and indeed as something accessory, although among the Authors it may seem to be the principal mark of a benefice; 2) that beneficiaries are only usufructuaries, the dominion itself of benefices always remaining with the Church.

It is said 5. from the goods of the Church, i.e. from goods dedicated to God and irrevocably donated to the Church. “But these goods can be immovable, movable, for example counted money, revenues, and also rights of any kind, or assignments due from one or another, even from moral persons and Governments, since in exacting these the Church has an incontrovertible right.”⁴²³ - From which things it is clear that present-day benefices in FRANCE, which obtain revenues from public treasuries, are true benefices, and that such revenues must be held as ecclesiastical, as the Sacred Congregation of the Council has defined several times, and the Sacred Penitentiary declared on 19 January 1819.⁴²⁴

“And all these things are so NECESSARY that, if one of the foregoing requisites is lacking, it cannot be called an ecclesiastical benefice; for all these things are substantial in a Benefice. - But if all these things are had, one must not care by what name the Benefice is called, whether it is called a benefice, or office, or prestimony (or prebend); because there is no force in the name, but rather the nature of the thing must be attended to.”⁴²⁵

2236. - DIVISION. Ecclesiastical benefices are distinguished in many ways,⁴²⁶ namely:

⁴²¹ *Acta S. Sedis*, vol. XVIII, p. 416.

⁴²² *H. A.*, XIII, 31; Book IV, 83.

⁴²³ *De Angelis*, lib. 3, tit. 5, n. 17.

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*, n. 17, v. fin.

⁴²⁶ Book IV, 84.

1. Into greater and lesser. The greater are the Papacy, Cardinalate, Episcopate, and Prelacies with quasi-episcopal jurisdiction, which are conferred in Consistory. - Lesser are the remaining inferior benefices, which lack such jurisdiction, and are comprehended under the name of benefices alone, in odious matter.
2. Into secular and regular, insofar as, from foundation or approved custom, they belong to secular or regular Clerics. In doubt, benefices are presumed to be secular. - If benefices are conceded to regulars at the good pleasure of the Superior, they are not benefices in the strict sense (cf. n. 1335).
3. Into simple and double. Simple are those which have been instituted only for the recitation of the canonical Hours, or for the service of the Altar: such are Canonries (or Prebends), Chaplaincies erected by the authority of the Pontiff or Bishop; and also Prestimonies, which are furnished to Clerics that they may devote themselves to study, and things of this kind. - Double are those which have some special quality annexed to themselves. Here come: 1) In Chapters, Dignities, by reason of jurisdiction over the Clergy, e.g. the archdeaconry (at least in some places), deanery, provostship; Personates, by reason of preeminence in choir or procession, such as are the primiceriatus, cantorate, dignity of major sacristan; Offices, by reason of administration, as the office of treasurer, steward, custodian, minor sacristan. 2) In Parishes, curative benefices, which have the care of souls annexed to themselves.⁴²⁷
4. Into elective, collative, and patronate, insofar as, when they are vacant, provision is made for them either by election of some College, or by free collation of the Prelate, or by presentation of the patron.⁴²⁸
5. Into incompatible and compatible, insofar as they require, or do not require, residence.

2237. - Questions. ASK 1. In what way is a benefice ACQUIRED?

Resp. It can be acquired in three ways: 1. by election, by which a Cleric is elected by the whole Chapter, and is confirmed by the Superior; 2. by presentation, by which someone is offered by a Patron to the Superior, and is instituted by him if he is found suitable; 3. by collation, when the benefice is given freely, by the sole right of the Prelate, and is not subject to the right of patronage.⁴²⁹ - That the institution of a benefice be canonical and valid, there ought to be power in the one instituting, capacity in the one receiving, solemnity in the act. Concerning these things, the Canonists.

ASK 2. What is the right of PATRONAGE, and to what rules is it subject?

Resp. 1. The right of patronage is the power of presenting to a vacant ecclesiastical benefice. If this right belongs to someone from an ecclesiastical title, it is called ecclesiastical; but if it comes from the fact that someone founded and endowed a church from patrimonial goods, it is called lay.⁴³⁰

Resp. 2. If the patronage is lay, presentation ought to be made within four months; but if it is ecclesiastical or mixed, within six months: when these have elapsed and presentation has not been made, the benefice becomes of free collation, and must be conferred by him to whom the institution pertains. Except if there is litigation about the patronage between Bishops and patrons, or between those presented; otherwise, if the litigation is between the patrons themselves.⁴³¹ - What if several are presented? - R. If a lay patron after one presents another, the Prelate can institute whom he prefers; but if an ecclesiastical patron does the same, the first must be instituted; because in this case, he who is first in time is first in right. - But if several patrons present several, and these equally worthy, let the Prelate institute whom he wills; otherwise the more worthy must be preferred, although presented by the lesser part of the patrons; indeed, with this disagreement of patrons standing, the benefice can be conferred on some third person.⁴³²

ASK 3. In what way is a Benefice LOST?

Resp. It is lost and is judged to be vacant: 1. by the death of the beneficiary; - 2. through sentence of a judge; - 3. from the disposition of law, namely: on account of marriage, or religious profession; on account of the acceptance of another incompatible benefice; on account of the crimes of heresy, schism, repeated sodomy, simony, etc., this, however, after at least a declaratory sentence; - 4. through free resignation, i.e. through a spontaneous dismissal, made before the legitimate Superior, in favor of someone suitable who accepts, and with the consent of the patron, or of the electors.⁴³³

⁴²⁷ H. A., XIII, 31; cf. De Angelis, lib. 1, tit. 23.

⁴²⁸ Book IV, 85.

⁴²⁹ H. A., XIII, 32; Book IV, 585.

⁴³⁰ Book IV, 87; cf. Trent, sess. 14, de Ref., cap. 12.

⁴³¹ Ibid., 88, 89.

⁴³² Book IV, 90; H. A., XIII, 32; cf. *Monit. Eccles.*, vol. IV, P. I, p. 31. Indult of the Sacred Penitentiary (21 July 1884) concerning Patrons of pious causes and alienations of goods.

⁴³³ H. A., XIII, 58; cf. Book IV, 133-135.

Article II.

On The Obligations Of Those Who Confer Benefices.

2238. - We note beforehand: 1. The obligations concerning which we are about to speak here do not fall upon the conferring Superior alone, but also, proportion having been observed, upon all who concur in the collation, e.g. examiners, patrons, those resigning, and others exercising the right of nomination or presentation; because generally the same reason runs concerning all these. - 2. The same rules are generally valid for Religious electing or nominating to regular prelacies.⁴³⁴

Therefore let the following be held.

2239. - Principles. I. Upon the collator there is imposed, under penalty of nullity, the obligation of conferring BENEFICES only on those who are CAPABLE BY LAW.⁴³⁵

Now, by the sacred canons it is strictly required on the part of the one to be elected, that he be:

1. A Cleric, i.e. at least marked with tonsure. But if the benefice requires a sacred Order, it is necessary that within a year from possession of the benefice, that Order be received. - Whence, he who with a doubtful or conditioned mind of receiving the priesthood receives a curative benefice sins gravely and is held to restitution of the fruits; because he received these fruits fraudulently, against the sacred canons. Nevertheless, if before the end of the year he becomes a priest, he can retain the fruits.⁴³⁶
2. Born of legitimate parents; otherwise, the election is null. Yet the Bishop can dispense with an illegitimate man for minor Orders, and for simple benefices which do not require a major Order; as regards a major Order, only the Pope can dispense.⁴³⁷
3. Not married; because "the cithara harmonizes badly with the psaltery," as Innocent III speaks,⁴³⁸ wherefore the collation which is made to a married cleric is invalid. Indeed, if a cleric initiated in minor Orders contracts marriage, he loses by the law itself his benefice.⁴³⁹
4. Learned, i.e. that he have suitable knowledge: which knowledge indeed, according to the diverse quality of benefices, is required diversely. To this can be referred Rule 20 of the Apostolic Chancery, which declares the provision of a curative benefice null if the one provided does not know the language of the place, because he cannot have care of a people whose language he does not know. - But certain benefices cannot be conceded except to those distinguished by a degree.⁴⁴⁰
5. That he have the prescribed age; for when age is lacking, even as to one hour, the common opinion holds that the collation of the benefice is null. But there are required for the Episcopate 30 completed years; 25 for a parish; 40 for a Penitentiary; 22 for a Dignity and Personate in a Cathedral; 21 for a canonry, even in a Cathedral; 14 for other Benefices (A year begun is held as completed, unless something else is expressed). - Yet those who are called restricted, namely those who from foundation are called to a simple Benefice, can, provided they are older than seven years, be marked with tonsure and acquire the benefice; because Trent did not expressly derogate these ancient foundations.⁴⁴¹
6. That he be entangled in no censure and irregularity. For collation made to an excommunicated person is certainly null, from cap. *Postulasti* 7, de Cler. excom.; made to one suspended, it is indeed not, according to the more probable opinion, void, but it is to be made void from cap. *Cum bonae* 8, de aet. et qualit.; finally made to an irregular person (even if it is a question of a simple benefice, e.g. of a canonry), is similarly null, at least from the more common and more probable opinion, to which Trent seems fully to favor.⁴⁴² Whence, it is doubtful whether one thus provided can, before a dispensation has been obtained, gain the fruits of the benefice. But otherwise, if someone already

⁴³⁴ H. A., XIII, 35, 39; Book IV, 97-101 and 111.

⁴³⁵ H. A., *ibid.*, 42; Scavini, III, n. 628.

⁴³⁶ Book IV, 113-114.

⁴³⁷ *Ibid.*, 112.

⁴³⁸ Cap. 5, de cler. conjug.

⁴³⁹ Book IV, 113; H. A., XIII, 44.

⁴⁴⁰ Cf. Trent, sess. 22, cap. 2, de Ref. and sess. 24, c. 12, de Ref.

⁴⁴¹ Book IV, 112; 1 *El. qq. ref.*, n. 48; Scavini, III, 628; cf. Craisson, n. 467.

⁴⁴² Sess. 22, c. 4, de Ref.

validly instituted a canon afterward falls into irregularity⁴⁴³ (Recall what was said n. 1928, 3; 1292, 6; 1303, 4).

7. That he be immune from the stain of simony. For the simoniac, whether elected or collator, incurs excommunication reserved to the Roman Pontiff (cf. n. 1335); and the provision of a Benefice simoniacally conferred is of itself null. Indeed, the simoniac, at least after a declaratory sentence, becomes incapable either of retaining other benefices previously acquired, or of acquiring new ones (cf. n. 591).⁴⁴⁴

From these things you will resolve: 1. Since, from the decrees of the sacred canons, the aforesaid CONDITIONS must be altogether observed, it follows that the cleric who, these not having been observed, was provided, was not validly provided, nor acquired any right for himself, and therefore does not make the fruits his own; 2. if he has already received them, he is held to restitution. Except if he has been, for at least three years, in possession with good faith; because then prescription would be had.⁴⁴⁵

2240. - II. The collator of a Benefice is held to confer it not only on a Cleric capable by law, but also on one WORTHY, or SUITABLE for fulfilling the office; under the penalty of invalidation to be pronounced by a judge. This is established from Trent sess. 7, cap. 3, de Ref., where it is prescribed that “ecclesiastical Benefices, especially those having care of souls, be conferred on worthy and capable persons...; but otherwise a collation or provision made is altogether to be invalidated.” From which precept of Trent, and from another similar to this of the Lateran Council, it is clear that he sins mortally, both the unworthy man who permits himself to be promoted, and the Collator who knowingly takes care to promote an unworthy man; (indeed he who knowingly elects an unworthy man is deprived for a three-year period of the right of election). The reason is because the unworthy, or incapable, is judged at least useless to the Church; but since benefices have been instituted for the good of the Church and the utility of the faithful, it is manifest that the collator is to the grave detriment of the Church and of the faithful by conferring them on the unworthy. And hence it is why he is held to restitution toward the Church.⁴⁴⁶

Two things here come TO BE NOTED, namely: 1. Examiners would be lacking to their office “if they were judges of doctrine only, and did not inquire who, before others, by probity of morals, labors, obedience previously furnished to the Church, and the other endowments necessary for cumulatively undertaking the office of pastor, were suitable and commendable.” Thus the Sacred Congregation of the Council has declared several times.⁴⁴⁷ - 2. Examiners are to be constrained to an oath, by which they may solemnly promise that they will faithfully perform their office according to the prescription of the Council of Trent; for otherwise the concursus would be null, from the Decree of the Sacred Congregation of the Council, 2 December 1628.⁴⁴⁸

2241. - III. The collator of a benefice, even if it is a question of a simple benefice, is held to CONFER it not only on one worthy, but on the MORE WORTHY. But he is to be judged more worthy who, compared to the other candidates, is more suitable for promoting the advantage both of the Church and of the faithful.⁴⁴⁹ And indeed,

1. It is certain that for the Cardinalate, Episcopate, and curative benefices, the more worthy must be chosen. - This is established from Trent sess. 24, cap. 1, de Ref., where it is said that collators sin mortally if they do not place over them “those whom they themselves judge more worthy and more useful to the Church, not indeed by human affection, or suggestions of those canvassing, but as their merits require...” And in cap. 18 it is prescribed that the Bishop choose for a curative benefice “him whom he shall judge more suitable than the others.” From which it is clear that Patrons, likewise Pontiffs and Kings, and their ministers, sin of themselves gravely if they do not promote the more worthy to the aforesaid dignities.⁴⁵⁰
2. It is more probable that even to simple benefices the more worthy must be promoted. - The reason is, 1. because thus there is cast into each one an incentive to render himself more worthy, and emulation of this sort yields to the greater utility of the Church; - 2. because benefices have been instituted not only for the common good, but also, although secondarily, for the remuneration of merits. Whence, by conferring benefices of this sort upon those less worthy, the Bishop gravely injures both legal justice, on account of neglect of the common good, and distributive

⁴⁴³ H. A., XIII, 55 and XIX, 75-77; Book IV, 130, *Quaer.*, and VII, 343.

⁴⁴⁴ Book III, 112, q. 30.

⁴⁴⁵ Book IV, 112, fin.

⁴⁴⁶ Book IV, 107, v. fin.

⁴⁴⁷ Bened. XIV, *de Syn.*, L. IV, c. 8, n. 3, fin.; cf. also Richter, *Declarationes Conc. Trid.*, sess. 24, c. 18, n. 17-19 (p. 381).

⁴⁴⁸ Book IV, 111, fin.; H. A., XIII, 39.

⁴⁴⁹ Book IV, 91; cf. proposition 47 condemned by INNOCENT XI.

⁴⁵⁰ Book IV, 91, 92, 97; H. A., XIII, 34; cf. 1 *Elench. qq. ref.*, n. 45.

justice on account of violation of the right which the more worthy have.⁴⁵¹ Yet the Doctors limit this opinion, and say that it is not a mortal sin if the more worthy is passed over not everywhere, but once or twice; if the excess of worthiness is small; if the benefices are of little importance; if, from the law of foundation, someone must be chosen from a family, college, town, etc.; if the more worthy is foreseen to be about to lay aside the benefice shortly.⁴⁵²

Let it be NOTED: 1. Greater worthiness is not to be taken absolutely, but respectively to the utility of the Church and of the faithful. - Hence, other things being equal, he is judged more worthy: 1) the Elder, on account of greater experience; 2) one well deserving, who from his own goods founded a church; 3) a Priest in competition with one not a Priest, since immediately he is able to serve; 4) one native-born with respect to a stranger, since he is presumed more solicitous; 5) one graduated in some science; 6) one endowed with greater sanctity or prudence, with respect to him who is preeminent in knowledge alone; 7) one powerful and noble, because these things are accustomed to conduce not a little to the good of the church; 8) a poor man with respect to a rich man, that provision also may be made for him. "But if someone is probably more worthy, but doubtfully less worthy than another, who is certainly worthy, this certainly worthy one can be preferred."⁴⁵³

2. He who is less worthy, provided he is not unworthy, does not sin by competing with a more worthy man, and accepting the benefice, even a curative one. - Whence St. Thomas,⁴⁵⁴ speaking of a Bishop: "It is not required," he says, "that he judge himself better than others; but it suffices that he find nothing in himself by which it would be rendered illicit for him to assume the office of prelacy."⁴⁵⁵

2242. - Questions. ASK 1. Whether the election of a LESS WORTHY man is invalid, and induces the burden of restitution?

Resp. 1. The election of a less worthy man even to a curative benefice, although gravely illicit on the part of the collator, nevertheless is not of itself invalid; for, although the more worthy man passed over has the right of appealing, the appeal nevertheless, as is read to have been declared in the Bull *In conferendis* of St. Pius V (18 March 1567), does not prevent the election meanwhile from being put into execution: whence it is held valid, until it has been revoked by a judge.⁴⁵⁶

Resp. 2. It does not induce the burden of restitution, at least outside the case of concursus: because, although the collator has gravely injured both legal justice toward the Church and distributive justice toward the more worthy, nevertheless more probably he has violated the strict right of neither; because, outside the case of concursus, there does not intervene a pact by force of which he would be held from commutative justice to choose the more worthy. We said outside the case of concursus: because, if the election is made through concursus, a pact intervenes between the elector and the competitors; whence the most common and certainly more probable opinion holds that a cleric notably more worthy has a right that the damage be compensated to him by those electing. Moreover the Doctors excuse from restitution if the excess of worthiness were moderate (cf. n. 922).⁴⁵⁷

ASK 2. Whether it is licit to confer SEVERAL benefices upon one cleric?

Resp. 1. Considering positive law, it must be distinguished thus: 1) It is licit, if the benefices are compatible, such as simple ones are customarily, which do not oblige to residence; for concerning these the Council of Trent (sess. 24, cap. 17, de Ref.) thus established: "that only one ecclesiastical benefice be conferred on individuals.

But if this indeed does not suffice for the honorable support of him to whom it is conferred, nevertheless it is licit for another simple sufficient one to be conferred upon the same person, provided both do not require personal residence." But the permission of the Bishop is required. But if even that does not suffice, a dispensation of the Holy See is necessary so that a third can be obtained. - 2) It is not licit if they are incompatible, as certainly are an Episcopate, curative benefices, and others to which some jurisdiction is annexed; wherefore, if someone receives two benefices of this kind, once the second has been accepted, the first is vacant by the law itself; and if he presumes to retain both for himself, he is deprived *ipso facto* of both. Thus from Trent sess. 7, cap. 4, and sess. 24, cap. 17. And the same, more probably, is valid concerning benefices which indeed lack jurisdiction, but which require residence, as Canonries; although many deny that these become vacant by the law itself, and before the sentence of a judge.

Resp. 2. Considering the law of nature, whether the benefices are compatible or incompatible, when one suffices for

⁴⁵¹Book IV, 93; cf. 1 *Elench. qq. ref.*, n. 46.

⁴⁵²Book IV, 94-96.

⁴⁵³*Ibid.*, 92.

⁴⁵⁴2. 2. q. 185, a. 3.

⁴⁵⁵Cf. *H. A.*, XIII, 38.

⁴⁵⁶Book IV, 102-103.

⁴⁵⁷*H. A.*, *ibid.*, 37; Book IV, 109; cf. 1 *Elench. qq. ref.*, n. 47.

support, plurality is, of itself, illicit; both because the mind of the founders is to be presumed to have been this, that several would serve the Church; and because from plurality of benefices several inconveniences flow. Thus the common and to-be-held opinion. We said of itself, because the Pope can dispense from a just cause. But an honesting cause is so absolutely required that, when it is lacking, the benefices cannot be retained, not even with the dispensation itself of the Pontiff. - Among HONESTING CAUSES there are customarily counted: 1) necessity of the Church, namely in the case in which other suitable ministers would be lacking; 2) utility, as if someone alone, although absent, can benefit more by prudence, doctrine, authority, than another present; 3) prerogative of merits, if namely someone benefits the Church by his doctrine, instruction, etc.⁴⁵⁸

Article III.

On The Obligations Of Beneficiaries.

2243. - Of the obligations of beneficiaries, some have regard to spiritual things, others to temporal things.

I. The obligations having regard to SPIRITUAL things are: 1. the obligation of reciting the canonical Hours, of wearing the habit, etc., as was explained above (n. 984-1004); 2. residence, concerning which in the following chapter n. 2261 and 2266); 3. special service, which either the nature of the Benefice or the tables of foundation require (See also n. 428 and 974).

II. But the obligations having regard to TEMPORAL things can be reduced to the right administration of the benefice and of its fruits. Hence there must be treated: 1. concerning the care and custody of the benefice or of the goods of the Church; 2. concerning the legitimate use of the goods of the Church.

§ 1. On The Care And Custody Of The Goods Of The Church. 2244. - Principles. I. It is forbidden to CLERICS and RELIGIOUS to ALIENATE ecclesiastical goods of any pious place whatever, without the Pontifical good pleasure and without the due solemnities.⁴⁵⁹ Thus it has generally been established by Paul II in the Extravagant *Ambitosae*, which Pius IX confirmed through the Constitution *Apostolicae Sedis*. - See n. 1353.⁴⁶⁰

II. Clerics, and other ADMINISTRATORS of ecclesiastical goods or of pious places, are held to manage them as good fathers of families, and to provide that they not only suffer no detriment, but also that, insofar as it can be done, they come into a better state. - Therefore it is theirs to take care that if buildings need repair, they be repaired opportunely; that estates be cultivated; that alienated things be vindicated; that things lost be recovered; and that debtors be compelled to payment. - But if by their fault something perishes, or becomes worse, they are held for the damage⁴⁶¹ (cf. n. 975).

Note. What was established in the Clementine *Quia contingit* de Xenodochiis, namely that their administrators "like tutors are held to furnish an oath, - to make an inventory of the goods, - and to render an account of their administration each year to Ordinaries or to others to whom the places are subject": this ought also to be extended to the administrators of Chapters, Collegiate churches, parishes, and all other benefices.⁴⁶²

§ 2. On The Legitimate Use Of The Fruits Or Revenues Of The Church. 2245. - It is equitable that he who serves the altar should also live from the altar; for the Apostle says (1 Cor. 9:7): Who ever serves as a soldier at his own expense? And hence it is that the faithful, by natural and divine law, are held to assist the necessities of the ministers of God (cf. n. 553, 2). - Yet they are exempted from that obligation if somewhere benefices have been constituted from which Clerics are able to live.

But here it is ASKED: In what way, and in what measure, has this enjoyment of ecclesiastical goods been conceded to Clerics? To understand this well, FOUR species of goods which can be possessed by Clerics MUST BE DISTINGUISHED: - 1. Patrimonial, which come to them from any profane cause whatever. - 2. Quasi-patrimonial, or industrial, which Clerics acquire from Masses, sermons, stole-rights, funerals, choral distributions, offerings of the faithful, pious legacies, pension, whether lay or ecclesiastical.⁴⁶³ - 3. Merely ecclesiastical, which are had from Benefices (whether directly

⁴⁵⁸ H. A., XIII, 40, 41; Book IV, 116-118; cf. 1 *Elench. qq. ref.*, n. 49; cf. also De Angelis, lib. 3, tit. 5.

⁴⁵⁹ H. A., XIII, 61, 62; Book IV, 187; cf. De Angelis, lib. 3, tit. 13.

⁴⁶⁰ See among more recent authors Aloys. Trombetta, *Praxeos regulae circa contractus rerum ecclesiasticarum rite ineundos*, Rome, 1865; whose Synopsis Lucidi reports, cap. VII, § 3, Append.

⁴⁶¹ Craisson, n. 5346.

⁴⁶² Cf. Lucidi, tom. 2, cap. VII, n. 232 sqq.; cf. also St. Alph., *Notif.* 2, n. 12 (*Opp.*, vol. IV, p. 714).

⁴⁶³ H. A., XIII, 49.

through legitimate administrators, or indirectly through usurpers in compensation, at least partial, for usurped goods⁴⁶⁴).
- 4. Parcimonial, which a Cleric has subtracted for himself from ecclesiastical goods out of his support, by living more sparingly than he could have lived honorably.⁴⁶⁵

These things having been posited, the following are commonly established.

2246. - Principles. I. Clerics have FULL DOMINION both in patrimonial goods, and in quasi-patrimonial goods, and also in parcimonial goods. The reason is because these goods are either extraneous, or stipends of labors, or fruits of industry. Therefore they pertain altogether to them and can be expended by them even for profane uses.⁴⁶⁶

2247. - II. It is licit for Beneficiaries to take from merely ecclesiastical goods SUITABLE SUPPORT, although they are rich from elsewhere; but they are held, under mortal sin, to expend REVENUES SUPERFLUOUS to their support upon the poor, or upon pious uses. - The reason of the first is because a minister of the Church can live honorably from the goods of the Church, since Benefices have been instituted especially for this end; nor is it an obstacle that he is rich; because he has the right to support not by reason of poverty, but by reason of labor.⁴⁶⁷ The reason of the second is first of all the precept of the Church, which is found promulgated in innumerable decrees of Councils and of the sacred Canons. It will suffice to have adduced here the authority of the Council of Trent, which (sess. 25, cap. 1, de Ref.) expressly forbids Bishops and other beneficiaries "to strive to increase their relatives by blood, or their familiars, from the revenues of the Church; since (it says) even the Canons of the Apostles prohibit that ecclesiastical things, which are God's, be given to relatives by blood; but if they are poor, let them be distributed to them as to the poor; but let them not divert or dissipate those things on their account." But

2248. - There is a great QUESTION: Whether a beneficiary is held FROM JUSTICE to distribute superfluous goods to the poor, so that those goods badly expended are liable to RESTITUTION to the poor?

Resp. One opinion, and this the more probable, affirms, because by no reason can it be proved that beneficiaries acquire the very dominion of the fruits of benefices; but if they acquire it (the supporters of this opinion continue), there is conceded to them, according to the mind of the Church and the institution of the founders, only a limited dominion: from which they can take only that which is required for their honorable support, the superfluous things being expended upon the poor, which indeed by the holy Fathers Basil, Augustine, Bernard, and also by many Councils are called the goods of the poor, the patrimonies of the needy.

But the other opinion denies it, and this, according to the judgment of St. Alphonsus, seems sufficiently probable in practice; especially on account of the authority of St. Thomas, who teaches that concerning the goods of benefices the same account is to be held as concerning patrimonial goods, and therefore that a Cleric, if he abuses the fruits of his prebend, "is not held to restitution, but only to performing penance."⁴⁶⁸ Nor do the words of the holy Fathers stand in the way: for these do not seem to be taken so rigorously, especially in present times; for since now a division of ecclesiastical things has been made (which the Angelic Doctor holds for certain), his own has been assigned either by the Pontiffs themselves, or step by step through usage itself, to each one; namely, his own to the Bishop, his own to Clerics, his own to the Church, and his own to the poor. And this same thing seems to be confirmed by that common manner of speaking which the sacred Canons everywhere admit: he does not make the fruits his own. Therefore a Cleric satisfying the burden makes the fruits his own; therefore, expending them badly, he does not injure justice, but only religion or charity.⁴⁶⁹

2249. - Several things WORTHY OF NOTE seem to be added here, namely: 1. The superfluous is estimated as that which exceeds honorable or suitable support. "Furthermore, the suitable support of a cleric is judged," says St. Alphonsus, "to be that which is necessary for the support of his state and family, according to the condition of state, grade, dignity, quality, and region in which he himself dwells."⁴⁷⁰

2. That superfluous expenses for profane uses reach mortal sin, a quantity greater than in theft is required. St. Thomas⁴⁷¹ requires much excess, i.e. according to the truer opinion, a twentieth part of the superfluous things,

⁴⁶⁴Cf. Berardi, *Prax. Conf.*, n. 506, IX.

⁴⁶⁵*H. A.*, X, 6; XIII, 49; Book III, 490.

⁴⁶⁶Book III, 491.

⁴⁶⁷Book III, 491, q. 5.

⁴⁶⁸St. Thomas, *Quodl.* 6, art. 12, ad 3; and 2. 2. q. 185, a. 7, c.

⁴⁶⁹*H. A.*, X, 7; Book III, 492 (from the 6th edition) and 2 *Elench. qq. ref.*, n. 10, according to whose norm there must be held, in the 1st *Elench.*, quest. ref. n. 24; cf. De Angelis, lib. 3, tit. 25, n. 30.

⁴⁷⁰Book III, 491, q. 2; Book IV, 181-182.

⁴⁷¹2. 2. q. 185, a. 7.

if this twentieth part itself reaches a notable sum. Thus a Cleric, expending from twenty thousand superfluous things a thousand for profane uses, sins gravely.⁴⁷²

3. Under the name of the poor there come not only those begging door to door, but also those who otherwise cannot preserve their state; also relatives by blood, if they are truly poor: and these can be preferred to the others, even those more gravely in need; “because assistance of needy relatives also pertains to preserving the proper state of the Cleric, since their poverty redounds to his disgrace.”⁴⁷³
4. Beneficiaries can also reserve superfluous things for the future for pious uses; provided they beware lest such revenues, death supervening, be plundered by relatives by blood.⁴⁷⁴

It is ASKED. Whether Clerics can make a testament concerning revenues of benefices which are superfluous?

Resp. Affirmatively, from custom received in many places, but only for pious causes; for although where the custom has prevailed they validly make testament for profane uses, nevertheless they sin mortally, unless they do this from an Indult of the Pope.⁴⁷⁵

Chapter III.

On The Obligations Of Clerics By Reason Of Office.

A Benefice is always on account of an office; but an office or duty is not always with a Benefice, as is clear from the example of those who are engaged in the state of mission. There have been constituted, for the diverse grades of the sacred hierarchy, many OFFICES and DUTIES, concerning which the Canonists discuss at length. For our scope it will be enough to have treated concerning the obligations 1) of Bishops, 2) of Canons, 3) of Pastors.

Article I.

On The Obligations Of Bishops.

2250. - Things to be noted beforehand. 1. Bishops are ecclesiastical Prelates who, obtaining the fullness of the priesthood, succeed into the place of the Apostles, and participate in the government of the Church: whether insofar as together with the Roman Pontiff they constitute the teaching or governing Church, or insofar as they are placed over individual dioceses, under the Pontiff, by ordinary office (See the Canonists⁴⁷⁶).

2. The things which were said above (n. 2196 sqq.) concerning the holiness of Clerics, agree especially with Bishops; for they, as being constituted in the state of acquired perfection, ought to be perfect, according to that of the Apostle: Present yourself as an example of good works (Tit. 2:7).⁴⁷⁷

Many are the OFFICES of Bishops; and since knowledge of them greatly benefits even Pastors of an inferior grade, it is useful here to set forth the principal parts of these offices.

2251. - I. A Bishop is held, and indeed by divine law, TO RESIDE formally in his own diocese, unless a JUST CAUSE excuses. This is established from Trent sess. 6, cap. 1, de Ref., and sess. 23, cap. 1, de Ref. Whence St. Alphonsus says:⁴⁷⁸

“the ring is consigned to the Bishop in his Consecration, that by wearing it he may consider that he is no longer of his own right, but of his Church, his spouse, so that perpetually, while he lives, he may assist her.” As regards the penalties established by the Council, see n. 1378.

We said 1. to reside formally, that is, laboriously and usefully; for in the bull *Grave* of Benedict XIV it is declared that residence is not true unless it is formal.⁴⁷⁹

We said 2. in his own diocese: for the Council of Trent says that “Bishops are obliged to personal residence in their Church or diocese.” Then it exhorts them to reside in their Cathedrals “on the Sundays of Advent, Lent, the Nativity, Resurrection

⁴⁷² H. A., XIII, 49, fin.; Book IV, 183.

⁴⁷³ Book III, 491, q. 2; H. A., XIII, 48.

⁴⁷⁴ Book III, 491, q. 4.

⁴⁷⁵ Cf. De Angelis, lib. 3, tit. 26.

⁴⁷⁶ Cf. Bouix, *de Episcopo*, P. I and IV.

⁴⁷⁷ Trent, sess. 23, cap. 4.

⁴⁷⁸ H. A., VII, 62; cf. Book IV, 120 sqq.

⁴⁷⁹ Book IV, 127, dub. 3.

of the Lord, Pentecost, and Corpus Christi, on which days the sheep ought especially to be refreshed and to rejoice in the Lord by the presence of the Pastor.”⁴⁸⁰

We said 3. unless a just cause excuses. But from Trent (loc. cit.) FOUR CAUSES are assigned which excuse a Bishop from continuous residence, namely: 1) Christian charity, e.g. if some Church is in great danger of heresy, and he can bring help to it without notable detriment of his own Church; or if his mediation is necessary for composing the enmities of powerful persons, etc. 2) Urgent necessity, e.g. if he is in danger of life on account of sickness, inclemency of the air, personal persecution, etc.; but not on account of a general danger, e.g. in time of contagion, etc. - 3) Due obedience, namely when the Pontiff calls him elsewhere and entrusts to him the care of some business. 4) The evident good of the Church, for defending its rights, e.g. in a provincial or general Council.⁴⁸¹

By law it is PERMITTED to the same that, from an honorable cause and without detriment of the flock, each year for two or three months, either continuously or interruptedly, they stay outside the diocese. This is established from the same Trent (loc. cit.). But they cannot be absent longer without an APOSTOLIC INDULT. Whence Benedict XIV in the Bull *Ad universae* declared that a Bishop who is absent beyond the three conciliar months, without express permission of the Roman Pontiff, is to be held as a transgressor, and that he does not make the fruits his own, and finally that he incurs the other penalties which have been brought against transgressors.⁴⁸²

2252. - II. A Bishop is held TO VISIT THE WHOLE DIOCESE in individual years, unless the excessive breadth of the diocese prevents it; in which case, AT LEAST WITHIN A BIENNIUM, he ought to complete the whole visitation. - This is established from Trent (sess. 24, cap. 3, de Ref.), which thus gravely asserts the obligation: “Let Bishops not omit to visit their own diocese by themselves, or, if they have been legitimately impeded, through their Vicar General or Visitor; if because of its breadth they cannot visit the whole each year, let them visit at least the greater part of it, so nevertheless that the whole be completed within a biennium by themselves or their Visitors.” And the Council adds: “let them strive as quickly as possible, yet with due diligence, to complete the visitation itself.” But if he wishes to defer it beyond a biennium, he needs an Apostolic Indult.⁴⁸³

But in these visitations the Bishop OUGHT: - 1. To preach. For the Apostle says (2 Tim. 4:2): “Preach the word; be instant in season, out of season; reprove, entreat, rebuke, in all patience and doctrine.” 2. “To examine the children, that he may see how they have been instructed; and thus he can provide against the negligence of pastors, by correcting them, and even by substituting some steward to teach the children doctrine at the pastor’s expense, at least for the example of others.” 3. “To examine priests in the ceremonies of Mass, and to suspend from celebration, without any mercy, those who, as they ought, are not skilled in them. - The Bishop can also recall approved confessors to examination, and from a just cause even pastors.” 4. “He ought to apply a personal scrutiny concerning all the priests of the region, by secretly questioning each one, first concerning his own duties, that he may suggest to him what will be necessary, and then concerning the defects of others, and especially of the pastor, of confessors, e.g. in what way they apply themselves to their duty, with whom they associate, etc.” - 5. “Let him inquire concerning abuses, scandals, and discords which creep through the regions.” - 6. “Let him take care to raise to fervor the Congregations of secular persons, and to provide them with opportune helps, by assigning a preacher and confessor, if they lack these.” - 7. “Finally, let him not omit to administer the Sacrament of Confirmation,” according to what was said n. 1498.⁴⁸⁴

2253. - III. “A Bishop is held TO CHOOSE for ministers of the altar only the WORTHY, and to exclude the unworthy.”⁴⁸⁵ Indeed, “a Bishop conferring sacred Order on an unworthy man sins by a double title: he sins because he fails in his duty; and he sins because he cooperates in all the sins which that man will commit, and he will be the cause why others also sin. St. Paul intimates this same thing (1 Tim. 5:22) when he said: ‘Impose hands hastily on no one, nor communicate in others’ sins.’”⁴⁸⁶

“A Bishop ought to EXAMINE two things in those who aspire to Orders, namely spirit and doctrine.” 1. Concerning spirit and morals, although that ancient rigor can no longer be brought into practice, by which access to Orders was closed to one who had fallen into one mortal sin, nevertheless it is certain that no one can be admitted to Orders unless he has first been proved in virtues, and especially in lasting continence, which those ordained in sacred Orders will have to

⁴⁸⁰Sess. 23, cap. 1, de Ref.

⁴⁸¹Book IV, 125; *H. A.*, VII, 19.

⁴⁸²Book IV, 125-127; cf. Craisson, n. 894.

⁴⁸³Cf. Vecchiotti, vol. I, lib. 2, § 63, p. 287.

⁴⁸⁴*H. A.*, VII, 60; cf. also St. Alph., opusc. *Riflessioni utili ai Vescovi*, where there are many things full of the spirit of God (*Opp. ascet.*, III, 865).

⁴⁸⁵*H. A.*, VII, 47.

⁴⁸⁶*Ibid.*, 51.

profess.⁴⁸⁷ 2. But concerning doctrine, “the Bishop ought to take the greatest care to inspect whether the one who asks to be promoted has been well taught, and whether he is eager for study: since he who is not a lover of study will never be suitable for the Church, indeed he will necessarily be depraved: for (as is customarily said) idleness is the father of vices”⁴⁸⁸ (cf. n. 1914, 1915).

Wherefore the Bishop must apply himself so that he have a SEMINARY constituted with the best direction (establishing that no one seek Orders who has not stayed there at least three or four years). For from this afterward pastors, confessors, and other priests will be selected, and thus he will be able to render his diocese cultivated.⁴⁸⁹

2254. - IV. “A Bishop is held TO CHOOSE good PASTORS and good CONFESSORS.”⁴⁹⁰ For on these depends the whole good of the diocese.

1. As regards PASTORS, it is already established that the more worthy must be preferred, especially those who excel in knowledge and probity of life (cf. n. 2240). - “As regards knowledge, the Bishop can well conform himself to the judgment of the examiners; but his principal diligence ought to aim at this, that he himself know concerning probity of life, by inquiring for information from different persons.... For the Sacred Congregation of the Council decreed thus concerning the election of pastors: ‘The less learned man (provided he is suitable) whose morals are approved is to be preferred to the more learned man whose life is unknown.’ It is to be held as certain that an upright pastor is more useful to the people in one month than a more learned but less upright pastor in a whole year.”⁴⁹¹

Moreover, “the Bishop is held to inform himself from others whether pastors apply themselves to teaching children Christian doctrine, whether they preach, and whether they preach according to the prescription of Trent. Concerning this the Prelate ought often to admonish pastors, that they break for the little ones the bread of the divine word, also exhorting them that in sermons they strive to suggest matters which conduce to use: e.g. how temptations are to be repelled; what must be said when adverse things occur, or when someone is affected by injuries, and things of this kind. - Likewise, let him inquire with what diligence pastors and confessors apply themselves to hearing confessions.... Let him also commend assistance to the dying, and the Congregations of secular persons, especially of girls.... These congregations (if they are well disposed and directed) afterward cause the highest good; because if those girls afterward marry, they will easily teach their children the things which they themselves practiced, and whole families will be sanctified.”⁴⁹²

2. As regards CONFESSORS, the diligence of the Bishop should be greatest in forming and selecting them. “For on confessors depends the direction of the consciences of all the subjects, and one confessor who is ignorant, or depraved in morals, can make a whole region lost. Therefore the Bishop ought not approve anyone unless first he becomes certain of his probity and doctrine, by examining him on moral theology (cf. n. 4 and 1786).”⁴⁹³

But for promoting piety and knowledge in pastors and confessors, TWO things are necessary:

One is the annual giving of spiritual exercises, in which each priest not legitimately impeded is held to take part at least every second or third year, with some penalty established against the negligent.⁴⁹⁴

The other is at least the monthly celebration of theological Collations or Conferences, which should treat practical matters. All priests having care of souls are held to take part in these conferences, as is established from many declarations of the Sacred Congregation of the Council; but Regular confessors are exempted from them by constituted law, unless perhaps they are pastors. - Yet here there must be recalled what our Most Holy Lord LEO XIII, Pope, in the Constitution *Romanos Pontifices* (15 January 1881), declares thus: “But it has by no means escaped us that the Roman Council held in the year 1725 by the authority of Benedict XIII ordered all Confessors, even from Regular Orders, dwelling within the limits of the province, to celebrate those meetings, provided moral lectures are not held in their convents.... Therefore moved by these reasons we declare that all rectors of Missions ought by office to be present at the collations of the Clergy, and at the same time we decree and prescribe that Vicars also, and other religious men furnished with the faculties customarily conceded to missionaries, who inhabit hospices and small houses of missions, take part in the same.”⁴⁹⁵

⁴⁸⁷Ibid., 47-51.

⁴⁸⁸H. A., V, 52.

⁴⁸⁹H. A., VII, 53, where there are more things; cf. *Regolam. per i Seminarii*; cf. also Lucidi, cap. 6.

⁴⁹⁰H. A., VII, 54.

⁴⁹¹Ibid.

⁴⁹²H. A., VII, 55 (cf. *Selva*, P. 3, c. 8, § 2 and 3).

⁴⁹³Ibid., 56.

⁴⁹⁴Cf. *Acta S. Sed.*, vol. XII, p. 609.

⁴⁹⁵*Acta S. Sed.*, vol. XIII, p. 486.

2255. - V. To the Bishop, SCHOOLS, PIOUS PLACES, and MONASTERIES ought especially to be a care.

1. As regards schools, "let the Bishop move every stone, that some Catholic schools be opened and be at hand, taking care that teachers undergo the examinations required by the Government, and obtain the necessary faculty of teaching"⁴⁹⁶ (cf. n. 712).
2. "Let him not forget those who pass their life in hospitals, orphanages, prisons, etc. A Bishop is to be praised if sometimes he visits them; but he is held by strict obligation altogether to provide for their spiritual necessities."⁴⁹⁷
3. As regards monasteries: 1) Let him not omit to explore the will of girls wishing to profess, lest they enter without the vocation of God, and afterward lead a restless life with common damage. 2) Let him not be easy in giving to strangers permission of speaking with cloistered nuns. 3) Let him send extraordinary confessors as is by law; but let him not confirm ordinary confessors beyond three years without necessity. 4) Let him take care that spiritual exercises be given each year by a priest who is exemplary and skilled in religious discipline; otherwise he would bring harm rather than utility.⁴⁹⁸

2256. - VI. A Bishop is held to CORRECT subjects, and to MEET scandals and abuses; for to this he performs the office of Pastor (Recall what was said n. 492 and 496).

But that he may efficaciously meet scandals, the Bishop ought diligently to inquire, not only from pastors and vicars forane, but also from other zealous priests (whom he should have destined to this in all parts of the diocese), concerning abuses which perhaps have crept elsewhere into other parishes. - And when priests come to him, let him take care that they are received without delay, and that the business on account of which they come is quickly dispatched; for thus it will happen that afterward, whenever they must come, they will return willingly.⁴⁹⁹ Similarly, that scandals and the ruin of souls may be prevented, let him resist with all his strength occult Sects, the reading of evil books and journals, the foundation and frequentation of impious schools, concubinages and merely civil marriages, and let him apply a prompt remedy to all growing evils; for medicine is prepared late when evils have grown strong through long delays.

But among subjects to be corrected, let him assign the first place to those Pastors of souls who perform their duty drowsily; to preachers who adulterate the word of God by preaching in which they set before themselves as an end their own glory more than the glory of God and the salvation of souls; to priests who too hastily, without gravity and without observation of the rubrics, celebrate Mass.⁵⁰⁰

But how one must proceed in summary forms, and without the noise of a trial, with undisciplined or criminal clerics: see the Instruction of the Sacred Congregation of BISHOPS AND REGULARS confirmed by our Most Holy Lord LEO XIII, 11 June 1880.⁵⁰¹

2257. - VII. A Bishop is held TO PRAY for the people and to bestow ALMS. As regards prayer, see what was said (n. 1606, q. 1) concerning the obligation of celebrating Mass. As concerns alms, St. Gregory affirms that it is the first work of mercy which a pastor ought to furnish to his flock.

"O how many evils," says St. Alphonsus, "can a Bishop provide against by alms! How many spouses live in sin, because the means of completing marriage is not at hand for them! How many children on account of poverty sleep together with their parents, or males with girls in the same bed, with such great destruction of souls! And therefore good Bishops take care to inquire from pastors concerning the necessities which are present, and enjoin upon them that they make him more certain whenever anything occurs."⁵⁰²

2258. - VIII. A Bishop is held to render an account to the Holy See concerning the state of his own diocese; and to this end he ought at the established times to perform the VISITATION AD LIMINA.⁵⁰³ - Concerning this and certain other obligations of Bishops, see the Canonists.⁵⁰⁴

⁴⁹⁶Berardi, *Prax.*, n. 702, IX; cf. also the Encyclical of LEO XIII to the Bishops of France, 8 February 1884.

⁴⁹⁷Berardi, l. c.

⁴⁹⁸*H. A.*, VII, 61.

⁴⁹⁹*H. A.*, VII, 63.

⁵⁰⁰Cf. Berardi, l. c., n. 702, VIII, IX.

⁵⁰¹Ap. Lucidi, vol. I, p. 530; cf. also Pierantonelli, *Praxis Fori eccles.*, p. 270.

⁵⁰²Cf. *H. A.*, VII, 64, 95, where there are more things.

⁵⁰³Cf. *Acta S. Sed.*, vol. X, p. 202.

⁵⁰⁴Lucidi, *de Visitatione SS. Limin.*; Bouix, *de Episcopo*; Craisson, *Manuale*, n. 919 sqq.; Konings, II, p. 422 to n. 34.

NB. Concerning the RIGHTS and PRIVILEGES of a Bishop, let St. Alphonsus be read, Book I, Appendix on Privileges (or *Homo Ap.*, tr. XX, cap. 3). - See also in the alphabetical Index the various faculties of the Bishop indicated under the word BISHOP; - likewise Appendix I, Quinquennial faculties, and the Forms of the Sacred Penitentiary.

Scholium.

On The Vicar Of The Bishop. 2259. - It is ASKED. What CAN the Vicar of the Bishop do?

Resp. The Vicar General, or Official, once constituted by the Bishop, has, speaking in itself, from Law an ORDINARY and free POWER of managing those things which the Prelate himself can, and also of delegating others. - Hence, he dispenses in the banns of matrimony; brings censures, so that those subject to him obey, e.g. that the accused, or a witness, appear; approves for confessions; absolves one who has struck a Cleric; institutes those presented by patrons; judges beneficiary causes concerning the right of patronage and its quasi-possession, etc.⁵⁰⁵

We said speaking in itself: for those things are excepted which require a peculiar mandate. - Hence, without a special mandate, he CANNOT take cognizance of criminal causes in which there must be a more serious proceeding against the accused, e.g. through deposition or excommunication (commonly *Exeat*); nor can he confer Benefices, nor furnish consent in changing, uniting, or erecting them; nor can he visit the diocese, nor call a synod, nor summon a meeting of Canons. Similarly, without a special commission, he cannot absolve from cases which the Bishop reserved to himself; nor remove irregularities arising from an occult delict; nor grant dimissorial letters, unless the Bishop is staying outside the diocese for a long time; nor dispense in oaths, in vows, in ecclesiastical laws, indeed not even in episcopal and synodal statutes: so that generally in all things which savor of grace he needs a special mandate.⁵⁰⁶ - But that he can perform none of those things which are of the episcopal Order is of itself already sufficiently clear.

The Vicar General, if he has offended, can be punished by the Bishop as a private person. If he has offended concerning the jurisdiction or office of Vicar, he must be punished by the Metropolitan or by the Holy See; because the Bishop cannot be judge in the cause of his Vicar, as such; likewise, there is no appeal from the sentence of the Vicar to the Bishop, but to the Metropolitan or to the Holy See; because the tribunal of the Bishop and of the Vicar is one and the same.⁵⁰⁷ When the Bishop has died or been removed, the jurisdiction of the Vicar, as such, ceases.

Article II.

On The Obligations Of Canons.

2260. - CANONS are so called from the Canon or rule which they ought to observe in the service of the Church. Today they are divided into Regulars, who under the care of an Abbot lead a common life bound by vows; and into Seculars, who in the world, separately, under the care of the Bishop, live from a benefice or prebend, and from choral distributions.⁵⁰⁸ These pertain either to a Church simply Collegiate, or to a Cathedral; whence they contract special obligations, which the Canonists or particular Statutes hand down.

Here, we shall speak only of the offices annexed to any Canonry whatever: which offices indeed are expressed in the following verse:

Solicitude of choir, residence, perpetual Mass.

2261. - I. Canons are held to RESIDENCE. For thus the Council of Trent established (sess. 24, cap. 12, de Ref.): "Let it not be licit for Canons by force of any Statute or custom whatever to be absent beyond three months... in any year, the constitutions of Churches which require a longer time of service nevertheless being preserved." - The same Council decreed (loc. cit.) that Canons who are absent beyond three months in the first year be deprived of half the fruits; but if they have persevered in absence, let them be deprived of all the fruits of that year. "But with contumacy increasing, let proceedings be taken against them according to the constitutions of the sacred Canons," namely to the deprivation of their benefices.⁵⁰⁹

⁵⁰⁵Cf. St. Alph., *De Priv.*, 31, 34, 47; Bened. XIV, *de Syn.*, L. 2, cap. 8.

⁵⁰⁶Book III, 288.

⁵⁰⁷Cap. *Non putamus*, de consuetud. in 6; cf. Craisson, n. 1120 sqq.

⁵⁰⁸Cf. Craisson, 2167 sqq.

⁵⁰⁹*H. A.*, XIII, 51.

Yet concerning these things it must be NOTED: 1. Since the decree is personal, it demands a sentence, that it may obtain its full effect. But because a Canon illegitimately absent does not make the fruits his own, he cannot exact or retain the fruits corresponding to the time of absence.

2. Since in individual years a vacation of three months from choir is conceded to all Canons, the time of vacations must be so distributed that never more than a third part of the Chapter is on vacation; because vacations are conceded to Canons, but not to the Chapter; for the divine worship to which they are assigned ought not to be vacant.
3. Canons, while they are on vacation, are not held to substitute someone for themselves. Nor do they need the permission of the Chapter or Bishop for departing within the diocese. But if they wish to travel outside the diocese, the permission of the Bishop is necessary for them. Thus the Sacred Congregation of the Council in one Senen., 12 March 1594.⁵¹⁰
4. It is enough for the violation of the law of residence if the days of absence, although interrupted, exceed the three-month period.⁵¹¹ But Canons (not Bishops) can well join the three-month period conceded with the three-month period of the following year, unless scandal should occur, or divine worship be diminished.⁵¹²
5. The Bishop can, on account of a legitimate cause, give the faculty that they can be absent for four months, from the decision of the Sacred Congregation of the Council (7 October 1580).⁵¹³
6. A Canon legitimately absent gains the fruits of the prebend, but not the choral distributions, which cannot be remitted even by his associates; and the reason is because distributions are made so that beneficiaries may be enticed to assisting.⁵¹⁴

2262. - II. Canons are held to sing or chant the DIVINE OFFICE in choir. This is established from Trent (sess. 24, c. 12, de Ref.). - Nor are they therefore excused because perhaps they are few; for the Sacred Congregation of the Council on 31 March 1696 declared that Canons, even if few, for example two or three, are held to sing or recite the office in choir.⁵¹⁵

Hence: 1. It does not suffice if they are only present at the choir or offices; but they are held, insofar as they can, to concur in the singing or recitation, with a high voice and pious affection of heart. Nor do they satisfy, although present, by private recitation, as is established from the Constitution *Cum semper* of Benedict XIV, 19 August 1744.⁵¹⁶

2. They sin gravely if they are notably absent from choir beyond the time permitted by the Council of Trent; and venially, if for a brief time, e.g. three or four days. Therefore those Canons err who think themselves safe in conscience provided they yield the distributions; for the obligation of choir is altogether independent from the distribution itself.⁵¹⁷
3. The Bishop cannot order that certain Hours be omitted in choir; but for this, if a just cause is given, an Apostolic Indult is necessary. This is established from the Response of the Sacred Congregation of the COUNCIL to the Chapter of the Church of Moulins in the year 1822.⁵¹⁸

You will ASK whether Canons can serve the choir through substitutes, or alternately one for another? Resp. Negatively, generally speaking; because it is against the prescription of Trent (loc. cit.), where it is said: "But let all be compelled to perform the divine offices by themselves and not through substitutes"; and against the declaration of the Sacred Congregation of the Council given on 25 July 1570, even if a custom or statute permitting this were present.

It was said generally speaking; because the Sacred Congregation of the Council declared "that the Bishop, where a custom is present, can concede the faculty to Chapter members of substituting themselves mutually in the service both of the church and of choir; provided they are not substituted in those times in which they are bound to the service of the church; and provided the Bishop take care that they not abuse this faculty of substituting; for example if substitutions of this kind

⁵¹⁰ Apud Lucidi, vol. I, cap. 3, n. 11.

⁵¹¹ Thus the Sacred Congregation of the Council, ap. Bened. XIV, *Institut.* 107, n. 31.

⁵¹² Book IV, 129, v. fin.; *H. A.*, XIII, 50.

⁵¹³ Fagnanus, in cap. *Licet*, 35, de Praebend., and others apud Ferraris, V. *Canonicus*, art. 5, n. 12.

⁵¹⁴ *H. A.*, XIII, 50.

⁵¹⁵ Ap. Ferraris, loc. cit., n. 50.

⁵¹⁶ Book VI, 326 and Book III, 675, where there are more things; cf. also Lucidi, cap. 3, n. 5.

⁵¹⁷ Scavini, I, 431; cf. Ferraris, l. c., n. 30-32.

⁵¹⁸ Ap. Gury, II, 119; cf. also Lucidi, cap. 3, n. 119.

are too frequent.” But at another time the Sacred Congregation of the Council declared that this decree has place only among those present.⁵¹⁹

2263. - III. Canons are held, under grave obligation, TO CELEBRATE one MASS DAILY in chant, and to APPLY it for the founders and benefactors of the Church. This is established from the Bull *Cum semper* of Benedict XIV (cf. n. 1617, 4).

Furthermore it must be NOTED: 1. All Canons ought to be present at this Mass in choir. But he upon whom the burden of the Conventual Mass is incumbent, on the day on which the Bishop celebrates pontifically, should apply it as a low Mass (thus the Sacred Congregation of Rites, 12 November 1831, Marsorum).⁵²⁰ - 2. The obligation of applying Mass for founders can be reduced by the Holy See to feast-days if Canons are so poor that they need Mass stipends for living. From the cited Bull *Cum semper*, § 19.

2264. - It is ASKED. What are the CAUSES EXCUSING from the service of choir?

Resp. 1. The causes TOTALLY excusing (namely, while they stand, Canons are deprived neither of the fruits of the prebend nor of ordinary distributions) are the following: 1) Grave infirmity, or one which can probably become grave. - 2) Necessity of the body, by which is understood fear of any grave harm in life, honor, or goods. - 3) Utility of the Church, which namely is reputed grave by the judgment of the Bishop or Chapter: by which title are excused the Vicar Capitular (not General), the Penitentiary, the curative Canon, the theologian, or preacher, while each of them is actually performing his duty. Likewise the Canon who at Rome performs the Visitation of the Holy Thresholds with the Bishop, or in the name of the Bishop. - 4) Indult of jubilation, by which namely a Canon after 40 years of service laudably performed obtains, through Rescript of the Holy See, exemption from choir and residence; yet so that he can again be called, if the necessity of choir demands it.

Resp. 2. The causes PARTIALLY excusing (namely, so that the absent one gains the fruits of the prebend, but not the choral distributions, unless there were another custom) can be reduced to THREE: 1) Legitimate absence for three conciliar months, according to what was said n. 2261. 2) Necessity of teaching theology or sacred Scripture in public schools; or permission conceded by the Bishop of studying the same for three years, within the twenty-fifth year of age, from more recent decisions. 3) Any legitimate impediment whatever approved by the Bishop. Thus Canon examiners are excused while they examine during the time of Office; Visitors of the diocese; those two Canons whom the Bishop can choose for himself as secretaries.⁵²¹

Note. Cathedral chapters were instituted chiefly for this end, that each would help its own Bishop, and, with the See vacant, would provide for the government of the diocese.

Hence: 1. With the See FULL, Canons of the Cathedral Church are born Counselors of Bishops; and just as the Bishop, unless a contrary custom flourishes somewhere, is held in all cases determined by Law to consult them concerning mandates to be issued: so equally the Canons are held to help the Bishop with their counsels; nor are they free from fault if, having been consulted, they keep silent about their opinion without just cause, or utter it with little sincerity (cf. n. 140, note 1). - They are also held to assist the Bishop exercising Pontificals and to serve him.

2. With the See VACANT, the whole jurisdiction of the Bishop, whether ordinary or delegated by law, passes to the Chapter (except those things which savor of innovation or alienation) and from the Chapter to the Capitular Vicar, who must be constituted within eight days from the vacancy of the See. - But concerning the Capitular Vicar, see the Canonists⁵²² (cf. n. 1327).

Article III.

On The Obligations Of Pastors.

2265. - Besides the obligations common to clerics and beneficiaries, PASTORS are bound by several others.⁵²³ These can be reduced to SEVEN heads, and are the following: 1. Residence; 2. Preaching and Instruction; 3. Administration of Sacraments; 4. Celebration of Mass for the people; 5. Care of the sick and the poor; 6. Correction of sheep; 7. Solitude of promoting good.

⁵¹⁹Book III, 675, dub. 5 (from the 6th edition); cf. Lucidi, c. 3, n. 21-26, where there are more recent decrees of the Sacred Congregation of the Council.

⁵²⁰Gardell, n. 4669, to 20.

⁵²¹H. A., XIII, 52-57; Book IV, 130-132; cf. Lucidi, cap. 3, n. 74; cf. also *Monitore eccles.*, vol. 3, P. 3, p. 102.

⁵²²Cf. Bouix, *de Capitulis*, P. IV and V; Craisson, n. 1212 sqq.

⁵²³See Bouix, *de Parocho*; Lucidi, cap. 3, n. 211 sqq.; Craisson, n. 1287 sqq.; Berengo, *Enchiridion parochorum*, P. III, cap. 2.

§ 1. On Residence. 2266. - I. PASTORS, and others having a curative benefice, are held by divine law TO RESIDE both materially and formally in their Churches, unless a legitimate cause excuses. This is established from Trent sess. 6, cap. 1, de Ref., and sess. 23, c. 1, de Ref.

We said 1. pastors and others, etc., i.e. all upon whom the actual care of souls is incumbent: such are coadjutors of a united parish, curative Vicars, parochial Vicars of a vacant parish, or of an absent pastor. This is established from Trent, l. c., sess. 23, c. 1, and from the declaration of the Sacred Congregation of the Council, 6 November 1620.⁵²⁴

We said 2. by divine law, according to the common opinion and the express declaration made by Benedict XIV in his Bull *Ubi primum*, published 3 December 1740. And hence it is inferred that “the Pontiff cannot dispense in this, but only in some case can declare that divine law does not oblige, just causes intervening.”⁵²⁵

We said 3. both materially, i.e. in the presbyteral house, if such exists, or within the boundaries of the parish, so that thus he can easily be approached; and formally, i.e. usefully, as was said concerning Bishops (n. 2251). “Hence the Doctors commonly say... that a pastor is not reputed to reside if he does not exercise through himself the more principal duties, namely the administration of the divine word, of the Sacraments, etc.”⁵²⁶

We said 4. unless a legitimate cause excuses, concerning which these things must be said:

2267. - II. Three things are required so that a pastor can licitly BE ABSENT, namely: 1. a just cause; 2. substitution of a suitable Vicar; 3. permission of the Bishop (Trent, l. c., sess. 23, c. 1, de Ref.).

There is required 1. a just cause, i.e. a grave cause, if he ought to be absent BEYOND TWO MONTHS, whether continuously or interruptedly; but a reasonable or honorable cause, e.g. of visiting relatives by blood, or of suitably recreating himself, if he wishes to be absent within two months, without any detriment of the flock. But from the Constitution *Ad universae* of Benedict XIV, “levity of spirit, desire for amusements, and other futile causes are utterly excluded.”⁵²⁷

There is required 2. substitution of a suitable Vicar, even if he is absent only for a few days; nor can the nearer pastor serve (without the permission of the Ordinary). Yet otherwise, if the case were urgent, and a Vicar could not be found.

There is required 3. permission of the Bishop, who approves both the cause of departure and the substitution of the Vicar; and this in writing, if it is a question of absence to be prolonged beyond two months. In a case of urgent necessity, the pastor will be able licitly, without permission, to be absent for a brief time, provided he leaves a suitable Vicar (from the decree of the Sacred Congregation of the Council, 7 October 1604): but unless he is about to return within a brief interval of time,

he ought to make the Bishop more certain concerning his departure and concerning the cause of the departure. “Likewise, from smallness of matter, he can be excused, at least from mortal sin, if he departs for a modest time, as the Doctors commonly say, provided he does not leave sick persons in the article of death.”⁵²⁸

2268. - It is ASKED. What PENALTIES do non-resident Pastors incur?

Resp. From natural law and from Trent, according to the common interpretation, non-resident Pastors (among whom are to be numbered those residing uselessly), in proportion to the time of absence or negligence, do not make their fruits their own, and are held, before every sentence or declaration, to apply them to the fabric of the church, or to expend them upon the poor of the place; nor can this obligation be remitted to them by any composition.

Yet they are not held to restore all the fruits corresponding to the time of absence, but only that part which corresponds to the burdens of residence.... The reason is because according to an absolutely probable opinion, fruits are given to Pastors not only for the burdens of residence, but also for the recitation of the divine Office, application of the Sacrifice, and other duties.⁵²⁹

Note. Nor can priests, to whom the removable care of succursal churches has been committed, renounce their duty without the permission of the Bishop, under the pretext that they do not possess benefices properly so called (S. C. C., 9 May 1884).⁵³⁰

⁵²⁴Cf. Lucidi, cap. 3, n. 211, 226.

⁵²⁵Book IV, 121.

⁵²⁶Ibid., 127, dub. 3; *H. A.*, VII, 15.

⁵²⁷Book IV, 122.

⁵²⁸Book IV, 123; cf. Del Vecchio, I, n. 269, where there are various decisions of the Sacred Congregation of the Council.

⁵²⁹Book IV, 127, 128.

⁵³⁰Cf. *Acta S. Sed.*, vol. XVII, p. 288; *Monitore eccl.*, vol. III, P. 3, p. 133.

§ 2. On Preaching And Instruction. 2269. - I. PASTORS are held to have SACRED SERMONS to the people committed to them, and this on Sundays and more principal Feasts. This is established from Trent, of which (in sess. 5, cap. 2, de Ref.) these are the words: "Whoever obtain the care of souls, by themselves, or by others suitable if they have been legitimately impeded, at least on Sundays and solemn feasts, shall feed the people committed to them, according to their own and the people's capacity, with salutary words; by teaching the things which it is necessary for all to know for salvation, and by announcing to them with brevity and facility of speech the vices which they ought to avoid, and the virtues which they ought to follow." Moreover (from sess. 24, cap. 4, de Ref.) the Bishop can decree that during the time of Lent and Advent, in any parish, daily, or at least on three days in the week, if he shall judge it opportune, preaching be made, and at other times, whenever he shall judge this expedient.

Hence, they commonly teach that pastors are not excused from mortal sin: - 1. who for one continuous month, or for three discontinuous months, have not preached either by themselves or through another;⁵³¹ - 2. who are accustomed to make preaching by no means accommodated to the capacity of the hearers, namely by using a kind of eloquence more profane than sacred, arguments empty of Christian doctrine, and that manner of speaking which plainly exceeds the grasp of most hearers. Speaking of preachers of this sort, St. Alphonsus gravely testifies that they are open enemies of the Church of God, for the reason that by preaching thus they are the cause why many souls perish, who certainly, if they heard apostolic preaching, would be saved.⁵³²

But if profane eloquence must be removed from the sacred pulpit, rusticity and carelessness must no less be removed; for it is not right to announce the word of God without preparation, in a disorderly and inconsiderate manner. Likewise untimely zeal must be warded off, lest the people be offended by the incautious words of the preacher; lest sins which are not certainly lethal be affirmed as lethal; lest matters which pertain to daily, civil, or political events be mixed with sacred doctrines; lest sacred preaching serve for avenging a private injury; lest speech easily be made concerning stipends which are owed to sacred Ministers, etc.⁵³³

It is expedient that the Pastor in sacred sermons very often inculcate to the people the frequency of prayer and of the Sacraments; flight from taverns and filthy speech; the enormity of sacrilege; the necessity of sorrow and purpose for Confession; the means of overcoming temptations, especially temptations of impurity; devotion toward the Blessed Virgin Mary, etc.⁵³⁴

2270. - II. Pastors are held TO CATECHIZE children and others rude and ignorant in Christian doctrine. - For Trent⁵³⁵ admonishes Bishops that "at least on Sundays and other festive days, they take care that children, in individual parishes, be diligently taught the rudiments of faith, and obedience toward God and parents, by those to whom it will pertain; and if there is need, let them compel them even through ecclesiastical censures, privileges and customs notwithstanding."

But in a special manner the Pastor is held, and indeed under grave obligation, to teach the people committed to himself the MYSTERIES OF FAITH which must be known and believed, and which are necessary for salvation, according to what was said n. 427. - Hence, when he notices that parents or masters do not take care that children or servants be present at Christian doctrine, he is held to warn them, or to have recourse to the Bishop, that he may be taught the remedies to be applied opportunely. "It is also expedient that he examine male and female teachers, whether they can rightly teach boys and girls Christian doctrine, and the means conducive to living in the fear of God."⁵³⁶ - As regards midwives, see n. 1459, fin.

Note. "When notable dissolutions of morals are found in a region, which no remedy meets, the Pastor is held to take care that a Mission come to it. That pastor who does not take care of a mission casts suspicion upon his morals; for good pastors do not omit to summon a mission every fourth or fifth year." Thus St. Alphonsus.⁵³⁷

§ 3. On The Administration Of The Sacrament. 2271. - PASTORS are held THROUGH THEMSELVES TO MINISTER SACRAMENTS to all parishioners needing them, or asking for them, from a reasonable cause. This is clear from what was said concerning Residence (n. 2266).

⁵³¹Book III, 269; *H. A.*, VI, 5.

⁵³²*H. A.*, VII, 36; cf. *Selva*, P. 2, Instr. 4, n. 4; *Prax. conf.*, n. 203; *Verita della fede*, P. 3, cap. XI, v. fin., n. 9; cf. likewise *Istruz. ai predicatori* (tom. 3, p. 298); and *Notif.* 2, n. 3 (tom. 4, p. 712).

⁵³³Cf. Konings, n. 1140.

⁵³⁴Cf. *H. A.*, VII, 37-44; *Praxis*, n. 204-216.

⁵³⁵Sess. 24, cap. 4, de Ref.

⁵³⁶*H. A.*, VII, 35.

⁵³⁷*H. A.*, VII, 31; cf. *Opusc. Riflessioni utili ai Vescovi*, cap. 2, § 5 (*Opp. ascet.*, IV, 874).

Hence “the Pastor sins who renders himself morose or difficult to his subjects. And therefore St. Charles Borromeo rightly warned: ‘At whatever hour of day or night the pastor will be called for administering the Sacraments to the sick, let him interpose no delay; indeed let him forewarn the people that when there is need of parochial administration, they freely summon him, no account being taken of time or of distance of place, etc.’ Yet he will be excused from mortal sin (St. Alphonsus continues) if once, or again, outside necessity, he denies the Sacraments; because he does not seem to have bound himself so strictly.”⁵³⁸

Recall what was said n. 1415 and sqq., and several other things which were noted in their places, as regards the individual Sacraments: concerning Baptism, n. 1461; concerning the Eucharist, n. 1536, 1538, q. 2; concerning Penance, n. 1802; concerning Extreme Unction, n. 1880; concerning Matrimony, n. 2057 sqq., 2067 sqq. and 2073 sqq.

2272. - It is ASKED. Whether Pastors are held to minister Sacraments WITH DANGER OF LIFE, e.g. in time of plague?

Resp. Dist. 1. They are held, even with evident danger of life, to minister by themselves, or through other suitable persons, the necessary Sacraments, namely Baptism and Penance; indeed also the Eucharist or Extreme Unction, if someone dying, probably constituted in the state of sin and deprived of the senses, could not be absolved except under condition: for perhaps afterward, being attrite, he will be saved through this or that Sacrament, without it to be damned (cf. n. 1397, 1873, q. 3). Thus all.

2. Very probably they are held with the same danger to minister the Eucharist and Extreme Unction, even in the case in which these Sacraments were not of extreme necessity; because the dying, although they are not in absolute necessity, must not be deprived of so great a good (especially holy Viaticum); unless otherwise some sick persons would be about to die without confession, or there were danger for the whole parish of remaining without a priest. Thus many grave Authors, whom however others contradict. Whence, such an obligation does not seem to be urged so much, unless otherwise scandal would be given to the people.⁵³⁹

Moreover danger of life must not easily, nor immediately, be feared beforehand. For it is established by experience in contagious or epidemic diseases, e.g. in the Asiatic disease called cholera, that physicians, nuns, and priests, who are assigned to the care of the sick, are protected by the special providence of God, and that they, provided they do not omit due precautions, for the most part escape safe and unharmed.⁵⁴⁰ But if they should succumb from the exercise of charity, what can be more desirable? For they prepare for themselves in eternity the most splendid crown of martyrdom (cf. n. 1452, q. 2).

§ 4. On The Obligation Of Praying For The People. 2273. - The Pastor, not only secular, but also regular, is held by force of divine law TO PRAY and to apply the SACRIFICE OF THE MASS for the people. - This is established from these words of the Apostle (Heb. 5:1): “For every Pontiff is constituted for men in those things which are toward God, that he may offer gifts and sacrifices for sins.”⁵⁴¹

Recall what was said in the Treatise on the Eucharist n. 1604 and following.

§ 5. On The Care Of The Sick And The Poor. 2274. - I. The Pastor “ought diligently TO ASSIST THE DYING, and especially habituated sinners, who greatly need special assistance. But it is true that the pastor can commit this assistance to other priests; yet he ought not trust any priest whatever; for in this occasion of assisting the dying, scandals of no mediocre harm can happen.”⁵⁴² - Recall what was said n. 473, 3, 1854, and 1880.⁵⁴³

2275. - II. The Pastor is held, by force of his duty, TO ASSIST THE POOR AND MISERABLE, as the Council of Trent admonishes (sess. 23, cap. 1, de Ref.) - Therefore let him relieve the poverty of the needy according to the condition of the revenues; let him soothe the unfortunate by all offices of kindness, and by opportune consolation. - Let him inquire especially concerning the hidden needy; and let him consider how many souls live in sin because they do not have the means of living honorably, or of educating children (cf. n. 2247 and sqq.).

Note. The Roman Ritual warns that the pastor, besides the books of the baptized, of those joined in matrimony, and of the dead, should compose another book ON THE STATE OF SOULS, in which are consigned the names and condition of the individual inhabitants of the parish.

⁵³⁸Book VI, 58.

⁵³⁹Book VI, 233, 729.

⁵⁴⁰Cf. Del Vecchio, tom. I, append. VI.

⁵⁴¹H. A., VII, 29; Book III, 359.

⁵⁴²H. A., VII, 45, 2.

⁵⁴³Cf. Berardi, *Prax. conf.*, n. 788.

§ 6. On The Correction Of Sheep. 2276. - I. The PASTOR is held, both from the office which he bears, and from the stipend which he receives, TO CORRECT, even with danger of life, his SUBJECTS who are in mortal sin, or in its proximate danger; and to this he is held not only in their extreme necessity, but also in their GRAVE necessity, whenever hope of amendment shines forth.⁵⁴⁴ - But how gravely this obligation of correction urges can be gathered from the following threat of the Lord (Ezek. 33:8): “If you have not spoken, so that the wicked man may keep himself from his way, that wicked man shall die in his iniquity; but I will require his blood from your hand” (cf. n. 496, 3).

Hence, the Pastor is held to inquire and prudently correct those who live in sin: such as concubinaires, blasphemers, drunkards, those reading forbidden books or evil journals, those eating prohibited foods, those despising feasts, and especially those who do not satisfy the paschal precept. - Likewise, let him inquire concerning enmities and scandals which creep, especially between spouses, so that thus, as far as he can, he may meet them opportunely.⁵⁴⁵

Nor indeed for removing scandals and extirpating abuses do public corrections in church and salutary admonitions in the tribunal of Penance suffice: sometimes it is necessary that the pastor meet those sheep of his who follow a deviant life, and impel them by salutary admonitions to amendment of morals, as zeal and prudence shall suggest. Nor let him ever neglect to perform this office, because of human respect, before magnates; for someday he himself will render an account to the Supreme Judge for all the sheep committed to his care. - Recall what was said (n. 492 and sqq.) concerning fraternal correction.

2277. - II. The Pastor is held not only to take away sins and scandals from the midst, but also TO PREVENT those which afterward are foreseen as easily about to arise. - (Recall what was said n. 451; 824; 2256).

“If, all things having been weighed, both from the character of men, from the custom of the inhabitants, from the frequency of outsiders, and from other circumstances, the pious Pastor has known in the Lord that amendment cannot be hoped for even from repeated correction: rather than by voice, let him correct by his example and by his sufficiently open displeasure; lest at least he himself be heard badly by the other faithful, when they see the scandal continue, and the pastors, vexed by no trouble, no solicitude, but as if all things were prospering, live cheerfully, rejoicing as if by conniving.”⁵⁴⁶

§ 7. On Solicitude For Promoting Good. 2278. - The PASTOR ought not only to avert evil, but also TO PROMOTE good. To the point thus St. Alphonsus: “Good pastors,” he says, “do not cease to exhort to frequency of the Sacraments and Congregations, to visits of the Most Holy Sacrament and of the divine Mother, to Novenas, to accompanying the Venerable One when Viaticum is carried about,” and to other things of this kind.⁵⁴⁷

Now, that the good may be PROMOTED more efficaciously: 1. “Let him very often take care that the people pursue with singular zeal devotion to Most Holy Mary, suggesting how great is her power and mercy toward her devoted ones... Happy is that

pastor who keeps his sheep fervent toward devotion to Mary! for they, with the Virgin helping, will live rightly, and he himself at the end of life will have a powerful advocate.”⁵⁴⁸

2. “Let him especially suggest the use of petition: namely that they often commend themselves to God, especially by asking from him holy perseverance on account of the love of Jesus and Mary; explaining more often that divine graces, and especially the gift of perseverance, are not obtained unless they are asked: Ask and you shall receive. And let him often publish that great promise of Jesus Christ, that whatever we ask the Father in his name, the Father will give us (John 16:23). Let him also insistently suggest the use of mental prayer, and take care that it be made in church together with the people on any day, or at least on any feast-day; also teaching the manner in which it can be done at home.”⁵⁴⁹

3. That the people may be enticed to sacred functions, let him especially TAKE CARE of these THREE things, namely: in the church, decency of furnishings; in singing, religious observance; in all ceremonies, diligence. For by these duly performed, as by signs, says Cardinal Bona, “the soul is stirred up to veneration of sacred things, the mind is elevated to heavenly things, piety is nourished, charity is fostered, faith increases, devotion is strengthened, the simpler are instructed.”⁵⁵⁰

⁵⁴⁴ H. A., VII, 30.

⁵⁴⁵ Ibid., 31, 32, 34.

⁵⁴⁶ Scavini, I, n. 644, where there are more things.

⁵⁴⁷ H. A., Append. IV, § 2, n. 7.

⁵⁴⁸ H. A., Append. IV, § 2, n. 8.

⁵⁴⁹ Ibid., n. 8.

⁵⁵⁰ Scavini, I, 445.

4. Let him bring much care to the sacred Sodalities of laymen, by stirring up their zeal, fostering their concord, and patiently sustaining them. For through Sodalities the worship of God is wonderfully increased and propagated⁵⁵¹ (cf. n. 2254, 1, fin.).
5. Let him take altogether special care concerning schools, so that they be instituted and governed according to the Catholic norm, as far as can be done. Wherever he detects schools in which the faith or good morals of youth are endangered, he ought to warn parents that these cannot be frequented by their children, and that they themselves are stained with the guilt of true prevarication if they send their offspring into gymnasia infected with a plague of this sort. - Recall what was said n. 712.
6. "Before the rest, let him be of good example to his subjects. For the Pastor is that shining and burning lamp which is described in the Gospel, burning with holy zeal inwardly, and shining by good example outwardly. Otherwise let him preach, and warn others with all his strength, as much as he wishes, to walk through the paths of virtues; unless he himself goes before by example, his subjects will not even furnish faith to the things which he himself says: for men believe more by eyes than by ears."⁵⁵²

"Finally, on good pastors depend the good morals and salvation of peoples. If a good pastor is present in regions, there devotion, frequency of the Sacraments, mental prayer, and good example will be seen to flourish; but if the pastor is depraved, the whole region will overflow with vices and scandals."⁵⁵³

2279. - It is ASKED. What are the principal RIGHTS of the Pastor?

Resp. They are the following: 1. The right of administering the Sacraments, namely of baptizing, of hearing the confessions of his parishioners everywhere, of giving paschal Communion, of assisting at matrimony, and also of ministering Viaticum and Extreme Unction. - 2. Honorific rights: namely, the pastor in his own church precedes others even constituted in dignity; outside his own church pastors sit after the Clergy of the Cathedral Church; among themselves they precede by priority of assumption, but a perpetual pastor precedes one removable. - 3. Useful rights are the right of burying or of taking part in funerals, stole-rights, the right of receiving offerings.⁵⁵⁴ Concerning these, see the Canonists.

Scholium.

On Vicars And Vice-Pastors. 2280. - Of these some are perpetual curative Vicars, and these are equated with pastors: but others are temporary Vicars.

I. A CURATIVE Vicar is he who is canonically instituted by the Bishop in a parochial church, whose actual care he receives, independent from the primitive and habitual pastor, e.g. from a Chapter. - To him generally belong the very rights and offices of pastors, concerning which we have just spoken.⁵⁵⁵

2281. - II. TEMPORARY Vicars, who perform the duties of an absent or deceased pastor, are called stewards, vice-pastors, administrators, or substitutes, and are bound by the same obligations as the pastor himself; but if they help a present pastor, they are called coadjutors or vicars properly so called.⁵⁵⁶

Concerning these we NOTE: - 1. From the law of Trent (sess. 21, cap. 4, de Ref.) the pastor ought to join to himself as many Vicars or Coadjutors as suffice, after they have been approved or confirmed by the Bishop for this duty. - But at present, on account of the necessities of the times, the deputation and removal of vicars pertain in many places to the Bishop alone.

2. A Vicar, whether constituted by the pastor or by the Bishop, exercises care in the name of the pastor, and after his likeness. But he enjoys those faculties which the express will of the Bishop or pastor, or at least the usage and practice of places, determine.
3. The mutual relations between pastor and vicars ought to be ordered not so much by law as by charity. - There are especially two OFFICES of Vicars. One is diligent help in the care of souls: which is so understood that the pastor can always, if he wishes, perform by himself any ministerial acts whatever. - The other is obedience, by which they

⁵⁵¹Ibid.; cf. Lucidi, vol. II, cap. 7, § 2; Craisson, n. 4654 sqq.

⁵⁵²H. A., VII, 45.

⁵⁵³Ibid., n. 46.

⁵⁵⁴Cf. Craisson, n. 1348 sqq.

⁵⁵⁵Cf. ibid., n. 1515.

⁵⁵⁶Cf. ibid., n. 1516 sqq.; cf. also Ferraris, V. *Vicar. parochialis*; cf. *Analecta J. P.*, series V, col. 838-902 and 970-1015.

exercise the care of souls not separately, but conjointly with the pastor. But let Vicars always remember that they are inferiors and disciples of the pastors.

Note. Concerning Chaplains and Almoners, see the Canonists: e.g. Craisson, n. 1530 and sqq. - Ferraris, v. *Capellanus*.

Treatise III.

On The Lay State.

2282. - For those living in the lay state, the condition of life is one or the other: either they spend private life in domestic society, or they bear some public duty, for the common good.

From this double condition of life there arises a double species of particular offices. Some bind men who conduct private life, and these are referred to domestic society, whether paternal, conjugal, or masterly (concerning which we have already acted in the Treatise on the Fourth Precept). But others bind men who perform some public duty in civil society. Concerning these there must be disputed in the present Treatise.

The disputation embraces THREE things, namely: 1. The Offices of Princes, legislators, and others who are over the republic; 2. The Offices of those who are engaged in the forum, and in whose hands is the exercise of public justice; 3. The Offices of physicians and pharmacists, who similarly perform their duty for the common good.

Concerning the other secular offices, we have treated abundantly in the various chapters of the Decalogue. - See what was said concerning more frequent scandals (n. 515 sqq.), concerning innkeepers (n. 522), concerning artisans and merchants (n. 523 and 908), concerning printers and booksellers (n. 524), concerning collectors of taxes (n. 968), concerning mandataries (n. 1090), concerning money-changers (n. 1116), etc. etc.

Chapter I.

On The Offices Of Those Who Are Over The Republic.

2283. - Those who are over others, these Divine Wisdom itself gravely admonishes in this manner: "Give ear, you who contain multitudes, and please yourselves in the crowds of nations: because power has been given to you by the Lord, and strength by the Most High, who will interrogate your works, and search out your thoughts: because when you were ministers of his kingdom, you did not judge rightly, nor keep the law of justice, nor walk according to the will of God. Horribly and quickly he will appear to you: because a most hard judgment will be made for those who are over others. For mercy is conceded to the little one: but the powerful shall powerfully suffer torments" (Wis. 6:3-7).

This most grave admonition having been premised, behold what things seem to have to be said summarily both concerning the offices of PRINCES and of those who possess supreme power; and concerning the offices of LEGISLATORS and of those who are over some multitude.⁵⁵⁷

Article I.

On The Offices Of Those In Whose Hands Is Supreme Power.

2284. - A PRINCE and anyone marked with supreme power, according to the doctrine of the Apostle, "is the minister of God unto good." But since the good of human society is DOUBLE, namely spiritual or moral, and temporal, the following things must be established.

Principles. I. A PRINCE, and anyone ruling, is held TO FOSTER in those subject to him the sense of religion, and good morals. The reason is because, religion and fidelity toward God having been taken away, fidelity itself toward the prince collapses, and supreme power, without which no order in society can subsist, is necessarily brought into contempt. For civil life is defended by religion alone, and no force or human law can efficaciously impel an irreligious multitude to an honorable and truly upright tenor of life.⁵⁵⁸

Therefore the Prince and whoever acts in his PLACE ought:

1. To furnish a good example in all those things which regard religion and honesty of morals; and since "the whole world is formed according to the example of the King," the leader of the people would stain himself with the enor-

⁵⁵⁷Cf. St. Thom., Op. *De regimine principum*; cf. also Scavini, vol. IV, append. XVI sqq.

⁵⁵⁸Cf. LEO XIII, Encycl. *Diuturnum*, 29 June 1881, and Encycl. *Immortale Dei*, 1 November 1885.

mous crime of prevarication if by his own evil example he induced those subject to him into contempt of religion and corruption of morals.

2. He ought to choose suitable counselors and ministers, whom doctrine and goodness of life make truly commendable, and first of all (if he possesses the right of election from the Holy See) good Bishops, and upright instructors of studious youth (cf. n. 2244 and 712).
3. He ought to use his power for the protection of religion and of the Church, not because he boldly arrogates ecclesiastical authority to himself, or decrees those things which regard faith and religion; but because he strives to be a help to the sacred Ministers to whom the care of the Church has been committed by Christ: by taking care that reverence be exhibited to the divine precepts and to men enrolled in the sacred militia, that public violations of divine law be prevented, that sowers of new religions be warded off, as also those evil books and journals by which damage is brought upon holy Faith and good morals. "For evil books," says St. Alphonsus, "plot ruin for kingdoms."⁵⁵⁹ (cf. n. 451).

2285. - II. A PRINCE and anyone ruling is held TO PROVIDE for public felicity and security by just and opportune means. The reason is because public felicity or prosperity is the end of government, not indeed the primary end, but the secondary, according to that of Matthew: "Seek first the kingdom of God and his justice, and all these things shall be added to you." - Whence, a prince would sin if he placed over the republic ignorant and unskilled ministers, if he burdened subjects more than is equitable, if he did not protect them from enemies or unjust vexations⁵⁶⁰ (Recall what was said nn. 138, 147-150, 653, 729, 749, 873, 922, 965, 978, 983, 1188).

Note. Since St. Alphonsus depicts in few words the form of a good prince, it is helpful to transcribe his words here, especially because ALL who PRESIDE over a multitude or community to be ruled can take from it an example for imitating. - Behold the salutary words of the holy Doctor:⁵⁶¹

1. A good Prince, for the exercise of good government, has God always present to himself, and he sets those things which regard the divine glory before all political reasons.
2. He abhors flatterers, and loves truthful men, and desires that this horror and love of his become known to all.
3. He uses equity toward all, every passion and party-zeal being removed.
4. He does not decree matters of greater moment except after a prior and serious inquiry.
5. In doubtful matters, he has recourse to the counsel of the prudent.
6. He is most cautious in selecting for himself wise and upright counselors.
7. Once counsel has been accepted which he judges to be good, he is wholly intent on this, that he execute the matter strongly, unless clear reasons supervene which persuade the contrary; for to change counsel with a just reason is not weakness of mind, but laudable prudence.
8. If he hears someone praised or accused, he is slow to believe, and weighs whether the reporter, moved by some advantage of his own, is incited to speak thus.

Article II.

On The Offices Of Those In Whose Hands Is Legislative Power.

2286. - Besides supreme governors, there concur for making laws or Decrees both Senators and Deputies (or Counselors) elected by the Prince or by the people in a representative Government, and the electors themselves. Wherefore we establish the following:

Principles. I. Those ELECTED to the office of MAKING LAWS are held to attend, not to what here and now pleases the prince or the multitude, but to what is just, and congruous with the common good of all. For civil law is not just because it is a fugitive decree of the will of the prince or of the people (as pleased certain innovators); but because it is a stable prescription, by which the supreme Power reasonably commands, prohibits, or establishes something, for the common temporal good of the citizens without detriment to spiritual good. - And what we say here concerning laws is valid, by a like reason, for Decrees and any Statutes whatsoever. (Recall what was said n. 153 sqq.) - Sometimes, however, Senators,

⁵⁵⁹ *Fedelta dei Vassalli*, c. 1, n. 9; cf. J. B. Jaugey, *Accord de l'Eglise et de l'Etat*, Letter 4 and following.

⁵⁶⁰ Cf. Tarquini, *Instit. jur. eccl. publ.*, L. 1, c. 2.

⁵⁶¹ *Fed. de' Vassalli*, cap. 2 (*Opp. ascet.*, t. II, p. 506).

Deputies, and Counselors can admit certain things less right (which are not intrinsically evil) and strengthen them by their vote, that worse things may be excluded; provided that they do this with a protestation of their right intention⁵⁶² (cf. n. 202).

Hence: - 1. Participants in legislative power SIN (for the most part gravely), if they do not bring due knowledge and diligence to so great an office; and most gravely indeed, if knowingly they lend their effort or assent to unjust laws or decrees. - Whence, it can happen that they are held to the reparation of damages. Indeed, theological fault and effective influence being supposed, whoever abstains from casting a vote is liable to restitution, when he ought to cast it by reason of the office which he freely accepted by quasi-contract, and by which he bound himself to protecting the public or private good. - Recall what was said n. 983 sqq. - Concerning excommunication, see n. 1320 sqq.

2. Those elected, or to be elected, if they are suitable for so great an office, and no other suitable persons are found, are held to subject themselves to election. And indeed, if someone is sometimes held to consult the good of private persons, how much more the good and safety of the whole community.⁵⁶³

2287. - II. Upon ELECTORS, in a legitimate government, there lies the grave office of ELECTING UPRIGHT Deputies, whether communal, or provincial, or political. - Whence, other circumstances being set aside, not only do positive co-operators sin, namely those who vote for evil men; but also negative co-operators, who by not concurring knowingly are the cause why evil men are elected; for from legal justice each one is held, insofar as he can, to avert evil from the republic, if any hope of averting it shines forth. But no one is ignorant how many and how great evils are brought into both religious and civil society by wicked Deputies, especially by those who are enrolled in the Masonic sect⁵⁶⁴ (cf. n. 989).

We have said in a legitimate government; for, if it is asked whether it is lawful, in a usurped kingdom, to vote in elections and to sit in an assembly of legislators, authors disagree. Some indeed affirm, especially if society is in extremities, and ruin threatens religion. - But others deny that it is right, because such concurrence cannot be furnished without scandal, nor without injustice, since to elect DEPUTIES and to exercise PUBLIC OFFICES is the same as to sustain the person of the usurper, to make laws with him, and to share the government. And hence it was that PIUS IX wholly disapproved a concurrence of this kind, especially for the Pontifical Dominion, in a Brief issued 29 January 1877, and already before in a Declaration made on 18 June 1874... Otherwise, however, if the question is only of electing municipal and provincial COUNSELORS; for these protect only the affairs of the Community, or the good of the Province, nor do they make laws, but they undergo them, not otherwise than the other citizens. - Finally others proceed by a middle way and teach more truly that account must be taken of places, persons, times, and circumstances, which, since they can be diverse, can also lead to diverse conclusions. Therefore with these we say: If, with the right of the legitimate prince preserved, grave damages can be averted from society, citizens have the right and the office of electing upright men, who may keep watch over the common good; if probable hope of promoting a greater good is lacking, it will be better to abstain from political concurrence; especially if the right of the legitimate prince would thereby be injured. But to define the matter belongs to the prince himself⁵⁶⁵ (cf. n. 150, q. 2).

2288. - IT IS ASKED. Whether it is lawful to elect an UNWORTHY man in order to exclude a MOST UNWORTHY man?

Resp. Some with Hurtado deny; for it is evil to will and to choose evil; and if evils are not to be done that goods may come about, a fortiori evils are not to be done that lesser evils may come about; for that is intrinsically evil, and prohibited by the law of nature. To this belongs that saying: "Let the world perish, but let justice be done." - Others with Lugo affirm; for it is lawful to take counsel for a lesser evil, that a greater may be avoided. And then an evil man is not properly chosen because he is evil or for evil; but he is chosen for this, that he may impede greater damages, which is good. And this cannot be said to be evil intrinsically and per se, since in the present case it has the character of good; for it is a diminution of evil. - Finally, others readily concede this, if not only is evil diminished by such an election, but some good is intended and hoped from the one to be elected, as if through him Catholics are able to obtain that liberty by which the evil enjoy themselves.⁵⁶⁶

⁵⁶²Cf. Lehmkuhl, I, n. 800.

⁵⁶³Scavini, I, 676.

⁵⁶⁴Scavini, loc. cit.; Gousset, tom. I, n. 627.

⁵⁶⁵Cf. Del Vecchio, I, n. 332; cf. Berardi, *Prax. conf.*, n. 66.

⁵⁶⁶Del Vecchio, *ibid.* I, 332.

Article III.

On The Offices Of Those In Whose Hands Is Executive Power.

2289. - To the present order chiefly pertain: 1. Ministers of princes, and Prefects of provinces; 2. Leaders of the military; 3. Syndics or rectors of communities. - Concerning each, a few things.

I. Concerning Ministers. - Standing between the prince and the people, MINISTERS owe to the prince truth and service in all things which look to good government; but to the people they owe the faithful and equitable execution of the common law. Whence they make themselves guilty of infidelity: 1) if they conceal from the prince, whose eyes and hands they are, those things the knowledge of which right administration requires for itself; 2) if they bring contempt or hatred of the government upon the people by vicious administration, whether by too great negligence or severity, or by injury to distributive justice in the application of the law, or in the distribution of burdens or favors; 3) if they execute commands certainly unjust. For where the injustice of the command is certain and grave, execution ought to be deferred, until the prince or Superior, having been reverently admonished, corrects the error. But if, admonished, he refuses to correct it, or if admonition is impossible, surely God must be obeyed, and not men.

And these same things, proportion being preserved, are valid concerning Prefects of provinces, concerning delegates to foreign princes, and concerning all other ministers of the executive Power.

2290. - II. Concerning leaders of the military. Leaders of the military, besides suitable KNOWLEDGE and SKILL, which they are held to acquire and to have, are bound by several other obligations, both toward the prince and toward the soldiers.⁵⁶⁷

- 1) Toward the Prince (and the nation), they ought to preserve inviolate FIDELITY and JUSTICE. - Whence, they cannot desert military service, especially in time of war, except by the consent of the prince. They are held to fight strongly; they would be perjured if they fled over to the enemies, or entered clandestine counsels with them. - They would sin against justice by pretending absent soldiers to be present, or by retaining the pay of dead soldiers.
- 2) Toward soldiers, as good fathers of families they ought to keep watch that nothing be lacking to them, whether as to soul, or as to body: let them impede, as far as it can be done, single combats, drunkennesses, quarrels, impurities, thefts. They sin gravely if, without necessity, they prescribe military exercises on Sundays and feast days, especially at the hour of Mass; for they impede the soldiers from performing the principal duty of religion. - Likewise, they sin gravely if they rashly enter battle, or expose the life of soldiers without a just cause. Recall what was said concerning Duel and War (n. 745 sqq.).

2291. - III. Concerning Syndics. "The Syndics of Communities, and their assistants, have their obligations, and indeed most grave ones; since they have been deputed by law as rectors and guardians of Communities, namely that they may protect their goods and rights and the observance of laws, if these are just. - Therefore, they sin gravely and are held concerning damages, if, acceptors of persons, they choose unsuitable men for public offices; if they do not restrain the wicked; if, when able, they do not impede scandals; if they squander the goods of the Community; if they hold the things which belong to religion as almost nothing; and coerce its free exercise, pervert rights, or furnish assistance to those who usurp them.

Concerning these things, sometimes, though prudently, public administrators are to be questioned by the confessor; for not rarely such men confess, as it is said, the sins of Charles, and are silent about the sins of Caesar: that is, they confess the things which they committed as private persons, not those which they perpetrated as deputed to public offices.⁵⁶⁸ - This the Most Holy Lord, Our Lord Pope LEO XIII specifically reproves, solemnly declaring:⁵⁶⁹ "it is not lawful to follow one form of duty privately, another publicly, namely so that the authority of the Church is observed in private life, and rejected in public. For this would be to join honorable and base things, and to make a man fight with himself, whereas, on the contrary, he ought always to be consistent with himself, and in no matter nor in any kind of life to fall away from Christian virtue."

But here the more general question, and one especially useful for practice, comes to be treated:

2292. - QUESTION. WHETHER A PRAETOR, or another PREFECT of the republic, can sometimes commit an UNJUST LAW to execution?

⁵⁶⁷Gousset, I, 627.

⁵⁶⁸Del Vecchio, I, 333.

⁵⁶⁹Encycl. *Immortale Dei*, near the end.

Resp. By reason of obtaining a greater good, or avoiding a greater evil, the execution of an unjust law sometimes becomes lawful. But for this it is required: 1) that the object of the law not be intrinsically evil; 2) that the one injured in his own right, because an unjust law is observed, can and wishes to assent to the injury of his right, or at least that, with the order of charity so commanding, he is not reasonably unwilling.

Wherefore: 1. It is not lawful for the praetor or judge to urge the application of an unjust law, if its execution has been committed to their discretion.

2. If any law is opposed to the rights and liberty of the Church, its execution, when the Church contradicts in the particular case, can in no way whatever be urged, not even under the pretext of obtaining a greater good, or avoiding a greater evil, since the Church alone is judge of those things which are more fitting for herself.
3. If the execution of an unjust law becomes a little harmful to some third party, but its neglected application very harmful to the praetor or judge, the law can be urged: especially if the damage to the third party cannot be avoided, because, one praetor failing, another will not be lacking who will furnish his effort (cf. n. 526).

Chapter II.

On The Offices Of Those Who Are Engaged In The Forum.⁵⁷⁰

2293. - Preliminary Notes. I. Forensic judgment is usually defined: The sentence of a judge concerning a right disputed between plaintiff and defendant, after due discussion has been carried out.

In this definition there are included: 1. The cause, or the disputed right, as the object of the judgment; 2. Three distinct and necessary persons: the plaintiff, the defendant, who litigate concerning the right, and the judge who pronounces; 3. The legitimate discussion and definition of the cause, as the form of the judgment.

2294. - II. Judgments are OF HUMAN LAW formally and as to solemnities, as is clear from their history; but originally they are OF NATURAL LAW; for, the condition of fallen nature being posited, it is necessary that crimes and lawsuits occur; but since it is repugnant to right reason that anyone be judge in his own cause: thence it is altogether required that judges and judgments be constituted by public authority, by which doubts of right are duly settled. - Yet natural law does not absolutely require that all crimes be restrained, and that all lawsuits be settled by judgments properly so called. For sometimes it is expedient, "when crimes are atrocious, to punish at once those caught in the very act of crime, or in excepted crimes to change the common manner of proceeding." Indeed military discipline has this as proper to itself, that it is right for leaders, every form of forensic judgment having been passed over, to punish the offenses of soldiers. And Bishops similarly can, in certain cases, proceed extra-judicially, e.g. from informed conscience⁵⁷¹ (cf. n. 731).

2295. - III. But in no judgment, even a summary one, can those things be omitted which are called the substantial things of judgments: for these are of natural law, against which custom cannot prevail. - Hence, in every judgment properly so called there are found: 1. the petition of the plaintiff and citation of the defendant; 2. proof of the cause, and its defense; 3. decision of the cause, and pronouncement of the sentence. And these THREE pertain to the nature or substance of the judgment; but the other things pertain to solemnity.⁵⁷²

Note. Among the legitimate forms of judgments, canon law excels, which first wove together the judicial web in the second book of the Decretals, from which thereafter every civil procedure was derived, as all Doctors testify with one voice.⁵⁷³

These things having been premised, there must be treated: 1. concerning the persons who constitute the judgment, namely concerning the judge, the plaintiff, and the defendant; 2. concerning the persons who intervene in the judgment, for helping either the litigants or the judge, i.e. concerning witnesses, advocates, etc. - (Recall what was said n. 1292, 7, and n. 1321.)

⁵⁷⁰Concerning these things cf. Lessius, *De justitia*, lib. II, c. 29-32; Lugo, *De just. et jure*, Disp. 37-40.

⁵⁷¹L. IV, 193; cf. Pierantonelli, *Prax. fori eccles.*, tit. VII.

⁵⁷²Schmalzgrueber, *Jus eccles.*, L. 2, tit. I.

⁵⁷³Ferrari, *Summa Inst. Can.*, L. 3, n. 735.

Article I.

On The Persons Constituting The Judgment.

Three persons, the plaintiff, the defendant, and the judge, as we have said, are found in every judgment. Nevertheless it is not always required that the plaintiff, or accuser, be a distinct person; for the judge can, once a rumor has been heard concerning a perpetrated offense, call those who are said to have offended to his tribunal, inquire into the truth, and, this having been certainly ascertained, pronounce sentence: “not as though the same person were accuser and judge,” says Innocent III,⁵⁷⁴ “but as if, report denouncing, or outcry bringing it forward, (the judge) executes the debt of his office.”⁵⁷⁵

§ 1. Concerning The Judge. 2296. DEFINITION. - A JUDGE, so called because he declares the law, is a public person, constituted by legitimate authority, that according to the laws he may vindicate justice, and decree punishments against delinquents. - If he is constituted by the litigants themselves, he is called an ARBITER, to whom thereafter, by new law and with the required conditions observed, jurisdiction over the litigants belongs. We have said by new law; for Roman law imparts no jurisdiction to him.

Among moderns, in criminal matters certain judges of fact alone are constituted, who are called JURORS, from the oath which they make of issuing a vote according to conscience. It belongs to them to pronounce according to the allegations concerning the existence of the fact and the culpability of the accused; afterward, the judges of law decree the penalty according to the law. These are bound by the same obligations as the judges themselves.⁵⁷⁶

2297. - Principles. I. In a JUDGE, that he may perform his office rightly and legitimately, THREE things are required, namely jurisdiction, knowledge, and integrity. - 1. JURISDICTION, or competence, failing which the sentence is null, unless there is a colored title and common error; whence, a civil judge sins, and indeed gravely, if he brings ecclesiastical causes before his tribunal, unless by Concordats or the tolerance of the Holy See, or also by special license, this is conceded to him. - 2. Suitable KNOWLEDGE of those things which pertain to his office. Wherefore, if from culpable ignorance he has injured the parties, whether in the substance of the suit, or in superfluous expenses, he is held to restitution; nor can he be absolved, unless he either resigns the office, or tries to acquire sufficient knowledge, with the damage or danger of his neighbor meanwhile removed. - 3. Incorruptible INTEGRITY, so that he constantly preserves justice, and yields neither to love nor to hatred.⁵⁷⁷

Wherefore two things here come to be NOTED: - 1) “If the judge recognizes an error committed by himself (although without grave fault) to the prejudice of a litigant, he is held, if he can do it without infamy, to impede the error, e.g. by secretly warning the injured party, that he may take counsel for himself by appeal or otherwise; because this pertains to the due execution of the office.”⁵⁷⁸ - 2) “If the judge, in executing the cause and pronouncing sentence, is negligent or unjust, he is held not only to the injured party, but sometimes also to the fisc: e.g. if he remitted without cause a monetary fine which by custom, or common law, he ought to have imposed upon the defendant.” Thus St. Thomas, Sylvester, and others. - Yet, “Lugo, etc., probably hold that the judge is held to nothing if the defendant has not yet been condemned to the fine; because, before sentence, no right to the penalty is acquired for the fisc; hence, if the judge unjustly absolves the defendant, he sins against legal justice, not commutative justice.”⁵⁷⁹

NB. Concerning RESTITUTION to be made by judges, recall what was said n. 983 and 988.

2298. - II. The judge ought to institute judgment ACCORDING TO THE RULES OF LAW, both natural and positive, whether in the manner of proceeding, or in passing and executing sentence. - For he is not constituted to make laws, but to commit them to execution. But the RULES of natural law, to which he ought to conform himself, are the following:

Rule 1. - As to the MANNER OF PROCEEDING, he ought to take care lest, without a just cause, he inflict damage or infamy upon the litigants. - Hence: 1) He cannot institute a special inquisition concerning a certain crime and its author, unless infamy, half-proof, or something similar has preceded; because he would render the man against whom he proceeded by inquisition suspected and infamous. The sole case must be excepted in which there is question of graver crimes, which turn to the common damage of the republic.⁵⁸⁰ - 2) He cannot, without necessity or a grave motive, defer the dispatch of

⁵⁷⁴Cap. *Qualiter* 24, *de accusat.*

⁵⁷⁵Lib. IV, 199.

⁵⁷⁶Cf. Bouvier, *de Decalogo*, cap. 7, art. 3, § 1.

⁵⁷⁷L. IV, 192-195.

⁵⁷⁸*Ibid.*, 195, 4.

⁵⁷⁹L. IV, 196, 3.

⁵⁸⁰Cf. *ibid.*, 198-204.

causes; otherwise he is held to compensate the injured party for the damages which have followed from unjust delay.⁵⁸¹

2299. - Rule 2. - The judge ought, regularly speaking, in PASSING SENTENCE, to pronounce according to the things alleged and proved, and from knowledge juridically acquired. Thus commonly; and the reason is, because the judge bears a public and legal person. - Hence, he sins and is held to restitution, if he condemns him whom by private knowledge indeed he knows to be guilty, but whom the process declares innocent (see however n. 2302). - Likewise, if he condemns anyone unheard, or without witnesses, or from knowledge unjustly extorted, e.g. by force, fear, or fraud, by interrogations made without competent indications, etc.; because the acquisition of knowledge of this kind participates in the injustice of the means, which are against the necessary order of judgment, and consequently is unjust.⁵⁸² The judge also sins, "if he opens to one party what that party could allege for himself; because this would be to perform the office of advocate, which is not lawful for the judge."⁵⁸³

2300. - Rule 3. - The judge ought, in criminal causes, TO FAVOR THE DEFENDANT, until his crime is certainly proved. For thus sounds the 11th rule of law in the Sext: "When the rights of the parties are obscure, the defendant is to be favored rather than the plaintiff." And Roman Law plainly agrees with this rule, prescribing that, for pronouncing a sentence of blood, proofs be brought which are clearer than light.⁵⁸⁴ - Hence: 1) The defendant is always to be absolved (both by jurors and by the judge), if probable reasons are brought for his defense, especially when there is question of capital punishment.⁵⁸⁵ - 2) Likewise he is to be absolved, although he has said nothing for his defense, if nothing is proved against him.

2301. - Rule 4. - The judge ought, in civil matters, to favor the CERTAIN POSSESSOR, until convincing reasons are given against him. But if there is DOUBT concerning the possession itself, or if neither litigant possesses in good faith, he ought to adjudicate the thing to the one bringing notably more probable reasons; and in equality of reasons, to divide the thing, unless there is question of a privileged cause. Thus commonly, with St. Alphonsus.⁵⁸⁶

It is said 1. he ought to favor the possessor. And this indeed is indubitable, whenever the reasons are equal, as is clear from the 65th rule of Law in the Sext: "In equal offense or cause, the condition of the possessor is the stronger"; and from rule 128 ff. of Roman Law: "In an equal cause, the possessor can be held stronger." Moreover, St. Alphonsus affirms that the same rule must be admitted, according to the most common opinion, even if more probable, or solely probable, reasons militate against the possessor in good faith; because the title of legitimate possession bestows a certain right, which is not destroyed except by another certain and proved right, that is, by convincing reasons (cf. n. 45 and 946). Nor does it stand in the way that the judge is held to judge according to the more probable reasons; for, in favoring the possessor, he judges not only according to the more probable opinion, but according to the most probable opinion founded upon another rule of law cited above: "When the rights of the parties are obscure (as they are, when certainty is not present on the part of the plaintiff), the defendant is to be favored rather than the plaintiff."⁵⁸⁷

It is said 2. if there is doubt concerning the possession itself, i.e. if there is doubt as much concerning possession as concerning ownership: e.g. if the suit is concerning a thing possessed by no one, or if the possessor is of doubtful good faith, or at least if it is not established that he is in good faith (as commonly happens in the external forum): then the one bringing stronger reasons is certainly to be favored, as is had from the 2nd proposition condemned by Innocent XI: "I probably think that a judge can judge according to an opinion even less probable." For deservedly was that proposition proscribed, because the judge is held to render to each one his own right, and that party certainly has the greater right who brings more probable reasons (cf. n. 84, 4; 945, 3).⁵⁸⁸

It is said 3. in equality of reasons, whether of fact, or even of law, as the Salmanticenses more rightly teach with Roncaglia, he ought to DIVIDE equally between the litigants the thing certainly possessed by no one; for the judge ought, from his office, to render to each one his own right according to the merits of the cause; therefore, since an equal right belongs to each from parity of cause, it is clear that the thing is to be divided equally, nor can the judge ever judge at will; because to judge is to declare the law, to declare, not to constitute. - Hence deservedly was this 26th proposition condemned by Alexander VII: "When litigants have opinions equally probable for themselves, the judge can receive money for passing

⁵⁸¹Ibid., 200; 196, 1 and 2.

⁵⁸²L. IV, 205; cf. Bonacina, Disp. 10, Q. 3, P. 4.

⁵⁸³L. IV, 210, *Sed notant*.

⁵⁸⁴Law *Sciant* 25, C. *de Probat.*, and law *Absentem* 5, ff. *de Poenis*.

⁵⁸⁵L. IV, 210, q. 1.

⁵⁸⁶H. A. XIII, 65; Lib. 209, 210, q. 2.

⁵⁸⁷H. A. XIII, 65, at end.

⁵⁸⁸H. A. ibid. 65; L. IV, 210.

sentence in favor of one before the other” (cf. n. 945, 3).⁵⁸⁹

“Exception is made [in ROMAN and CANON law], if there is question of causes of matrimony, dowry, widow, ward, and of other pious causes; for then judgment must be made for them, when the rights are equal, even if they are plaintiffs (from cap. *Ex litteris 3 de Probationibus*, and from cap. *final de sent. et re judicata*). - But otherwise, if the opposite party rather has the right (from law *Si pars ff. de inoff. testam.*).” - Recall what was said n. 1027-1028.

2302. - Questions. - QUAER. 1. Whether a judge can condemn an innocent man who is juridically proved guilty?

Resp. 1. It is certain that the judge is held to do as much as is in him, that he whom by private knowledge he knows to be innocent may not undergo punishment. This will often be possible, e.g. by impeding the accusation, prolonging the judgment, suggesting means of defense, remitting the cause to the Superior, or even by opening the prison, if he can execute this without a greater evil.⁵⁹⁰ It is also certain that jurors or judges of fact can never cast a vote against an accused man whom by private knowledge they certainly know to be innocent; for by pronouncing thus, they would sin against their own office and oath.⁵⁹¹

Resp. 2. It is very much controverted, in the case in which the judge is compelled to pass a sentence of punishment. - Some with St. Thomas⁵⁹² say that the innocent man can then be condemned according to the things alleged and proved. Others with Bonacina,⁵⁹³ Lessius, etc., deny this; because to condemn an innocent man seems intrinsically evil: just as it would be evil to compel a woman to live with him whom the judge privately knows not to be her husband. - St. Alphonsus distinguishes and says: “1) In monetary penalties, and in civil causes, the judge, without doubt, ought to judge according to that which has been proved....; while the republic, for the common utility, which is had while judgment is passed according to public knowledge, can certainly transfer ownerships of goods.”⁵⁹⁴ 2) But in corporal penalties, in which there is question of death or mutilation, the holy Doctor holds the opposite as very probable; and the reason can be assigned, because the republic neither could nor willed to confer on the judge the power of killing or mutilating an innocent man, since this is intrinsically evil (cf. n. 738).

QUAER. 2. Whether it is lawful for a judge to receive GIFTS from litigants?

Resp. Neg., even if they are offered freely; for it is said in Deut. 16:19: “You shall not accept a person, nor gifts: because gifts blind the eyes of the wise, and change the words of the just.” - Foods and drinks spontaneously offered are excepted; both because, in law, under the name of gifts there do not come *xenia*, that is, small gifts; and because it cannot be supposed that the judge, on account of a small gift, will pass an unjust sentence. At least in this, as Lugo says, custom ought not to be reprov'd, where it is found legitimately prescribed.⁵⁹⁵

QUAER. 3. Whether and when a judge is held TO RESTORE gifts received?

Resp. 1. It is certain that he is held to restitution: - 1) If he has received gifts from a pact, for passing a just sentence, or for furnishing that which he owed from justice (cf. n. 1036, q. 2); - 2) If by force, threats, or unjust vexation he extorted them; - 3) If the law makes an acceptance of this kind invalid, and a declaratory sentence of the crime has already been passed; - 4) If he has received them for passing an unjust sentence, and the crime (namely of barratry) has not yet been completed (cf. n. 1036, q. 1).

Resp. 2. It is probable that he is not held to restitution, although he has acted illicitly: - 1) if the gifts were offered spontaneously, and he protested that he would nevertheless judge according to justice; 2) if he has already completed the pact concerning an unjust sentence to be passed, and has not been condemned to restitution (cf. 1036, q. 1).⁵⁹⁶

QUAER. 4. Whether he sins who GIVES GIFTS to a judge, or to his ministers?

Resp. Dist. 1. If he gives without a just cause, he indeed sins, by cooperating with unjust reception. Yet simple persons are often excused because of ignorance. - 2. If he gives with a just cause, namely for redeeming unjust vexation, he does not sin; “provided that there is probable danger that otherwise manifest injustice would be inflicted upon him; for then this is not corruption, but caution that his right be rendered to him.... Nor do prohibiting laws stand in the way of this;

⁵⁸⁹L. IV, 210, *Quoniam*.

⁵⁹⁰L. IV, 208.

⁵⁹¹Bouvier, *Decalog.*, cap. 7, art. 3, § 1, sect. 2, at end.

⁵⁹²2. 2. q. 64, a. 6, ad 3.

⁵⁹³Disp. 10, q. 2, p. 2, n. 2.

⁵⁹⁴H. A. XIII, 64; L. IV, 208.

⁵⁹⁵H. A. *ibid.* 66; L. IV, 211 (from the 6th edition).

⁵⁹⁶H. A. *ibid.* 67; L. IV, 216.

for laws intend to avoid lest those giving gifts corrupt judges by gifts, but not that they obtain a just sentence (otherwise not to be obtained).”⁵⁹⁷

QUAER. 5. Whether an unjust or doubtfully just sentence of the judge OBLIGES?

Resp. 1. “If the sentence is unjust, or null on account of defect of jurisdiction, or of substantial form, or if it proceeds from false principles and from ignorance of the facts which is opposed to the order of law simply necessary, whether it is passed through things falsely alleged and proved, or from the iniquity of the judge, it has no force in the forum of conscience; and his right remains to the injured party, even if he does not appeal, and it will be lawful for him, if he can do it without scandal, to recover the goods.... We have said in the forum of conscience: because in the external forum, where not so much the truth of the fact as juridical proof is regarded, the sentence passed must be observed, for avoiding scandals and inconveniences; nor, once the term has elapsed (within which it was lawful to appeal), is action granted to him, the law so establishing, both as a punishment for sluggishness and on account of the public good, that there may be an end of lawsuits.”⁵⁹⁸ (cf. n. 191 and 1272).

Resp. 2. A doubtfully just sentence certainly obliges, in each forum, unless appeal is made. For presumption favors the judge (cf. n. 52).

QUAER. 6. To what is a judge HELD, who has passed an unjust sentence?

Resp. 1. “If he did this by deceit, or great unskillfulness, he made the suit his own, that is, he transferred to himself the damage of the injured party, to whom he is held to make restitution.

2. If otherwise worthy of his office, he erred through forgetfulness, from human frailty, he is not obliged in conscience to restitution from his own goods, since he did not inflict formal injury, nor received any advantage from such a sentence;... nevertheless he ought to revoke the sentence, if he can do so without grave inconvenience”⁵⁹⁹ (cf. n. 983, and 988).

NB. But if the law itself applied or to be applied by the judge has been unjust, recall what was said n. 2292. - If there is question specifically of Divorce, see n. 2126, 3.

§ 2. Concerning The Plaintiff And Denouncer. 2303. - A PLAINTIFF or Petitioner, in civil causes, is he who proposes an action for obtaining reparation of his own damage, and who first summons to judgment, either by himself, or by a procurator. See n. 2316. - A Plaintiff in criminal matters is called an Accuser, and is he who brings a crime before the judge, and asks from him vindication for the common good in writing, with the burden of proving the crime charged.⁶⁰⁰

Note 1. From ROMAN LAW, accusers, if they are convicted of calumny, incur the penalty of retaliation, or ought to undergo the very penalty which they were seeking for the accused. - This penalty, however, from general custom, is no longer inflicted.

2. From MODERN law, private persons are not permitted to institute an accusation; for this function belongs solely to the magistracy constituted for this, i.e. to the general procurator of the State: who therefore, together with others destined for this office, is called the Public Ministry; for it belongs to them to assume and protect the parts of the Community and of good morals against defendants. - In lower tribunals, e.g. before the judge of the region, in a cause, as they say, correctional, the same office is committed to ministers of public security, or even to the first elected municipal Officials. But the general procurator, in fulfilling the parts of his office, is assisted by another official, who is called the Judge of instruction. To this man it generally belongs to collect arguments and indications of offenses before the suspects are cited, to make investigation of guilty persons, and to take care for their arrest, to inform the cause, and to order the suit in that manner which the laws prescribe or permit. - Let recourse be had to the Code of the respective nation.

2304. - The place of accusation is supplied by denouncement, concerning which a more special discussion must be given.

I. Notion Of Denouncement. Denouncement in general is defined: the manifestation of someone’s crime made to a Superior, with the burden of proving it not assumed. By these last words it is stated in what manner denouncement differs from accusation.

⁵⁹⁷Ibid. 212, 213.

⁵⁹⁸L. IV, 215.

⁵⁹⁹Ibid. 214.

⁶⁰⁰Cf. H. A. XIII, 73; L. IV, 234 sqq.

Denouncement is threefold: evangelical, canonical, and judicial. 1. Evangelical or paternal denouncement is the delation of a crime to a Superior as to a father, to the end that the defendant may come to his senses⁶⁰¹ (See what was said n. 494). - 2. Canonical denouncement (which in certain cases is prescribed by the canons) is the delation of a crime to an ecclesiastical Superior, to the end that the crime may be impeded, or that an unworthy man may be removed from office.⁶⁰² - 3. Judicial denouncement is the delation of a crime to a judge, whether lay or ecclesiastical, to the end that the defendant may be punished, or that damage may be repaired for the injured party. It is held in place of accusation, and lays the way for the judge to inquire.

II. Obligation Of Denouncing. 2305. - The obligation of juridically denouncing arises from a threefold source, namely: from justice, from charity, and from a positive precept.

Principles. I. From LEGAL and COMMUTATIVE justice, those are held to denounce who are deputed to this by office, and are remunerated by the Prince or by masters by an agreed stipend. Of this kind are Fiscals, and other public officials, keepers of fields, of taxes, and of similar things, all of whom, since by office and by quasi-contract they are held to denounce crimes, are also held to repair damages to the Community, or to masters, which have followed from culpable omission of accusation or denouncement. - Recall what was said n. 988.

Gury notes that keepers of woods, fields, etc. sin if they denounce merely accidental damage, and that they are not held to denouncement if the delinquents spontaneously offer themselves to compensate the damage secretly.... But sometimes, he says, they can act more mildly with those causing damage, if the damages, e.g., are of lesser moment, and have not been repeated more often; if it can prudently be presumed that the master does not wish the delinquent to be brought forward; if the delinquent is very poor and not accustomed to offend, etc.; but let keepers carefully beware lest in these things they indulge more than is equitable.⁶⁰³

2306. - II. FROM CHARITY, for consulting the good of the Community or of the innocent, private persons are held to denounce certain OFFENSES or CRIMES, namely: 1. a crime turning to the damage of the Faith, or of the Community, as heresy, rebellion, falsification of monies, robbery on the public road, and the like: which each one ought to avert under grave obligation, even with grave inconvenience, because there is question of the common good (cf. n. 442). - 2. A crime from which grave damage threatens an innocent person, whenever no grave inconvenience is prudently to be feared for the denouncer. The reason is, because on the one side the innocent is to be preferred to the voluntarily harmful, but on the other, each one is held from charity to protect the innocent, when he can furnish this without grave inconvenience to himself⁶⁰⁴ (cf. n. 483, Reg. I.).

2307. - III. FROM THE PRECEPT OF A SUPERIOR, or from a MONITION or PUBLIC EDICT, all persons, for the most part, are held to denounce offenses. - But a precept of this kind does not urge, unless the delinquent is defamed, or at least suspected by grave indication, or when the crime turns to the damage of the Community, or of a third party; yet with this difference, that in the case of damage only inflicted or to be inflicted upon some third party, fraternal correction ought to be premised, nor is there obligation of denouncing with one's own damage; but when the offense turns to common damage, there is an obligation of denouncing, even with one's own damage, although the offense were occult; nor is previous correction to be premised, except in the rare case in which by secret warning the evil can be impeded at once (cf. n. 494 sq.).

We have said all persons for the most part; for: 1. by force of a Monition no one is held to denounce himself; for no one can be bound to brand himself with infamy; 2. he is not held to denounce those joined to himself within the fourth degree, except in the case of formal heresy, or of conspiracy against the Prince. "The reason is, because to denounce one joined to oneself is the same as to undergo grave damage or inconvenience: which reasonably excuses, when danger of common damage is absent."⁶⁰⁵

2308. - IT IS ASKED. When is it ILLICIT to denounce a crime?

Resp. You are not held, nor ought you (even supposing the precept of the Superior) to denounce: 1. If the crime is not public, nor harmful to society, and fruit is hoped from private warning; for then fraternal correction ought to be premised (cf. n. 494). - 2. If the delinquent has been amended, without danger of relapsing, and satisfaction has been made to the injured party, nor does danger threaten others; because the infamy of the neighbor would follow without

⁶⁰¹Cf. L. IV, 242-245.

⁶⁰²Cf. Craisson, n. 5839-5849.

⁶⁰³Gury, II, n. 35, 36; cf. L. IV, 237; H. A. XIII, 73.

⁶⁰⁴H. A. XIII, 74; L. IV, 236 and 248 at end.

⁶⁰⁵L. IV, 250; VII, 214.

cause. (See however what was said n. 1798 concerning solicitors.) - 3. If you know the crime under a committed secret, as consultant, advocate, etc.; unless however he who committed the secret to you were unjustly vexing an innocent person or the Community, and were unwilling to desist from vexing (cf. n. 1187).

Note. From ECCLESIASTICAL LAW these must be denounced: - 1. Heretics and those suspected of heresy (cf. n. 442); - 2. Confessors who solicit (cf. n. 1354; 1794 sqq.); - 3. Confessors who demand that the name of an accomplice be revealed to themselves (n. 1701); - 4. Masons and others enrolled in secret sects (n. 1331); - 5. The unworthy to be promoted to sacred Orders (cf. n. 1916); - 6. Betrothed persons entangled in a diriment impediment and about to enter matrimony already published (cf. n. 2065).⁶⁰⁶

§ 3. Concerning The Defendant. 2309. - A DEFENDANT (called from the thing or from guilt) is he who is called into law and against whom action is taken in judgment. - In a civil judgment he is also called the defender, and in criminal matters the accused. - But for discerning what is lawful for the defendant, and what is not lawful, whether in confession of the crime, or in defense of his cause, or finally in declining the penalty inflicted upon him, the following things are valid:

Principles. I. The defendant is held TO CONFESS THE TRUTH and TO REVEAL the associates of the crime TO THE JUDGE ALONE, when he legitimately and juridically interrogates. - Thus commonly with St. Alphonsus.⁶⁰⁷

We say 1. when legitimately and juridically interrogating; otherwise, according to St. Thomas,⁶⁰⁸ the accused is not held to respond; "but he can elude the judge, either by ambiguous words, or even by denying with some restriction, and in a good sense, so that a lie be absent." The reason is, because the judge does not have authority, except when he interrogates legitimately and juridically (cf. n. 1182). But now: - 1) he does not interrogate legitimately unless he has jurisdiction over the matter or over the person; - 2) he does not interrogate juridically, unless half-full proof has preceded, or unless infamy exists, or another manifest indication of the crime. - Indeed, in a criminal cause, if the defendant reasonably doubts whether he is interrogated legitimately, he is not held to respond. "The reason is, because he himself possesses life and reputation; whence, in doubt, he has the right of preserving it, until the legitimate interrogation is established."⁶⁰⁹ Yet someone could be held from charity, namely on account of the utility of the neighbor, to respond.

We say 2. he is held to confess the truth; for the judge legitimately interrogating has the right of demanding the truth from the defendant: therefore it is repugnant that there should be at the same time in the defendant a right of denying it. - Hence, Benedict XIV in the Constitution *Paterna charitas* issued in the year 1749 teaches that absolution is generally to be denied to defendants who keep back the truth; because it pertains to the common good that guilty persons be known and punished; especially if the penalty which is feared is ecclesiastical, because this is medicinal. - But whether the defendant is held to confess his offense with fear of death, or of another most grave penalty? It is sharply DISPUTED. Suarez, Lugo, and others deny; because the law would then be too hard, and as if impossible for human weakness, unless it is necessary for averting common damage, e.g. by revelation of the associates of rebellion. St. Alphonsus indeed does not reprove this opinion; but he considers the opposite opinion more probable, at least because of the authority of St. Thomas, Sanchez, Lessius, the Salmanticenses, etc., and because the judge has the right of knowing the truth whenever he interrogates legitimately. In practice, if the defendant does not believe himself obligated, and no fruit can prudently be hoped from admonition, he is to be left in his good faith.⁶¹⁰

We say 3. he is held to reveal associates; namely, if there would be against them indications, or testimonies, or infamy. Otherwise, he is not held nor can he reveal them, because in occult matters they retain the right to their own reputation. But if the offense is of the excepted ones, as heresy, conspiracy, etc., he is held, even when not interrogated, to reveal them, as is clear from what was said concerning denouncement (n. 2306).⁶¹¹

It is helpful TO NOTE: - 1) After sentence has been passed, the defendant is not held to confess the crime which before he unjustly denied; because once the judgment is finished, the precept of the judge no longer urges. Except if the defendant by his denial has inflicted damage on the judge, which he ought to repair. - 2) Before sentence it is not necessary that he be interrogated again; because the precept of the judge perseveres, which he is still held to obey.⁶¹²

⁶⁰⁶Cf. Craisson, n. 5839 sqq.

⁶⁰⁷H. A. XIII, 82; L. IV, 272, 273.

⁶⁰⁸2. 2. qu. 69, a. 2.

⁶⁰⁹L. IV, 273.

⁶¹⁰Conf. dir. XX, 7; H. A. XIII, 83; L. III, 156; IV, 274.

⁶¹¹H. A. ibid. 85; L. IV, 278.

⁶¹²H. A. ibid. 83 at end; L. IV, 274.

2310. - II. It is never lawful for a defendant or accused man, even if innocent, FOR HIS OWN DEFENSE, to impose a false crime upon another. This is clear from the 44th proposition condemned by Innocent XI (cf. n. 1196). - Yet he can licitly, for his own defense, set against the accuser or witnesses a true but occult crime, provided that this is absolutely necessary, and that otherwise he himself would suffer grave damage, although through the revelation greater damage may come to the accuser or witness; for no one is held, with his own grave damage, to preserve the reputation of his neighbor (cf. n. 1198). - Likewise, if the defendant had indeed committed the crime, but so occultly that it cannot be proved, he can licitly set calumny against the accuser; because by law he is presumed to calumniate who accuses a defendant of a completely occult crime.⁶¹³

2311. - III. It is not lawful for the defendant, even if unjustly condemned, TO REPEL FORCE BY FORCE, e.g. by killing, wounding, etc.; as is clear from the 18th proposition condemned by Alexander VII. - Nor can he licitly corrupt the keeper of the prison with money, since this is intrinsically evil (cf. n. 518). - But one unjustly condemned can positively resist, so that he may snatch himself from the hands of the attendants, provided that from this there does not arise public scandal and grave disturbance. He can similarly, by breaking doors, lawfully flee, even if the keeper of the prison is going to suffer damage from this; for he uses his own right, and consequently the damage which he does not directly intend is not imputed to him.⁶¹⁴

But for him not yet condemned, or already justly condemned to death, or to the galleys, it is not lawful to resist. He can indeed flee from prison, where he is detained in custody; but he is by no means held to this. - But if prison (not very hard) has already been assigned to him as punishment, he can no longer flee; because the sentence justly passed against him obliges in conscience. Thus commonly.⁶¹⁵

On these things LET IT BE NOTED: - 1. When it is lawful for the defendant to flee, others also (ministers of justice, however, excepted) can supply those things which help or hasten flight, e.g. files, ropes, or other instruments, provided that no damage will come to the republic from this, for example, if the defendant were the head of robbers. - But it is lawful for no one to break into prisons in order to free the condemned: for this is conceded to the defendant from the right of preserving life; but for others it is ruled by the common good, namely lest all security of the prison perish (cf. n. 519).

2. Let the confessor prudently ADMONISH the defendant that he can neither benefit him nor harm him; for, this admonition being omitted, the defendant, led by hope or fear, will try to prove himself innocent. And although his innocence becomes known from confession, nevertheless let the confessor not commit himself to intercede for him before the judge; both because his testimony would not make faith, and because the seal of confession would be broken indirectly, in relation to those for whom the same intercession would not be made, and also because of many other inconveniences⁶¹⁶ (cf. n. 2300, and n. 1546, qu. 2, concerning Communion).

2312. - Questions. QUAER. 1. What is lawful for the defendant in a CIVIL cause?

Resp. The defendant, or defender, has the civil action brought against him by the petitioner, either as certainly just, or as certainly unjust, or as doubtful. - In the first case, he ought without delay to satisfy the petitioner, nor can he begin a lawsuit without being held concerning all damages that will come about. In the second case, he can defend his cause by all means and arts not illicit, as a defendant in criminal matters (n. 2310). - In the third case, he can, as long as the doubt persists, licitly contend; unless charity toward himself and the neighbor, and the counsel of the prudent, advise a transaction, namely lest expenses be multiplied beyond measure (cf. n. 944-947 and n. 1160).

QUAER. 2. Whether it is lawful to interpose an APPEAL?

Resp. 1. Neg., in a civil cause certainly unjust, or certainly less probable; because if a new judge judged for the defendant according to the less probable opinion, he would certainly act unjustly (from n. 2301, rule 4). - "But what if it is doubtful whether the superior judge will justly pass sentence for the defendant? In such a case, it is probable that the defendant can appeal, even in a civil cause; because, since the minds of men are diverse, perhaps the opinion which appeared less probable to the lower judge will appear more probable to the superior; and the defendant, since he already has a probable right for himself, can licitly try this, not without a just cause. And this seems to be the practice of all who appeal." Thus St. Alphonsus.⁶¹⁷

Resp. 2. If there is question of a criminal and capital cause, the defendant can appeal, even if he has a less probable right,

⁶¹³ H. A. *ibid.* 85; L. IV, 277.

⁶¹⁴ H. A. *ibid.* 86, 87; L. IV, 279-282.

⁶¹⁵ *Ibid.* 86; IV, 279, 280.

⁶¹⁶ Cf. L. IV, 286-290; H. A., Tr. ult., n. 48, 49.

⁶¹⁷ L. IV, 285.

as is clear from what was said n. 2300. He will also be able to do this, although the first sentence has been just according to the things alleged, in the case in which he has found new reasons for himself, so that the opposite can still be proved.⁶¹⁸

Article II.

On Persons Auxiliary In Judgment.

There must be treated: 1. concerning auxiliaries of the litigants, 2. concerning auxiliaries of the judges.

§ 1. Concerning Auxiliaries Of The Litigants. To help litigants there intervene witnesses, advocates, procurators.

I. Concerning Witnesses. 2313. - WITNESSES in general are suitable persons who are employed for establishing faith in some matter.

Preliminary Notes. For testifying in judgment, some are never assumed, some only in certain causes; nor is the same number of witnesses always required in all causes. - We have said 1. Some never; for several are excluded by the laws. Thus, in canon law,⁶¹⁹ the insane, the immature, the blind, those corrupted by money, infamous persons, criminals, perjurers, the excommunicated, vile persons, parents, spouses against each other, servants, women, an associate in crime, etc. are excluded: all of whom, however, have their own proper exception.⁶²⁰ - 2. Some only in certain causes; for, from canon law, lay persons are regularly not admitted against clerics in a criminal cause; and from civil law, in some regions, witnesses are regularly not admitted concerning an agreement concerning a thing exceeding the value of 300 francs, but authentic writings are required. - 3. The same number of witnesses is not always required; for sometimes one witness suffices: for example, if there is question of lighter penalties to be inflicted, e.g. in theft from woods; or of an expert in his art, e.g. if a physician testifies that someone's death is natural. Regularly, one witness also suffices in favorable causes: e.g. if it is asked whether someone was baptized, whether a church was consecrated, etc.⁶²¹ - Sometimes more than two or three are required, as happens for a solemn testament in several kingdoms; and from canon law, if there is question of a criminal process against a Bishop.⁶²² - Yet:

Regularly, TWO suitable WITNESSES are required and suffice for full proof in every judgment, both civil and criminal; provided that they have perceived by external sense what they testify, depose with oath, and agree among themselves, not only in the substance of the fact, but also in the principal circumstances of person, place, time.⁶²³ Hence that saying of Matt. 18:16: In the mouth of two or three let every word stand, and the axiom of Law: One witness, no witness. The reason is, because for proving human actions moral and probable certitude suffices.

2314. - Principles. I. Anyone is held TO TESTIFY: 1. from charity, namely when this is necessary for averting a great evil of the neighbor or of the Republic; - 2. from precept, when the judge legitimately interrogates; for a just precept obliges in conscience (n. 2307).

Moreover, the judge legitimately interrogates (as was said above), when either half-full proof of the crime, infamy, evident indications, are present, or also when the accuser offers himself to prove the offense by several witnesses. If these things are at hand, and become known to the witness through the judge, the judge interrogates legitimately, and the witness is held to reveal the truth.⁶²⁴

But he is NOT HELD to reveal it: 1. If he knows the matter from sacramental secret, or under natural or committed secret; provided that from observance of the natural or committed secret, there does not threaten the republic or an innocent person great damage, which cannot be averted by another way; - 2. if he cannot testify without grave damage to himself or his own, provided that public damage, or another's private damage, does not prevail; - 3. if he has heard the matter from men worthy of no faith; for then he can hold himself as if he knew nothing; or by an unjust manner, for example by force or fraud, e.g. by opening letters; 4. if he knows that the defendant did not sin in conscience, e.g. because of ignorance; because the mind of the judge is to inquire concerning an offense.⁶²⁵

⁶¹⁸Ibid. 285 and 210.

⁶¹⁹Cf. Tit. *de Testibus*, L. II, Decretal. Tit. 20.

⁶²⁰Cf. Soglia, § 218.

⁶²¹Soglia, § 218 at end; cf. Craisson, n. 5712.

⁶²²L. IV, 255-258; 261-263.

⁶²³Ibid. 259, 260.

⁶²⁴L. IV, 264-267.

⁶²⁵Ibid. 268; H. A. XIII, 79.

2315. - II. A witness legitimately interrogated, and not excused from the obligation of testifying, is held TO SPEAK THE TRUTH integrally, and nothing besides the truth, by responding to the questions simply, according to his conscience. Thus all.

Hence: 1. The witness sins, and is held to restitution: 1) if he receives a price for speaking the truth, since by every law he is held to speak it freely; - 2) if knowingly he affirms what he is ignorant of, or opens things to be hidden, or testifies falsely; and he is obliged to reparation whenever, by acting thus, he has been the effective cause of damage. Whence, he is held to retract himself, even with damage equal to life or goods, provided that the retraction is foreseen to be profitable. - Mark the words knowingly, effective; for if grave fault is lacking, he is indeed held, insofar as lies in him, to impede the damage, but not to repair what he did in ignorance. Likewise, if by his false testimony he effected nothing, he is held to nothing⁶²⁶ (cf. 948 and 949).

2. He also sins, but without the burden of restitution: 1) if, in a case in which he is held to testify, he hides himself, lest he be cited by the judge; because he injures charity; 2) if he flees after citation; 3) if, legitimately interrogated, he hides the truth: because he injures obedience, indeed also religion, if he has furnished an oath. - In these things, however, since he is only a negative cause, he does not sin against justice: unless he entered into a special pact, with a party, concerning manifesting the truth.⁶²⁷

II. Concerning The Advocate And Procurator. 2316. - An ADVOCATE (patron, pleader) is he who is called to assist a litigant in pleading, or defending, a cause.

A PROCURATOR (caretaker for another) is he who by legitimate mandate conducts and administers the affairs of another (cf. n. 1091). - A judicial procurator can be: 1. on the part of the State or republic, and is called fiscal or royal (cf. n. 2303); 2. on the part of the advocate, namely he who is the helper of the advocate in the defense of the suit, or the second advocate; 3. on the part of the litigant, whose place he bears in judicial acts.⁶²⁸

2317. - Principles. I. Not all indiscriminately can exercise the office of judicial ADVOCATE or PROCURATOR. - For some are excluded by civil law: such as women, minors, infamous persons, judges in the same cause, etc.; others by canon law, namely: the excommunicated, monks, clerics constituted in Sacred orders, beneficiaries, unless there is question of certain causes which we have designated above, n. 2226. - By natural law itself those lacking necessary knowledge are prohibited, who consequently are held concerning damages that followed from ignorance.⁶²⁹

2318. - II. An advocate or procurator cannot assume ALL CAUSES; but only those which, after diligent examination, he has judged to be JUST and LAWFUL. This is clear through itself. But now, in an unjust cause, the advocate is held to repair the damages both of the opposing party and of his own client, if he has concealed from the latter the injustice of his own cause. But if the client also is in bad faith, he himself is held, in the first place, to make restitution to the opposing party, as one commanding; but in the second place, the advocate, as executor.

Hence: 1. An advocate questioned by a client is held to examine the cause with diligence proportioned to the gravity of the matter, to preserve fidelity to the same, and finally to declare the quality and state of the cause, lest there be proceeding to vain expenses.⁶³⁰

2. If he has assumed the cause in good faith, at least as probable, and notices its injustice in the course of the process, he is held to abandon it, and to advise the client to desist. Nor in this case can he advise a composition with damage to the other party; because there is no place for composition, except when the matter is doubtful.

2319. - Questions. QUAER. 1. Whether an advocate or procurator can defend a LESS PROBABLE cause?

Resp. 1. In a civil cause, according to the more probable and more common opinion, if the doubt is of law, the advocate (or procurator) can assume and defend the slightly less probable parts, whether of the plaintiff or of the defendant, yet with the litigant warned concerning the quality of his right. "The reason is, both because an opinion less probable in the course of time can become more probable; and because many times the opinion which appears less probable to the advocate seems more probable to the judge." But if the doubt is of fact, he cannot, whether in lesser or even equal probability, defend the

⁶²⁶L. IV, 269, 270.

⁶²⁷Ibid. 270, 271; H. A. ibid. 80, 81.

⁶²⁸Porpora, Tr. 25, n. 330. In canon law the fiscal procurator is called the promoter.

⁶²⁹L. IV, 219.

⁶³⁰L. IV, 223.

cause; because in such a cause the defendant, or possessor, is altogether to be favored; and therefore if a suit were brought against him, he would be vexed unjustly, and the plaintiff would be compelled to useless expenses.⁶³¹

2. In a criminal cause the defendant, even truly culpable, can always be defended, provided that it is done without fraud and lying; because he is not held to the penalty unless convicted. But the accuser or denouncer cannot, in a doubtful criminal cause, be helped by the fiscal procurator or by another, because these would sin, just as the accuser himself, by cooperating with his illicit denouncement.⁶³²

QUAER. 2. To what is an advocate held by reason of HONORARIUM or STIPEND?

Resp. 1. He can receive nothing beyond the just price, namely that taxed, where it exists, or determined by the judgment of the prudent, account being taken of the business, of his own skill, of the labor which he expends, and of approved custom. - Yet if the client, without just cause, abandoned the lawsuit begun, he could contend for the whole salary.⁶³³

Resp. 2. As to the poor: 1) He is held, even with grave inconvenience to himself, to assist gratuitously those who are in extreme necessity, and have no other recourse; 2) likewise, but short of his own grave inconvenience, those who are in grave necessity; 3) finally, to those who are in common necessity, it suffices if he bestows some of his work.⁶³⁴

2320. - From these things you resolve: - I. An advocate SINS: 1. If he defends or prosecutes a cause certainly unjust as to ownership, although it were just as to possession; for just as the defendant then cannot retain the thing, so neither can the advocate protect him. 2. If he prosecutes a just cause by unjust means, by bringing forward, e.g., false writings, or abrogated laws. 3. If, after the lawsuit has been begun, he makes an agreement concerning stipend; for concerning this an agreement must be made either before or after; because if he were to agree during the course of the suit, the client could easily be compelled to acquiesce in every stipend, however immoderate; and he sins much more gravely by agreeing concerning a proportional part of the suit, e.g. concerning a third part, if the cause is won; for such a pact casts him into proximate danger of employing every device, that by right and wrong the suit may be obtained. Nevertheless, if the price were certainly just, and deceit were absent, he would not be held to restore what he had received. - 4. If he undertakes more causes than he can conveniently handle, the client not having been warned. - 5. If he patronizes each party; because it is repugnant that he defend each party equally, at least in the same cause. - 6. If he opens the secrets of his client to the opposing party. There are indeed some who except the case in which another, because the secret is observed, would unjustly suffer grave damage; but others with St. Thomas do not admit this limitation, except in the very rare case in which the defendant would be punished capitally, and the accuser proceeded unjustly. - 7. If he uses deceits or delays not making for the matter; finally if by negligence or grave imprudence of his own he loses the cause⁶³⁵ (cf. n. 974).

2321. - II. The fiscal procurator (or his substitute) SINS AGAINST justice: 1. If from negligence, from precipitation, or prejudice, from hatred or acceptance of persons, etc. he drags an innocent person into detention, into judgment, into an unjust sentence to be undergone. 2. If he sustains an accusation after in the course of the cause he has recognized the innocence of the accused, or has gravely doubted concerning it. 3. If he defers the exercise of his office with injury to citizens. But what he has acquired for himself by arts of this kind, he is held to restore.⁶³⁶

2322. - III. The procurator of the parties SINS against justice: "1. If he procures an unjust suit; 2. if he undertakes more causes than he can dispatch; - 3. if he receives more pay than is just; - 4. if he persuades the defendant or party to deny the truth unjustly; - 5. if by his carelessness, negligence, or other fault, he is the cause that the suit is lost; - 6. if in the name of the party he swears, without particular information from him, with danger of perjury; - 7. if culpably he is not present at the tribunal, from fear of future inconvenience, etc.; - 8. if he brings the parties to an inequitable agreement; - 9. if he defers the cause, or perverts the judge, asks for impertinent terms or superfluous delays; - 10. if he induces false witnesses."⁶³⁷

IT IS ASKED. What of him who substitutes or adulterates WRITINGS, for supplying lost acts, or for prosecuting a certain right?

Resp. 1. He sins, at least venially by reason of lying, because, however the matter stands, the note of hand which is exhibited is diverse from that which makes faith in judgment. It can also happen that he sins against prudence, namely if

⁶³¹Ibid. 222; H. A. XIII, 70.

⁶³²Ibid. 220.

⁶³³H. A. ibid. 70; L. IV, 225, note 2.

⁶³⁴H. A. ibid. 69.

⁶³⁵H. A. XIII, 71; L. IV, 223-226.

⁶³⁶Cf. Gury, II, 14, 4.

⁶³⁷L. IV, 232.

he exposes himself to the danger of incurring most grave penalties.

Resp. 2. He does not sin against justice, since he prosecutes a certain right; and consequently he is not held to restitution. Except, if he conducts the cause of another, as an advocate, and from the discovery of the fraud damage comes to his client or to the opposing party.⁶³⁸

NB. What is lawful for an ADVOCATE and PROCURATOR in a cause of Divorce, see n. 2126, 2.

§ 2. Concerning Auxiliaries Of Judges. 2323. - Auxiliaries of judges help them in settling causes in a threefold manner: 1. by counseling: in which office auditors or referendaries, and assessors or counselors, function; 2. by writing the acts of the judgment: which notaries do, who are also called scribes, chancellors, actuaries, tabellions, protocolists; 3. by executing what the judge commands: in which business attendants and judicial messengers are occupied, who are also called apparitors, runners, beadles.

Principle. Auxiliaries of judges “are held to exercise their office JUSTLY AND FAITHFULLY, whether from the debt of the office only, or also from oath. - Likewise, they are held TO KNOW those things which pertain to their office, and to employ due DILIGENCE, furnishing all necessary things, asking for just terms, appealing, when it has been necessary.”⁶³⁹

This general principle having been premised, it remains that the following things be noted separately.

I. Concerning Referendaries And Counselors. 2324. - I. Referrers or Ponents are those to whom the examination of the suit or recognition of the cause is committed, that they may refer it to the judges to be defined. Generally such an office is committed to one from the judges themselves, who by this reason is called the commissioner of the cause, or judge-relator.

The Referrer SINS and is held to reparation of the damage that comes about: 1. If by defect of study, or by carelessness, he reports badly, or omits things which pertain to the substance of the suit; - 2. if he favors either party; - 3. if he divulges the sentence before the time.

Note. But from the fact that knowledge of the cause belongs to the Referrer, it by no means follows that the other judges can neglect knowledge of the cause; for if they were to neglect it, the judgment would depend, in great part, upon the report of the Referrer alone, which not rarely totters. - Therefore each judge is held to weigh the cause considerably, and then, from his own knowledge, to cast his vote.

- II. Counselors are held to the same things as the judge himself, insofar as they cooperate proximately with him in passing sentence. - Recall what was said concerning the Judge, n. 2296 sqq.; and concerning Counselors, n. 980, 983, 984, and 988.

II. Concerning Scribes And Notaries. 2325. - I. A scribe or secretary is said to be one who has been deputed by legitimate authority, that in writing he may report testimonies, the sentences of judges, and the other things which are done in tribunals. From this it is clear how great prudence the office of Secretary requires for itself; for he himself is, as it were, the right hand of the judge.⁶⁴⁰

A SCRIBE can commit various injustices, especially:

1. If he does not use due diligence for reporting into authentic books all things brought forward and done in the tribunal. For defect of this diligence, unless it is altogether involuntary, easily induces grave fault and the obligation of restitution.
2. If from malice he omits something in writing, or if he adulterates the public tablets committed to himself, or keeps them badly; if he does not add the due formalities and signatures, or does not take care that they be added; if he does not faithfully transcribe the testimonies or words of witnesses, whether by exaggerating or diminishing, or by changing or inverting.
3. If he betrays a secret committed to himself; if he manifests a sentence not yet published; if, without the prescription of the judge, he shows the processes completed to the parties; if he hands over to the same parties the acts of the judge before they have been signed according to the legal forms. For then he exhibits a maimed and false instrument, the dispatch of which is of no value.

⁶³⁸Cf. Gury, II, 13.

⁶³⁹L. IV, 227.

⁶⁴⁰Cf. Ferraris, Verb. *Cancellaria, Secretarius*.

4. If, for increasing his salary, he amplifies more than is equitable the acts to be distributed; if he demands an unjust price, etc. - Moreover, as to stipend, he is held to stand by the legal or usual tariff, if by the passage of times the legal tariff has become insufficient. - Besides, all commonly say that the scribe cannot receive from the parties anything beyond the just price, even under title of donation; for such largesses are never spontaneous. Yet, if he undertook some extraordinary labor, it would certainly be lawful to receive something more.⁶⁴¹

2326. - II. A notary or tabellion is said to be one who has been legitimately instituted for writing and noting acts, or instruments, which make faith either in judgment or outside it. The office of Notary is most grave, since public faith is committed to him. Hence that very well-known verse:

Let the notary be experienced, faithful, diligent.

Therefore he ought to be: 1. Experienced; whence he sins gravely against justice, if from ignorance or negligence of his office he omits those solemnities and necessary conditions which are required for the validity of the act. - 2. Faithful; whence he likewise sins gravely against justice, if he violates an oath, or a secret; if he conceals instruments from the party requesting them, especially those which contain legacies; if he makes a false instrument; if he writes the testament of a man deprived of the use of reason; if he adds to or takes away from the pacts of the contracting parties something of grave moment; if he does not warn them concerning clauses which can harm them, etc. - 3. Diligent; whence he sins gravely, and is held concerning damage, if he prepares acts negligently, e.g. through an unsuitable transcriber, or keeps them badly; if he defers, without just impediment, the dispatch of the cause; or brings it about that judicial acts come to other judges than to those whom the order of the forum designates, etc.⁶⁴²

Concerning the Notary, moreover, those things are valid which above (n. 2325) we said concerning the scribe.

2327. - IT IS ASKED. Whether a notary is held to restitution toward the FISC, if in preparing an instrument of sale or inventory, at the request of the parties, or even with himself hinting it, he does not inscribe the true price of the thing, but another lesser one, so that the TRIBUTE to be paid may be DIMINISHED?

Resp. It is controverted. - Some affirm, because thus he cooperates with the defrauding of tributes: which is wicked and unjust on the part of the magistrate, to whom the Republic trusts. - Others deny, provided that at least the lowest price is reported in the authentic writing. - Finally others totally excuse him, because from custom generally received even by upright men, the whole price, even the lowest, is not usually declared, but only a little beyond the middle part, or about two thirds of this price, is declared. But if the parties do not sin by dissimulating the true price, neither does the notary sin from cooperation; for he himself is not constituted, like one placed over taxes, for exacting tributes, but for preparing instruments. Thus Gury⁶⁴³ (cf. n. 967).

III. Concerning Apparitors And Other Ministers Of Judges. 2328. - I. An apparitor (elsewhere Commissioner) is he who by office brings the order of appearing in judgment and the mandates of justice, and carries out the executions decreed by the judge.

Apparitors sin and are held to restitution: 1. If they allow themselves to be corrupted by price or favor to the prejudice of the client; - 2. If they do not grant the time prefixed for juridical acts; - 3. If, searching houses, they act more harshly, that they may extort some gift; - 4. If they exceed the mandate of the judge, or the statutes of the law, etc.; - 5. If, under title of donation, they receive a price above the tariff determined by law; for such a donation generally cannot be called spontaneous: as we have already noted concerning the scribe n. 2325, 4.⁶⁴⁴

2329. - IT IS ASKED. Whether an apparitor or commissioner can exact a MULTIPLE SALARY, if at one and the same time he brings diverse summonses?

Resp. St. Alphonsus:⁶⁴⁵ It is necessary to distinguish: 1. If a price has been taxed for the apparitor (Executor or Commissioner) for the occupation of each day of his, he cannot exact more, as is clear. - 2. If the commissions are disparate, and a special salary has been assigned for each procuration, Lugo rightly says that the Commissioner can exact several salaries according to the number and quality of the executions, and Lessius holds the same (cf. n. 1036, q. 2).

In FRANCE, Gury testifying,⁶⁴⁶ although the law prohibits this, nevertheless the usage has prevailed, the Government

⁶⁴¹H. A. XIII, 68; L. IV, 229; cf. Gury, II, 19.

⁶⁴²L. IV, 230, 231; cf. Gury, II, 21.

⁶⁴³II, 22, where however he speaks of the office of notary in France.

⁶⁴⁴Gury, II, 15.

⁶⁴⁵H. A. XIII, 68, at end.

⁶⁴⁶II, 18.

knowing and seeing it, that advocates and procurators so arrange the matter that for individual summonses apparitors have almost the same price.

2330. - II. The other MINISTERS of judges, for example interpreters, attendants, armed horsemen, keepers of prisons, etc., are similarly held to fulfill their own office rightly, faithfully, and justly.

Whence they sin and are held concerning damages: 1. If they exact anything beyond the just stipend; - 2. if they warn defendants whom they have been ordered to seize, that they may take flight; or debtors, that they may hide goods to be assigned to creditors; - 3. if they act more harshly and inhumanly toward them, especially for extorting money or other gifts; - 4. if they do not execute the things commanded at the constituted time.⁶⁴⁷

Chapter III.

On The Offices Of Physicians And Pharmacists.

2331. - A grave and delicate office lies upon PHYSICIANS, and, proportion being preserved, upon SURGEONS and PHARMACISTS, because the life of men, and the safety of their life, are entrusted to them.

Hence they ARE HELD, and indeed under grave obligation: 1. To know those things which pertain to the exercise of their office; - 2. to apply those cares which correspond to the gravity of the disease;

3. to preserve equity in exacting stipend. In these things, if by their own fault they fail, they are liable to reparation of the damage which has followed from this. But in particular:

I. PHYSICIANS (and Surgeons) sin gravely: 1. If without sufficient skill they undertake a grave disease or wound to be cured; or if, when a grave and unusual disease occurs, they do not devote effort to special study of the medication. - 2. If, once the danger of the sick person has been recognized, they are not present to him opportunely. - 3. If they neglect necessary treatment, or do not permit other suitable physicians, where it is fitting, to be called. - 4. If, the nature of the disease not having been well inspected, they rashly apply doubtful or dangerous remedies, especially with risk of life or grave lesion. (See n. 84, 2.) - 5. If easily, and without true necessity, they absolve from fasting, from abstinence from flesh, from hearing Mass. - 6. If they despise a poor sick person constituted in grave danger. - 7. If they exact too great a price; or compel to useless expenses, e.g. by prescribing superfluous medicines, multiplying visits, etc. - 8. If they advise abortion, onanism, or other illicit things. - 9. If they do not preserve the secrets committed to their trust, e.g. by divulging shameful diseases without just cause. - 10. If they do not opportunely warn of grave danger of sickness, that the Sacraments may be conferred. - 11. If in a case of necessity they neglect to baptize. - 12. If in time of plague they abandon the sick without help, for curing whom they have been constituted by the Community with stipend.[^vol2-0148-fn-1]

2332. - IT IS ASKED. Whether a physician is held TO WARN the sick concerning confession to be made?

Resp. 1. If there is question of a mortal disease, or one proximately dangerous, he is held by NATURAL LAW to warn the infirm person, by himself or through others; for each one ought, at least from charity, when he can without grave detriment to himself, to remove from his neighbor the danger of eternal damnation. "Oh how miserable it is," exclaims St. Alphonsus,[^vol2-0148-fn-2] "to see so many sick persons (and especially those who are of distinguished dignity) reduced to the extremities of death, so that they may prepare the accounts of life soon to be rendered to God, at a time when they are almost lifeless, when they can scarcely then form words, scarcely hear others, scarcely conceive the state of their own conscience, and sorrow for their sins! And all this happens by the fault of those physicians, who, lest they displease the sick or their relatives, do not make them more certain concerning the danger; indeed they continue to flatter them, until they themselves are altogether despaired of concerning life."

2. If there is question at least of a grave disease, namely when it must be feared that it may become mortal, the physician ought by POSITIVE LAW, that is, from the decree of the Fourth Lateran Council, cap. 22, and from the Constitution *Supra gregem* of Pius V (where the law has been received and has not fallen into desuetude), he ought, I say, by himself or through another, to warn the infirm person concerning confession to be made within three days; these having elapsed, he is held to abandon the one not confessed.[^vol2-0148-fn-3] - The motive of this law is, lest the infirm, if they know that only the despaired-of are warned, be too much disturbed from such warning; by which it would happen that they would more difficultly take counsel for their own conscience, and easily be cast into a grave danger of life. - But Doctors note that the physician is not obligated to warning if he is morally certain that the infirm person is in a good state of conscience; nor is he held to abandon him if graver causes are present for not abandoning him, especially if no hope of helping the soul is present.[^vol2-0148-fn-4]

⁶⁴⁷Porpora, tr. 25, n. 185.

2333. - II. A PHARMACIST sins: 1. If, rude and ignorant, he exercises the office. - 2. If without due diligence he prepares medicines. - 3. If he supplies one medicine for another (unless it were equally good, and of equal price), against the prescription of the physician, with danger of grave damage. - 4. If he sells useless medicines. - 5. If he furnishes medicines for inducing sterility, or for expelling the fetus (although such medicines were plainly ineffective): both because of the scandal which he furnishes to those requesting; and because the imagination of women, from which abortion is usually produced, is not a little stirred by this; and because he commits himself to the danger of undergoing the penalties which civil laws have established against prevarications of this kind.[^vol2-0148-fn-5]

Praise Be To God.