COMPENDIUM OF MORAL THEOLOGY

composed by John Peter Gury, S.J., and augmented with notes by Anthony Ballerini, S.J.;
drawn up in a briefer form and adapted to the use of the seminaries of this region
by Aloysius Sabetti, S.J.

I

Treatises I-X

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Contents

Title Pages **14**
Compendium of Moral Theology 14
Compendium of Moral Theology 14

To the Reader **15**

Things to Be Noted **17**

Treatise I. On Human Acts ..... **nn. 1–28** **18**
Chapter I. On the Notion of Human Acts ..... nn. 1–2 19
Chapter II. On Those Things which Constitute a Human Act ..... nn. 3–9 21
Article I. On the Voluntary in General ..... nn. 4–5 21
Article II. On the Indirect Voluntary, or Voluntary in Cause ..... nn. 6–9 22
Principle I 22
Principle II 23
Chapter III. On Those Things which Modify a Human Act ..... nn. 10–21 26
Article I. On Ignorance ..... nn. 10–12 26
Principle 26
Article II. On Concupiscence ..... nn. 13–15 28
Principle I 28
Principle II 28
Article III. On Fear ..... nn. 16–18 29
Principle 29
Article IV. On Force or Violence ..... nn. 19–21 30
Principle 30
Questions 31
Chapter IV. On the Morality of Human Acts ..... nn. 22–28 35
Article I. On the Essence of Morality ..... nn. 22–23 35
Questions 35
Article II. On the Sources of Morality ..... nn. 24–28 36
§ I. On the Object ..... n. 25 36
§ II. On Circumstances ..... n. 26 37
§ III. On the End ..... nn. 27–28 38
Questions 39

Treatise II. On Conscience ..... **nn. 29–71** **41**
Chapter I. On Right and Erroneous Conscience ..... nn. 30–32 42
Principle 42
Chapter II. On Certain and Doubtful Conscience ..... nn. 33–36 44
Principle 44
Questions 45

Chapter III. On Scrupulous and Lax Conscience ..... nn. 37–43 46
I. Signs Of Scruples, Or Of A Conscience Subject To Scruples 46
II. Causes Of Scruples 47
III. Harms Of Scruples 48
IV. Remedies Of Scruples 48
V. Rules For The Scrupulous 49
VI. Rules For Confessors 49
Chapter IV. On Probable and Improbable Conscience ..... nn. 44–71 50
Article I. On the Nature and Division of Probability ..... nn. 45–47 50
Article II. On the Various Systems concerning Probability ..... nn. 48–55 51
Article III. The System of Probabilism is Vindicated ..... nn. 56–65 53
Article IV. On Special Rules and Applications of Probabilism ..... nn. 66–67 61
Questions 63
Article V. On the System of Equiprobabilism ..... nn. 68–71 65

Treatise III. On Laws ..... nn. 72–123 74
Part I. On Laws in General ..... nn. 72–106 74
Chapter I. On the Nature and Properties of Law ..... nn. 72–73 74
Chapter II. On the Author of Law, or on the Legislator ..... nn. 74–75 75
Questions 75
Chapter III. On the Object of Law ..... nn. 76–77 78
Questions 78
Chapter IV. On the Subject of Law ..... nn. 78–81 79
Principle 79
Questions 81
Chapter V. On the Promulgation of Law ..... nn. 82–83 83
Question 83
Chapter VI. On the Acceptance of Law ..... nn. 84–85 84
Questions 84
Chapter VII. On the Obligation of Law ..... nn. 86–90 85
Article I. On the Very Force of Obligation ..... nn. 86–87 85
Questions 85
Article II. On the Mode of Satisfying the Obligation of Law ..... nn. 88–90 86
Principle 86
Questions 87
Chapter VIII. On Causes Deobliging from Law ..... nn. 91–93 88
Questions 88
Chapter IX. On the Interpretation of Law and Epikeia ..... nn. 94–97 90
Questions 91
Chapter X. On the Dispensation of Law ..... nn. 98–104 91
Article I. On the Power of Dispensing ..... nn. 99–100 92
Questions 92

Article II. On the Causes Required for Dispensing ..... nn. 101–103 93
Questions 94
Article III. On the Cessation of Dispensation ..... n. 104 94
Chapter XI. On the Cessation of Law ..... nn. 105–106 95
Part II. On the Principal Species of Laws ..... nn. 107–123 96
Chapter I. On Natural Law ..... nn. 107–108 96
Chapter II. On Positive Divine Law ..... n. 109 96
Chapter III. On Ecclesiastical Law ..... n. 110 97
Article I. On the Sacred Congregations 102
Article II. On the Tribunals of the Roman Curia 105
Article III. On the Offices of the Roman Curia 106
Chapter IV. On Civil Law ..... nn. 111–112 107
Chapter V. On Penal Law ..... nn. 113–114 108
Questions 108
Chapter VI. On Invalidating Law ..... nn. 115–117 109
Questions 110
Chapter VII. On Unwritten Law, or on Custom ..... nn. 118–119 110
Questions 110
Chapter VIII. On Favorable Law, or on Privilege ..... nn. 120–121 112
Questions 112
Chapter IX. On the Reckoning of Time and Rescripts ..... nn. 122–123 114
I. - On the Reckoning of Time 114
II. - On Rescripts 115

Treatise IV. On Sins ..... nn. 124–150 117
Part I. On Sins in General ..... nn. 124–134 117
Chapter I. On the Nature of Sin ..... nn. 124–126 117
Principle 117
Chapter II. On the Gravity of Sin ..... nn. 127–128 118
Questions 120
Chapter III. On the Distinction of Sins ..... nn. 129–134 123
Article I. On Specific Distinction ..... nn. 129–130 123
Article II. On Numerical Distinction ..... nn. 131–134 124
Questions 126
Part II. On Sins in Species ..... nn. 135–150 127
Chapter I. On Internal Sins ..... nn. 135–138 127
Questions 128
Chapter II. On Capital Sins ..... nn. 139–150 130
I. - On Pride 131
II. - On Avarice 131
III. - On Lust 131
IV. - On Envy 131

V. - On Anger 131
VI. - On Sloth 131
VII. - On Gluttony 132
On Drunkenness 133
Principle 133
Questions 134

Treatise V. On Virtues ..... nn. 151–199 137
Chapter I. On the Virtue of Faith ..... nn. 152–161 138
Article I. On Necessity ..... nn. 152–154 138
Questions 138
Article II. On the Material Object of Faith ..... nn. 155–157 144
Questions 144
Article III. On the Vices Opposed to Faith ..... nn. 158–161 145
§ I. On Infidelity in General ..... nn. 158–159 145
§ II. On Heresy ..... nn. 160–161 146
Chapter II. On the Virtue of Hope ..... nn. 162–164 148
Questions 148
Chapter III. On the Virtue of Charity ..... nn. 165–199 150
Article I. On Love of God ..... nn. 166–167 150
Questions 150
Article II. On Love of Neighbor ..... nn. 168–199 151
§ I. On the Precept of Love of Neighbor in Itself ..... nn. 168–174 151
Point I. On the Precept of Charity Toward All in General 151
Questions 152
Point II. On the Precept of Charity Toward Enemies in Particular 153
Questions 154
§ II. On Works of Mercy ..... nn. 175–181 155
Point I. On Alms 155
Questions 156
Point II. On Fraternal Correction 156
Questions 157
§ III. On the Vices Opposed to Charity toward Neighbor ..... nn. 182–199 159
Point I. On Scandal, Either in General or in Particular 159
Questions 160
Questions 162
Questions 163
Point II. On Cooperation, Either in General or in Particular 166
Principle 166
Questions 166

Treatise VI. On the Precepts of the Decalogue ..... nn. 200–325 171
On the First Precept of the Decalogue ..... nn. 200–218 171

Chapter I. On the Acts of the Virtue of Religion ..... nn. 200–203 171
Article I. On Adoration ..... nn. 200–201 171
Article II. On Prayer ..... nn. 202–203 173
Questions 173
Chapter II. On Vices Opposed to Religion ..... nn. 204–218 174
Article I. On Superstition ..... nn. 204–211 174
§ I. On Idolatry ..... n. 204 174
§ II. On Vain Observance ..... nn. 205–206 174
§ III. On Divination ..... nn. 207–209 175
Questions 176
§ IV. On Magic and Malefice ..... nn. 210–211 180
Article II. On Irreligiosity ..... nn. 212–218 180
§ I. On Tempting God ..... nn. 212–213 180
§ II. On Sacrilege ..... nn. 214–215 181
Questions 182
§ III. On Simony ..... nn. 215–218 184
Questions 184
Questions 186
On the Second Precept of the Decalogue ..... nn. 219–239 189
Chapter I. On Vain Usurpation of the Name of God and Blasphemy ..... nn. 219–221 189
Questions 190
Chapter II. On Oath ..... nn. 222–226 191
Article I. On the Conditions of an Oath ..... nn. 223–224 191
Questions 192
Article II. On the Obligation of a Promissory Oath ..... nn. 225–226 193
Questions 194
Chapter III. On Vow ..... nn. 227–239 195
Article I. On the Conditions Required for a Vow ..... nn. 228–229 195
Questions 196
Article II. On the Obligation of a Vow ..... nn. 230–232 198
Questions 198
Article III. On the Cessation of a Vow ..... nn. 233–239 199
§ I. On the Irritation of Vows ..... nn. 233–235 199
Questions 200
§ II. On Dispensation of Vows ..... nn. 236–237 200
Questions 201
§ III. On Commutation of Vows ..... nn. 238–239 202
Questions 202
On the Third Precept of the Decalogue ..... nn. 240–255 203
Chapter I. On Those Things which are Commanded on Feast Days ..... nn. 240–251 204
Article I. On the Obligation of Hearing Mass ..... nn. 240–248 204
§ I. On Presence of Body ..... nn. 241–242 204
Questions 204

§ II. On Attention of Mind ..... nn. 243–245 206
§ III. On the Due Place ..... nn. 246–248 207
As Regards Oratories 207
Article II. On Causes Excusing from Mass ..... nn. 249–251 208
Chapter II. On Those Things which are Prohibited on Feast Days ..... nn. 252–255 209
Questions 210
On the Fourth Precept of the Decalogue ..... nn. 256–262 212
Chapter I. On the Obligations of Children toward Parents ..... nn. 256–257 212
Chapter II. On the Obligations of Parents toward Children ..... n. 257 213
Questions 214
Chapter III. On Other Obligations ..... nn. 258–262 219
Article I. On the Obligations of Spouses ..... n. 258 219
Article II. On the Obligations of Masters and Servants ..... n. 259 220
Article III. On the Duties of Employers and Workers ..... n. 260 221
Article IV. On the Obedience and Reverence of Citizens toward Temporal Authority ... nn. 261–262 222
On the Fifth Precept of the Decalogue ..... nn. 263–278 224
Chapter I. On Killing Oneself, or on Suicide ..... nn. 263–264 224
Questions 225
Chapter II. On Killing One's Neighbor ..... nn. 265–273 226
Article I. On the Killing of a Guilty Person or Malefactor ..... nn. 265–267 226
Questions 227
Article II. On the Killing of an Unjust Aggressor ..... nn. 268–269 228
Questions 229
Article III. On the Killing of an Innocent Person ..... nn. 270–273 230
§ I. On the Killing of an Innocent Person in General ..... nn. 270–271 230
§ II. On the Procuring of Abortion ..... nn. 272–273 231
Questions 232
Chapter III. On Dueling ..... nn. 274–276 238
Chapter IV. On War ..... nn. 277–278 239
On the Sixth and Ninth Precept of the Decalogue ..... nn. 279–309 240
Chapter I. On Non-Consummated Sins of Lust ..... nn. 281–288 241
Article I. On Impure Kisses ..... nn. 281–282 241
Article II. On Impure Touches ..... nn. 283–284 242
Article III. On Impure Gazes ..... nn. 285–286 243
Article IV. On Impure Speech and Readings ..... nn. 287–288 243
Chapter II. On Consummated Sins of Lust ..... nn. 289–309 244
Article I. On Sins Consummated According to Nature ..... nn. 289–300 244
§ I. On Fornication ..... nn. 289–290 244
§ II. On Adultery ..... nn. 291–292 244
§ III. On Incest ..... nn. 293–294 245
§ IV. On Sacrilege ..... nn. 295–296 245

§ V. On Stuprum ... nn. 297–298 245
§ VI. On Raptus ... nn. 299–300 246
Article II. On Consummated Sins Against Nature ... nn. 301–309 246
§ I. On Pollution ... nn. 301–304 246
§ II. On Sodomy ... nn. 305–307 248
§ III. On Bestiality ... nn. 308–309 248
On the Seventh and Tenth Precept of the Decalogue ... 249
On the Eighth Precept of the Decalogue ... nn. 310–325 249
Chapter I. On Lying and Mental Restriction ... nn. 310–313 249
Chapter II. On Detraction ... nn. 314–316 251
Questions ... 252
Chapter III. On Contumely ... nn. 317–319 255
Chapter IV. On Rash Judgment, Suspicion, and Rash Doubt ... nn. 320–322 256
Chapter V. On Violation of a Secret ... nn. 323–325 257
Questions ... 257

Treatise VII. On the Precepts of the Church ... nn. 326–345 260
The Precepts of the Church ... 260
On the First Precept of the Church: To Hear Mass on Sundays and Other Feast Days ... n. 327 260
On the Second Precept of the Church: To Observe Fasting and Abstinence on Certain Days ... nn. 328–338 262
Chapter I. On the Law of Abstinence and Fasting ... nn. 330–337 263
Article I. On Abstinence from Meat and Broth from Meat ... nn. 330–331 263
Questions ... 263
Article II. On the Law of Fasting ... nn. 332–333 264
Questions ... 265
Article III. On the Days of Abstinence Alone, of Abstinence Together with Fasting, and of Fasting Alone ... n. 334 268
Article IV. On the Permanence of Particular Indults ... n. 335 269
Article V. On the Subjects of This Law ... n. 336 269
Article VI. On the Hour of Refection ... n. 337 269
Questions ... 269
Chapter II. On Causes Excusing from Fasting ... n. 338 270
Questions ... 270
On the Third Precept of the Church: To Confess Sacramentally at Least Once in the Year ... nn. 339–340 272
Questions ... 272
On the Fourth Precept of the Church: To Receive the Sacrament of the Eucharist within Paschal Time ... nn. 341–342 274
Questions ... 274

On the Fifth Precept of the Church: To Contribute Some Subsidy for the Suitable Support of Pastors ... n. 343 275
Questions ... 275
On the Censure and Prohibition of Books ... nn. 344–345 276
Questions ... 277
On the Prohibition of Books ... 280
Questions ... 280

Treatise VIII. On Justice and Right ... nn. 346–475 284

Part I. On the Nature and Principles of Justice and Right ... nn. 346–401 284
Chapter I. On the General Notions of Justice and Right ... nn. 346–349 284
Article I. On the Nature of Justice ... n. 346 284
Article II. On the Nature of Right ... nn. 347–348 285
Article III. On the General Principles of Right and Justice ... n. 349 286
Chapter II. On the Principal Species of Right ... nn. 350–401 287
Article I. On the Species of Right which is Called Dominion ... nn. 350–397 287
§ I. On the Object of Dominion ... nn. 352–353 287
Questions ... 287
§ II. On the Subject of Dominion ... nn. 354–364 288
Point I. On the Dominion of Children of the Family ... 288
Point II. On the Dominion of Wives ... 289
Questions ... 290
Point III. On the Dominion of Clerics ... 291
Questions ... 291
Point IV. On the Dominion of Authors ... 292
Questions ... 292
§ III. On the Acquisition of Dominion ... nn. 365–397 293
Point I. On the Acquisition of Dominion by Occupation ... 293
I. On Animals ... 293
II. On Found Things ... 294
Questions ... 296
Point II. On the Acquisition of Dominion by Prescription ... 297
I. A Prescriptible Thing ... 298
II. Good Faith ... 298
III. Title ... 299
IV. Possession ... 299
V. The Required Time ... 300
Point III. On the Acquisition of Dominion by Accession ... 301
Article II. On the Species of Right which is Called Use or Usufruct ... nn. 398–399 301
Questions ... 301
Article III. On the Species of Right which is Called Servitude ... nn. 400–401 302
Part II. On the Violation of Right through Theft ... nn. 402–411 303
Chapter I. On the Nature and Malice of Theft ... nn. 402–405 303

Questions 303
Chapter II. On the Lawful Taking Away of Another's Thing ..... nn. 406–411 306
Article I. On Necessity which Permits Taking Away Another's Thing ..... nn. 406–408 306
Questions 306
Article II. On Occult Compensation ..... nn. 409–411 308
Questions 309
Part III. On Restitution ..... nn. 412–475 310
Section I. On Restitution in General ..... nn. 412–463 310
Chapter I. On the Obligation of Restitution ..... nn. 412–413 310
Chapter II. On the Roots of Restitution ..... nn. 414–441 312
Article I. On the Acceptance of Another's Thing ..... nn. 415–422 312
Principle 312
§ I. On the Possessor of Good Faith ..... nn. 416–418 312
Questions 313
§ II. On the Possessor of Bad Faith ..... nn. 419–420 315
Questions 315
§ III. On the Possessor of Doubtful Faith ..... nn. 421–422 316
Questions 317
Article II. On Unjust Damaging ..... nn. 423–425 318
Questions 318
Article III. On Unjust Cooperation ..... nn. 426–441 321
§ I. On the One Commanding ..... nn. 426–428 321
§ II. On the One Counseling ..... nn. 429–431 322
§ III. On the One Consenting ..... nn. 432–434 323
§ IV. On the Flatterer ..... n. 435 324
§ V. On Refuge ..... n. 436 324
§ VI. On the Participant ..... nn. 437–438 324
§ VII. On Negative Cooperators ..... nn. 439–441 325
Questions 325
Chapter III. On the Circumstances of Restitution ..... nn. 442–459 326
Article I. How Much is to be Restored ..... nn. 443–447 326
Questions 327
Article II. To Whom Restitution is to be Made ..... nn. 448–449 327
Article III. In What Order Restitution is to be Made ..... nn. 450–455 328
§ I. On the Order of Restitution Among Cooperators ..... nn. 450–452 328
§ II. On the Order of Restitution as Regards Creditors ..... nn. 453–455 329
Article IV. In What Manner Restitution is to be Made ..... nn. 456–458 330
Questions 330
Article V. When Restitution is to be Made ..... n. 459 332
Chapter IV. On Causes Excusing from Restitution ..... nn. 460–463 332
Questions 333
Section II. On Restitution in Species ..... nn. 464–475 335
Chapter I. On Restitution Because of Damage in Goods of the Soul ..... nn. 464–465 335

Chapter II. On Restitution Because of Damage in Goods of the Body ..... nn. 466–471 336
Article I. On Restitution Because of Homicide ..... nn. 466–467 336
Article II. On Restitution Because of Defloration and Fornication ..... nn. 468–469 337
Article III. On Restitution Because of Adultery ..... nn. 470–471 338
Appendix: On the Obligation of Paying Taxes ..... nn. 472–475 338
Questions 339

Treatise IX. On Contracts ..... nn. 476–557 342
Part I. On Contracts in General ..... nn. 476–502 342
Chapter I. On the Definition and Divisions of Contracts ..... n. 476 342
Chapter II. On the Requisites for Contracting ..... nn. 477–493 343
Article I. On the Matter of Contract ..... nn. 477–479 343
Questions 343
Article II. On the Subject of Contract ..... nn. 480–488 345
§ I. On Minors ..... nn. 481–483 345
§ II. On Wives ..... nn. 484–485 346
§ III. On the Civilly Dead ..... n. 486 347
§ IV. On the Interdicted and Prodigals ..... n. 487 347
§ V. On Aliens ..... n. 488 347
Article III. On the Required Consent ..... nn. 489–493 348
§ I. On the Qualities of Legitimate Consent ..... nn. 489–490 348
§ II. On Those Things which Can Vitiate Consent ..... nn. 491–493 348
Chapter III. On the Obligation of Contract ..... nn. 494–495 350
Chapter IV. On the Modifications of Contracts ..... nn. 496–502 351
Article I. On an Oath Added to a Contract ..... nn. 497–498 351
Article II. On Modes Prefixed to a Contract ..... nn. 499–500 352
Article III. On Conditions Placed upon a Contract ..... nn. 501–502 352
Part II. On Contracts in Particular ..... nn. 503–557 353
Section I. On Gratuitous Contracts ..... nn. 503–528 353
Chapter I. On Promise ..... nn. 503–505 353
Questions 354
Chapter II. On Donations ..... nn. 506–516 354
Article I. On Donations Properly So Called ..... nn. 506–508 354
Questions 355
Article II. On Testaments ..... nn. 509–516 357
§ I. On the Nature, Division, and Form of Testaments ..... nn. 509–511 357
§ II. On Testators and Heirs ..... nn. 512–513 359
Questions 360
§ III. On Testamentary Dispositions ..... n. 514 361
§ IV. On the Revocation of Testaments ..... n. 515 362
§ V. On the Executor of a Testament ..... n. 516 362
Chapter III. On Commodatum and Precarium ..... nn. 517–518 363
Chapter IV. On Deposit and Sequestration ..... nn. 519–521 364

Chapter V. On Mandate and Management of Affairs ..... nn. 522–524 364
Chapter VI. On Mutuum ..... nn. 525–528 365
Questions 367
Section II. On Onerous Contracts ..... nn. 529–557 368
Chapter I. On Sale and Purchase ..... nn. 529–544 368
Article I. On the Nature of Sale and Purchase ..... nn. 529–531 369
Article II. On the Just Price ..... nn. 532–535 369
Questions 370
Article III. On the Principal Species of Sales ..... nn. 536–544 372
I. - On Retrovendition and Mohatra 372
II. - On Sale Under the Spear or by Auction 373
Questions 373
III. - On Monopoly 373
Questions 374
IV. - On Sale Through Brokers 376
Questions 376
Chapter II. On Partnership and the Triple Contract ..... nn. 545–546 376
Chapter III. On Hiring and Leasing ..... nn. 547–549 377
Questions 378
Chapter IV. On Subsidiary Contracts ..... nn. 550–552 379
Chapter V. On Aleatory Contracts ..... nn. 553–557 381

Treatise X. On Particular Obligations ..... nn. 558–627 385
Part I. On the Particular Obligations of Laymen ..... nn. 558–566 385
Chapter I. On the Obligations of Judges ..... nn. 558–559 385
Questions 386
Chapter II. On the Obligations of Advocates ..... nn. 560–561 388
Questions 389
Chapter III. On the Obligations of Accused Persons ..... n. 562 390
Questions 390
Chapter IV. On the Obligations of Witnesses ..... nn. 563–564 391
Questions 392
Chapter V. On the Obligations of Physicians ..... nn. 565–566 392
Part II. On the Particular Obligations of Clerics ..... nn. 567–607 394
Chapter I. On Obligations Common to All Clerics ..... nn. 567–593 394
Article I. On the Positive Obligations of Clerics ..... nn. 567–584 394
I. - On Holiness of Life 394
II. - On Celibacy 396
Questions 396
III. - On Wearing the Habit and Tonsure 397
IV. - On Recitation of the Canonical Hours 398
Point I. On the Obligation of Reciting the Hours 399
Questions 399

Point II. On the Time Due for Reciting the Hours 401
Questions 402
Point III. On the Order of Reciting the Hours 402
Questions 403
Point IV. On Pronunciation in Reciting the Hours 404
Questions 404
Point V. On Attention and Devotion in Reciting the Hours 406
Questions 406
Point VI. On Causes Excusing from Recitation of the Hours 406
Questions 407
Article II. On the Negative Obligations of Clerics ..... nn. 585–593 408
On Habitation with Women 408
On Dice-Playing 409
On Carrying Weapons and Hunting 409
On Business 410
On Entrance into Taverns and Inns 412
On Spectacles 412
On Military Service 412
II 412
Chapter II. On Certain Obligations Proper to Clerics ..... nn. 594–601 413
Article I. On the Obligations of Bishops ..... nn. 594–595 413
On the Office of Preaching 414
Questions 414
Article II. On the Obligations of Parish Priests ..... nn. 596–601 415
On Catechesis 417
Appendix: On the Privileges of Clerics ..... nn. 602–607 419
§ I. On the Privileges of Clerics in Common ..... n. 602 419
§ II. On the Privileges of Bishops ..... nn. 603–607 420
Part III. On the Particular Obligations of Religious ..... nn. 608–627 421
Chapter I. On the Nature of the Religious State ..... nn. 608–610 421
Questions 422
Chapter II. On Religious Vocation ..... nn. 611–612 429
Questions 431
Chapter III. On the Obligations of Vows ..... nn. 613–627 432
Article I. On the Vow of Poverty ..... nn. 613–615 432
Questions 432
Article II. On the Vow of Chastity ..... nn. 616–617 437
Questions 437
Article III. On the Vow of Obedience ..... nn. 618–627 438
Questions 438
On the Privileges of Religious 439

Title Pages

Compendium of Moral Theology

Sabetti-Barrett

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Composed by John Peter Gury, S.J., and augmented with notes by Anthony Ballerini, of the same Society;

then indeed drawn up in a briefer form, and adapted to the use of the seminaries of this region,

by

Aloysius Sabetti, S.J., formerly professor of Moral Theology in Woodstock College, Md.

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It can be printed.

Eduard C. Phillips, S.J. Provincial Superior of the Maryland-New York Province.

Nothing stands in the way.

Arthur J. Scanlan, D.D. Censor of Books.

Let it be printed.

- Patrick Cardinal Hayes, D.D. Archbishop of New York.

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To the Reader

Behold, for you, friendly reader, a book certainly not altogether new, but, as I hope, one that will be useful: namely, you have Gury's *Compendium of Moral Theology*, reduced to a new and briefer form, and adapted to the necessities and customs of this region. For since by long experience I had learned how many and how excellent were the qualities of this book, especially after it had been enriched by Father Ballerini with many notes, I judged that it would be a better plan if I should render it especially profitable for our use, than if I should write a new one.

But in order that I might attain the end which I had set before myself, it was necessary first of all to change certain things. For by new and ever-increasing notes not only had the bulk become excessive, but also no small confusion was wont to cloud the minds of students. Wherefore, all the notes having been suppressed, I combined with the text very many of those things which I found in them solidly and usefully stated, so that the text might at the same time become briefer and contain more.

Besides, there were many things in Gury's *Compendium* which would be useful for France, but nothing which would serve this region; indeed, also nothing, or very little, which would be necessary for solving those cases which arise from common intercourse between Catholics and non-Catholics. Therefore I eliminated all things which would be useless to us dwelling in these States, and in their place I gathered many things from our Plenary Councils and from other best sources. For since Moral Theology consists in great part in practical applications, it must necessarily bear before itself a certain diversity and, as it were, a local character according to the diversity of regions.

In Gury's *Compendium* many things were being reported which today are held to be antiquated, especially those things which touch censures. Therefore I set all these aside and briefly explained the New Code of Canon Law according to the notes on the sources with which Cardinal Gasparri adorned the text of the Canons. Indeed I have often recalled the reader throughout the whole book to the said New Code, and I have cited in their proper places the most recent Decrees of the Roman Congregations.

Few things had been said by Father Gury about probabilism, and still fewer about equiprobabilism; and consequently it seemed opportune if I should speak more fully about both: yet not with the intention that I should go off into controversies, but only that the true doctrine of the most wise Doctor of the Church in moral matters, St. Alphonsus, whose disciple I both confess and glory that I am, might be placed in safety.

Certain other things also, both as to form and as to doctrine, I have tried to correct; and first of all I myself verified all citations with my own eyes, so that, so far as human fallibility allows, none is to be called erroneous.

Behold, then, with what mind and in what manner I have elaborated this brief and practical Manual, drawn up for the usefulness of students and Missionaries. For I have had only these before my eyes; namely, young students who in our Seminaries are preparing themselves for the Priesthood, and Missionaries who labor continually and strenuously in the vineyard of the Lord. For the first, lengthy

dissertations are not necessary, nor controversies, nor doubts, nor new and unusual heads of doctrine; but brief and solid solutions, to be unfolded by the living voice of the Professor. But for the others there is need of a certain brief repertory, in which solutions perhaps forgotten may be seen, as it were, at one glance of the eye.

One thing remains which I should add, namely, that here I may show a grateful mind to those who by work and counsel added strength to me, and that I may entreat those to whom, in so great a multiplicity of minute things, anything to be corrected should occur, kindly to disclose it to me.

Things to Be Noted

I. - Whenever a number from Authors is indicated, it is to be referred to the Treatise concerning which there is question among those Authors: thus, for example, if in the Treatise on Laws you find "St. Alphonsus, n. 40," understand St. Alphonsus, in the Treatise on Laws, n. 40. But if at any time the cited place pertains to a different Treatise, this will be expressly indicated.

II. - In citing St. Alphonsus I have abstained from reporting the number of the Book, because according to the diversity of editions their distribution is diverse.

III. - Whenever Ballerini is cited, the third edition is understood, namely that which reports the responses to the difficulties of the *Vindiciae*. But the work of Ballerini edited by Palmieri is cited in a special manner.

IV. - Authors, for the greater usefulness of the reader, are always cited at the end of the solution or paragraph. But it is not to be supposed that the solution itself, or at least some one of the given reasons, belongs to them; for the reason why they are cited is that, among them, the question concerning which there is discussion may be seen treated more fully, however diverse the opinion may be which they themselves embrace.

Treatise I. On Human Acts

Chapter I. On the Notion of Human Acts

A human act is called only that act which proceeds from the deliberate will of man. The reason from St. Thomas is that only that act can be called truly human by which man acts insofar as he is man, and differs from irrational creatures; but he differs from them precisely from this, that through free will he is master of his own acts. Therefore.

Nor say, 1st, that man differs essentially from brutes through the act of understanding; for it is answered that this difference must be considered here not only as to the substance of the work, but also as to the mode of operating; wherefore the act of understanding can be called the proper act of man, but not a human act taken strictly.

Nor say, 2nd, that the act by which we seek our beatitude in general is a human act properly so called, since it is perfectly voluntary and proceeds from perfect knowledge; for it is answered that here we consider man as he is a moral being, and his actions as they are worthy of praise or blame; but such they are not except insofar as they proceed from free will, which is the foundation of imputability. Hence although a necessary act of the will, if it is regarded according to its physical entity, can be called human, nevertheless in moral consideration, and in the usage especially current among theologians, it cannot. Hence it follows that human, moral, and free acts signify the same thing in moral matters, and can be used promiscuously.

But other acts, which are not referred to morals and are done in man or by man without any deliberation, such as first-first movements, or acts of a man wholly distracted, dreaming, raving, insane, drunk, or deprived of the use of reason in any manner whatever, are called acts of man, but not human acts. Cf. St. Thomas, 1-2, q. 1, art. 1. - Suarez, in 1-2, tract. 1, disp. 2, sect. 2, n. 7. Baller., note (a), p. 1.

A human act is distinguished in many ways; for it is:

1st. Elicited or commanded. It is called elicited when it is consummated in the will itself, as an act of love, hatred, desire; but commanded when, at the command of the will, it is completed by another power, either internal, as an act of thinking, or external, as an act of walking, writing.

2nd. Internal or external. An internal act is that which is completed only by the internal powers of the soul, such as an act of thinking, loving; but an external or mixed act is that which the will completes through the organs of the body. An internal act is more specially called an act, and an external act is rather named an action.

3rd. Good, bad, indifferent. A good act is called that which is conformable to right reason; bad, that which is repugnant to the same; indifferent, that which is neither conformable to, nor repugnant to, the norm of reason.

A good or indifferent act, because it is prohibited by no law, is also called licit; but a bad act, because it is opposed to natural or positive law, is called illicit.

4th. Natural or supernatural. The former is that which is produced by the powers of nature alone; but the latter, that which is completed by the aid of divine grace. A supernatural act is further called

meritorious either de condigno or de congruo, according as some retribution is repaid to it either from justice, or from mere fittingness and from the benignity of God.

5th. Valid or invalid. A valid act is that which enjoys all the essential requisites for producing its proper effect; but an invalid act is that which lacks even any one of the essentials.

Chapter II. On Those Things which Constitute a Human Act

As is gathered from the very definition of a human act, three things concur to constitute it, namely knowledge, volition, and liberty. Since discussion concerning knowledge will occur throughout the whole Treatise on Conscience, here only volition and liberty will be spoken of under the single word voluntary; not because voluntary and free are the same, but because in the acts by which man as wayfarer tends to his end, in reality they are never separated, and thence they are used promiscuously by the moral theologian. First, then, some notion will here be given of the voluntary in general, and then of the voluntary in species, or rather of the indirect voluntary, for this species of the voluntary is very necessary to know and liable to difficulties.

Article I. On the Voluntary in General

The voluntary, according to St. Thomas, is that "whose principle is in the one operating . . . yet in such a way that the one operating himself knows the individual circumstances which concur for the operation": or, it is an act proceeding from the will illumined by intellectual knowledge of the individual things, namely of the object, end, and circumstances. Cf. St. Thomas, 3 Ethic., lect. 4.

The voluntary is distinguished in many ways, namely:

1st. Perfect or imperfect. The former is that which is done with full knowledge and full consent of the will; but the latter is that which proceeds from somewhat obscure knowledge, or from imperfect consent.

2nd. Voluntary simply or in a certain respect. The former is sometimes defined as that which is done from full deliberation and inclination of the will; the latter, as that which is done with consent of the will, but with some repugnance, or some inclination of the will toward the opposite. But more often the Doctors understand and explain this division in a different way. For they call voluntary simply that which proceeds from the absolute and efficacious will of man, even if there is given, to the contrary, a certain conditioned nolleity, so that apart from this case it would not be done, as happens in a sailor who, when a storm is pressing, casts merchandise into the sea; then they call that voluntary simply and involuntary in a certain respect, or more briefly a mixed voluntary simply. But if there is present no mixture of the involuntary, because no actual conditioned nolleity is given, as happens in a sinner seriously penitent from fear of hell, then it is called a pure voluntary simply. But voluntary in a certain respect is called by the same Doctors that which is according to the conditioned and inefficacious will of man, although here and now a prevailing unwillingness is present; for example, a player would gladly prolong the game, unless the time of Mass were pressing. Cf. St. Thomas, 1-2, q. 6, art. 6. - St. Alphonsus, nn. 9 and 21. - Voit, n. 4.

3rd. Direct or indirect. The former is that which is intended in itself, or through itself, that is, which in the order of intention is the immediate object of the will, although perhaps it is very remote in the order of execution; but the latter is called that which is not willed in itself but in another, or rather is foreseen as about to follow from another thing directly willed, as an effect from a cause, or as something connected with it; for example, drunkenness in excessive drinking, or homicide from the rash throwing of a stone. Hence the Doctors often express the same division by the name voluntary

in itself and voluntary in cause; but they use the name direct and indirect voluntary with St. Thomas to designate the positive and negative voluntary. Cf. St. Thomas, 1-2, q. 6, art. 3. - St. Alphonsus, n. 9.

4th. Positive or negative. The former is called that which is from the will really acting, or which requires a positive action, for instance reading; but the latter is that which proceeds from the omission of an act depending on the will; not insofar as no act is posited by the will which is the cause or occasion of the negative voluntary, but insofar as no positive act is required which is of its essential nature. Cf. St. Thomas, 1-2, q. 71, art. 5; and q. 6, art. 3.

5th. Express or tacit. It is called express if it is manifested by words or signs; but tacit if from some fact, or omission, it is apprehended to be present.

6th. Actual, virtual, habitual, and interpretative. That is called actual which proceeds from the will actually acting, as for example contrition in one who here and now elicits an act of penance. Virtual is an act of the will already posited, which nevertheless still so perseveres that here and now it exercises its power upon that which is being done, of which therefore it exists as the true cause. Such is the intention of a priest who, from an actual will of consecrating or absolving, begins Mass or enters the confessional, but a little afterward is so distracted that he no longer adverts to the words which he utters; nevertheless he truly consecrates and absolves by virtue of the intention which he had, and which morally perseveres and acts. Habitual is called that which indeed was actually emitted by the will, has not yet been revoked, but does not flow into the present action, because it has been interrupted either by sleep, or drunkenness, or a notable delay of time; whence it bespeaks pure concomitance, but not causality in relation to the action now to be posited. It is named interpretative if in no way it has been had, but can prudently be presumed, and would be had if it were thought about, or could be thought about. Thus a sick man deprived of his senses, if he has lived as a Christian, is judged to will to receive Extreme Unction.

Article II. On the Indirect Voluntary, or Voluntary in Cause

The indirect voluntary or voluntary in cause, as has been said, is not intended in itself but in another thing directly willed, and from that, as an effect from a cause, is discerned as about to follow. Nevertheless it can be a true object of the will, although indirect; for he who wills the cause also wills the effect proceeding from it, if he foresees this effect and the other conditions have place. Hence the saying: he who is the cause of the cause is the cause of the caused thing. Therefore this voluntary is not always imputed unto sin; but that you may know when it ought to be imputed, attend to the two following principles.

Principle I

A bad effect is then only imputed to the fault of the agent or of the one positing the cause, when the three following conditions are verified: 1st, that the agent foresaw the effect at least confusedly; 2nd, that he was able not to posit the cause; 3rd, that he is bound not to posit the cause, or to remove it once posited. For foresight at least confusedly is required, because an effect in no way foreseen and, as St. Thomas says, thought beforehand, can in no way be voluntary. It is further required that the cause could have been not posited, because liberty is the foundation of imputability, and a sin which cannot be avoided is repugnant. Finally there is required the obligation of impeding the cause,

because no one is bound to remove a cause when he has the right of positing it, a right founded in necessity, utility, or honesty. Hence he is free from all fault who, while for his own or others' utility he studies matters of the sixth precept of the Decalogue, foresees that he will suffer base movements, or even pollution, and afterward in fact suffers them. Observe carefully, however, that sometimes there is no right to posit the cause; indeed there is a strict law against positing it; nevertheless the bad effect foreseen and afterward following is not imputed unto fault, because that law is not about avoiding the cause in order to such an effect. Wherefore he who eats meats on Friday with foresight of pollution indeed breaks the ecclesiastical law, but the pollution is not imputed to him. From this it is understood that for this voluntary not just any precept is sufficient, one which is as it were extrinsic and by accident by reason of such an operation, but that there must be a precept by which someone is bound to avoid lest from it another effect should follow, because a precept of this sort is what makes a moral change in the object, and not just any other precept. Cf. St. Alphonsus, nn. 10 and 14; and on the sixth precept of the Decalogue, nn. 483 and 484. - Voit, n. 6. - Baller., note (a), p. 396, vol. 1. - Suarez, *De Vol. et Invol.*, disp. 1, sect. 4, nn. 22, 11.

Principle II

It is lawful to posit a good or indifferent cause from which there immediately follows a double effect, one good, but the other bad, if there is present a proportionately grave reason, and the end of the agent is honest. The reason for the principle is that this cannot be illicit, 1st, by reason of the end, for this is supposed to be honest, and the bad effect which is foreseen as about to follow is not intended, but merely permitted; nor, 2nd, by reason of the cause, because this ought to be good, or at least indifferent; or even if it is bad, it is required that it not be bad on account of that effect about to follow, because then indeed the malice of the cause would be contracted, but not the malice of the effect. Besides, in order that the principle be true, beyond the two conditions just recounted, which regard the end and the cause, two others must be present.

Therefore it is required, 3rd, that the good effect follow at least equally immediately from the cause. The reason is that if the cause directly and immediately has an evil effect, and only by means of that does the good effect proceed, then good is sought from evil; but now it is never lawful to perpetrate evil, however slight, for procuring any good whatsoever; for according to the well-known axiom taken from the Apostle, Rom. iii, 8, evils are not to be done that goods may come.

It is required, 4th, that there be present a proportionately grave reason for positing the cause; because natural equity obliges us to avoid evils and to guard against damages to our neighbor, when we can do this without proportionately grave damage. But this damage is to be weighed not solely from the inconvenience which the agent would then suffer, but also, and much more, from the common inconvenience of all if this were generally required. I said a proportionately grave reason; for this ought to be the graver, the nearer the connection is between cause and effect, the greater is the malice of the latter, and the less right is had to the action considered in itself. Cf. St. Thomas, 2-2, q. 64, art. 7. - St. Alphonsus, on the sixth precept of the Decalogue, nn. 483 and 484.

Thus, it is lawful for someone who by horse flees an enemy and death at the same time to continue his riding when, in a narrow part of the way, there is in his path a child whom the horse will kill. Certainly that riding, through itself and from the intention of the agent, is not ordered to killing the child but to saving his own life by fleeing through that way; he enjoys a right to this safety, and

indeed to obtaining it by riding: it is by accident that the death of the child follows, which he chooses neither as end nor as means; he wills it not directly but indirectly, that is, he wills this swift riding not on account of the connection which it has with the death of the child, but on account of the connection which it has with his own safety. Moreover, in these cases it is often useful to see whether the action, the bad effect being absent, would be lawful; e.g., a woman not pregnant suffers from a deadly tumor in the womb, or a man fleeing on horseback from a pursuing enemy by a narrow road in which this child is not lying; certainly the man possesses the right of fleeing so that his own death may be averted, and the woman the right to have the tumor removed by operation. Now then, it happens in the case of the one fleeing that the death of the child is induced by the riding, and in the case of the pregnant woman that the death of the fetus is induced by the operation. One and the same action has a double immediate effect: flight has safety and death, good and evil. Certainly the man has a right to the good; by this right he uses riding on account of safety; on account of this good he directly wills and posits his action. Very grave is the cause of positing that action whether the bad effect is present or absent; and the presence of that bad effect does not take away his right to posit the action on account of the good effect: the death of the child does not take away from him the right to flee his own death and to save his life; or, he is not bound to die, by omitting an action licit in itself, so that the child may not die. And the same is to be said, by equal reason, of the pregnant woman who suffers from that tumor. In both cases the agent directly wills the good effect and permits the bad; the good effect is directly intended, the bad is permitted, and each is equally immediate. Cf. De Lugo, *De Jus. et Jur.*, disp. 10, sect. 5, nn. 123 seq.

You Will Resolve. 1st. Blasphemies, impurities, quarrels, or injustices which are done in drunkenness are voluntary in cause and imputable unto sin, when they can be foreseen and in fact are foreseen; but they are sufficiently foreseen from the custom of doing such things in this state.

2nd. A leader in war does not sin who, in time of siege, to ward off the enemy sets fields on fire, etc., even if by accident innocent inhabitants suffer. Likewise if he sets fire to a tower in which, together with enemies, perhaps pilgrims foreign to the war are enclosed; because the cause of this damage is honest in itself, but the damage of the innocent follows merely by accident, and is not intended, but only permitted.

3rd. A girl who, pregnant from a crime, procures abortion in order to avoid infamy sins gravely; because she directly intends abortion as the means by which she may free herself from infamy, and therefore seeks good from evil.

4th. If a cause remotely and lightly flows into a bad effect, and from it there also follows some good effect, although it would not preponderate or would not be equivalent to the evil, there is no obligation of removing the cause; because a lesser reason is required for positing a cause only lightly and remotely flowing into evil than if it flowed gravely and proximately. Hence you are not bound to abstain from an honest and useful conversation on account of carnal movements arising from it.

5th. But if the cause, remotely and lightly influencing, is in itself venially bad, or if no good effect follows from it, there will be an obligation of removing it, but a slight one and under venial sin only, unless there is question of grave damage to the neighbor; the reason is that this obligation is to be estimated according to the quantity of the influence of the cause. For since the effect is not voluntary except in the cause, and is contained lightly and remotely in the cause, it is lightly voluntary in it, and

therefore lightly imputable unto fault; and for that reason there is present a slight obligation of removing the cause on account of that effect.

6th. The omission of acts about which a man in no way thinks is in itself and directly in no way voluntary; because those acts are impossible, since they wholly escape the advertence of the agent. Nevertheless such an omission can be voluntary and imputable in cause, if forgetfulness or inadvertence proceeds from preceding negligence.

7th. He who knowingly posits the cause of an action or omission, at that instant contracts malice before God, even if the action or omission does not in reality follow; and therefore he is bound to confess it as willed.

On the same principles concerning the indirect voluntary and the voluntary in cause depend innumerable other resolutions, especially where there will be discussion concerning scandal, and where concerning cooperation either toward another's sin, or unto the damage of one's neighbor.

Chapter III. On Those Things which Modify a Human Act

Article I. On Ignorance

Ignorance, taken generally, is the lack of knowledge; but it is divided in many ways, and is:

1st. Positive or negative, according as it is the lack of knowledge due, for example, of moral theology in a confessor; or not due, for example, ignorance of canon law in a rustic.

2nd. Of law or of fact, according as it is concerned with the existence of a law, or of a particular fact.

3rd. Vincible or invincible, according as, diligence being employed, it can be overcome, or not. But invincible ignorance is physically such if it can in no way be overcome; but morally such, if, moral diligence being employed, namely that which prudent men are wont to employ according to the gravity of the matter, it cannot be removed.

Vincible ignorance is distinguished as threefold, namely: 1st, simply such, when some diligence, yet not sufficient, is employed to drive it away; 2nd, crass or supine, when no, or scarcely any, zeal is applied in investigating the truth; 3rd, affected, which is directly willed, as when someone directly and positively wills to be ignorant of something, either that he may sin more freely, or that he may have an excuse from sins, or for some other reason.

To invincible ignorance are to be referred perfect forgetfulness and full inadvertence. But these, if they are not perfect, and proceed from negligence, pertain to vincible ignorance.

4th. Antecedent or consequent, according as it precedes an act of the will or follows it; whence the former is also called involuntary, invincible, and therefore inculpable; but the latter voluntary, either directly or indirectly, vincible, and more or less culpable. But each is a cause of willing or doing that which would not be done if knowledge were present. This last thing only, namely that it is the cause why the will wills what otherwise it would not will, antecedent or consequent ignorance adds beyond simply invincible ignorance, to which this does not necessarily belong. Cf. Baller., note (b), p. 13.

Here also mention is to be made of concomitant ignorance, which is had when someone is ignorant of what he is doing, but would still do it even if he were not ignorant; for example, if someone killed an enemy thinking him to be a wild beast, yet would still have killed him if he had not been ignorant. It in no way flows into the act, but only accompanies it by accident. Cf. St. Alphonsus, nn. 26 and seq.

Principle

Invincible ignorance wholly removes the voluntary, because no voluntary can be present where no knowledge is had; but vincible ignorance does not remove it. For such ignorance is truly voluntary, either directly or indirectly, and in morals what is caused from the voluntary is reputed voluntary. Yet if this ignorance is indirectly voluntary, namely either simply vincible, or crass or supine, then it diminishes the voluntary, and consequently sin, because it diminishes, although in a diverse degree, the knowledge of the malice of the act. But if it is directly voluntary, that is, affected, then, according to St. Thomas, "such ignorance does not excuse sin either wholly or in part, but rather increases it."

Yet this greater malice seems to have to be understood of the depravity of the will, while it positively neglects to learn the law in order to sin more freely, but not of the very infraction of the law, which indeed is sinful because known in some way, but nevertheless less so than if it were perfectly known. Cf. St. Thomas, *QQ. DD.*, q. 3, *De Malo*, art. 8.

The voluntary properly so called, although diminished, can suffice for grave sin. And this must be adverted to. But the gravity of the sin is taken first from the gravity of the arising obligation, for instance, from a positive precept or from the matter considered in itself; as in children the necessity of learning the catechism, and in a confessor the necessity of knowing those things which are required for rightly fulfilling his office. Secondly, to this must be added the gravity of negligence, which is measured according to the mode of diligence which the matter demands. Cf. Ballerini, *Op. Mor.*, v. 1, tr. I, n. 904.

You Will Resolve. 1st. A spouse sinning with a woman whom he invincibly does not know to be the sister of his wife is guilty of adultery, but not of incest.

2nd. Children who have done things illicit in themselves without any anxiety of conscience or suspicion of malice have in reality not sinned formally, even if they had already attained the use of reason; and therefore afterward they are not bound to confess those things, when they understand them to be illicit, since material sins are not matter for confession.

3rd. If a confessor adverts that sufficient knowledge is lacking to him for discharging, as is fitting, his office, and neglects to acquire knowledge, or before he acquires it goes on exercising his office, he is guilty of the errors which he foresaw at least in some way, because they themselves, at least in cause, are voluntary.

4th. If negligence in laying aside ignorance is culpable only venially, the deed following from it will be imputable unto only venial fault; because acts of this kind are voluntary, and therefore culpable, only in cause; since therefore the cause, namely ignorance, does not reach grave fault, the effect also cannot exceed slight fault.

5th. Ignorance can be concerned either with those things which ought to be known at any time whatever, or with those things which here and now only ought to be known; for example, upon any faithful person there lies the burden of knowing the truths of faith and the obligations of his state, and a similar burden is imposed upon a physician of investigating the disease of this sick person. In the first case the ignorance is habitual; in the other, actual. The one culpably ignorant of things necessary to be known is in some manner in the state of habitual sin; namely, he sins as often as there is present a recognized occasion of acquiring knowledge, which nevertheless he voluntarily neglects. In the second case the physician sins when the necessity of investigating shines forth to his mind, but he does not investigate.

6th. Error renders an act null if it is concerned with that which constitutes the substance of the act or falls back upon a condition *sine qua non*; otherwise the act is valid, unless something else is provided by law; but in contracts error can give place to a rescissory action according to the norm of law (Can. 104).

Article II. On Concupiscence

By the name of concupiscence here there comes, not indeed that inborn tinder of depraved desires concerning which the Apostle complains, Rom. vii, 23, but a movement of the sensitive appetite, by which we tend toward a sensible good; or, as St. Thomas says after Damascene, 3, dist. 26, q. 1, art. 1: "a movement of the sensitive appetitive power which is from the imagination of good or evil."

But concupiscence so understood is distinguished as twofold, for one is antecedent, and another consequent. The former is that which, in the order of causality, precedes any deliberation or consent of the will, and allures and draws it to consenting. But the latter is that which, in the order of causality, follows an act of the will, either because a vehement movement of the will overflows into the lower appetite, or because the will directly and by design excites this appetite itself. That which is produced from mere overflowing is voluntary only in cause; that which is directly and by design excited is voluntary in itself. Cf. Baller., note (b), p. 14.

Principle I

Antecedent concupiscence does not remove, but rather increases, the voluntary, insofar as by this name the inclination of the will is signified; but it diminishes, and even wholly removes it, insofar as the judgment of reason and the indifference of the will are signified. The reason for the first is that through concupiscence the will is inclined to willing that which it desires, and from another side the mind is not impeded from knowing at least the sensible qualities of the thing; indeed it is more occupied in considering them. Therefore the act proceeding from it is done through itself from a fuller and more intrinsic propensity of the will. But the reason for the second is that concupiscence turns the mind away from considering the inconveniences and defects of the object, and diminishes the indifference of the will. But when the passion is so great that it wholly removes the use of reason, as happens in those who are driven mad on account of love or anger, the act is indeliberate, and for that reason is rendered wholly involuntary. Cf. St. Thomas, 1-2, q. 6, art. 7; q. 73, art. 6; and q. 77, arts. 2, 6, and 7.

Principle II

Consequent concupiscence neither increases nor diminishes the voluntary, but rather, as St. Thomas says, 1-2, q. 77, art. 6, "is a sign of its magnitude, insofar as it demonstrates the intensity of the will toward the act." The reason for the first is that the act of the rational will in that hypothesis precedes the movement of concupiscence, as a cause precedes an effect. Therefore the later disturbance of reason, which concupiscence induces, cannot affect the act which has already preceded, and therefore neither diminish nor increase the account of the voluntary. But the reason for the second is that, as St. Thomas has it, *De Malo*, q. 3, art. 11: "when from a strong movement of the will the sensitive appetite is moved to passion, passion adds merit or demerit, because it is a sign that the movement of the will is stronger; and in this way it is true that he who gives alms with greater compassion merits more, and he who sins with greater lust sins more, because this is a sign that the movement of the will is stronger."

You Will Resolve. 1st. Antecedent concupiscence diminishes the merit or demerit of an act; for it diminishes the free element, from which an act has that it is worthy of praise or blame, capable of merit or demerit.

2nd. Consequent concupiscence contributes nothing through itself and formally to the moral goodness or malice, merit or demerit, of an act, but rather takes on the morality, merit, or demerit of this act; although, as has been said, it is a sign and indication of greater or lesser merit or demerit.

3rd. Concupiscence which so follows an act of the will that it has been excited and willed is good and praiseworthy in itself, if it is not inordinate or immoderate, and is referred to an honest end. Cf. Suarez, in 1-2, tract. 2, disp. 3, sect. 3, n. 1.

Note. - Concerning concupiscence, insofar as it is the tinder of depraved desires and inclines the will to sin, we shall treat below, where we treat of sins.

Article III. On Fear

Fear is a trembling of the mind on account of some present or future danger to oneself or to those closely joined to oneself; but it is commonly divided thus:

1st. Grave or slight fear, according as the evil feared is either grave, such as death, mutilation, hard imprisonment, notable detriment to reputation, a great loss of goods, etc.; or slight or mediocre inconvenience, such as the loss of a thing of slight moment, a small detriment to reputation; or even something grave, but from a slight cause, or which can easily be averted, etc.

But grave fear is such absolutely or relatively. Fear is called absolutely grave when evils truly grave in themselves are feared; but relatively grave when evils, though slight in themselves, are nevertheless grave respectively to certain persons. Thus children, women, and old men are wont to be affected by greater fear in the same danger than men of mature age.

2nd. Fear from within or from without, according as it proceeds from an intrinsic cause, for example, from sickness, from infirmity of mind, etc.; or from an extrinsic cause, either free, namely from man, or necessary or natural, as from the elements, contagion, etc.

3rd. Fear justly or unjustly impressed, according as it is brought in either from a just cause, for example, from deserved punishments, or from an unjust cause, that is, is impressed through injury. Cf. St. Alphonsus, n. 20.

Reverential fear must also be added, which is had when someone fears lest he have offended his parents, or other superiors. It is referred to just or unjust fear according as its cause is just or unjust. But it can be grave, if there is a prudent fear lest those who impress the fear be offended for a long time or gravely.

Principle

An act posited from fear, however grave, is voluntary simply, although regularly it is also involuntary in a certain respect. The reason for the first is that what, being known as the lesser evil here and now, is efficaciously assumed as a means for avoiding another evil, is called voluntary simply. Hence they have always been held as apostates who, conquered by fear of torments, denied the faith. The reason for the second is that what is done from fear alone is repugnant to the will, and apart from this case would not be done. Cf. St. Thomas, 1-2, q. 6, art. 6. - St. Alphonsus, n. 21.

I said, 1st, from fear or from fear alone, because acts posited with fear, or from fear but not as from a total or moving cause, are voluntary without any admixture of the involuntary.

I said, 2nd, however grave, but always excepted is the case in which the fear is so great that the use of reason is wholly removed. But if the fear should be slight under every respect, and at the same time the total cause of the action, in the external forum indeed it is not reckoned, because it is presumed not to have had influence; but in the internal forum that action will be less sinful according to the quantity of influence, or of the involuntary, which it causes.

I said, 3rd, regularly, because then an action is involuntary in a certain respect from fear when in itself it is hateful to the will, although relatively, and appears here and now desirable as a means for avoiding the evil which is feared. But this happens regularly, yet not necessarily and always. For he who, for example, flees sin in order to avoid hell, or from fear of hell, does not for that reason have flight from sin as hateful in itself; otherwise by the force of such a disposition he would always sin and become worse, which it is wicked to assert. Cf. Council of Trent, sess. 6, can. 8.

You Will Resolve. 1st. Fear proceeding from within or from natural causes does not prevent an act elicited under its influence from being able to be valid: thus a vow emitted from fear of death in the midst of shipwreck, or in grave sickness, is valid. But if a vow from fear impressed by an extrinsic and free cause is not valid, the reason is not taken from the absence of the voluntary, but from the presence of injury.

2nd. Fear, even grave fear, does not of itself excuse from mortal sin whenever the violation falls into contempt of religion; but it excuses when there is question of a prohibiting human law, or even a positive divine law, not because the voluntary ceases, but because the legislator is judged not to will to press the obligation with so great an inconvenience. But natural laws which prohibit acts intrinsically bad continue to oblige, and so do laws which regard the common good of the whole republic; nor in these does fear excuse.

3rd. § 2. Acts posited from grave and unjustly impressed fear, or from deceit, are valid unless something else is provided by law; but they can be rescinded, according to the norm of can. 1684-1689, by the sentence of a judge, either at the petition of the injured party or ex officio (Can. 103).

Article IV. On Force or Violence

Force or violence is coercion which is brought upon someone by an extrinsic and free cause, his will resisting. But the will is said to resist when, both exteriorly, that is, by the aid of means extrinsic to itself, for example, by prayers dissuading, by threats deterring, by repelling force with force, etc., and interiorly, that is, in itself and by an interior affection, it resists as much as it can.

Principle

Acts elicited by the will can in no way be forced, because, as St. Thomas says: "it is against the account of the act of the will itself that it be forced or violent." But the other acts extrinsic to the will, whether they are completed by the external powers, or by the internal powers as by phantasy and the sensitive appetite, if they are posited from absolute violence, are not voluntary, and therefore not sinful; but if from violence in a certain respect, they are more or less voluntary according to the greater or lesser difficulty of resisting, or according to the greater or lesser affection with which one suffers force. Cf. St. Thomas, 1-2, q. 6, art. 4. - St. Alphonsus, nn. 17 and 18.

In canon law.

§ 1. Acts which a person, whether physical or moral, posits from extrinsic force, which cannot be resisted, are held as not done (Can. 103).

You Will Resolve. 1st. A woman who resists in every way the violence which is brought upon her sins in no way, even if intercourse occurs; because no one sins wholly unwillingly.

2nd. Women suffering force sin gravely if, through faintheartedness or vain fear, for example, of offending the aggressor, etc., they do not resist as much as they can, even with the danger of consent excluded, because while they resist less than is fitting, they equivalently consent to the violation of themselves, and cooperate in the crime of another.

But if you ask whether this resistance ought to be so great that it reaches even to crying out, a distinction is needed: if there is present proximate danger of consent, the woman is bound to cry out, despising whatever damage the aggressor threatens to her, because formal sin must absolutely be avoided. But with this danger excluded, again a distinction must be made: if the aggressor does not seek intercourse, being content only with touches and other things of this sort, then, according to St. Alphonsus, it is very probable that there is not such an obligation, even if fear of a damage less than death is cast upon her. The reason is that such an obligation cannot arise either by reason of preserving virginity, which by hypothesis remains intact, or by reason of charity, which does not oblige with so great an inconvenience. But if intercourse is sought, then, according to the same holy Doctor, the opinion which holds that a violated woman is not bound to cry out, while fear of death stands, is not lacking in probability, but only speaking speculatively; for practically it scarcely seems possible that this woman would not consent to venereal delight. Cf. St. Alphonsus, on the fifth precept of the Decalogue, n. 368; on the sixth precept of the Decalogue, n. 430.

3rd. Sometimes resistance wholly absolute and continuous against inflicted coercion is not required, namely when on the one hand it would be useless, and on the other hand there is question of a less dangerous matter. Thus martyrs led to pagan temples did not sin, although they walked. But in every case resistance must be made as much as is required for averting the danger of scandal, or injury to religion.

The things established in these two chapters concerning the human act receive splendid confirmation from those things which the new Code decrees concerning delicts, or external violations of law to which a canonical sanction has been added.

Questions

Question 1. On what things does the imputability of a delict depend?

Response. The imputability of a delict depends on the malice of the delinquent, or on his fault in ignorance of the violated law or in omission of due diligence; wherefore all causes which increase, diminish, or remove malice or fault, by that very fact increase, diminish, or remove the imputability of the delict (Can. 2199).

§ 1. Malice here is the deliberate will of violating the law, and to it there is opposed, on the part of the intellect, defect of knowledge, and on the part of the will, defect of liberty.

§ 2. Once an external violation of law has been posited, malice in the external forum is presumed until the contrary is proved (Can. 2200).

Namely, such is the fault to be imputed as is the deliberate will of violating the law; defect of knowledge diminishes the account of the voluntary according to the measure of ignorance, just as defect of liberty also diminishes actual imputation; in equal manner omission of diligence flows into fault. These things notwithstanding, once an external violation of law has been posited, the deliberate will of violating the law, or malice, is supposed, unless the contrary is proved. Therefore the subjective elements of a delict are discretion of mind and liberty of will; when these are lacking, there cannot be given an intention of committing a delict, or the foundation of imputability.

Question 2. Who are, and who are presumed to be, incapable of delict? In what manner does voluntary and involuntary drunkenness stand toward the imputability of a delict? In what manner weakness of mind?

Response. § 1. Those are incapable of delict who actually lack the use of reason.

§ 2. Those habitually insane, although sometimes they may have lucid intervals, or in certain reasonings or acts may seem sane, are nevertheless presumed incapable of delict.

§ 3. A delict committed in voluntary drunkenness is not devoid of some imputability, but this is less than when the same delict is committed by one who is fully master of himself, unless, however, drunkenness was sought expressly for perpetrating or excusing the delict. But when the law is violated in involuntary drunkenness, imputability is wholly absent if the drunkenness takes away the use of reason entirely; it is diminished if only in part. The same is to be said of other similar disturbances of mind.

§ 4. Weakness of mind diminishes the imputability of a delict, but does not wholly remove it (Can. 2201).

This canon is an application of the preceding one to various cases, and first indeed to those lacking the use of reason, who cannot intend a delict and therefore are simply incapable of it. For how shall he be constituted guilty who does not know what he is doing? By equal reason the habitually insane are presumed incapable of delict; they should rather be cared for and pitied than punished, c. 14, C III. 9. Drunkenness stands in diverse ways toward the imputability of a delict, which certainly will not be lacking when the drunkenness was voluntary, although it is less than when a man is fully master of himself, unless the drunkenness was directly sought for perpetrating the delict. Involuntary drunkenness indeed removes fault; weakness of mind does not remove the use of reason, but plainly diminishes it and liberty, and thus imputability.

Question 3. Does ignorance affect the imputability of a delict?

Response. § 1. The violation of an unknown law is in no way imputed if the ignorance was inculpable; otherwise imputability is diminished more or less according to the culpability of the ignorance itself.

§ 2. Ignorance only of the penalty does not remove the imputability of the delict, but diminishes it somewhat.

§ 3. Those things which are established concerning ignorance are also valid concerning inadvertence and error (Can. 2202).

This canon is an application of canon 2199 to defect of knowledge, which is opposed to imputability. For if ignorance of the violated law is inculpable, the very fact of violation is inculpable. But if, however, ignorance of the law is culpable, the violation will be culpable; and indeed the culpability of the latter follows the culpability of the former. Ignorance only of the penalty leaves the violation of the law intact; and therefore in no way removes imputability. But since such a violation does not carry with it contumacy against the punishing authority, imputability is diminished. Nevertheless a sinner of this sort has posited the cause of some punishment.

Question 4. Is imputability diminished from the omission of due diligence?

Response. § 1. If someone violates a law from omission of due diligence, imputability is diminished according to a mode to be determined by a prudent judge from the circumstances; but if he foresaw the matter and nevertheless omitted the cautions for avoiding it which any diligent man would have employed, the fault is proximate to malice.

§ 2. A fortuitous case which cannot be foreseen, or which when foreseen cannot be met, exempts from any imputability (Can. 2203).

If, therefore, some unjust damage occurs which could and ought to have been foreseen by the one omitting diligence, the infliction of damage is imputable according to the measure of the diligence omitted. The law directly obliges me to avoid voluntary violation; indirectly it also obliges lest from my action there follow the same damage which would follow from voluntary violation. And hence omission of diligence is imputable, as, for example, in homicide arising from omitted diligence of taking care lest it be done by the action. It belongs to the judge to determine the mode by which imputability is diminished.

But if the agent foresaw the matter and neglected it, his fault is proximate to malice. Thus the Most Holy Eucharist is to be guarded under faithful custody with keys employed, lest a sacrilegious hand extend itself to it for carrying out wicked things; the fault of a priest foreseeing such a sacrilege, yet omitting diligence by employing cautions lest the crime occur, is proximate to the fault of deliberate violation of the law, or malice.

Of the unknown there is no desire, nor imputability; wherefore it is not imputable to anyone that which followed by chance from his action, and which was neither foreseen nor could have been foreseen.

Question 5. What is the influence of passion upon the imputability of a delict?

Response. Passion, if it has been voluntarily and deliberately excited or nourished, rather increases imputability; otherwise it diminishes it more or less according to the diverse heat of passion; and it wholly removes it if it precedes and impedes every deliberation of mind and consent of the will (Can. 2206).

In these circumstances the influence of passion upon imputability is varied. If passion has been deliberately excited and nourished, it increases affection and hence the voluntary; if it has not been such, it is not in the full power of man; wherefore according to the greater or lesser heat it is less or more voluntary; indeed it can be that it not only precedes every consent of the will and deliberation of the mind, but also simply impedes it, in which case it removes imputability.

You will resolve. - 1st. Lesser age, unless something else is established, diminishes the imputability of a delict, and by so much the more the nearer it approaches to infancy (Can. 2204).

The reason is that in minors there is not that perfect reason, by defect of which full malice seems to be absent from their crimes. Cf. Clement XIII, *Quemadmodum*, n. 5. And the nearer age approaches to infancy, by so much the less must the delict be held imputable. Hence, in children, much is usually left which in others of more advanced age human laws say must be more severely corrected, as c. 2, X, V. 23. On account of the defect of the age in which the excess was committed, rigor is to be tempered by mildness.

2nd. § 1. Physical force which takes away every faculty of acting wholly excludes a delict.

§ 2. Grave fear also, even only relatively grave, necessity, indeed even grave inconvenience, for the most part wholly remove a delict, if there is question of merely ecclesiastical laws.

§ 3. But if the act is intrinsically bad, or tends toward contempt of the faith or of ecclesiastical authority or toward damage of souls, the causes spoken of in § 2 indeed diminish the imputability of the delict, but do not take it away.

§ 4. The cause of legitimate defense against an unjust aggressor, if due moderation is preserved, wholly removes a delict; otherwise it only diminishes imputability, just as also the cause of provocation does (Can. 2205).

Concerning force the matter is clear: it removes the foundation of imputability.

The reason for the second paragraph lies in this, that ecclesiastical laws and other human laws do not oblige with great inconvenience, unless the act is intrinsically bad, or tends toward contempt of the faith, etc. Certainly the excuse of necessity does not extend itself to freeing someone from the obligation of not blaspheming, of not perjuring; wherefore also the reason for the third paragraph is clear. But the fourth paragraph is evident from this, that he who so defends himself in no way sins, provided that he does not exceed the limits of just defense.

Chapter IV. On the Morality of Human Acts

Article I. On the Essence of Morality

I say, 1st. The essence of morality consists primarily in the habitude or relation of a human act to the eternal law, which is the divine reason, or the will of God commanding that the natural order be preserved and forbidding that it be disturbed. The reason is that only that can be the primary rule of morality which is the supreme norm of an infallible and indefectible order, and able to oblige in conscience; but such is the eternal law alone, from which alone the other laws receive the force of obliging. Therefore.

I say, 2nd. The essence of morality consists secondarily in the habitude of a human act to right reason. For human actions cannot be measured against the supreme norm of morality except by means of human reason, which is a certain participation in, and consequently manifestation of, the divine reason. Hence:

1st. That, and that alone, is a moral being which stands under the rule of morals, or under the law of God commanding or permitting. For through that alone are we ordered to our ultimate end, or disordered from it.

2nd. It is false that the essence of morality is to be placed in liberty alone. For this is prerequired as a condition that an act can be imputed, but it is not the reason why it is imputed unto praise or blame. For he who acts freely is not for that reason worthy of reward, but only he who, since he is free, acts conformably to the divine reason.

3rd. It is false also that morality consists in the voluntary alone. For the voluntary without liberty is in no way imputable, because without it man would not be master of his own actions.

4th. It is false that public opinion is the rule of morality, because it is neither infallible nor immutable, and consequently tomorrow that could be called unjust which today is reputed honest.

5th. Indeed the civil laws themselves cannot be the supreme rule of morals, because laws measure the goodness or malice of an act only insofar as they are honest and reasonable, and consequently insofar as they participate in some higher criterion. Cf. St. Thomas, 1-2, q. 19, art. 4; q. 71, art. 6; and q. 93, art. 3. - St. Alphonsus, nn. 34 and 35.

Questions

Question 1. Are there acts properly indifferent, or lacking morality, either in species or in the individual?

Response. It is certain that there are acts indifferent in species, or acts which in their species are without morality. For there are acts which, considered in themselves while abstracting from end and circumstances, have no agreement or repugnance with law or right reason, and therefore are to be reputed neither good nor bad. Thus walking, writing, and innumerable similar things are acts indifferent through themselves.

But there is controversy concerning acts in the individual, or considered in the agent; but the more common and more probable opinion, which with St. Thomas denies it, is held. The reason is that it belongs to a man acting deliberately, and therefore master of his act, to order the act to a due end; but the due end is that which befits rational nature, as it is rational. Moreover an act otherwise good from the object, or at least indifferent, and thus ordered to a due end, is necessarily good; but an act lacking such ordering is bad; therefore in no case will there be given an act properly indifferent in the individual. Cf. St. Thomas, 1-2, q. 18, arts. 8 and 9; and *QQ. DD.*, *De Malo*, q. 2, arts. 4 and 5. - St. Alphonsus, nn. 42 and seq.

Question 2. Does an external act add morality to an internal act?

Response. Through itself an external act adds no morality to an internal act; and the reason is that all morality is taken from the intrinsic, or from the will; nor does an external act have any imputability unto merit or demerit proper to itself and distinct from the imputability of the internal act. Wherefore an external act is not formally, but only materially, honest or dishonest. Nor does the obligation of declaring the external act in confession stand in the way; for it must be declared both because reservation, scandal, or some damage of neighbor is often present, and because it constitutes one and the same act with the internal act, as will be said where there will be discussion concerning the integrity of confession. But by accident an external act usually increases morality, because very often it is the occasion why the goodness or malice of the internal act is increased, for example, that it is prolonged or multiplied, etc. For the internal act is increased on account of the arduousness of the good external work or the delight of the evil, or on account of the longer delay of time necessary in completing the external work. Cf. Suarez, in 1-2, tract. 3, disp. 10, sect. 1, nn. 3 and 9.

Article II. On the Sources of Morality

The sources of morality are named those principles which bestow upon human acts their species, or a modification of the species, in the genus of morals.

Three sources of morality are numbered, namely: 1st, the object of the act; 2nd, its circumstances; 3rd, the end of the agent. These three are altogether required for a good act; if even one is bad, the act will become bad. Hence the well-known axiom: Good is from an integral cause, evil from any defect whatsoever.

§ I. On the Object

The object is that about which a moral act is immediately concerned, and in which the will of the agent proximately and through itself is terminated.

The object is good or bad or indifferent according as it agrees or does not agree with reason, law, or right order, or stands apart from law or right order. Likewise it can be intrinsically good or bad, that is, by reason of itself from the requirement of right order; or not intrinsically, but only by reason of a positive precept.

I say. From the object morally considered is taken the first and essential morality of a human act; for the morality which the object bestows upon the action is conceived before every other morality, whether it proceeds from the end or from the circumstances.

The morality which is taken from the object is called morality, or objective goodness or malice. If the object has been indifferent in itself, then the act will receive its morality from the end or from the circumstances.

But intrinsically bad objects are of a threefold class, namely: 1st. Some are such absolutely, and independently from every circumstance, because from themselves they involve repugnance with an absolutely necessary right order, as hatred of God, blasphemy, etc. 2nd. Others are intrinsically bad, not precisely in themselves, but by reason of some adjunct or condition which depends on the dominative power of God or of man: such are the taking away of another's thing, injury to body or reputation, and similar things which at times become licit. 3rd. Finally, others are bad only by reason of the danger which they ordinarily have joined to them, such as the sight of a base object, the reading of a depraved book, etc. These, given a reasonable cause and the danger being removed, can become licit.

§ II. On Circumstances

Circumstances are accidental determinations of an act, without which the act could exist as to substance, and which nevertheless in some way touch its morality. Seven classes of circumstances are numbered, expressed in this little verse:

Who, what, where, by what aids, why, how, when?

Namely: Who, or what sort the agent is, married, cleric, etc.? What, or what is the accidental quality or quantity of the object? Where, or in what place, whether sacred or profane, etc.? By what aids, that is, what means, instruments, etc., the agent has used? Why, or from what end, namely extrinsic? How, namely whether maliciously or in good faith, whether in an intense or remiss manner, whether advertently, or not? When, that is, at what sort of time or for how much time? Cf. St. Thomas, 1-2, q. 7, arts. 3 and 4.

I say. A human act takes true morality from circumstances. The reason is that circumstances, which cannot together with the object not be intended directly or indirectly, by that very fact affect the act insofar as it is a human act and lies under the rules of morals; but often they have a relation of agreement or disagreement with reason and right order. Therefore they affect the act in the being of morals, or as to morality; indeed sometimes the circumstances alone introduce agreement or disagreement of this kind into the act, as happens in acts indifferent from the object.

Hence, 1st, some circumstances are those which pertain to the morality of an act, others which contribute nothing to it, and which therefore are to be held wholly indifferent. 2nd. Some leave the object in the same moral species, and others change the species itself, or add a new species. 3rd. Of the former, some aggravate malice, but others diminish it, and they do this gravely or lightly. If they so aggravate that they render a sin mortal from venial, or so diminish that they render it venial from mortal, the act, remaining in the same moral species, is said to be changed as to its theological species.

Ordinarily a circumstance is said notably to aggravate malice either when to this malice, grave in itself, it adds an excess which alone would itself be a lethal sin, which in quantitative things is obvious to anyone, as if someone steals ten horses; or when one sinning notably exceeds the mode of delinquency in things not quantitative, as if a murderer cuts an enemy limb by limb.

§ III. On the End

An end in general is that for the sake of which something is done; but it is distinguished as twofold, namely the end of the work, that is, the end intrinsic to the work itself and to which the work tends through itself; and the end of the one working, that is, the end to which the agent directs his intention at will, or which the agent has set before himself, whether it is the same as the end of the work, or is diverse from it and extrinsic to the work. Concerning this latter end only must we speak, since it alone is properly called the end.

But that end is: 1st, intermediate or ultimate, according as it is referred to another end, or the will rests in it; 2nd, positively or negatively ultimate, or, what is the same thing, simply and as to all things, or in a certain respect and in only some series ultimate, according as it is or is not intended with the exclusion of any other ultimate end whatsoever; 3rd, primary or secondary, according as it is intended first and through itself, or only consequently and with subordination to the primary. Again, the ultimate end can be intended explicitly or implicitly, according as the agent is moved by an end of this sort expressly or only virtually.

I say, 1st. A human act takes true morality from the end. The reason is that the freely intended end ultimately orders the act to this, that it be or not be conformable to right reason. But this ordering is diverse from that which the object and the other circumstances besides the end bestow upon the act. Thus it is conformable to right reason not only to give alms, but also to give them unto the remission of sins; just as likewise it is repugnant to right reason not only to steal, but also to steal in order to make oneself drunk.

I say, 2nd. He sins who acts on account of delight alone, which he does not refer even implicitly or virtually to a further end. The reason is that delight is only a means for carrying out actions more easily, better, and more constantly, but not the ultimate end of an action. Therefore he who acts on account of delight alone perverts the order of things instituted by the author of nature. The same is clear from proposition 8, condemned by Innocent XI, which sounds thus: "To eat and drink even to satiety on account of pleasure alone is not a sin, provided it does not harm health, because the natural appetite can licitly enjoy its acts." Moreover this proposition, as Father Viva observes, was condemned both on account of the clause even to satiety, and on account of the word alone. Cf. St. Thomas, 1-2, q. 4, art. 2. - Viva, on the cited proposition, nn. 5 and 6.

Yet it must be noted, 1st, that this disordering through itself is not grave, and therefore does not exceed venial sin; for he who behaves thus seeks, on the one hand, not a bad thing, but rather a good thing in an undue order, since, as St. Thomas says, *Contra Gentiles*, lib. 3, cap. 26, n. 6, "delight is good, and to be sought, if it follows a good operation"; and on the other hand he does not ordinarily place the ultimate end of his life in this undue mode of seeking, unless he is of the number of those concerning whom the Apostle says, Philipp. iii, 19: "whose God is the belly." Cf. St. Alphonsus, tract. on sins, n. 73; and tract. on matrimony, n. 912.

It must be noted, 2nd, that this disordering then only has place when someone so acts on account of delight alone that he positively excludes a further honest end. For he does not sin, not even venially, who expressly seeks the delight of food, for example, or of games, even if he does not actually think about a further end, provided only that in some way he virtually intends this further end; for instance, because he wills generally in all these things to behave honestly, and to admit nothing

against the prescription of right reason, or because he is accustomed to assume them on account of some utility of soul or body, etc. For such a one must perhaps be said to act on account of delight, but not on account of delight alone. Cf. Viva, on prop. 8, condemned by Innocent XI, n. 6. - Salmantic., *de matr.*, cap. 3, n. 33. - Baller., note (a), p. 26.

Questions

Question 1. Does any bad end corrupt the whole goodness of an act?

Response. An end gravely bad always wholly infects an act, however good the object may be in itself. For that act can be good from no part, since the agent, by sinning mortally, totally recedes from God. But an end lightly bad also corrupts the whole act if it is the total end, or at least the primary end, of the agent. For if it is total, it embraces the whole object, and therefore infects the whole, because, as St. Thomas says, "the agent with a bad end wills the good under the aspect of evil, and therefore, insofar as it is willed by him, it is evil." But if a double end is had, and the bad end is primary, it must be resolved in the same way, because that act is still chosen so that it may be an instrument for evil, and therefore it is substantially vitiated. Finally, if an end lightly bad is merely secondary, more probably it does not corrupt the whole act, and therefore this act will be partly good, partly bad. The reason is that that act retains its goodness from the object; but the bad end behaves only concomitantly, and does not flow into the very substance of the action. If it were otherwise, fewer good acts would be found. Cf. St. Thomas, 1-2, q. 19, art. 7. - Billuart, dissert. 4, art. 4.

Question 2. Are all our actions commanded to be referred to God by the words of the Apostle, I Cor. x, 31: "Do all things unto the glory of God"?

Response. Negatively, if there is question of an obligation of actually and explicitly referring all and each of our actions to the glory of God. The reason is not only that the aforesaid words can be taken, and in reality are taken by many Doctors, in a negative sense, insofar as they would mean: do nothing against God; but also because, if they are understood in an affirmative sense and at the same time concerning the actual reference of all our actions to God, they report a mere counsel and not a precept, which would be altogether impossible.

But if there is question of another reference besides actual and explicit reference, at times a sharp controversy has existed among theologians. Those who were called Augustinians, especially from among the Louvain theologians, said that an intention of this kind was necessary, which they called virtually explicit, and that it was commanded by the words of St. Paul, I Cor. x, 31, and Coloss. iii, 17. But indeed, while they thought thus, it could scarcely happen that they would not fall under the condemnation of proposition 25 of Michael Baius: "All the works of unbelievers are sins"; indeed they were to be accused of notable temerity, because, against the sense of the Church, they would condemn of sin very many works of innumerable faithful who operate without such an intention. For that reason their opinion was vehemently attacked by nearly all the other theologians. But these established: 1st, that through an act of charity elicited at due times, the obligation of directing all works universally to God as the ultimate end is sufficiently fulfilled; 2nd, that no law can be brought forth by which we are obliged to refer the same works to God in a more particular mode; 3rd, that, besides, a work honest from its object and vitiated by no depraved end and no bad circumstance, from itself, and therefore in the implicit intention of the one working, is referred by a certain necessary order to God, who is the source, rule, and end of the good and the honest.

"Who endures to praise all day? I suggest a remedy, from which you may praise God all day, if you wish. Whatever you do, do it well, and you have praised God. When you sing a hymn, you praise God: what does your tongue do, unless your conscience also praises? Have you ceased from singing a hymn, and do you go away to refresh yourself? Do not become drunk, and you have praised God. Do you go away to sleep? Do not rise to do evil, and you have praised God. Are you doing business? Do not commit fraud, and you have praised God. Do you cultivate a field? Do not stir up a lawsuit, and you have praised God. In the innocence of your works prepare yourself for praising God all day." St. Augustine, *Enarratio in Ps. 34*, serm. 11 (M. 36, c. 340). - Cf. St. Thomas, 2 dist. 40, q. 1, art. 5; 2 *de Carit.*, art. 11, ad 2; and 2-2, q. 44, art. 4. - Perrone, *de Caritate*, cap. 5, art. 1, prop. 4. - Theol. Wirceb., *de Act. hum.*, cap. 3, art. 3.

Question 3. Whether, just as there is not given an act in the individual indifferent in relation to natural honesty, so it can be said that no act is posited by a just man which is indifferent in relation to eternal life?

Response. Negatively. For in order that some act be meritorious of eternal life, it is required that it be supernatural; but it cannot be supernatural unless, besides the honesty of the work and the state of grace of the principle operating, there is also present some supernatural motive. This third condition being lacking, and no one will deny that it can be lacking, that work will be neither meritorious nor demeritorious. Besides, if some act were to be called meritorious of eternal life insofar as it proceeds from a just man, it would follow that every act which proceeds from a sinner is demeritorious, which can in no way be said. And this is the doctrine which is constantly and certainly handed down by St. Thomas in several places. Cf. Suarez, *de Merito*, lib. 12, cap. 7, nn. 2 and seq., and cap. 10, n. 15. - Mazzella, *de Virt. Inf.*, prop. 55, nn. 1345 and seq.

Treatise II. On Conscience

Conscience can be defined: a judgment concerning the honesty or dishonesty of an act to be placed here and now. It is called, 1st, a judgment, for conscience is not some special faculty, but the intellect itself insofar as it actually judges. It is called, 2nd, concerning the honesty or dishonesty of an act, because this judgment does not regard the utility, fittingness, or facility of the act, but only its morality, or its relation of order or deformity to right reason. It is called, 3rd, to be placed here and now, for that judgment regards the action at hand which it ought to direct, but not a past action. Hence conscience differs from synderesis, which is: a habit of first principles concerning things to be done. Cf. St. Thomas, p. 1, q. 79, arts. 12 and 13. - St. Alphonsus, n. 2. - Bouquillon, n. 248.

Conscience is distinguished in many ways, for it is:

1st. Right or erroneous, according as it dictates what is true or false.

2nd. Certain or doubtful, according as the mind firmly judges something to be good or bad, or, on the contrary, remains suspended concerning the honesty of an action.

3rd. Scrupulous or lax, according as, either from an empty motive, it apprehends sin where there is none, or, on the contrary, from a lighter cause, presumes sin to be absent, or holds as light what is grave.

4th. Probable or improbable, according as the mind is inclined to opine from a grave or from a weak motive. Concerning each separately.

Chapter I. On Right and Erroneous Conscience

Right conscience, which some prefer to call true, is that which represents the object as it is in itself; otherwise it must be called erroneous, and indeed it is called invincibly or vincibly erroneous, according as ignorance or error is inculpable or culpable.

Principle

Right conscience, if it commands, must always be followed, because conscience is the proximate rule of the will, derived from the first and supreme rule of all human actions; but if it permits, it altogether exempts from every sin, because there can be no sin there where it is known that no objective malice is present. But erroneous conscience, if it is such vincibly, must not be followed, whether it commands or permits, because vincible error is considered voluntary, and is imputable as demerit; but if it is invincibly erroneous, then the same must be said of it as of right conscience, because subjectively it is compared to it. Cf. St. Alphonsus, nn. 3 and 5.

You Will Resolve. 1st. He who thinks it is a fast when it is not, because of erroneous conscience sins against the precept which he supposes, if he does not fast.

2nd. If someone lies in order to free his neighbor from danger of life, thinking inculpably that from charity he is bound to this, he performs a good act; and if he does not lie, he sins against charity.

3rd. He who, with some doubt, thinks that he must lie or steal in order to aid his neighbor, cannot follow such a conscience, nor act against it; but he must, if he can, inquire, lay it aside, and afterwards act; for such error is vincible.

4th. He who acts from a vincibly erroneous conscience is never immune from sin. For his very ignorance is voluntary and culpable; and this is always present, whether he acts according to conscience or against conscience, and it was committed when he omitted due diligence for knowing the things necessary to be known. Such a man, if when about to act he does not advert here and now to his error and acts against conscience, is stained with a twofold guilt, the former sin in its cause and the present actual fault contracted when he violates the dictate of conscience; but if the same man acts according to conscience here and now, as is evident, he does not sin, because he does not advert to his error, but nevertheless the former guilt of sin in its cause remains. But if when about to act he adverts in some way to his ignorance, he is surely bound to inquire and to obtain due knowledge. Moreover, if he retracts the fault of that ignorance by true penitence and applies a sufficient effort to driving away the ignorance, even if perhaps it remains, it will no longer be held culpable. Cf. Baller., *Op. Mor.*, vol. 1, tr. 2, n. 32 sqq.

Question. By what signs can the confessor know that error is vincible in a penitent?

Response. Let him ask, 1st, whether he adverted to some indecency in this act; 2nd, whether his conscience dictated to him that at least the confessor or another prudent man should be asked; 3rd, whether from shame or fear he neglected an occasion of asking. If the penitent answers affirmatively to one or another of these, he can be judged to be living in culpable error; otherwise, if he denies all of them. And generally, if there is question of first principles and obligations of state, vincible ignorance ought to be presumed; but invincible ignorance if the penitent is diligent in those things

which the pious are accustomed to observe, or grieves when he adverts to the error, which grief is rather a sign that no present fault is present, not that there was none past in the cause. Cf. Baller. tr. 11, n. 43.

Chapter II. On Certain and Doubtful Conscience

Certain conscience is that by which someone firmly and without fear of erring judges something to be good or bad.

Although certainty is distinguished in three ways among philosophers, that which is called moral is chiefly considered by moralists. This certainty, which rests upon the laws by which men are ruled in their acts, is subdivided into perfect and imperfect. The former is that which is so founded upon moral laws that the proposition is clearly perceived to be unable to be false. This is reduced indirectly to metaphysical certainty. The latter is that which belongs to those propositions in which it is not absolutely repugnant that there be error, although this can happen most rarely. This admits various degrees.

Doubtful conscience is that which remains suspended concerning the honesty of an action; for doubt is the suspension of assent between opposites.

Multiple doubt is distinguished, namely: 1st, positive or negative; the first is had when the intellect suspends assent on account of grave reasons for doubting, or at least reasons apparently such; but the other when assent is suspended on account of a defect of motives; 2nd, of law or of fact, according as it is concerned with the existence of a law, or its obligation, or with some particular fact; 3rd, speculative or practical, according as it is concerned with the abstract cognition of truth and in common, or with truth which here and now is ordered to work.

Principle

Only certain conscience is the right rule of morals, and therefore it is never licit to operate with a practically doubtful conscience. The reason is both because, according to the Apostle, Rom. xiv, 23: "all that is not from faith is sin"; and because the agent with a conscience not certain voluntarily admits the danger of transgressing a precept, and therefore, by virtually consenting to its violation, formally sins. But morally certain conscience, even imperfect, suffices; because only that certainty is required which alone for the most part can be had; otherwise the rule of acting, to which man is proximately subject, would be very little accommodated to the human condition. Cf. Baller., note (a), p. 41.

You Will Resolve. 1st. As often as someone doubts whether the act which he is about to place here and now is licit or not, he is bound to apply diligence congruent to the gravity of the matter and the condition of person and place for the inquiry of truth; let him consult upright and skilled men, investigate their practice, and weigh the reasons with the sole zeal for truth; otherwise he exposes himself to the danger of violating the law from negligence in inquiry, and by that very fact sins.

2nd. If he cannot inquire, nor by himself is able to weigh the reasons of each side, nor in another way, for example through reflex principles, free himself from doubt, let him embrace the safer part; because otherwise he would act in practical doubt, that is, with a conscience truly doubtful and without any certain judgment concerning the honesty of the action.

3rd. He who, after diligent and sufficient inquiry has been completed, still doubts whether there is a law commanding or prohibiting, is not bound to obey this law, if nevertheless he can form for himself

a conscience from a reflex principle, namely that a law which cannot be found cannot oblige, as will be said below, where probabilism is treated.

4th. Merely negative doubt is to be held as nothing, because it is founded upon no reason at all, or upon a very light one. Therefore, even if it remains, because it cannot bring it about that the opposite moral certainty is overthrown, nevertheless the obligation presses, or liberty stands, according as it existed before. But if a prudent suspicion of error, resting upon a grave motive, arises for you, the doubt ceases to be merely negative, and you are bound to inquire. And so, when hereafter cases of negative doubt occur, you will easily dissolve them, this rule having once been established, and therefore we shall attend only to positive doubt. Cf. St. Alphonsus, n. 24.

Questions

Question 1. Does he who operates with practical doubt concerning the gravity of sin sin gravely?

Response. Affirmatively. For he who acts with a practically doubtful conscience, according to the common principles, sins in that species of sin, both moral and theological, concerning which practically, while he acts, he doubts. The reason is that he surely violates the grave obligation of taking care lest through voluntary ignorance or inadvertence he fall into transgressions of the law which could be grave.

Question 2. What is to be done in the case of a perplexed conscience, namely when someone, placed between two precepts, remains doubtful which of the two he ought to follow?

Response. 1st. Consult, if you can, a confessor or other prudent men, because in that case ignorance is vincible. 2nd. If you cannot consult and there is a necessity of acting, because the action cannot be suspended without grave harm, choose what seems to you the lesser evil, yet not so that you do evil, but so that you recede more from evil. Know, moreover, that the law of an inferior order ought to yield to the law of a superior order. 3rd. If each precept seems to you equally grave, choose anything, and you will not sin; for there is not given a necessity of sinning. Cf. St. Alphonsus, n. 10.

Chapter III. On Scrupulous and Lax Conscience

A conscience is called scrupulous which, from a slight, indeed even empty cause, doubts concerning the honesty of some action, and therefore fears sin where there is no sin. For a scruple is an empty apprehension, or slight suspicion, by which someone falsely judges something to be a sin. But the word *scruple* is said to be derived from little stones, or pebbles, which, inserting themselves into the shoes of travelers, create trouble for the feet.

But a lax conscience is called that which from a rather slight reason judges that what is illicit is licit; or finds only a venial sin there where there is a mortal one: it is namely that which, without sufficient reason, bends judgment in favor of liberty, either for avoiding the law, or for diminishing the gravity of fault. This conscience can be distinguished in three ways, namely: 1st, a lax conscience simply, which tends to extend liberty more than is fair; 2nd, a cauterized conscience, which from a long-standing habit of sinning regards grave sins, indeed even most grave sins, as nothing; 3rd, a pharisaical conscience, which makes great things small, and in turn small things great. It takes its name from the Pharisees, who spurned the most grave mandates of the law, while by eating with unwashed hands or passing over empty traditions, they considered themselves guilty of great sin.

For correcting the scrupulous, or at least for dealing more usefully with them, there will briefly be said here something concerning the signs, causes, harms, and remedies of scruples, and also concerning practical rules to be followed both by scrupulous penitents themselves and by their confessors.

I. Signs Of Scruples, Or Of A Conscience Subject To Scruples

It is of very great importance that directors of souls discern the truly scrupulous from the false. For often those are thought scrupulous who are not, and vice versa; and from this immense errors in direction flow, with no small danger of spiritual harm. Therefore much circumspection is needed here. But the principal signs of scruples are:

1st. Pertinacity of judgment, by which someone refuses to obey the counsels of a confessor or of wise men; and while he consults several, he acquiesces in the judgment of none; indeed the more men he hears, the more he is entangled.

2nd. Frequent change of judgment from slight motives, whence frequent inconstancy in acting, and continual disturbance of mind.

3rd. Fear of sinning in all things, joined with pertinacity of mind against the judgment of the confessor, of prudent men, or even against one's own judgment; whence follows frequent questioning concerning the responses of the confessor, and repeated inquiry whether, in acting according to counsel, the conscience can be immune from fault.

4th. Impertinent reflections concerning the circumstances which were present in an action, or could have been present, and certainty anxiously sought in all things.

5th. Obstinacy in always repeating the same sin in confession, or in holding as a sin that which already several times has been declared by the confessor not to be such.

6th. Continual anxiety concerning past confessions, notwithstanding the judgment of the confessor, or repetition of confessions.

But he cannot be judged scrupulous, at least immediately: 1st, who is moderately solicitous, or anxious lest he offend God; 2nd, who after a life passed in sins is still troubled, nor after confession seems to himself to have satisfied, but rather wishes to confess and expiate sins; 3rd, who deliberately still consents to grave sins, although after the committed sin he is greatly troubled and confesses anxiously, for there is a just cause of anxiety, at least moderate: nevertheless even in this there can be a truly scrupulous person; 4th, who in only one or another case has a scruple in a passing way, nor he who doubts whether he has sinned in this or that.

Moreover, it sometimes happens that the confessor cannot, after the penitent has been heard the first or second time, immediately decide whether he is scrupulous, even if he appears anxious concerning many things; since some just and reasonable cause of anxieties can be present. But much less can a scrupulous confessor easily judge whether the penitent is scrupulous, or only fearful. Cf. Lacroix, lib. 1, nn. 517 and seq.

II. Causes Of Scruples

The principal causes of scruples are the following:

1st. Divine permission. Not indeed as if God sends in false apprehensions, but because, permitting these, He withdraws His light, so that namely man, having fallen into anxieties, may return to the heart, bring himself back to better fruit, learn to run back to God, and by patiently sustaining anguish, make satisfaction for sins, increase merit, etc.

2nd. Operation of the devil. For the devil knows skillfully how to fashion scruples, by moving the blood, altering the humors, objecting various images to the imagination, composing diverse species, so that he may form a gloomy and false image of sin, trouble the mind, draw it back from spiritual progress, and finally cast it into dejection of soul, or even into desperation.

3rd. A melancholic and phlegmatic temperament. For melancholic persons are for the most part suspicious and tenacious of the things which they apprehend, and therefore prone to every suspicion of evil; and since they are of a cold temperament, they are more easily subject to fear and pusillanimity, and are terrified at the first appearance of evil.

4th. Weakness of the head, or defect of natural judgment in persons inclined to fear; likewise pusillanimity and dejection of soul, on account of which one does not know how to contemn fears.

5th. Excessive solicitude for avoiding everything which has the appearance of evil; for while the scrupulous person continually cries out to himself: Beware of sin... Attend to yourself..., he frightens and disturbs himself without cause.

6th. Association with the scrupulous; to which pertains also direction received from a scrupulous confessor, the reading of cases of conscience and of stricter ascetical writers done by someone incautious and less understanding; likewise the excessive flight from every human conversation.

III. Harms Of Scruples

Scruples generally draw along with themselves grave inconveniences and spiritual harms, and often also bodily ones, provided they are not specially permitted by God and do not persevere without fault of man. But the principal harms of scruples are the following:

1st. They harm the body; for through continual anguishes they constrict the heart, corrupt the blood, consume the vital spirits, and weaken the head.

2nd. They render the scrupulous person unfit for acting fruitfully with his neighbor; for most scrupulous persons are gloomy, and morose toward those at home no less than toward strangers.

3rd. They harm obedience, or even totally impede it; since the scrupulous person rather follows trifles and the mockeries of imagination; thus he is driven to act against the will of God, which is manifested to him through the spiritual father or director.

4th. They weaken the practice and love of prayer, or even remove it altogether from the midst; because they enervate the force of the mind, distract by leading it away to trifles, fill the soul with anxieties, and render it unfit for union with God. Hence follows not only spiritual gain ceasing, but also immense damage arising.

5th. They break down fortitude; for what great thing would he dare, who is wholly occupied in trifles, and, with the victory over his passions neglected, is so easily cast down in soul?

6th. They greatly diminish hope, or even destroy it; because the matter is at length brought to this, that, confidence in God having been lost, it declines into laxity. For how will he duly trust in God, who always beholds Him as a most severe exactor? Therefore the scrupulous person, unless he fights bravely against scruples, being vexed by them, will shortly be driven into desperation, and will loosen the reins to his desires, or at least will lead a most miserable life and one with great danger of damnation.

IV. Remedies Of Scruples

Scruples are frequently concerned: 1st, with daily actions; 2nd, with depraved thoughts; 3rd, with confessions. Therefore:

I. To scrupulous persons who in all actions are troubled by the fear of sinning, it must be enjoined that they act vigorously against scruples, and abstain from confessing them, unless they are most certain that sin is present there. For although by acting thus they sometimes sin materially, nevertheless they will not sin formally by reason of the obedience which they ought to render to the confessor. Cf. St. Alphonsus, n. 17.

II. To scrupulous persons who fear to give, or to have given, assent to any depraved thought against chastity, faith, or charity, it must be imposed that they despise these thoughts as mere phantasms, and abstain from confession of thoughts of this sort, unless they can swear that they have truly consented to the same. Cf. St. Alphonsus, n. 15.

III. To scrupulous persons who are always anxious concerning confessions, especially past ones, it must be prohibited that they think any more about the faults of their former life, nor say a word about them in confession, unless they can swear: 1st, that they have perpetrated mortal sins; 2nd,

that they have never confessed them, especially if they have already made a general confession. Cf. St. Alphonsus, n. 16.

Moreover the scrupulous and the timorous, anxious about past confessions, are to be questioned thus: 1st. Have you knowingly concealed a grave sin? 2nd. Were you proposing to repeat sins? If they answer negatively to each question, their confession must be pronounced valid.

V. Rules For The Scrupulous

1st. In moral matters certainty is not to be sought in all things. This is valid for all; but it must be applied especially to the scrupulous person.

2nd. The greatest and blind obedience is to be rendered to the confessor, and one must proceed in all things with great humility and confidence.

3rd. A doubt which in others could seem reasonable is altogether to be spurned in the scrupulous.

4th. It is licit, indeed often obligatory, and sometimes under grave obligation, to contend against scruples. Cf. St. Alphonsus, n. 7.

5th. Confession is never to be repeated, unless it was certainly sacrilegious; nor is the examination of the last confession ever to be renewed, even if a doubt concerning a grave sin omitted seems to arise.

6th. Scruples are to be contemned; nor are the scrupulous ever to dispute with themselves about these things.

VI. Rules For Confessors

1st. Let the confessor scrutinize whether the penitent is truly scrupulous..., whether in all things..., and what is the origin of the scruples.

2nd. Let him be patient, kindly, and strong. To him pertain these words of the Apostle, II Tim. iv, 2: "Be urgent in season, out of season; reprove, entreat, rebuke in all patience and doctrine."

3rd. Let him respond to one asking without hesitation and with command; let him not easily add reasons to responses; nor let him permit sins already confessed to be repeated several times.

4th. Let him commend to the scrupulous person great confidence in the goodness of God, frequent prayer, flight from idleness, brevity of examination, humility of heart.

5th. With the scrupulous person let him use general, not particular rules; for the scrupulous person cannot be directed by these, because he is unfit for applying them.

Chapter IV. On Probable and Improbable Conscience

Probable conscience, or, as others prefer, a probable opinion, properly and through itself, is that act of the intellect by which we adhere to some proposition, yet not without fear concerning the opposite. Therefore it differs from doubtful conscience, not indeed on the part of the motives, which exist in each case and can be of the same weight, but from the diverse mode by which the intellect holds itself toward them: for if it adheres to them, it is called probable; otherwise it will remain doubtful. I said properly and through itself, because often by the name of probable opinion or even probable sentence, among many authors, there comes the very complex of motives or reasons by which the intellect could prudently be supported, if it wished to adhere to one part rather than another. But this complex of motives is indeed better accustomed to be designated by the name of probability, and concerning this alone we shall have to speak here. Cf. Lacroix, n. 387.

Article I. On the Nature and Division of Probability

Probability is nothing other than that motive, one or multiple, which, all the circumstances having been inspected, is capable of extorting the assent of a prudent man, yet not in such a way that no fear of error remains with him. Wherefore, when we say this or that proposition is probable, we understand two things, one positive, the other negative. The first is that a proposition of this sort is supported by so great a motive that a prudent man can safely assent to it; but the other is that that motive is not so great that it must necessarily and without any fear of error extort the assent of a prudent man. If the first is lacking, the proposition will be improbable; if the other, it must be called certain.

Probability is divided in many ways, but four divisions are chiefly considered here. Therefore it is:

1st. Intrinsic or extrinsic, according as it rests proximately either upon reasons deduced from the nature of the thing, or upon authority. It is called proximately, because extrinsic probability necessarily supposes intrinsic probability; namely so far does the authority of Doctors have force, insofar as it can or ought to be judged that they were moved to hold some opinion by some grave reason.

2nd. Speculative or practical, according as it regards the action considered in itself, namely without attending to those concrete circumstances which are commonly joined to it, or rather according as these circumstances are well weighed in each particular case.

3rd. Of law or of fact, according as it is concerned with the law itself, or rather some fact.

4th. Greater, equal, or lesser, according as the foundations upon which some probable proposition rests, comparison having been made with its contradictory, appear more solid, equally solid, or less solid. Cf. Lehmkuhl, n. 79.

Things To Be Noted. I. Probability which is everywhere among authors called slight or doubtful is understood as that which is so light that he who assents to it is judged imprudent; for St. Alphonsus says: "Slight probability is not probability, but only a certain false appearance, or empty apprehension of probability." Therefore some authors rightly observe that those two terms, slight probability, are as

it were opposite and fighting with one another. Cf. St. Alphonsus, n. 82. - Lacroix, n. 126. - Bouquillon, n. 308.

II. A proposition or sentence which in St. Alphonsus is called most probable is, according to him, that "which rests upon a most grave foundation; wherefore the opposite is judged slightly or doubtfully probable." The same, in the holy Doctor, is the sense of the word more probable, when one of these four adverbs is added to it: notably, certainly, truly, absolutely. Cf. St. Alphonsus, nn. 40 and 54.

III. Some proposition can be more probable and at the same time less safe, and vice versa safer and less probable. The reason is that probability is measured from the weight of the motives, and safety from the absence of danger of harming the law.

IV. An opinion is to be held certainly probable which is asserted by most theologians to be probable; or even which five or six theologians outstanding in probity, judgment, and knowledge absolutely hold as true, unless a certain reason is brought against that opinion; for every probability, however great it may have been, when certainty of the contradictory proposition arrives, is altogether destroyed.

V. That opinion is certainly probable for a learned and upright man which he himself knows he has diligently examined, and experiences himself, without inordinate affection, on account of grave reasons, to find as true or certainly probable.

VI. Concerning the intrinsic probability of law, commonly only the learned and those versed in moral matters can judge, since only they can know that nothing certain is opposed to them. But concerning the extrinsic probability of some opinion, a moderately learned man can well judge, if, rightly understanding the state of the question, he finds this opinion asserted by authors greater than every exception, that is, altogether approved among theologians.

VII. A single author, if he is greater than every exception, and brings forward a reason which others have not examined or have not sufficiently solved, while he himself conveniently solves the reasons of others, can make his opinion certainly probable, although this is contrary to the common opinion.

Article II. On the Various Systems concerning Probability

That for any action to be honest a certain conscience concerning its honesty is required, all theologians admit; but by what manner such certainty can or ought to be had, when only probable reasons appear on this side and on that, this is what troubles them not a little. Namely, theologians ask to what side he can or ought to turn himself who, a doubt having arisen concerning the liceity of the action which he is about to place, and diligent inquiry having been made, has found it not certainly but only probably licit. Moreover, for solving this question they enter upon a twofold way; for some teach that certainty in this case can be had only directly; but others hold that it can, and therefore ought, to be obtained indirectly, namely by force of another principle; and therefore the former drive the agent to embrace the safer part, while the latter permit that indulgence be granted to liberty. The first are called either anti-probabilists, because they say probabilities in moral matters are of no use, or tutiorists, because they always incline to the safer part, or finally rigorists, because they impose more burden than is necessary or even accommodated to human shoulders. But the others

are called by a certain generic name probabilists, because they hold that practical utility can be derived from probabilities.

But the patrons of each opinion, agreeing as to their substantial principle, admit various degrees: the former indeed in relation to the certainty which they will to have directly, and the latter in relation to the probability upon which they remotely rely; and therefore the first are split into absolute and mitigated tutiorists, and the second into probabiliorists, equiprobabilists, and probabilists simply. Wherefore there have properly been five systems: absolute tutiorism, mitigated tutiorism, probabiliorism, equiprobabilism, and probabilism. There is added laxism, which can scarcely be called a system, and scarcely merits the attention of a prudent man. Concerning each there will briefly be said something.

Absolute tutiorism requires certainty in every way, or absolute certainty, that the law either never existed, or has already fully ceased, before it permits anything to liberty; and therefore, even if you bring forward in favor of liberty a most probable opinion, you are bound to follow the law. For thus the patrons of this system argue: "Just as an opinion, whether less probable, or even less than probable, can be true, so on the other side, an opinion more probable, or even most probable, can be false. Therefore, as long as one remains within the limits of probability, the danger of erring is not fully obviated." Moreover, that this system is altogether to be rejected is clear both from the fact that it surpasses human strength, and from the condemnation made by Alexander VIII of the following proposition: "It is not licit to follow an opinion, even the most probable among the probable." Cf. Viva, on prop. 3, among the 31 condemned by Alexander VIII.

Mitigated tutiorism differs from the preceding system in this, that in place of absolute certainty it demands the greatest probability, and therefore only then permits the part favoring liberty to be followed when a most probable opinion stands for it. But although this system has not been positively condemned, nevertheless it is easily overthrown; for that most probable opinion which is required either makes the conscience certain or it does not: if the first, the aforesaid condemned proposition and the reason of the condemnation are urged; if the other, it would now become licit to act from a conscience not certain, which cannot be admitted.

Probabiliorism, as at least it is defended by those who wish to distinguish themselves from tutiorists and seek protection from reflex principles, teaches that it is licit to follow the less safe part, namely the part favoring liberty, provided you bring forward for it an opinion manifestly and solidly more probable; and therefore you are bound to follow the law not only when a lesser, even if solid, probability stands for liberty, but also when the opinion which favors it is equally probable as that which favors the law. The chief reason of this system is taken from this, that by following the more probable opinion, we much less incur the danger of sinning. But if reflex principles are admitted, the simple probabilist will avoid the danger of formally sinning as well as the probabiliorist; but if they are not admitted, one must finally come to absolute tutiorism.

Equiprobabilism holds that only then is it licit to follow the less safe part, namely the opinion favoring liberty, when the opinion which stands for the law is only equally or almost equally probable; but if this is certainly more probable, adherence must be given to it. The patrons of this system add that this is valid if that equal or almost equal probability regards the existence of the law; but if the doubt is concerned with the cessation of a certain law, then you are bound to follow the law, however much the opinion which favors liberty is equally probable as that which favors the law.

But this addition pertains rather to the application of the system than to its substance, and there are many among simple probabilists who either suppose or explicitly admit this limitation. The principal foundation of equiprobabilism is taken from the authority of St. Alphonsus, which indeed is very grave; but by what right this opinion is attributed to him will be said below.

Probabilism indeed teaches that the safer part must always be followed when there is question of attaining some determinate end; but when there is question only of the licit and the illicit, it holds that someone can follow an opinion less safe and also less probable, provided it enjoys true and solid probability. Wherefore the probabilist seeks not two judgments, but only one; namely he asks whether the opinion which favors liberty is solidly probable, every comparison with that which favors the law having been left aside, and as soon as he knows that there is present in favor of liberty a solid probability, he is exempted from the law by force of a reflex principle. It must be noted that this system is called by some simple, and by others moderate probabilism, so that they may distinguish it both from equiprobabilism and from laxism; but since from the things said confusion of this sort is not possible, we shall abstain in this book from any added term.

Laxism, no distinction having been made between solid and slight probability, always exempts from the law as often as any opinion whatever is brought forward against it, even if it is only slightly probable. This system was condemned, as is clear from prop. 3, proscribed by Innocent XI, which reads thus: "Generally, when trusting in probability whether intrinsic or extrinsic, however slight, provided one does not depart from the boundaries of probability, we do something, we always act prudently." But the reason of the condemnation is open; for since slight probability is that which does not merit the assent of a prudent man, by force of it the law cannot be said to be uncertain. Cf. Bouquillon, n. 287 and seq.

Article III. The System of Probabilism is Vindicated

Probabilism, as was observed above, is applied not to all cases, but only to those cases in which there is discussion of the licit and the illicit; for if there is question of obtaining some necessary end, for example, of procuring the matter or form of some sacrament, one must always flee to the safer part, any probability whatsoever being set aside. Besides, it must be noted that in the application or use of probabilism two essential conditions are required, one which regards the remote foundation, but the other which regards the proximate foundation upon which the probabilist relies while acting. The remote foundation is probability itself, which ought to be not slight, not doubtful, not apparent, but true and solid. But the proximate foundation is some reflex principle, and this must always be invoked by the one operating, either explicitly or implicitly. These things, which are the compendium of the whole system, are explained more fully in the following twofold proposition.

Proposition I. It is not licit to follow a probable opinion, nor a more probable one, the safer having been left aside, whenever there is present an absolute obligation of efficaciously obtaining some determinate end, which the use of a probably unfit means would bring into danger; therefore then the safer part must be followed.

Proof. Whoever is driven by an absolute obligation to efficaciously obtain some determinate end, he is bound to choose those means by which he will be about to attain that end in the more efficacious way in which he can. But by the safer part alone can the end be more efficaciously obtained: for from the hypothesis, a means only probably apt brings into danger the end which I am bound absolutely to

attain. Therefore it is not licit to use a means only probably apt, but more apt means and the same safer means are to be chosen. Therefore the safer part must be followed. Hence the following are deduced.

Corollaries. 1st. In those things which are necessary for salvation by necessity of means, you are bound to follow what is safer; for the most grave obligation presses each one to attain certainly the eternal salvation of his soul; therefore absolutely safe and certain means are to be applied. Therefore in matters pertaining to faith or to true religion, the opposite probability being put after, the safer opinion must necessarily be followed.

2nd. A hunter, fearing lest by discharging lead at a wild animal he perhaps wound some man, cannot fire, even if he should think it more probable that danger is absent; for this danger, if perhaps it is present, cannot be removed by a contrary probability, even a greater one. For he is bound by a certain law to remove even the probable danger of harm.

3rd. The physician and the surgeon are bound to apply the safer medicines and means which here and now can be had; because by a tacit contract they have obligated themselves to obtaining the end more securely, insofar as can be done. The same likewise must be said concerning all others who have contracted some obligation of this sort toward their neighbor.

4th. The minister of a sacrament, where there is question of its validity, unless the defect is supplied by the Church, or a case of necessity presses, is bound to follow the safer part, insofar as he can, the less safe probable or even more probable opinion having been left aside; because otherwise he would expose the sacrament to the danger of nullity, and his neighbor to the danger of spiritual harm. Hence the following proposition was deservedly condemned by Innocent XI: "It is not illicit, in conferring the sacraments, to follow a probable opinion concerning the validity of the sacrament, the safer having been left aside."

I said, 1st, unless the defect is supplied by the Church; for sometimes the Church can and is judged to supply that which is wanting for the validity of the sacrament: and this can indeed happen in two sacraments, namely in the sacrament of Penance, if for a grave reason it is conferred with doubtful jurisdiction, or with probable jurisdiction; and in the sacrament of Matrimony, when it is celebrated with a doubtful impediment of ecclesiastical law, or also when the delegation of the assisting priest is doubtful, as will be said in its own place.

I said, 2nd, unless a case of necessity presses, because since the sacraments are for men, they are to be ministered to a man constituted in grave danger of life in the better way in which it can be done, even with mere probability, indeed with slight and most slight probability concerning their validity. Cf. St. Alphonsus, nn. 43-49.

Proposition II. It is licit to follow an opinion truly and solidly probable, the safer having been left aside, which is at the same time more probable, where there is question of the licit or illicit alone.

Proof, 1st, From Reason. A law against which true and solid probability militates is not a certain law; but a law which is not certain induces no obligation. Therefore a law against which true and solid probability militates induces no obligation, and therefore it is then free to each one, that law not certain having been left aside, to follow the opinion favoring liberty. The major is most openly clear from this, that probability and certainty necessarily exclude one another: therefore either the

hypothesis is not verified, namely that true and solid probability in fact militates against some law in particular; or if the matter so stands, that law cannot be certain. But the minor is proved from this, that the effect cannot surpass the cause; but it would surpass it, if the binding produced by some law were certain when the force of binding is not certain. But this is most beautifully illustrated by St. Thomas by the following comparison: "The command of someone governing stands toward binding in voluntary matters, in that mode of binding which can happen to the will, as corporeal action stands toward binding corporeal things. But the corporeal action of an agent never induces necessity into another thing except through the contact of the coercion itself with the thing upon which it acts. Hence neither is anyone bound from the command of some lord, unless the command reaches him to whom it is commanded. But it reaches him through knowledge." These words of the Angelic Doctor having been related, St. Alphonsus thus continues: "The likeness brought forward here by St. Thomas cannot be more lucid and convincing for proving our sentence or principle, namely that an uncertain law cannot induce a certain obligation. The holy Doctor says that knowledge of the precept is like a bond which binds the will; hence, just as for binding some thing there is need that a cord actually be applied, so for binding the will of man, so that he is bound to exercise or omit some action, it is necessary that he have knowledge of the precept; otherwise that man remains in his liberty.... Therefore, just as he who is not actually bound by some bond has the power of turning aside where he wills, so he who is not bound through knowledge of the precept is free from the obligation of the precept." Cf. St. Thomas, 1-2, q. 90, art. 4; 2-2, q. 1, art. 4; *QQ. DD. De Veritate*, q. 17, art. 3. - St. Alphonsus, *Systema Mor.*, §§ 1 and seq.

Nor should you say, 1st, that under the name of knowledge here, in each holy Doctor, there is not understood certain cognition, but only probable cognition; for St. Alphonsus responds "that this would be a new meaning of a new vocabulary, while all philosophers with the same St. Thomas distinguish opinion from knowledge, which is taken as certain cognition of some truth." Cf. St. Alphonsus, *Syst. Mor.*, § 2, Objic. 1.

Nor should you say, 2nd, that, the law which directly obliges being lacking, there exists another indirect law, which, as certain, produces a certain obligation. For if such a law could be feigned, it would either be a law of avoiding the danger of sinning, or a law of following what is safer; moreover neither can be said. Not the first, for in order that someone expose himself to the danger of sinning, it is not enough that he incur the danger of acting against the law, but it is required that he undergo the danger of acting against an obligation imposed upon him by the law; for although perhaps a law exists, if from elsewhere it is certain that I am not obligated by the law, it is not to be feared lest I formally violate the law. Nor can the other be said, for that law of following what is safer would suppose that it is not simply safe to set aside a law probably not existing; but this is false where there is question of the licit or illicit alone, for it is indeed safe to avoid formal sin and the danger of sin. Besides, the objection, if it has any force, can very well be turned back against the probabiliorists who urge it. For the probabiliorist will neither avoid the danger of sinning, nor follow what is safer, unless he practically says farewell to his own system and falls into absolute tutiorism.

Proof, 2nd, From Authority. For (a) St. Gregory Nazianzen thus urges a certain Novatian: "Do you give to young widows, on account of the slipperiness of age, the power of entering marriage? But Paul by no means doubted to do this.... But, you say, this by no means after baptism. By what argument do you confirm this? Either prove that the matter so stands, or if you cannot do this, do

not condemn. But if the matter is doubtful, let humanity and ease prevail." Orat. 39, *in Sancta Lumina*, n. 19.

(b) St. Jerome, reproved by Chrysogonus, the disciple of Rufinus, because he taught that those who had successively taken two wives, one before, the other after baptism, could be promoted to the Episcopate, responds: "Let him hear us again proclaiming: the old Adam dies wholly in the laver, and the new is raised with Christ in baptism.... We say these things not because we ourselves, Christ being propitious, are held by this question; but having been asked by brothers what seemed to us, we have responded, prejudging no one from following what he wills, nor overturning the decree of another by our sentence." *Apolog. advers. Rufin.*, lib. 1.

(c) St. Bonaventure, treating of the dispensation of vows, recounts three sentences or opinions, and finally concludes: "Which of these three opinions is truer, I confess that I do not know, and any of them can sufficiently be sustained; yet if someone wishes to accept this last one, no manifest inconvenience occurs to him." In 4, dist. 38, a. 2, q. 3.

(d) St. Antoninus, after he had established that only two things are required for the honesty of an action: first, that the agent not doubt practically about the goodness of the act; the other, that the sentence which he follows is not against the express authority of Sacred Scripture, nor against the determination of the Catholic Church, descending to a particular case says: "If it were said that here there is usury, and usury is against the decalogue, it is answered: that usury is against the precepts of the decalogue is true reductively; but that this contract is usurious is not clear, since wise men think things contrary to one another in matters of this sort." *Summa*, p. 1, tit. 3, cap. 10, § 10, reg. 4; and p. 2, tit. 1, c. 11, § 28.

(e) Melchior Cano, attacking Scotus who said that sinners are bound to elicit contrition on every feast day, writes thus: "There is no human or evangelical law by which this precept is asserted; let them bring it forth, and we shall be silent." And again: "Since I do not know whence those doctors have come to this opinion, I can freely deny what is not sufficiently ascertained as precept." *Relect*. 4, *de poen.*, p. 4, q. 2, prop. 3.

(f) Dominic Soto requires that a man look upon the law, namely so that he know it as certain: "He who uses a rule must look upon it." And again: "When there are probable opinions among grave doctors, whichever you follow, you have your conscience in safety." *De just. et jur.*, lib. 1, q. 1, a. 4; and lib. 6, q. 1, art. 6. Cf. Bouquillon, n. 298 and seq.

Nor should you say, 1st, that probabilism is something recent, and therefore that it is not licit to recur to the authority of the ancient Fathers and scholastics; for it is answered that two things are to be distinguished in the system of probabilism, namely its use founded upon its substantial foundation, and its scientific form. Moreover, whatever may be the case concerning the latter, it suffices for the force of the argument to show that the former is most ancient in the Church of God; and this is clear not only from the cited texts and many others which can be cited, but also from this, that when in the year 1577 Bartholomew Medina proposed to the schools the doctrine of probabilism reduced scientifically into a system, no one cried out against it as something new, but it seemed to all altogether conformable to the rule of morals, and was received by unanimous consent.

Nor should you say, 2nd, that probabilism lay as if dead in the middle of the seventeenth century, and throughout the whole following century; for it is answered that that death, which the adversaries

boast of, was finally nothing other than a diminution of splendor, and that this must be owed entirely to the frauds, reproaches, and outcries of the Jansenists. But if it is certain that many truths have sometimes been somewhat obscured by the force and pertinacity of adversaries, what wonder if the same happened to probabilism? But in these our days, if the schools diffused throughout the whole world are inspected, in most of them will be found the doctrine of probabilism handed down and defended, which, the Jansenistic outcries having been stilled and the heresy overcome, chiefly by the work of St. Alphonsus, today enjoys new honor and new patronage. Cf. Bouquillon, nn. 300 and seq.

Proof, 3rd, From Consequences. For if, probabilism having been rejected, we were bound to follow probabiliorism,

(a) There would follow a difficulty too grave for confessors, and one so great that the office of hearing confessions would be altogether intolerable for many. For the confessor would perpetually expose himself to the danger of sinning on account of defect of sufficient diligence in weighing the various degrees of probability, especially in the matter of restitution, when from two probable opinions he would follow one. For if he should assume the more benign sentence, he would sin by permitting that in which he would apprehend a deformity probably existing; but if he should act according to the more rigid sentence, he would sin by imposing an uncertain yoke upon the penitent. Besides, although the more rigid sentence may appear to him more probable, when will he be certain that it is truly such, and that the opposite does not seem more probable to another confessor? Hence follows also that contradiction of confessors who, although professing probabiliorism, nevertheless not rarely keep saying that in the administration of the sacrament of Penance they cannot rigorously apply the principles of probabiliorism; and therefore they hold one thing in theory, but another altogether opposite in practice. Would it not be better to establish and admit milder principles with so many most wise Doctors, and to bring them into practice more exactly?

(b) There would follow a most troublesome difficulty for the faithful. For in doubts there would be imposed upon them the obligation of inquiring which opinion is more probable; for the obligation of operating according to the more probable necessarily includes the duty of inquiring into it. But for the most part there is given a moral impossibility of distinguishing between the more probable and the less probable; for even for the learned this is very often quite difficult. And indeed I ask whether I am bound to what is more probable in itself, or absolutely, or with respect to me, or relatively? If the former, whence shall I know it? If the latter, again there is question either of intrinsic probability or extrinsic probability. If of the latter, what school is to be followed? And what Doctors are to be asked? If of the former, the difficulty increases: whence shall I know whether I am sufficiently fit for this judgment? Whether I am living in invincible ignorance, or not? Therefore, uncertain and pressed by doubts, what shall I do? Shall I recur to teachers? But from the hypothesis, it is mine to judge. Therefore it becomes manifest how many and how great anxieties would hang over the faithful from that necessity of following what is more probable or safer.

(c) There would follow a perpetual fluctuation of doctrine. For this is clear not only from the daily experience of probabiliorists, but also from the very nature of probabiliorism; since, the obligation of following the opinion which appears more probable to each one having been posited, it is impossible that several probabiliorists agree in the same decision. Wherefore some will necessarily stand for the affirmative part, and others for the negative: one will bind, another will loose, and what will appear more probable to you will very easily seem equally or less probable to another. Hence there will

follow confusion of decisions, perplexity of the faithful, and anxieties of the confessors themselves, who from some supposed excess of probability will impose most grave obligations. But probabilism well understood lacks inconveniences of this sort, at least for the most part. For only two things are to be weighed by probabilists, namely certain obligations and merely probable obligations. But although it is not always clear concerning true probability, nevertheless no one fails to see that, ordinarily speaking, it is much easier to discern whether a solid reason or authority is had against the law, than to bring forth a judgment concerning some excess of probability. Therefore.

Nor should you say, 1st, that probabilists are oppressed by greater inconveniences, not only because they love danger, which is against that saying of Ecclus. iii, 27: "He who loves danger will perish in it," but also because they lack a true word or directive principle, which is against that saying of Ecclus. xxxvii, 20: "Before all your works let a true word go before you"; for it is answered that the true word among us is the reflex principle itself, which, since it produces practical certainty, means that we incur no danger of formally sinning. Besides, each text can very well be turned back against the probabiliorists who object them, unless they wish to flee to condemned tutiorism.

Nor should you say, 2nd, that against probabilists that well-known rule of canon law can be urged: "In doubts the safer part is to be chosen"; for besides the fact that the argument could again be turned back, it is answered that in the aforesaid rule there is question either of practical doubt, or of cases in which some end must necessarily be obtained.

Nor should you say, 3rd, that probabilists can be accused of imprudence, because, not choosing the more truthlike opinion, they do not imitate those prudent physicians who seriously strive to drive out diseases of the body; for in no way can he be called imprudent who, the obligation having been weighed, acts after he has seen certainly that no deformity is found in his action. But to the example it is answered that it is not to the point, for the physician, just as also the judge, does not deal with the licit or illicit, but the first seeks the efficacy of the means, and the other the truth of the matter; and these two do not depend upon some reflex principle.

Nor should anyone object, 4th, that the more probable opinion must be embraced as being nearer to truth; for a greater or lesser approach of two contradictory propositions is ineptly asserted in relation to truth, since one is true and the other false; but which is true, which false, we do not know. There is indeed a greater appearance of truth in one than in the other; assent can be given to each, but to neither without fear. Indeed truth can stand on the part of the less probable; and therefore the assent given is not necessary. And although it is licit to embrace the more probable, the obligation of embracing it is not to be affirmed; it is licit also to embrace the less but truly probable, because there is present a grave reason and one worthy of assent. Nor should anyone say that this is repugnant: it is indeed repugnant in evident matters in which the intellect necessarily assents, but not in merely probable matters in which the will determines the mind to assenting.

Nor does it suffice, 5th, that there are more probable reasons for someone to assert that this obligation of the law is imposed upon us, because as long as there is had only that greater probability in favor of the obligation, this obligation can exist or not exist, and therefore it is not known. "What is known," as the Angelic says, "cannot possibly be otherwise." Hence, while the solid probability of the contradictory opinion remains, the obligation cannot be imposed; for it is unknown. And an unknown obligation is to be held as none for this subject. Moreover, an object cannot truly be called necessary when it is not known whether it is such or not. Namely, the force of law consists in this,

that it imposes necessity upon some object in order to the will; and surely when a twofold opposed probable opinion is had, this very necessity remains uncertain, and therefore the object itself, as necessary, cannot be proposed to the will.

6th. We certainly ought by every human effort to tend toward the agreement of our acts with their norm, and hence with truly reasonable diligence to inquire what the law itself is; we ought also to be prepared to fulfill the known law itself. For to these things we are obligated by nature itself. Namely, objective obligation is the effect of an existing objective law; but subjective obligation is the effect of law existing in the mind: but known law is law existing in the mind, and hence subjective obligation is the effect of known law, but not of unknown law. But law is unknown when opposed probable opinions concerning it are had. Therefore there is no subjective obligation in the case: or, an uncertain obligation is none. Therefore we are bound to conform our acts with their known norm, but not with an unknown norm.

Nor did the Decree of Innocent XI given on 26 June 1680 condemn probabilism, although many have asserted this. The genuine text of this Decree was at last published on 19 April 1902 by the secretary of the Holy Office: "A report having been made by Father Laurea of the contents in the letters of Father Thyrsus Gonzalez of the Society of Jesus directed to our Most Holy Lord, the Eminent Lords said: that it should be written through the Secretary of State to the Apostolic Nuncio of Spain, that he signify to the said Father Thyrsus, that His Holiness, his letters having been kindly received and read not without praise, has commanded that he freely and intrepidly preach, teach, and defend with the pen the more probable opinion, and also vigorously attack the sentence of those who assert that, in the concurrence of a less probable opinion with a more probable one thus known and judged, it is licit to follow the less probable, and that he make him certain that whatever he will have done and written in favor of the more probable opinion will be pleasing to His Holiness. Let it be enjoined upon the Father General of the Society of Jesus, by order of His Holiness, that he not only permit the Fathers of the Society to write for the more probable opinion and to attack the sentence of those asserting that, in the concurrence of the less probable with the more probable thus known and judged, it is licit to follow the less probable; but also that he write to all the Universities of the Society that the mind of His Holiness is that each one, according as it shall please him, write freely for the more probable opinion and attack the aforesaid contrary one, and command them that they submit themselves altogether to the mandate of His Holiness." It is added in the exemplar of the Holy Office on 8 July 1690: "The aforesaid Order of His Holiness having been announced to the Father General of the Society of Jesus through the Assessor, he responds that in all things he will obey as quickly as possible, although neither by himself nor by his Predecessors had it ever been forbidden to write for the more probable opinion and to teach it."

The decree itself contains a singular and private mandate, 1st, to Father Thyrsus, that he himself freely and intrepidly preach, teach... the more probable opinion, etc.; 2nd, to the Father General of the Society, both that he permit the same to the Fathers of the Society and that he write to the Universities of the Society that the mind of His Holiness is that each one, according as it shall please him, write freely for the more probable opinion, etc. The difficulty arises especially from the second part. Namely, seriously and constantly the Supreme Pontiff desired that in the Society of Jesus there be full liberty for teaching that it is not licit to follow a sentence favoring liberty against the law, unless the one operating should first prudently and probably persuade himself that it is true and not

contrary to the eternal law, which persuasion he will never be able to have unless by authority and reason, or by both together, it is clearly more truthlike to him that the matter is licit and permitted by divine law. From the order of His Holiness, liberty was conceded to the Fathers of the Society of defending the more probable sentence: "each one, according as it shall please him, write freely."

This father, when he was a subject, was wholly intent on this: that he persuade the superiors "that it was expedient for the Society that in its schools," I use his own words, "each sentence be read indifferently," probabilism and anti-probabilism (*Monumenta ad Gonzalezii Fundamentum*, p. 216); that they should "leave free to the Fathers to hand down that" sentence of the Probabilists "or the opposite" (ibid., p. 214); "lest the Society should undertake to defend that" probabilistic sentence "by common studies" (ibid., p. 214). The liberty conceded removed an obligation, if any had ever existed, not of defending the more probable opinion; it did not impose an obligation of defending it; it removed the obligation of defending probabilism, but not the liberty of defending it. Thus the Society itself understood the Order of His Holiness when it established the 18th Congregation, decree 12, by force of which it is clear that the Society neither prohibited nor prohibits defending the sentence contrary to this: "in acting it is licit to follow a less probable opinion favoring liberty, the more probable standing for the precept having been left aside." Indeed, if the decree of Innocent XI had condemned probabilism, Father Gonzalez, exercising the supreme office in the Society, could not have written these things in his book concerning the right use of probable opinions: "But I do not publish this treatise as the General Superior of the Society of Jesus, but as one theologian from the Society: intending to bind none of my subjects to teaching thus, but leaving full liberty to all, so that in this most grave controversy they may defend that part which, after accurate study undertaken from a sincere desire of finding the truth, they have found to rest upon more solid foundations." *Fundamentum Theologiae Moralis*, Rome, year 1694, p. xv, n. 41.

Add, if this decree had transfixed probabilism, it also transfixed no less equiprobabilism. Probabiliorism, confirmed in it, is the system of Father Gonzalez, who admitted that "the limitation applied by Father Esparza, by Father Terillo," and by certain others to the licit use of the less safe opinion in the occurrence of the safer "is indeed necessary and very useful for restraining the abuse of probable opinions; nevertheless it does not suffice; and further I inferred," thus he continues, "that it is permitted to no one to embrace the less safe sentence in the occurrence of a safer one equally or almost equally truthlike to him; and therefore for the licit use of the less safe opinion it is altogether necessary that, after diligent inquiry of the truth, it appear to the one operating, apart from passion and fault, sensibly and clearly more truthlike than the opposite, and for this reason be judged by him true by an absolute determinative judgment" (ibid., XII, n. 36); "indeed it is required," as he afterwards says, n. 38, "that it be notably and clearly and manifestly more truthlike: for since a little is reputed as nothing, if the excess of truthlikeness is slight, morally those opinions will be equal; and then he will not be able prudently to judge that the contract is licit." In the seventh Dissertation the same Father Thyrsus investigates: "Whether it is licit to follow a probable opinion favoring liberty, in the occurrence of an equally probable opinion standing for the precept?" Concerning the affirming sentence he says: "I judge it false, and the negative true and altogether to be held" (ibid., p. 134, n. 2), which negative he indeed attempts both to prove and to defend from objections through very many pages. Besides, it must be noted that "no reflection can make it licit to follow a less safe opinion which someone knows to be directly less probable by authority and reason" (p. 124). The probabiliorism of Father Thyrsus rejects both probabilism and equiprobabilism, and the favor shown

to Father Thyrsus must be said to transfix this no less than that, if it destroyed any system. The more benign sentence at that time was not only the doctrine of very many authors of the Society, but also of almost all sacred religious orders and universities, a few doctors excepted. Concerning it Father Segneri, on 8 June 1692, wrote to Father Gonzalez: "The whole Roman Curia in more than a hundred affairs is directed by this ancient sentence; whence to condemn this it would be necessary to turn the world upside down." A splendid example of this practice of the Roman Curia exists in the responses of the Holy Office made on 11 February 1661 concerning the obligation of denouncing soliciting confessors. The solution is given according to the probability of the sentence denying that the obligation exists; namely, where the denying sentence is probable, the confessor is not to be denounced; but where this sentence is not probable, he is to be denounced. Let the examples be: The lord qualifiers judged that he was to be denounced, and that the negative opinion was not probable, 1. 5. 8. 9. 13.; that he was to be denounced, the contrary opinion being rejected, which they judged not to be probable, 2.; that he was to be denounced and that the contrary opinion was not probable, 3.; but in other cases: if the solicitation is made outside the place of confession and without pretext of confession, they judged that the negative opinion was probable; otherwise if in the confessional, or in the place of confession, 4.; they judged that the negative opinion did not lack probability, 6. 7. 14. 15.; as to each article, they judged that the negative opinion was probable, 10.; they judged that the negative opinion was probable, 11.; they judged that if that praise is serious and has no scent of depraved intention, the negative opinion is probable. But if otherwise, it is not probable, 12. 16. And Urban VIII, when a certain faculty was requested by Lugo for a Missionary in Paraguay, said: Respond to Lugo that a need for his special faculty does not seem to him to exist; but where the sentences of doctors on both sides would intervene as probable, they should follow the opinions more favorable to the Barbarians according to the condition of places and men.

Corollary. If it is licit to follow a solidly probable opinion favoring liberty, *a fortiori* it will be licit for you to follow the more probable or most probable opinion, provided that, relying proximately upon some reflex principle, you form for yourself a certain conscience. Nevertheless one must beware lest the burden of favoring liberty only in that case in which this appears more probable or most probable be imposed also upon others, according to that saying of Chrysostom related by St. Alphonsus: "concerning your own life be austere; concerning another's, benign." Moreover, this is the sense in which several probabilists affirm that it is licit to follow probabiliorism. It is likewise licit to use equiprobabilism; but if someone wished to impose that system as such upon both confessors and penitents, all the arguments brought above would have to be solved by him, which have force no less against equiprobabilists than against probabiliorists.

Article IV. On Special Rules and Applications of Probabilism

Besides the general principles by which the theory of probabilism has been established above, namely: an obligation is not to be imposed unless it is certain concerning it, or, a doubtful law does not oblige, there are also recounted some special rules by which those principles are confirmed, or are applied in particular cases. They are the following:

I. In doubt one must stand for him for whom presumption stands. The reason is that presumption produces moral certainty, at least broad certainty; and in this sense alone the cited principle or rule ought to be understood. Hence if you are accustomed at such a time diligently to recite the whole

Breviary, and you doubt whether you have recited some part, the presumption favors you, and exempts you from the obligation of reciting or repeating it. Likewise, if you doubt whether a superior justly commands or dispenses, presumption stands for him; because he can be led by reasons unknown to you, or is judged to judge prudently concerning those known. Besides, right order and the common good require that in such a case deference be shown to him.

II. In doubt one must judge from things ordinarily occurring. This rule nearly falls back into the preceding one, since in each presumption is the reason for judging thus. But the former extends more broadly; since presumption can be drawn not only from things ordinarily occurring, but also from particular circumstances.

III. In doubt one must stand for the validity of the act. It is a rule of civil law; but also commonly applied to theological matters. It is applied if the principal fact is certain, and there is doubt concerning some necessary circumstance or condition, or concerning the due mode; for example, if you doubt whether you confessed a sin with sufficient sorrow, or if you doubt, without being able to drive away the doubt, whether you contracted matrimony duly, which certainly and in good faith was entered into, you are not bound to repeat the confession, and the matrimony must be held as valid.

IV. In doubt favors are to be enlarged and burdens restricted. It is rule 15 of canon law in the Sixth, and signifies that in doubt the more benign things are to be preferred. Whence, according to this principle and the more common interpretation, these things seem to be established: 1st. As often as burdens and favors can be separated, burdens are to be restricted and favors enlarged, as much as can be done without force being brought upon the sense of the words. 2nd. If burdens and favors are indivisible, then one must judge concerning the intention of the legislator from his words, from the subject matter, or from the connected circumstances. 3rd. If the intention of the legislator cannot clearly be determined, one must attend more to the favor than to the burden. But here burdensome is understood as whatever tends to penalty, or harms the right of a third party, or is opposed to common law. But favor, or favorable, is whatever indulges liberty, or grants grace without detriment to private persons, or to the community, or to the law itself.

V. In obscure matters that which is least is to be held. It is rule 30 of canon law in the Sixth, and it is to be understood thus: where it is not certain concerning the true sense of a law or statute, and, inquiry having been premised, it cannot be determined either from the nature of the thing, or from the context of the words, or from the custom of the place, or from another circumstance, the less burdensome interpretation, or one more benign to liberty, is to be admitted. The reason is that the legislator is not judged to will to oblige beyond that which is clearly expressed in the law. Hence in doubt concerning the quantity of penalty to be inflicted, the minimum is to be chosen. Likewise, if it is not certainly clear concerning the delict, the accused must be absolved.

VI. In a doubt of fact the following axioms have force, or rules of civil law received among all, namely: 1st. In doubt a fact is not presumed, but must be demonstrated. But this is to be understood concerning doubt about the principal act, for example, if it is doubtful whether someone struck another, this fact ought not to be presumed, but he who affirms must prove it positively. 2nd. In doubt it is presumed rightly done, what had to be done by law. This is to be understood concerning doubt about an accessory act, the certainty of the principal act being supposed; for if something had to be done by law, or if it is ordinarily accustomed to be done, or is favorable to the one doing it, it is presumed to have been done. 3rd. In doubt no one is presumed bad unless he is proved. This has

force as often as there is question of the doubt of some delict, which ought not to be imputed unless it is certainly clear concerning it. Therefore, since delicts are not presumed, no one is presumed bad, but must be proved.

VII. In doubt the safer part is to be followed. It is a rule of canon law, which is had in cap. *Illud Dominus, de sent. excomm.,* and in cap. *Ad audientiam, de homic.* But this rule must be restricted to cases of practical doubt, or to those in which an end must necessarily be obtained, namely where probability would not remove the danger which the law commands altogether to be avoided, as, for example, in confecting the sacraments, according to the things said above, and as is ascertained from all things thus far set forth. But if it is extended to speculative doubts, it ceases to be a rule or precept, but is a mere counsel. Cf. St. Alphonsus, throughout, but especially lib. 1, nn. 26 and 99; *Systema Mor.,* Obj. 4; and lib. 6, n. 505. - Voit, nn. 38 and seq.

Questions

Question 1. Is it licit to use probability, not only in the matter of positive human law, but also of divine and natural law?

Response. Affirmatively, because in any matter whatever it can happen that it is not certain concerning the existence of the law, namely as often as true and solid probability militates against it; and therefore concerning such a law there is given truly invincible ignorance. Moreover God, author of law and principle of the natural order, is not judged to will to obligate us when we invincibly ignore the existence of the law. Cf. Scavini, n. 103.

Question 2. Is it licit for a confessor to attend only to extrinsic probability, and to rely upon it alone in questions to be solved practically?

Response. Affirmatively, at least generally speaking, and especially in questions whose solution depends greatly upon the estimation of prudent men. The reason is that it is difficult for something to be extrinsically probable unless a grave reason militates for it; for many and grave authors ordinarily do not teach that some opinion is truly probable unless they have seen through the intrinsic reasons. Therefore this way is indeed rather little scientific, and scarcely worthy of a theologian, but it is short, and must be called safe. There is added the authority of the Sacred Penitentiary, which, having been asked whether a confessor is to be disturbed who follows the doctrine of St. Alphonsus without weighing his reasons, but only on account of his authority, responded negatively; and this response was approved by the Supreme Pontiff Gregory XVI. I said at least generally speaking, because if at some time someone perhaps detects that even many and grave authors have erred in asserting the probability of some opinion, their whole authority, however great it may finally be, and that whole extrinsic probability, will no longer bring it about that this opinion is truly probable for him.

Question 3. What must be thought concerning that principle most familiar to not a few probabilists: "He who acts probably, acts prudently"?

Response. Very many and very grave Doctors who have used this saying have employed it after the manner of a proximate rule of acting, but not as a principle by which they would prove the truth of their doctrine concerning probable opinions. Certainly that principle is false if it is held as a primary principle and one which suffices through itself. The reason is that an action cannot be prudent by

force of probability alone, but obtains this from certainty alone. But it is true if it is held only, as it was held by these learned men, as a corollary of another primary principle, which is through itself the ultimate rule of acting, such as this can be: A doubtful law does not oblige; or, There is no obligation unless it is certain concerning it.

Question 4. If you doubt whether you have already satisfied some obligation, are you still bound to satisfy it?

Response. It is greatly controverted, and a twofold sentence is given.

The first sentence affirms. The reason is deduced from this commonly admitted principle: A certain obligation is not satisfied through a doubtful fulfillment. For a law once existing and commanding has the right of exacting rigorous obedience, or the undoubted fulfillment of the obligation. Moreover, when you doubt, or only probably or even more probably judge that you have fulfilled the law, you have by no means rigorously satisfied it. Therefore it still urges and presses you until you have certainly satisfied it. Besides, equity demands that what we grant to liberty we not deny to the law also in an equal condition: but we grant to certain liberty that it cannot be bound by a doubtful law. Therefore it must be granted to certain law that it cannot be loosed by a doubtful fulfillment. Finally, in doubt the condition of the possessor is better; but a law certainly existing possesses against liberty, which it has obligated to itself; therefore in doubt it prevails against liberty. Thus St. Alphonsus, nn. 28 and 29, who in this place, and in several other places, as, for example, lib. 6, n. 477, *QQ. ref.*, ser. 2, nn. 1, 18, etc., seems fully to have retracted whatever he had written to the contrary, lib. 1, n. 99, vers. fin. Almost unanimously the more recent disciples follow the Master: Scavini, n. 87. - Neyraguet, cap. 3, inf. 2. - Gousset, n. 87. - Panzuti, n. 20. - Mueller, § 84, reg. 1, etc.

The second sentence denies, with not a few very distinguished theologians. For, they say, an obligation is not to be imposed unless it is certain concerning it, as was said above concerning probabilism. But it is not certain concerning an obligation to which satisfaction has already more probably or probably been made. Therefore. Besides, just as from that principle: An obligation is not to be imposed, etc., it is drawn that the human will is not obligated by a law whose existence has not yet been proved, so it necessarily follows that the same will is not obligated as soon as the existence of the law becomes uncertain; for just as obligation depends upon certain notice of the law, so also the continuation of obligation depends upon continuation of the same certain notice. But a law to which satisfaction has probably been made probably no longer exists. Therefore.

As to the axiom which is objected: A certain obligation is not satisfied through a doubtful fulfillment, it is answered that it is true as often as there is discussion of practical or negative doubt, but not if true and solid probability favors liberty. Suarez holds this sentence, in 3, St. Thom. ad q. 90, disp. 22, sect. 9, n. 6. - Roncaglia, *de Voto*, cap. 2, q. 4; and tract. 2, cap. 5, q. 3, *de Leg.* - Tamburini, *Meth. conf.*, lib. 2, cap. 1, n. 10. - Lugo, *de Paenit.*, disp. 16, nn. 59 and 60. - Bonacina, *de Integrit. conf.*, disp. 5, q. 5, sect. 2, punct. 2, § 3. - Lacroix, lib. 1, nn. 599 and 600. - The Salmanticenses, *de Voto*, cap. 1, n. 145. - etc., etc. - Add from the camp of the probabiliorists Billuart, *de Integrit. conf.*, § 4, and others who say that it is enough if satisfaction has more probably been made to the law.

It cannot be denied that this sentence, which Cardinal de Lugo in the cited place calls common, enjoys great extrinsic probability. Otherwise, the reasons upon which it rests are efficacious, and make it truly probable. Cf. Baller., notes (a), (b), (c), p. 74.

Question 5. Among several probable opinions is it licit to follow now this one, now the opposite?

Response. Affirmatively, and the reason is that among probable opinions none is formally safer and more secure than another. For all are equally secure. Nevertheless you cannot, as to one and the same matter, use at the same time a probable affirming sentence and a probable denying sentence, so that from one, for example, you gain an advantage, from the other you guard yourself against certain disadvantages. For he who feels the advantage ought also to feel the burden, as rule of law 55 in the Sixth bears.

Besides, I ought to retain the sentence which I have embraced, until it is not certain concerning its improbability, as often as liberty of varying the sentence results in prejudice to another who in that way is defrauded of his right. Add also that a superior obligating me to a precept obligates me to retaining the sentence once accepted, the change of which would impede fulfillment of the precept. Thus, for example, on a fast day it would be illicit in the morning to refresh myself fully, because, as I think, a probable opinion says the hour does not pertain to the substance of the fast, and at midday again to take a full refreshment, because it is probable that the fast has been violated; for indeed such a free faculty of changing would annul the very force of the precept. Moreover, it is not licit to leave a sentence once admitted and embrace another, if, because I act thus, one or the other of two laws is violated, although it is not clearly certain which has been violated. Cf. Castropal., disp. 2, punct. 2, nn. 2 and 3. - Baller., note (b), p. 76.

Question 6. What must be done when the penitent follows a probable opinion but one opposed to the opinion of the confessor?

Response. Since he who acts thus uses his own right, the confessor cannot dismiss him without absolution on this head. Indeed it is not lawful for the confessor to use his own probable opinion for imposing an obligation upon the penitent, whether the latter knows or does not know that the right belongs to him of following a probable sentence. If this opinion of the penitent is publicly probable, it is more difficult to excuse the confessor who does not absolve him: rather let him lay aside his own opinion, leaving liberty to the other. Cf. Baller., note (a), p. 76.

Article V. On the System of Equiprobabilism

A little more fully must be treated here concerning the system of equiprobabilism, for this reason, that its recent favorers disapprove confessors who refuse to adhere to it. But their reason is twofold, one intrinsic, the other extrinsic. For, they say, equiprobabilism is the sole reasonable and right norm of acting, because it rightly agrees with principles and avoids all inconveniences; besides, it is unlawful to recede from the doctrine of St. Alphonsus even by a finger's breadth. This last reason, as is clear, manifestly supposes that the holy Doctor Alphonsus certainly was an equiprobabilist. Therefore three things are here briefly to be examined.

(a) Whether it is true that equiprobabilism is the sole reasonable and right norm of acting.

(b) Whether it is historically certain that St. Alphonsus was an equiprobabilist.

(c) Whether it is unlawful, the necessary conditions having been posited, to recede from St. Alphonsus even by a finger's breadth.

Before these three questions are answered, there must be recalled what we said above, n. 53, namely that there are two parts of equiprobabilism, according as today it is defended by its favorers. For they say, 1st, that equal or almost equal probability is required in favor of the opinion which stands for liberty, before that which stands for the law, so that you may be exempted from the force of the law. They say, 2nd, that equiprobabilism is applied only when the doubt is concerned with the existence of the law; for if it is concerned with the cessation of the law, one must always stand for the law. Moreover we noted in the cited place, and here it must again be repeated, that this second part regards the application of the system, but not its fundamental principle; since while several probabilists require it, some probabiliorists, among whom is Billuart, reject it. Wherefore that which the equiprobabilists establish in the first place concerning equality of probability, that alone is substantial to their system, and concerning that alone there will be discussion here. These things having been premised, let us see whether those three assumptions are certain.

I. That norm of acting certainly ought to be judged reasonable and right according to which no danger of formally sinning is incurred, and all difficulties are satisfied; but whoever acts according to probabilism not only avoids the danger of any formal sin whatsoever, but also can very well solve all difficulties which are objected, as is manifestly clear from those things which have been said above. Therefore probabilism is a reasonable and right norm of acting, and therefore it is false that this excellence belongs to equiprobabilism alone. This argument would abundantly suffice for the end which we intend here; but it is better to proceed further, since all the arguments which were brought above against probabiliorists can be urged no less against equiprobabilists. And indeed there can be urged:

(a) An argument from reason. For either equiprobabilists admit that solemn principle, an uncertain law does not oblige, or they do not admit it. If the first, how will they prove that only then is a law uncertain when equal or almost equal probability militates against it? Does not true and solid probability, wherever it is present, destroy the certainty of the opposed sentence? If the other, the reasons upon which that principle rests would have to be answered by them.

(b) An argument from authority can be urged. For those sayings of the Fathers and Scholastics, no distinction having been made, ought to be applied to a probable opinion of whatever degree, the slight alone excepted; since nowhere among them is there discussion of an opinion equally or almost equally probable. Nor should you say that they speak of this equality as if implicitly and equivalently; for it is answered that there exists no nation and there is no dictionary in which the adjective equal has the same value as true and solid.

(c) The argument from consequences can especially be urged. For would not the same most grave difficulty be had both for confessors and for penitents? Certainly the same; for equiprobabilists no less than probabiliorists require, and ought to require, that comparative judgment which very few can effect, and which is the cause of that difficulty. Would there not likewise be a perpetual fluctuation of doctrine? Do all confessors have the eyes of the mind disposed and balanced in so equal a manner that concerning the same question they make for themselves the same opinion? Wherefore St. Alphonsus, in the Dissertation edited in the year 1755, n. 17, thus argues against probabiliorists: "Such an appearance, namely of greater probability, cannot constitute a certain rule of operating, since it can deceive in many ways. For not rarely some opinion which appears more probable to one will appear less probable to another; indeed, to himself the opinion which yesterday was less

probable will today appear more probable." And again, ibid., n. 42: "Some opinion which is more probable to me will often be less probable to others, and therefore the law would be particular for those only to whom that opinion would appear more probable. But this surely would be against the nature of law, which for the common good must necessarily be universal and universally proposed, lest the people who are bound to observe it be more often divided and perplexed concerning the truth to be embraced, while each preacher or confessor, from the diversity of opinions, according to his own sense would often instruct the faithful." Moreover, if you change the word more probable employed here by the holy Doctor into the word equiprobable, you have an excellent condemnation of equiprobabilism from the fluctuation of doctrine flowing from it.

Nor should you say that probabilists also are pressed by this inconvenience. For the holy Doctor responds, ibid., n. 43: "Nor is it valid to say that by following the benign sentence, deformity also can intervene, since the same opinion can seem probable to one, improbable to another. It is not denied that this can happen, but it will always be true that when some opinion is strong with solid probability and rests upon a certainly grave foundation, it will be judged probable among the greatest part of the wise; and this will already be enough for preserving the universal uniformity of observance of the law, notwithstanding that among some particular person it is not probable; for that which rarely happens does not take away universal conformity. Yet this certainly does not happen concerning the estimation of more probable opinions, in our case equiprobable opinions; because since greater or lesser probability depends upon moral motives, namely upon the judgment and weighing of reasons, which some deduce from one principle, others from another, it happens not rarely but commonly that what to one is more valid appears weaker to another." Cf. Baller., note (a), p. 60.

II. It must now be examined whether it is historically true that St. Alphonsus was an equiprobabilist. Equiprobabilists indeed affirm this, but an affirmation of this sort falls by its very mass; for if the matter stood thus, it would now follow that that norm of acting, which they say is uniquely right, had been unknown in the Church of God through several centuries, and had not been discovered before the age of St. Alphonsus - and there is no one who does not see how many inconveniences and absurd consequences this abounds in. Therefore either it must be said that equiprobabilism is not that most right system of acting, as they boast, or that St. Alphonsus is not its parent. Yet he will better attain the truth and vindicate the honor of the holy Doctor who, rejecting equiprobabilism on account of the reasons recently brought forward, denies besides that St. Alphonsus was an equiprobabilist. For:

It is certain, 1st, that St. Alphonsus in solving particular questions is a simple probabilist; for as often as he sees true and solid probability militate against the law, he solves the case in favor of liberty.

It is certain, 2nd, that he expressly teaches and confirms with marvelous erudition all the speculative principles in which, as even the adversaries confess, the whole substance, as it were, of probabilism is contained, namely: "that no one is bound to observing some law unless it is manifested to him as certain; that an uncertain law cannot induce a certain obligation; that a doubtful law does not oblige," etc. Cf. *Moral. Systema,* nn. 63 and 69.

It is certain, 3rd, that the holy Doctor did not teach some new system, but explained and vindicated that probabilism which the Scholastics of the more ancient age had handed down everywhere. This is clear both because he often calls these Scholastics our authors, our masters, Doctors of our sentence,

and from those things which he has in the *Apologia contra Patuzzi*: "I have never wished nor do I wish to forge new systems," and especially from the Dissertation where he says: "Let us allow the opponents to cry out that our sentence is new and never heard in former centuries. The truth is that formerly this question was never treated in express terms; but in the year 1577 it was first discussed by Bartholomew Medina, who expressly taught the benign sentence, and from that time it was very commonly embraced, as the adversaries themselves confess."

It is certain, 4th, that St. Alphonsus explicitly taught simple probabilism. For in the Dissertation according to the Neapolitan edition of the year 1755, after, in order to avoid "ambiguities," as he says (n. 1), "and equivocations," he had premised this definition of a "more probable" opinion: "The more probable is that which rests upon a weightier foundation, but also with prudent fear of the opposite, so that the contrary is also truly probable, or gravely truthlike, although less so"; then, ibid., n. 3, he writes: "We undertake to prove the last, more benign and most common sentence: namely that it is licit to use a probable opinion even in concurrence with a more probable opinion for the law, whenever the former has a certain and grave foundation." Concerning this thesis then, ibid., n. 52, he brings forth this judgment: "Our sentence, namely that it is licit to follow a probable opinion for liberty, the more probable having been left aside, is far more probable or most probable, indeed morally or in a broad mode certain. This is clear from the arguments set forth above.... These arguments, each one indeed, have force to show the moral certainty of our sentence, so much more when conjoined together." Moreover, even the adversaries themselves concede, indeed contend, that the holy Doctor never changed his sentence. Cf. Baller., note (c), p. 64.

It is certain, 5th, that from the year 1762 the holy Doctor proposed a changed formula of the system, and defended it, polished with exquisite care, up to the end of his life. Cf. *Opusculum circa usum opinionum aeque probabilium*; *Theologia Moralis*, editions 7, 8, 9; letters, 28 March 1767; 25 May 1767; November 1768; 8 August 1769. "I say first, if the opinion which stands for the law seems certainly more probable, we are altogether bound to follow it; nor can we then embrace the opposite which stands for liberty." n. 54, edition 9. Let the reader consult the letters just now enumerated concerning this matter, and he will find the reason perpetually recurring, namely because the law in that case is sufficiently promulgated. Editions 6 and 7: "I say certainly because when the opinion for the law is certainly and without any hesitation more probable, then that opinion cannot be anything but notably more probable. And in that case the safer opinion will no longer be doubtful, understanding this of doubt strictly taken, but it is morally or quasi-morally certain; at least it can no longer be called strictly doubtful, since it has for itself a certain foundation that it is true. Whence then it happens that the less safe opinion, which lacks a certain foundation, remains either slightly or at least doubtfully probable with respect to the safer; and therefore it is not prudence but imprudence to wish to embrace it." n. 55. Cf. *Homo Apostolicus*, n. 31. - "For as often as it expressly appears to the intellect that truth stands much more for the law than for liberty, then the will cannot prudently and without fault adhere to the less safe part": *Theol. Mor.*, editions 6 and 7, n. 55. "Which, the less probable, in my judgment is in no way probable": letter, 28 March 1767. "I say third that when two equiprobable opinions concur, although the less safe opinion cannot be held, since, as we have said, probability alone - note, probability alone - by no means furnishes a firm foundation for operating licitly; nevertheless that opinion which stands for liberty, since it has equal probability as the opposite which stands for the law, indeed introduces a grave doubt whether there exists a law which prohibits the action, and therefore it can by no means be said to be sufficiently promulgated; and

therefore, since in that case it is not promulgated, it cannot oblige; so much the more because an uncertain law cannot induce a certain obligation." *Theol. Mor.*, edition 9, n. 56.

It seems indubitable, 6th, that the certainly more probable opinion of the later formula is not the more probable opinion of the earlier formula; and that the less probable opinion of the later formula is not the less probable opinion of the earlier. Thus the later formula is proved: because an opinion certainly more probable for the law... cannot be anything but notably more probable. And in that case the safer opinion will no longer be doubtful, strictly doubtful, but is morally certain. But thus the earlier formula is proved: when two opinions are present, one more and the other less probable, then the comparison is not made between truth and falsity, so that if the less probable is chosen, for that reason falsity is not preferred to truth; but the comparison is made between two apparent truths, of which, although one may seem greater than the other, nevertheless each seems great, so that each can be true; concerning which matter, at the same time that the more probable opinion appears more truthlike as true, it appears truthlikely false, and the opposite opinion appears probably true. Hence the more probable opinion cannot be called the true opinion; otherwise the more probable opinion would be manifest truth, which is repugnant, since manifest truth is properly knowledge, not opinion. Dissertation, year 1755, n. 17.

Therefore it is false to say that the more probable opinion is morally certain with respect to the less probable.... Because the more probable opinion is not morally certain unless it so exceeds the probability of the other that the latter appears improbable, or at least slightly probable. But otherwise, if it still seems to retain a grave motive by which it can be true. Ibid., n. 13.

"Nor is it valid to say that when some opinion appears more probable, then that greater probability declares the law and exhibits knowledge of the law: for knowledge, as is clear to everyone, imports certain notice concerning the existence of the law, but an opinion, even a more probable one, since it does not remove prudent fear of the opposite, is as far as heaven from knowledge, which, every prudent fear having been excluded, bears certainty before itself. Therefore when in some question there is no knowledge of the law, then the law either is not present, or at least does not oblige." Dissertation, 1755, n. 33.

Therefore in the later formula the certainly more probable, notably more probable sentence is morally certain; in the earlier formula the more probable opinion is not morally certain; in the later formula the less probable opinion lacks a certain foundation, remains either slightly or at least doubtfully probable, and for the holy Doctor is in no way probable; on the contrary, in the earlier formula the less probable opinion, because this opinion is by no means destitute of its grave probability, must not be called improbable. Therefore, just as it seems certain that the certainly more probable opinion of the later formula is distinguished from the more probable opinion of the earlier, so likewise it seems certain that the less probable opinion of the later is distinguished by the whole heavens from the less probable opinion of the earlier.

To the difficulty arising from this, that the greater probability destroys the lesser and that this by that very fact becomes improbable, he replies: "But our authors rightly respond that it is false that greater probability destroys the lesser, unless that greater probability is drawn from the same principle, or unless the more probable opinion has for itself so convincing an argument that the contrary seems truly improbable, or no longer gravely and certainly probable." Dissertation 1755, n. 13. The more

probable opinion is not morally certain unless it so exceeds the probability of the other that the latter appears improbable, or at least slightly probable.

In this Dissertation the holy Doctor distinguishes a twofold more probable opinion: one namely by which the opposite becomes truly improbable or at least slightly probable; the other, truly more probable, which does not destroy the probability of the opposite, but leaves it by its own force, as resting upon a grave foundation. Concerning this latter he treats in the earlier formula, Dissertation 1755. And indeed to affirm that the holy Doctor in one and the same reckoning holds every more probable opinion is to reject his clearest words, which is clear from this very place.

It is certain, 7th, that the holy Doctor, for proving his sentence concerning equiprobable opinions, cites almost all, one by one, those authors whom he had cited for proving the sentence concerning the liceity of action according to a less probable opinion in concurrence with a more probable one; indeed it is certain that he appeals to the same citations of the same authors, to prove the sentence concerning equiprobable opinions to which he had appealed when proving the sentence concerning a less probable opinion in concurrence with a more probable one.

The holy Doctor refers the reader to the *Opusculum de usu moderato opinionum aequiprobabilium*, *Mor. Sys.*, n. 79. But in this little work, edited in the year 1765, for proving his sentence, he cites around one hundred thirty-six authors; and he adds: neither can it be believed that through so many years in which this sentence of theirs was common, God had abandoned His Church by permitting pastors and sheep commonly to follow a false and detestable doctrine, as the adversaries call it. These things St. Alphonsus says in that little work, chapter V, 6.

In the Dissertation of the year 1755 he cites from these one hundred thirty authors eighty-three; and the same places are praised in each place. Come now: these eighty-three authors are cited for proving the more benign and most common sentence, "namely that it is licit to use a probable opinion even in concurrence with a more probable one for the law, whenever the former has a certain and grave foundation," n. 3; "it cannot be denied... that for the space of around one hundred years, or at least up to the middle of the seventeenth century, as the same opponents confess, the benign sentence was received by all the Doctors," n. 9; "shall we think that God at that time abandoned the Church, permitting the faithful everywhere to be deceived by this error so pernicious, as they themselves shout?" Therefore indeed the later formula of St. Alphonsus does not differ in doctrine from the earlier formula. For those eighty-three authors, of whom very many are classic authors, already dead, did not change their sentence between the year 1755 and the year 1765; nor do the same cited places pour forth a different meaning; and certainly the doctrine was clear and perspicuous: namely, it is licit to use a probable opinion even in concurrence with a more probable one for the law, whenever the former has a certain and grave foundation; and this doctrine was common through those same hundred years, nor was it erroneous. And therefore, concerning his doctrine, St. Alphonsus in each stage, in the year 1755, 1765, and thereafter, practically says: My sentence is the sentence of these authors; it is clear from the same places; it is common. Therefore the sentence contained in each formula does not differ: it is one and the same, and it is this: it is licit to follow a probable opinion even in concurrence with a more probable one for the law, whenever the former has a certain and grave foundation. And if this sentence is not true, and indeed in the obvious sense of the words, the reasoning of St. Alphonsus requires this conclusion: those authors erred, the cited places contain false doctrine, and God abandoned the Church.

It is certain, 8th, that the holy standard-bearer of the Church, that he might snatch the very weapons from his adversaries, wrote a dissertation to be substituted, in his book *Homo Apostolicus*, for the dissertation published in the old style and with the old terminology. Letter, Nov. 20, 1769. Indeed, concerning the new emendation of the *Theologia Moralis*, he says, Nov. 27, 1777:

"I am certain, according to the mode of thinking now prevailing, that this recent *Moral* will be more accepted and more sought after than the old." First, to remove every ambiguity and to ward off the accusation of laxism, in his new formula he says: "if the opinion which stands for the law seems certainly more probable, we are altogether bound to follow it"; "For acting licitly probability alone does not suffice, but moral certitude concerning the honesty of the action is required"; "When two equiprobable opinions concur," the opinion which stands for liberty, since it has equal probability as the opposite which stands for the law, indeed introduces a grave doubt whether there exists a law which prohibits the action, and therefore it can by no means be said to be sufficiently promulgated; and therefore, since in that case it has not been promulgated, it cannot oblige, etc.

It is certain, 9th. Come now, from the history of that time it is gathered, 1st, that probabilists were accused of laxity, as if they said that any foundation whatever, however slight, for the sentence in favor of liberty was sufficient for acting against the law; that this accusation was constantly moved against them; 2nd, that the mode of speaking of the theologians of that time was distinct from the common mode, at least as regards the sense of the word "more probable": "Yet the distinguished Fr. Gazzaniga excellently observes that here that sentence is not called more probable which has some, even small and minimal, excess of probability over the other: for in morals, as St. Thomas says, reason takes what is small as almost nothing, but that sentence which surpasses the other by many degrees in probability." - Luby, *Theol. Mor.* 1, p. 191. "I have not contended nor do I contend to forge new systems," says St. Alphonsus, "and I well know that no probabilist of solid doctrine hands down as licit the use of an opinion slightly or doubtfully probable. But because many probabilists say indiscriminately that it is licit to follow a less probable opinion when it has some foundation from reason or from authority, for this reason I wished to distinguish, by establishing that it is not licit to follow the less safe opinion when there is a notable and certain excess of probability for the safer one, because then the less safe opinion cannot be called certainly probable, nor the law in such a case doubtful with a doubt strictly so called; but when the excess for the opinion which stands for the law is small and doubtful, then the opinion which stands for liberty can rightly be called equiprobable." Now at that time the theologians who, in the concurrence of two equally probable opinions, of which one favors the law and is safe, the other favors liberty and is called not safe, teach that the not safe opinion which favors liberty against the law can licitly be chosen, the safer one being left aside, even in that case where the latter is more probable, are called, Luby being witness (*ibid.*), "benign probabilists"; those who oppose them with all their strength are called probabiliorists or anti-probabilists.

St. Alphonsus followed until death the distinguished authors of the Society of Jesus, whose fortunes he could, not without reason, fear for himself and for his own glorious Congregation. Jansenists, probabiliorists, rigorists attacked him as a friend of the Society. Almost alone he battled down and routed Jansenism and the more rigid sentence of Catholics. As a young man and as an old man, he was the incomparable defender of the Church against all enemies. The strong saint conquered. By changing an ambiguous form, he snatched the weapons from the hands of his enemies. They could

not accuse him of laxism. He employed their mode of speaking, with clear distinctions introduced, lest truth should suffer anything. The probabiliorists themselves persecuted him as a probabilist. He repelled laxism from his sentence. With one and the same reckoning he held, as often historically is the fact, a probable and an equiprobable sentence. He left behind, as something perpetually exposed to taunts, the determinative word "less"; he never left behind what is solidly probable. Behold the words of this man, a Doctor of the Church: "I believe that I have now demonstrated ... the principle: 'A doubtful law does not oblige'; for, as St. Thomas and all theologians affirm, a law not sufficiently promulgated does not oblige. When two probable opinions are mutually opposed to each other, it is not a law that is promulgated, but a doubt whether a law exists. Therefore when two opinions are equiprobable, the law does not oblige, because it is doubtful." Letter to Father Blasucci, Nov. 1768. The major and minor of that syllogism are very customary in St. Alphonsus. But the conclusion is about equiprobable opinions. Shall we say that the holy Doctor erred in logic? Far be it. Practically, equiprobable and probable sentences are in the same reckoning. Hence the holy Doctor concludes his moral system, II, 82: "Then it is concluded that unless the opinion which stands for the law is either certain or certainly more probable, as we said from the beginning, we are not bound to follow it." By repeated turns the sentence certainly etc. more probable is named by him a morally certain sentence. This is the system of the holy Doctor: If the sentence is either certain or morally certain, then you are bound to follow it; in all other cases you are free. Namely, all other sentences are to be held, for use, as equiprobable. Nor do we admit that St. Alphonsus holds the more probable sentence, as such, to be obligatory, because perpetually in every period he requires knowledge, in order that someone be bound by the law. The quality of being more probable as such gives only opinion. But it can happen in practical matters that, although there is not absolute evidence, the force of the argument on one side is so great that solid probability is absent from the other side. And this sentence is morally certain. Perhaps in this explanation of ours of the great Doctor we err; but even if we err, we shall not recede from him unless we have received his paternal blessing.

III. Since from those things which have recently been said, it is not certain, to say the least, that St. Alphonsus was an equiprobabilist, it could seem superfluous here to examine whether it is wrong to recede even by a finger's breadth from his doctrine; for even if this question were answered affirmatively, an argument cannot thence be taken for imposing the system of equiprobabilism upon all confessors. For it would be a great and intolerable wrong to impose some norm of acting upon others for this reason, that a great authority favors this norm, when one greatly doubts the very existence of this authority. Yet it will be useful to indicate briefly what must be held concerning this matter, on account of certain particular questions to be solved below.

That the authority of St. Alphonsus the Doctor in moral matters is very great, and that it regularly suffices for being loosed from the law, there is no one among today's probabilists who either denies or does not know. I have said regularly, because the case must always be excepted in which some absolutely certain argument is had to the contrary, as we know happened concerning the obligation of denouncing a confessor consenting to a woman soliciting in confession. For concerning this obligation, on the one hand the holy Doctor says that the sentence which denies it seems more probable, and on the other hand a certain decree of the Holy Inquisition, solemnly approved by Benedict XIV in the constitution *Sacramentum Poenitentiae*, but wholly unknown to St. Alphonsus, requires that denunciation be made. But if someone should wish to infer from the various approvals and praises given to the works of the holy Doctor that in no case ever is it licit for a theologian to

recede from some opinion of his which binds, when either solid reason or the grave authority of other Doctors persuades that the severer opinion is such, and provided that it be done with due moderation, he certainly would neither attain the mind of the Holy See in approving the writings of saints, nor rightly understand or apply the very principles and practice of the holy Doctor. For the mind of the Holy See is not that by that formula "nothing worthy of reprehension" and others of this sort, the writings of saints and Doctors of the Church should have so great an approval that each and every sentence of those writings is by this very fact to be said to be true; for this would be, as it were, to canonize their books, which has neither been done concerning St. Alphonsus or St. Thomas, nor ever will be done. That the matter stands entirely thus Benedict XIV showed at length, and St. Alphonsus himself confirmed it practically; for in solving particular questions he more than once, having left aside the sentence of St. Thomas, adhered to another, relying on the authority of other Doctors and on solid reasons, as they seemed to him, although the approvals of the writings of St. Thomas have certainly been most illustrious and altogether singular. Indeed even the Sacred Penitentiary, to the question: "Whether a professor of sacred theology can safely follow and profess the opinions which Blessed Alphonsus Liguori professes in his *Theologia Moralis*?" responded, 5 July 1831, "AFFIRMATIVELY, without however judging that those should therefore be reprehended who follow opinions handed down by other approved authors." - Cf. Bened. XIV, *de Servor. Dei beatif. et Beator. canoniz.* lib. 2, cap. 34. - Baller. vol. 2, note (a) p. 549. - *Revue des sciences eccles.* vol. 16, p. 302; and vol. 30, pp. 340 and 411. - *Etudes relig.* etc. vol. 4, p. 78. - Bouquillon, nn. 309 and seq.

Treatise III. On Laws

Part I. On Laws in General

Chapter I. On the Nature and Properties of Law

Law is defined by St. Thomas, 1-2, q. 90, art. 4: "A certain ordinance of reason for the common good, and promulgated by him who has care of the community." - It is said, 1st, an ordinance, because law is imposed by way of a rule and measure by which human acts are subjected to order; 2nd, of reason, because that ordinance ought not to be violent but to proceed from right reason; 3rd, for the common good, because the end of law, at least immediate and direct, is to provide for the community; 4th, by him who has care of the community, because to make laws is an act of jurisdiction; 5th, promulgated, because a rule cannot order except through application, and the application of this rule is made through promulgation. Hence it follows:

1st. There is present a manifold distinction between law and precept. For they differ, 1st, by reason of the one commanding, because a legislator is always a public person, but one giving a precept can be a private person; 2nd, by reason of the subject, because law is made for a community, but a precept even for a private person; 3rd, by reason of the end, because although ultimately the good of individuals redounds to the community, and conversely, nevertheless directly and immediately law regards the common good, a precept the private good; 4th, by reason of place, because law affects the territory, but a precept affects persons, and, as they say, clings to the bones; 5th, by reason of duration, because a precept ceases with the death of the one giving the precept, but law remains in force even after the legislator has died.

2nd. It follows that the properties or conditions of human law consist in this, that it be, 1st, possible, that is, accommodated to the morals and circumstances of persons, etc.; 2nd, honorable, that is, establishing nothing repugnant to right reason or to positive divine law; 3rd, useful, namely apt for procuring the common good; 4th, just, that is, according to the norm of distributive justice; 5th, promulgated, that is, applied to the community for directing actions.

3rd. Laws are instituted when they are promulgated. Thus the Code, can. 8, § 1. Cf. C. 3 D 14; c. 1. X, I. 5.

Law is distinguished in many ways; for it is:

1st. Divine or human, according as it has God or man as its immediate author.

2nd. Natural or positive, according as it is intimated by rational nature itself, or by a positive act of the legislator.

3rd. Ecclesiastical or civil, according as it is made by ecclesiastical or civil power.

4th. Moral or penal or mixed, according as it obliges under guilt alone, or under penalty alone, or under both at the same time.

5th. Affirmative or negative, according as it commands the placing of an act, or prohibits it. Hence it is also called preceptive or prohibitive.

6th. Simply prohibiting or invalidating or permitting, according as it renders an act illicit only, or invalid, or prohibits the agent from being disturbed.

Those laws alone must be held invalidating or inhabilitating by which either an act is expressly or equivalently established to be null, or a person to be incapable (Can. 11).

7th. Favorable or odious, according as it grants a benefit or favor, or brings in a burden or grievance.

8th. Written or preserved by use, according as it is made by written mandate, or introduced and preserved by custom alone.

9th. A personal or territorial law, according as it directly regards the person and then the territory, or directly the territory and then the person.

§ 2. A law is not presumed personal, but territorial, unless something else is clear (Can. 8).

It can, however, be both territorial and personal; a clear example of this was the chapter *Tametsi* of the Council of Trent.

Chapter II. On the Author of Law, or on the Legislator

A legislator is called a superior in whom there is present either independent and supreme power, or subordinate power, of making laws for a community over which he has jurisdiction.

I say, 1st. The Church has the power of establishing laws which conduce to the end proper to herself. The reason is that the Church is a perfect society in her own kind, and therefore she ought to be able to provide for her own governance, which she obtains through legislative power. The positive arguments are handed down more fully by the canonists.

I say, 2nd. Those who hold supreme power in civil society can establish laws which conduce to the end of temporal happiness. For the power of making laws is a necessary means for preserving society. Therefore it ought to be present in him to whom supreme authority over it belongs.

Questions

Question 1. Who in the Church possess the faculty of establishing laws?

Response. The Pope, a general Council, Bishops, and particular Councils.

1st. The Pope or Roman Pontiff for the whole Church. For it was said to him in the person of Peter: "Feed my lambs, feed my sheep." John xxi, 15 and 16. - But the word to feed signifies the same as to govern and rule.

2nd. A general Council likewise for the whole Church. For a general Council juridically consists of all the Bishops of the whole world convoked by the Pope, and of the Roman Pontiff, the supreme head of the whole Church, by whose authority its decrees must necessarily be confirmed. Therefore it has the fullest jurisdiction over the universal Church.

3rd. Bishops for the diocese. This is clear from Acts xx, 28: "The Holy Spirit has placed you Bishops to rule the Church of God."

§ 1. Bishops are successors of the Apostles and by divine institution are placed over particular churches, which they govern with ordinary power under the authority of the Roman Pontiff (Can. 329).

§ 1. It is their right and duty to govern the diocese both in spiritual matters and in temporal matters with legislative, judicial, and coercive power, to be exercised according to the norm of the sacred canons.[1]

§ 2. Episcopal laws begin to oblige immediately from promulgation, unless something else is provided in them; moreover, the mode of promulgation is determined by the Bishop himself (Can. 335).

And therefore he can also simply make laws even outside a synod and without the chapter having been heard. For to him must be attributed the principal authority of all things to be done. An abbot or prelate *nullius* has the same ordinary powers which belong to bishops in their own dioceses. Cf. Can. 323, § 1.

Apostolic Vicars and Prefects enjoy in their territory the same rights and faculties which belong to bishops in their own dioceses. Cf. can. 294; 323, § 1; 198, § 11. Concerning Apostolic Administrators, see canons 312-318.

Archbishops, however, and Patriarchs cannot make laws for the diocesans of their suffragans, because they are not their superiors properly so called, although they can settle lawsuits brought before them.

4th. Particular Councils for the province. For if Bishops, taken separately, are able to establish laws for dioceses, similarly also in a Council, whether plenary for the whole nation or provincial, they can establish laws for the nation or province. Concerning these councils the new Code decrees as follows:

§ 1. When the plenary or provincial Council has been completed, the president is to transmit all the acts and decrees to the Holy See, and these are not to be promulgated before they have been weighed and reviewed by the Sacred Congregation of the Council; moreover, the Fathers of the Council themselves are to designate both the mode of promulgating the decrees and the time at which the decrees, once promulgated, begin to oblige.

§ 2. The decrees of a plenary and provincial Council, once promulgated, oblige in the whole territory of each one, and local Ordinaries cannot dispense from them except in particular cases and for a just cause (Can. 291).

But confirmation of Synods by the Apostolic See can be done in two ways, to be carefully distinguished: in common form, or in specific form. In common form, by which their statutes are neither approved absolutely, nor, much less, sanctioned by Apostolic authority, but are only permitted to be promulgated; in specific form, by which, after diligent examination has been premised, their decrees are confirmed by the Apostolic See *motu proprio* and from certain knowledge, and therefore put on the nature of pontifical law with regard to those to whom they are directed. - Cf. Bened. XIV, *de Synod. dioec.* lib. 13, cap. 5, n. 11; and lib. 12, cap. 5, n. 13. - Nevertheless transmission to the Sacred Congregation of the Council, and much less confirmation by the Apostolic See, is not necessary for the statutes of a diocesan Synod.

The Bishop is the only legislator in a Synod, the others having only a consultative vote; he alone subscribes the synodal constitutions; and if these are promulgated in the Synod, by that very fact they

begin to oblige, unless something else is expressly provided (Can. 363).

[1] Cf. Addenda, p. 1126, n. 83.

Question 2. Are the statutes of the Second Plenary Council of Baltimore to be said to have been approved in common form, or rather in specific form?

Response. It seems it must be said that they were approved only in common form. For the approval which they received was neither given to them from certain and personal knowledge of the Supreme Pontiff, nor with the formalities required for specific form having been employed. This is clear from the letter of the Supreme Pontiff, Pope Pius IX, to the Fathers of the Council, where it is said: "As regards the acts of the aforesaid Council ... you will receive a suitable response concerning those same acts from Our Congregation set over the Propagation of the Faith." - Cf. *Acta Conc. Plen. Balt. II*, p. cxxxv. - It is also clear from the decree of the Sacred Congregation of the Propagation of the Faith for the recognition of the Council, p. cxxxvi. - Cf. Smith, *Elem.*, vol. 1, n. 74.

Question 3. Must the same be said concerning the statutes of the Third Plenary Council of Baltimore?

Response. Affirmatively, as is gathered from the Decree of recognition, which is prefixed to the acts of the Council itself. For there it is said that "the Most Eminent Fathers set over the Sacred Council for Propagating the Christian Name, in general meetings held on the days 17, 24, 27, and 31 of the month of August, and also on the 5th day of September in the year 1885, after diligent inquiry had been employed, and after all things had been weighed with careful study and due maturity of judgment, examined the Decrees of the same Council and, with some emendations and modifications added, recognized them, that they may be observed inviolably by all to whom it pertains." Then it is added: "Moreover, His Holiness deigned benignly to approve this sentence of the Sacred Congregation, reported to the Supreme Pontiff Leo XIII by the Most Reverend Lord Dominic Jacobini, Secretary of the same Sacred Congregation, in the Audience of the 10th day of September 1885, and commanded that the present Decree be issued concerning these things."

Question 4. Can the Administrator of a Diocese, while the see is vacant, Prelates of Religious, and Abbesses or Superioresses of Nuns establish laws?

Response, 1st. The administrator of a vacant diocese has all and only those faculties which belong to a Capitular Vicar, and therefore, just as ordinary episcopal jurisdiction passes to the latter, so it passes to the former, in spiritual and temporal matters, excepting those things which in law are expressly prohibited to him. Hence he cannot innovate or abrogate anything, but can only govern the Diocese according to laws already existing. Yet he can make statutes which would be necessary for the circumstances, so that laws already made may have force. Cf. St. Alphonsus, n. 104. - Cf. Can. 431, § 2; 435, § 1, 2, 3; 436.

Response, 2nd. Chapters or general Congregations and Prelates of Religious are able to establish true laws, within the limits of their jurisdiction, according to the proper constitutions of the Order. For they have statutes approved by the Supreme Pontiff, which bestow this faculty upon them.

Response, 3rd. Abbesses or Superioresses of Nuns cannot make laws properly so called, since they are not capable of ecclesiastical jurisdiction. They can, however, exact obedience in conscience concerning things commanded, or concerning those things which conduce to the progress of the

Nuns according to the rules. For they have the right of commanding both from the vow of obedience emitted by the subjects, and from the necessity of discipline which ought to be preserved in a community.

Chapter III. On the Object of Law

The object of law, generally, is whatever law can command or prohibit. Hence the object of law can be all and only those acts whose placing or omission favors the common good.

Concerning the object of law the Supreme Pontiff Leo XIII speaks thus: "Among human laws, some are concerned with that which is good or evil by nature, and command that the one be followed, the other fled from, with the due sanction added": decrees of this sort are by no means derived from human society, but rather precede human society itself and are entirely from the natural law. "Therefore the precepts of natural right, comprehended in the laws of men, have not only the force of human law, but chiefly embrace that much higher and much more august command which proceeds from the law of nature itself and from the eternal law."

"But other prescriptions of the civil power follow not immediately and proximately from natural right, but more remotely and obliquely, and they determine various matters concerning which provision has been made only generally and universally. Thus nature commands citizens to contribute their effort to public tranquility and prosperity; how much effort, in what manner, and in what matters is established not by nature but by the wisdom of men. Now human law properly so called is contained in these particular rules of living, discovered by prudent reason and proposed by legitimate power. This law indeed commands all citizens to work together toward the end proposed to the community, and prohibits them from turning aside; and the same law, insofar as it is attendant upon and consenting to the prescriptions of nature, leads to those things which are honorable and deters from the contrary." "The liberty of those who preside is not placed in this, that they may command rashly and according to desire, which would equally be shameful and joined also with the greatest destruction of the commonwealth; but this ought to be the force of human laws, that they be understood to flow from the eternal law and to sanction nothing which is not contained in it, as in the principle of all right." - Encyclical Letter *Libertas*.

Questions

Question 1. Can acts already placed be the object of law?

Response. Negatively, according to the common axiom: law does not look backward. The reason is that law does not extend itself to past acts by reason of guilt, which, in the absence of law, was none, nor by reason of penalty which follows guilt, nor by reason of rescission, except in some case expressed by law. Besides, that retroaction would induce great disturbance in society. - Cf. Scav. n. 218. The Constitution of the United States is consonant with this; for in art. I, sect. ix, n. 3, it is had: "No ex-post-facto law shall be passed"; and art. I, sect. x, n. 1: "No State shall pass any ex.post-facto law, or law impairing the obligation of contracts."

Laws regard future things, not past things, unless provision is made in them by name concerning past things (Can. 10).[1]

C. 13. X, I. 2. Thus in fact, C. 4. I. 15 in VI extended the canon of the Church not only to future affairs, but also to past and still pending affairs.

[1] Cf. Addenda, p. 1093, n. 26.

Question 2. Do heroic acts fall under human law?

Response. Generally, and with prior acceptance excluded, they do not seem to fall under law, because they are judged morally to exceed human powers, and therefore a law of this sort could not be called possible. Nor should you say that this reason has equal force for divine law; for when God commands some heroic act, He at the same time gives and strengthens powers through grace. I have said, 1st, generally, because sometimes, when the common good requires it, heroic acts can be commanded by human law; thus, for example, soldiers on guard cannot desert their post even when danger of life is imminent. I have said, 2nd, with prior acceptance excluded, because a precept is not reputed morally impossible for the few who voluntarily receive it; thus, for example, the Church commands perpetual enclosure for Nuns.

77. Question 3. Can human law command merely internal acts?

Response. Civil law certainly cannot, both because it cannot judge concerning internal things, and because without these acts the proper end of that law can be obtained. But it is controverted whether ecclesiastical law can, and the sentence which denies it is more probable, at least extrinsically. - Cf. St. Thomas, 1-2, q. 100, art. 9. - St. Alphonsus, n. 100. - Suarez, *de Leg.* lib. 4, cap. 12.

The same must be said concerning internal acts which are joined accidentally with external acts, as would be, for example, true devotion in giving alms. But those internal acts which are joined with external acts necessarily, whether as form, for example, the consent of the will in contracts, or as cause, for example, the desire of harming in homicide, can indeed fall under human law, but only indirectly. - Cf. St. Alphonsus, *ibid.*

Question 4. Do acts indeed external but hidden fall under human law?

Response. Affirmatively, because hidden acts by their nature do not differ from others; and besides, they can be judged by sentence, as hidden heresy which does not escape censure. - Cf. St. Alphonsus, *ibid.*

Question 5. Can a confessor enjoin merely internal acts?

Response. Affirmatively, and the reason is both because the office of directing the penitent in the way of salvation demands this, and because the confessor represents Christ Himself and participates in His divine power. - Cf. Voit, n. 163. - Scav. n. 217, and the note to n. 209, Paris edition.

Chapter IV. On the Subject of Law

Principle

Every man is born and remains subject to the natural law; but by human law only subjects are bound, provided they are habitually possessed of reason. The reason for the first is that, as St. Thomas says, 1-2, q. 91, art. 2, "the natural law is nothing other than the participation of the eternal law in the rational creature"; therefore wherever a rational creature is found, there is present there a subject of the natural law. But the reason for the second is that human law cannot be made except through an

act of jurisdiction, which can be exercised only over subjects. Finally, the reason for the third is that men habitually lacking the use of reason cannot be directed by laws.

You Will Resolve. 1st. It is not licit to provoke infants and the insane to a thing intrinsically evil, because, since they have a rational nature, they are bound by the natural law in first act or radically; and therefore those formally sin who induce them to blasphemies or indecent things. Cf. Sanchez, lib. 1, *Decal.* cap. 10. - Reuter, n. 167.

2nd. It is licit, on prohibited days, to give flesh-meat to be eaten by the perpetually insane, or by infants who have not yet attained the use of reason; but not to those insane for a short time, nor to the drunk or sleeping. The reason for the distinction is that the former are in no way subject to human law, but the latter are subject. - Cf. St. Alphonsus, n. 155.

3rd. Those who have not received baptism are not held by merely ecclesiastical laws, nor baptized persons who do not enjoy sufficient use of reason, nor those who, although they have attained the use of reason, have not yet completed the seventh year of age, unless something else is expressly provided by law (Can. 12).

See also can. 859, § 1; 906; 1099, § 2; 1254, § 1.

4th. Heretics, schismatics, and all other baptized persons whatsoever, even if not Catholics, are of themselves held by ecclesiastical laws, because the foundation of subjection endures in them, which is the character of baptism; nevertheless, accidentally, in practice they do not seem to sin, because they commonly do not know that by their condition they are held to observing these laws, even if perhaps they already know the necessity and obligation of entering the Catholic Church. Indeed it also seems probable that material heretics, such as very many among our own are judged to be, are in no way bound by at least certain ecclesiastical laws, namely those which regard the sanctification of souls, such as the laws of feasts and fasting; not because the Church cannot bind them, but because she is reasonably thought not to wish to bind them. - Cf. Mazzella, *de Eccles.* disp. 3, art. 10, n. 567. - Tarquini, *Jur. Eccl. Publ. Inst.* nn. 63 and 65. - Kenrick, tract. 3, part. 1, n. 28.

5th. The excommunicated, although they have been cast out of the Church, are bound by the laws of the Church as regards acts which are not interdicted to them; otherwise they would gain an advantage from their own malice.

6th. § 1. By general laws all persons everywhere on earth are held for whom they were made.

§ 2. To laws established for a particular territory those persons are subject for whom they were made and who have a domicile or quasi-domicile there and at the same time actually reside there, with the prescription of can. 14 remaining firm (Can. 13).

Here, by reason of the necessity of the matter, we place those things which are had in the Code concerning domicile. For very many things depend on the well-understood notion of it.

7th. § 1. Domicile is acquired by residence in some parish or quasi-parish, or at least in a diocese, apostolic vicariate, or apostolic prefecture; which residence is either joined with the intention of remaining there perpetually, if nothing calls one away from there, or has been prolonged for a completed decade.

§ 2. Quasi-domicile is acquired by residence as above, which is either joined with the intention of remaining there at least for the greater part of the year, if nothing calls one away from there, or has in fact been prolonged for the greater part of the year.

§ 3. A domicile or quasi-domicile in a parish or quasi-parish is called parochial; in a diocese, vicariate, or prefecture, but not in a parish or quasi-parish, diocesan (Can. 92).

Diocesan domicile is now already admitted. The difficulty formerly connected with the condition concerning intention now vanishes, once the clause has been posited, or it has been prolonged for a completed decade or for the greater part of the year.

8th. The Code also determines the domicile of diverse persons:

§ 1. A wife, not legitimately separated from her husband, necessarily retains the domicile of her husband; the insane person, the domicile of the curator; the minor, the domicile of him to whose power he is subject.

§ 2. A minor who has passed out of infancy can obtain a quasi-domicile proper to himself; likewise a wife not legitimately separated from her husband; but one legitimately separated can obtain even a domicile (Can. 93).[1]

9th. In the same way it is determined through domicile, etc., who is the pastor.

§ 1. Whether by his domicile or by his quasi-domicile, each person obtains his own pastor and Ordinary (Can. 94).[2]

Domicile and quasi-domicile are lost by departure from the place with the intention of not returning, saving the prescription of can. 93 (Can. 95).

There is a manifold application of these canons to diverse cases, especially matrimonial ones.

[1] Cf. Addenda, p. 1087, n. 1; p. 1106, n. 48.

[2] Cf. Addenda, p. 1087, n. 1; p. 1106, n. 48.

Questions

Question 1. Are clerics held by civil laws?

Response. Affirmatively, excepting those which are repugnant to their state, or to some ecclesiastical immunity still in force. The reason is that clerics are part of the political community, and receive many advantages from it. Wherefore the Apostle says, Rom. xiii, 1: "Let every soul be subject to higher powers." - To these words St. John Chrysostom adds: "Therefore even if you were an Apostle, even if an Evangelist, even if a Prophet, even if anyone else whatever; for this subjection does not overturn piety." - Cf. Scav. n. 221.

I have said, 1st, excepting those which are repugnant to their state; for the state is of divine right, and laws which are opposed to the stronger right cannot oblige.

I have said, 2nd, or to some ecclesiastical immunity still in force. Immunity is a certain exemption granted by the Church either to a person, or to a place, or to a sacred thing. Therefore civil laws which are opposed to this exemption do not of themselves oblige, because they injure the right of a superior order. But often the Church either expressly or tacitly does not urge these immunities, and

then civil laws obtain their native efficacy. In this region very few immunities can be urged; the principal ones are: local, by which certain profane acts are not permitted to be exercised in sacred places; and real, by which, only in some places, ecclesiastical goods are exempted from taxes. - In relation to immunity of forum, those things are to be attended to which the Third Plenary Council of Baltimore has, n. 155, but especially canons 120 and 2343 of the Code.

Question 2. Are children held to ecclesiastical laws as soon as they have attained the use of reason, although they have not yet completed seven years?

Response. Negatively. They are not held by merely ecclesiastical laws unless something else is expressly provided by law. Cf. Can. 12. - Cf. St. Alphonsus, *de tertio praec. Decal.* n. 270. - Lacroix, 676. - Reuter, n. 167.

Question 3. Are pilgrims held by the laws of their own territory?

Before the question is answered, it must be said what comes under the name of inhabitant, newcomer, pilgrim, and vagus:

A person is called: an inhabitant, in the place where he has domicile; a newcomer, in the place where he has quasi-domicile; a pilgrim, if he is staying outside the domicile and quasi-domicile which he still retains; a vagus, if he has no domicile or quasi-domicile anywhere (Can. 91).

Response. Negatively, generally speaking:

§ 1. Pilgrims;

1st. Are not bound by the particular laws of their own territory so long as they are absent from it, unless either their transgression harms in their own territory, or the laws are personal (Can. 14).

Moreover, a law is not presumed personal but territorial, unless something else is clear, Can. 8, § 2. - Cf. St. Alphonsus, n. 156; and *Hom. Ap.* n. 39. - Lacroix, n. 683. - Elbel, n. 370. - Scav. n. 222.

Question 4. Are pilgrims held by the laws of the place in which they are staying?

Response. Pilgrims are not bound by the laws of the territory in which they are staying, excepting those which provide for public order, or determine the solemnities of acts (Can. 14).[1]

3rd. But they are held by general laws, even if these do not have force in their own territory, but by no means if they do not oblige in the place in which they are staying (Can. 14). They are also held by laws as regards contracts, as regards delicts, and as regards those things which are necessary for the common good. - Cf. St. Alphonsus, n. 156.

[1] Cf. Addenda, p. 1087, n. 2; p. 1094, n. 27.

Question 5. By what laws are vagi held?

Response. § 2. Vagi are obliged by both general and particular laws which are in force in the place in which they are staying (Can. 14).

You Will Resolve. 1st. If in your territory there is fasting, and on the same day you go on to a place where there is no fasting, you can eat supper in the evening. Indeed, probably you can also breakfast, and the reason is that fasting is something indivisible.

2nd. Existing in the morning in a place where there is no fasting, you are not bound to fast, even if around midday you are going to return home, where there is fasting. Yet at home you are bound to abstain if it is also a day of abstinence.

3rd. If in your territory there is a special feast of precept and you are about to depart to another place where there is no feast, you are not bound to hear Mass before departure, provided you will arrive outside the place where the precept is in force before the time of obligation ceases. The reason is that the precept does not oblige you to wait.

4th. Pilgrims are held by all common laws in force in that place, even if in their own territory they had been abrogated, or by dispensation did not oblige here and now. The reason is that they are subject to the common legislator, and while absent they do not enjoy the privilege of their own territory. Thus a Cuban staying in this region is held to abstinence on Friday.

5th. Probably pilgrims are not held to observing the particular law of some place, even if the same particular law is in force in their own territory. The reason is that they are held neither by the laws of their homeland, because they are absent, nor by the laws of the place in which they are staying, because, as pilgrims, they are not subject to them. - Cf. St. Alphonsus, nn. 156 and 157; and *Hom. Ap.* nn. 39 and seq. - Lacroix, n. 686.[1]

[1] Cf. Addenda, p. 1087, n. 2; p. 1094, n. 27.

Chapter V. On the Promulgation of Law

Promulgation is the public announcement of a law, made by legitimate authority for inducing obligation upon subjects.

I say, 1st. Promulgation is altogether necessary for a law to induce obligation. The reason is that law, in order that it may oblige, must be intimated to the will, which is done through promulgation. - Cf. St. Thomas, 1-2, q. 90, art. 4. - St. Alphonsus, n. 96.

§ 1. Laws are instituted when they are promulgated (Can. 8).

I say, 2nd. Promulgation without knowledge of the law suffices for obliging in the external forum, because knowledge of a law duly promulgated is generally presumed. But in the internal forum, knowledge of the law is additionally required, because no one can sin without cognition of the obligation.

I say, 3rd. From the nature of the matter, it suffices that a law be promulgated in some principal city, or in such a place from which it can come to the notice of the community; and it obliges immediately once it has been promulgated. But in practice attention must be paid to received custom, or to the particular statutes of various places. Wherefore Kenrick says: "among us, a law is judged promulgated as soon as it has been made, excepting some States in which it is necessary that twenty, thirty, or sixty days elapse before it has force." - Cf. Kenrick, tract. 6, n. 8, with the added notes.

Question

Question: How are Pontifical and Episcopal laws promulgated?

Response. As regards the first. Laws made by the Apostolic See are promulgated by publication in the official commentary of the *Acts of the Apostolic See*, unless in particular cases another mode of

promulgating has been prescribed; and they exert their force only after three months have been completed from the day which is placed upon the number of the *Acts*, unless from the nature of the matter they bind immediately, or in the law itself a shorter or longer *vacatio* has been specially and expressly established (Can. 9).

As regards the second. § 2. Episcopal laws begin to oblige immediately from promulgation, unless something else is provided in them; moreover, the mode of promulgation is determined by the Bishop himself (Can. 335, § 2).

Chapter VI. On the Acceptance of Law

Acceptance of law is the submission by which subjects, at least as regards the greater and sounder part, accept the law formally or virtually.

I say, 1st. Of itself, a law, as regards its force of obliging, in no way depends on the acceptance of the people; otherwise, together with the power of the superior, all authority of laws would collapse, and thus the subversion of the whole social order would follow. This is also clear from proposition 28, condemned by Alexander VII, which stands thus: "The people do not sin, even if without any cause they do not receive a law promulgated by the Prince."

I say, 2nd. Accidentally, sometimes a law not accepted does not oblige by reason of the tacit or express consent of the superior, or by reason of a privilege or tolerated custom. This is clear from practice in various cases and from the common consent of theologians. - Cf. St. Alphonsus, n. 138.

Questions

Question 1. Does a law oblige if the greater and sounder part of the people has not accepted it?

Response. If the greater and sounder part of the people, on account of a reasonable cause, does not accept a law for a time, with this end, that it may obtain from the Prince its dispensation or abrogation, then from a benign interpretation the obligation of the law can be held as suspended, until the matter is settled. If on the contrary the law is rejected absolutely and forever, without any recourse to the Prince, by the greater and sounder part of the people, those not accepting it sin, until the law has been abrogated by legitimate desuetude; for it does not depend on their will that the law oblige or not oblige, though excepting the case in which the law is not accepted because it suffers from some intrinsic defect. Meanwhile the lesser part, which is prepared to observe the law as soon as it will be accepted by the greater part, more probably does not sin, speaking of itself, while it omits its observance; because the Prince is not judged to wish that what has not been accepted by the greater number be observed by the fewer with their great inconvenience. Cf. St. Alphonsus, nn. 137 and 139. - Suarez, lib. 3, cap. 19, n. 13. - Salmant. cap. 1, n. 107.

Question 2. Does a law oblige in doubt whether it has been accepted?

Response. Affirmatively, because it ought to be presumed accepted, unless the contrary is clear. For a fact is presumed which by law was to be done, according to the rule of law related above, n. 66. - Cf. St. Alphonsus, n. 97.

Question 3. Can Bishops not admit pontifical laws?

Response. ... It must be denied. For Bishops, although they are princes in their own churches, are nevertheless subject to the Roman Pontiff, the immediate Vicar of Christ on earth and head and governor of the whole Church. Therefore they must obey him, and thus furnish an example of obedience to their own subjects, by promulgating the pontifical law and procuring its observance in their diocese. Yet except if grave reasons stand in the way: for then Bishops not only can but ought to set forth these reasons to the Holy See, and then they will be bound to acquiesce in its definition. See Benedict XIV, *de Synod. dioeces.* lib. 9, c. 8.

Chapter VII. On the Obligation of Law

The obligation of law can be considered in two ways, namely in itself, and as regards satisfaction; concerning both a brief treatment will be given here.

Article I. On the Very Force of Obligation

I say, 1st. Any law induces a true obligation, at least to penalty; for in this law differs from counsel, that the subject cannot with impunity set the latter aside according to his own pleasure.

I say, 2nd. Any human law can of itself oblige in conscience before God. The reason is that superiors have been constituted by God with the power of commanding. Hence the Apostle says, Rom. xiii, 2: "He who resists power resists the ordinance of God. But those who resist acquire damnation for themselves."

I say, 3rd. Law obliges under grave or under light obligation according to the gravity of the matter or circumstances, or of the end specially intended by the superior. But an affirmative law obliges always, but not for always; a negative law, however, obliges both always and for always, that is, for each single moment.

I say, 4th. Positive divine law and human law generally do not oblige with a very grave inconvenience, or with grave harm, which is accidentally joined to the observation of the law. This is clear from natural and canonical right, from the practice of the Church, and from the consent of all.

I say, 5th. Laws, even invalidating and inhabilitating ones, do not urge in doubt of law; but in doubt of fact the Ordinary can dispense in them, provided that it concerns laws in which the Roman Pontiff is accustomed to dispense (Can. 15).

Questions

Question 1. Can a legislator command under light obligation in grave matter?

Response. Affirmatively, at least more probably, because the quantity of the obligation depends on his will, just as the law itself does. Yet he cannot oblige under grave obligation in light matter, because then proportion would be lacking, unless the matter, light indeed in itself, should become grave by reason of the end or circumstances. - Cf. St. Alphonsus, n. 143.

Question 2. What matter of law must be judged grave or light?

Response. This must be gathered, 1st, from the very words of the law; 2nd, from the gravity of the penalty inflicted; 3rd, from its interpretation; 4th, from its object, end, and circumstances. Thus, for example, it is grave for one celebrating Mass if he omits to pour into the chalice a few little drops of

water; it will be light if on a day of fasting you chew an ounce of bread outside the refection. - Cf. St. Alphonsus, n. 144. - Lacroix, n. 663.

Question 3. Is the violation of law in a light matter grave from contempt?

Response. Affirmatively, if the contempt directly affects the legislator formally as such, because the very authority from which laws obtain force is contemned. But the sin will not be grave if the contempt regards only the matter as light in itself, or if someone transgresses the law from carelessness, anger, or another cause of this sort. - Cf. St. Alphonsus, n. 142.

Question 4. Does a law founded on presumption always oblige?

Response. Laws made for guarding against a general danger urge, even if in a particular case the danger is not present (Can. 21).

But a law founded on a presumption of fact does not oblige if the fact does not really subsist, because presumption yields to truth. - Cf. St. Alphonsus, nn. 100, 150.

Article II. On the Mode of Satisfying the Obligation of Law

Principle

Although for satisfying a law the intention of fulfilling the precept is not required, and much less the intention of obtaining the end of the precept, nevertheless the intention of doing that which is commanded is required, if the law is affirmative; but not if it is negative, or indeed affirmative, but of such a kind that through it the simple effect of some action is intended, and not the action itself. The reason for the first is that, for satisfying, material obedience suffices, as theologians speak, namely, to place the action which is commanded. The reason for the second is both because, as the axiom taken from the Angelic Doctor has it: The end of the precept does not fall under the precept; and because by the simple fulfillment of the precept the end intended by the legislator is sufficiently obtained. But the reason for the third is that, since law is imposed upon men, its fulfillment ought to be a human action. Finally, the reason for the fourth and fifth is that then the legislator intends nothing except either the omission of a work, or only the material placing of the effect, for example, restitution, which even one who is sleeping is able to make. - Cf. St. Thomas, 1-2, q. 100, art. 9. - St. Alphonsus, nn. 162, 163, 164, and 165.

You Will Resolve. 1st. He satisfies who hears Mass, not knowing that it is commanded on this day, or who indeed knows the obligation, but intends only here and now to satisfy devotion, with the intention of hearing another Mass.

2nd. But he does not satisfy who places the work of a vow or oath while expressly intending not to satisfy; for it depends on the will of the one promising that such an obligation remain.

3rd. He does not satisfy who, wholly coerced, is present at Mass; for such an act, on account of the defect of will, is not human. It is otherwise if someone is induced only by fear, as, for example, a servant by fear of his master, a child by fear of his mother, etc.

4th. He satisfies who sins in the very fulfillment of the law, provided the act is honorable in itself and evil only from an extrinsic circumstance, so that the substance of the thing commanded is placed; because the precept commands only the substance of the act, not the mode. Hence he satisfies who,

while he hears Mass, is occupied with thoughts of vain glory or lust. Yet satisfaction is not made to the precept of confession or communion by sacrilegious confession or communion, because then the very substance of the commanded act, that is, confession destructive of sins, or communion which spiritually feeds the soul, is not placed. This is also clear from proposition 14 condemned by Alexander VII: "He who makes a confession voluntarily null satisfies the precept of the Church," and from proposition 55 condemned by Innocent XI: "The precept of annual communion is satisfied by a sacrilegious eating of the Lord." - Cf. St. Alphonsus, *ibid.* - See Can. 861, 907.

Questions

Question 1. Can several precepts be fulfilled by one act?

Response. Affirmatively, if these precepts fall upon the same matter and on account of the same intrinsic motive, as the fast of a vigil falling in the Ember days; but otherwise if they fall upon the same matter indeed, but on account of a diverse motive, as fasting owed from penance and from ecclesiastical law. - Cf. St. Alphonsus, n. 166.

Question 2. Can diverse precepts be fulfilled at the same time by diverse acts?

Response. Affirmatively, if those acts are associable, that is, if they can be placed as they are required, because then the whole is placed which is required. Thus while hearing Mass you can recite the canonical Hours or discharge an imposed penance, etc. - Cf. St. Alphonsus, n. 166.

Question 3. Does the obligation cease for one who has not satisfied at the determined time?

Response. Affirmatively, if the determination of the time was made for ending the obligation. Thus, for example, if you did not fast on the day of a vigil, you indeed sinned, but you are freed from the law, because fasting is a burden affixed to the day itself. But otherwise it must be said if the time was not determined except for soliciting or urging the obligation. Thus he is not freed from the obligation of receiving the Eucharist who did not receive it in paschal time. Cf. St. Alphonsus, *de secundo praec. Decal.* n. 220; and *de Euchar.* n. 297. See below n. 342, Q. 1. - Cf. Can. 859, § 4.

Question 4. What must be done in the concurrence of two unassociable precepts?

Response. The greater must be observed before the lesser, which then ceases to oblige. But a natural precept prevails over a merely positive precept; a divine precept prevails over a human one; an ecclesiastical over a civil one, etc.

You Will Resolve. 1st. If you owe 100 coins to Titius, and you vow to restore them, by one act you satisfy two obligations, namely, of justice and of vow. Likewise a beneficed Priest vowing faithfully to recite the Hours satisfies a triple obligation by one recitation.

2nd. If from a vow and from a penance imposed by the confessor you are held to hear Mass, you do not satisfy each obligation if you are present at a single Mass on Sunday. Except unless the confessor imposes a work otherwise commanded.

3rd. Nor can you hear several Masses imposed upon you by a confessor at the same time, while they are being celebrated simultaneously on several altars, because such is not to be presumed to have been the intention of the confessor.

4th. He who is held to hear Mass on individual days from penance for one month satisfies by hearing one on Sunday, because it is reasonably presumed that the confessor did not wish to oblige the penitent to hear two Masses on the same day, unless he expressed this. - St. Alphonsus, *Hom. Apost.* n. 31.

Chapter VIII. On Causes Deobliging from Law

Deobliging causes are either exempting or impeding. The former are those which totally withdraw the subject from the dominion of the law, for example, if someone betakes himself outside the place which the law affects. But the latter are those which impede or excuse from its fulfillment a subject remaining under the law. Besides, both the former and the latter can be placed directly or indirectly, according as the agent is moved either by the end of withdrawing himself from the law, or by another cause; proximately or remotely, according as the law urges either shortly, or only after a notable interval of time.

I say, 1st. Exempting causes totally free from the obligation of the law; for no one can impose a precept upon a man not subject to himself. Moreover, where some exempting cause is present, he who was subject to the law ceases to be subject to that same law, either by reason of territory from which he is absent, or by reason of privilege. - Cf. St. Alphonsus, n. 156.

I say, 2nd. Physical impotence, although it does not exempt, always excuses from observing the law, as the very common axiom has it: No one is held to the impossible. Moral impotence likewise excuses, because the legislator is not judged to urge obligation with so great an inconvenience, according to the common interpretation of the Doctors; this is the reason why grave fear, apart from harm to society or religion, excuses from human law. - Cf. St. Alphonsus, n. 165; and *Hom. Ap.* n. 44.

Questions

Question 1. Is it always licit to place exempting causes, even directly and proximately?

Response. Affirmatively, and the reason is that law of itself does not make someone subject to itself, but rather is made for him who is already subject; and therefore, at least speaking of itself, it obliges no one to be or remain subject to itself, but rather obliges him who is and remains subject to observe it. Wherefore it is licit for someone to go outside the diocese to confess reserved sins. For any reservation lacks all force outside the territory of the one reserving, even if the penitent departed from it only for obtaining absolution (Can. 900, § 3). - Cf. St. Alphonsus, *ibid.* - Baller., note (a), p. 97.

Question 2. Must the same be said concerning the placing of impeding causes?

Response. It is certain that it is never licit to place them directly; and the reason is that so long as someone lies under a law, he cannot wish to infringe it without such a will being the violation of that very law. Indeed, it will not even be licit indirectly to place proximately impeding causes, unless a proportionate necessity is otherwise present. The reason is that a law proximately urging proximately binds the will, and constrains it to employ the necessary means lest the law itself be violated, and therefore to not throwing in impediments. But more probably it is licit, even without reason, to place remotely impeding causes; because the legislator is not judged to wish to restrict liberty to such a degree. For it would be too grave a burden if each person, long before the obligation of the law, were

bound to leave behind all works unassociable with that obligation, and to await the time of the obligation. - Cf. Suarez, *de Peccatis*, disp. 3, sect. 4, n. 10.

But when a cause must be judged as impeding proximately, and when only remotely, can hardly, or not even hardly, be established by some general norm. And that cause is usually held to be remotely impeding which precedes the time of fulfilling the precept by the space of some days; but there must always be kept before the eyes both the mind of the legislator and the gravity of the thing commanded, and also the judgment of the prudent and the practice of the upright. Cf. Sanchez, *In Decal.* lib. 1, cap. 15, n. 4.

Question 3. Is he who is impotent as to the whole held to the part?

Response. Affirmatively, when the matter of the law is divisible, and the reason of the precept remains in the individual parts. Wherefore, just as he who cannot fast on a day of fasting and abstinence at the same time ought to abstain if he can, so he who has vowed a pious pilgrimage, and is not able to complete the whole journey, is not held to begin it. - Cf. St. Alphonsus, *Hom. Ap.* n. 45.

You Will Resolve, 1st. He sins who on a day of fasting, without a just cause, undertakes some labor by which he becomes unable to fast. The reason is that a law proximately urging demands that an obstacle not be placed without a just cause to its fulfillment. - St. Liguori, *Hom. Ap.* n. 20.

2nd. He does not sin against the precept of hearing Mass who begins a journey foreseeing that on the following Sunday he will not be able to hear Mass. Yet he is not excused who does this when the precept is at least morally already urging, namely either on the same feast day or one or another hour before it, unless some just cause intervenes.

3rd. Much more easily can it be permitted that a cause be placed indirectly if the question concerns one or another omission, say of Mass, than if it concerns a continual one. Therefore the force and rigor of the precept must be considered; for certain precepts more easily admit a benign interpretation and therefore need lesser causes for excusing; on the contrary others do so with more difficulty and cease to urge only on account of graver causes. "Thus, for example, since the obligation of justice is graver than that of fidelity or obedience, a graver cause is required for you to render yourself unable to pay the price of a thing bought than to fulfill a gratuitous promise; the obligation of bringing it about that you are not impeded, for example, from executing your office of schoolmaster, physician, or judge, is graver than if it concerns the omission of Mass alone or of fasting." Baller., *Op. Mor.* v. 1, n. 264. The necessity or utility of the impediment must be considered. The matter is evident: consider, for instance, the necessity and evident utility arising from some pleasure journey undertaken once or twice during the summer by those of our workers who for an entire week must labor many hours daily. Surely Mother Church will not rebuke them if so rarely they omit Mass. Or consider some poor little old woman who in some corner sells goods on Sunday to other poor persons who cannot make their small purchases quite conveniently except on that day. It must also be considered whether the precept is impeded from being fulfilled proximately or remotely. And hence a graver cause is required for someone licitly to place an impediment the more proximately the law urges. Finally it must be seen whether the impediment pertains of itself and intrinsically to the matter of the precept, or only accidentally: for example, the breviary for reciting the office, or good health with respect to the same. Sanchez, *Moral.* lib. 1, cap. 15, n. 4. All these

things must be considered, and thus in diverse laws the judgment will be diverse. - Cf. Sanchez and Baller., l. c.

Chapter IX. On the Interpretation of Law and Epikeia

Interpretation of law is the explanation of the sense intended by the legislator, when this seems more obscure or ambiguous, and it is distinguished in many ways; for:

1st. By reason of the subject or cause, one kind is authentic, another usual, and another doctrinal, according as it is made either by the superior himself or by others who participate in his power, or by custom, or by learned men.

2nd. By reason of mode, it is either strict or broad. The former rigorously preserves the propriety of the words, as, for example, if by the word son there is understood only a generated person; the latter admits a more benign sense, as if the same word son is extended to an adopted person.

3rd. By reason of mode again, it is either comprehensive or extensive. The former takes the words as they sound, and explains them either broadly or strictly, as was just said; but the latter attaches another sense to the words beyond the natural one, for example, if under the name of father even a grandfather is understood, and under the name of death, perpetual prison.

But epikeia is the exception of a case on account of circumstances from which it is judged, certainly or at least probably, that the legislator did not wish that case to be comprehended under the law. Hence it differs from interpretation, because it does not treat of explaining an obscure law, but of not applying a law otherwise clear to some case in particular. - Cf. St. Thomas, 1-2, q. 96, art. 6, and 2-2, q. 120, art. 1. - St. Alphonsus, n. 201; and *Hom. Ap.* n. 77.

I say, 1st. § 1. The legislator, or his successor, and he to whom the power of interpreting has been committed by them, authentically interprets laws.

§ 2. An authentic interpretation, exhibited by way of law, has the same force as the law itself; and if it only declares the words of the law, certain in themselves, it does not need promulgation and has force backward; if it restricts or extends the law or explains a doubtful law, it is not retroactive and must be promulgated.

§ 3. But an interpretation given by way of a judicial sentence or of a rescript in a particular matter does not have the force of law and binds only the persons and affects the things for which it was given (Can. 17).

I say, 2nd. Usual interpretation likewise has the force of law, and approaches authentic interpretation, provided the custom is legitimate, public, and universal. The reason is that then the consent of the legislator is had; whence custom is said to be the best interpreter of laws.

I say, 3rd. Doctrinal interpretation does not have the force of law, since it does not proceed from legislative power; nevertheless it has more or less weight according to the number and authority of the Doctors, and especially according to their reasons. That doctrinal interpretation may be done rightly, the following rules are to be attended to.

1st. Ecclesiastical laws are to be understood according to the proper signification of the words considered in text and context; if this has remained doubtful and obscure, recourse is to be had to

parallel places of the Code, if there are any, to the end and circumstances of the law, and to the mind of the legislator (Can. 18).

2nd. Laws which establish a penalty, or restrict the free exercise of rights, or contain an exception from the law, are subject to strict interpretation (Can. 19).

3rd. If an express prescription of law, whether general or particular, is lacking concerning a certain matter, the norm is to be taken, unless it concerns applying penalties, from laws made in similar matters; from general principles of right observed with canonical equity; from the style and practice of the Roman Curia; from the common and constant sentence of the doctors (Can. 20). But a favorable law demands an ample interpretation. - Cf. St. Alphonsus, n. 200. - Scav. n. 260. - Kenrick, n. 32.

Questions

Question 1. Must extension be made from case to case when the same adequate reason occurs?

Response. Affirmatively, and the reason is taken from that worn principle: Where the reason is the same, there the same disposition of the law runs. But the same adequate reason runs when, unless the law were extended, the legislator could be accused of injustice or imprudence; and therefore the case not expressed ought rather to be said to be comprehended in the law, than the law to be extended to it. But this is had in the following: 1st, in correlatives, as bridegroom and bride; 2nd, in those equated, as eggs and milk-foods in relation to the law of abstinence; 3rd, in connected things, as are Deacon and Subdeacon; 4th, in contained things, as are the power of making a testament and the power of making legacies. - Cf. St. Alphonsus, *ibid.* - Scav. n. 261.

But a negative response must be given if it concerns penalties; thus Can. 2219, § 3: It is not licit to extend a penalty from person to person or from case to case, although an equal, indeed graver, reason is present, yet saving the prescription of Can. 2231, according to which equally culpable participants are struck with the same penalty, although only one is named.

Question 2. What things are subject to strict interpretation?

Response. Laws which establish a penalty or restrict the free exercise of rights, or contain an exception from the law; in doubt, rescripts which refer to lawsuits, or injure rights acquired by others, or are opposed to a law for the advantage of private persons, or finally were obtained for obtaining an ecclesiastical benefice, receive strict interpretation. Cf. Can. 19, 50.

Chapter X. On the Dispensation of Law

Dispensation is the legitimate relaxation of an obligation arising from law, for some particular case; and therefore it differs both from epikeia and from cessation of law. - Dispensation can be: 1st, licit or illicit, according as it is made for a just cause or not; 2nd, valid or invalid, according as it either exempts from observation of the law or does not exempt; 3rd, absolute or conditioned, according as it is granted simply or with some condition added; 4th, subreptitious or obreptitious, according as in the petition something to be manifested is kept silent, or on the contrary something false is asserted.

Article I. On the Power of Dispensing

Dispensation, or the relaxation of law in a special case, can be granted by the founder of the law, by his successor or Superior, and also by him to whom they have granted the faculty of dispensing (Can. 80).

I say, 1st. The legislator can dispense: 1st, in his own laws, because he has as much power for loosing as he has for binding; 2nd, in the laws of his predecessors, because he enjoys equal power with them; 3rd, in the laws of his inferiors, because these have their power from him or at least have it subordinated to him.

I say, 2nd. An inferior cannot dispense in the laws of his superior, except from delegated power, and insofar as it has been delegated to him either by the superior himself, or by law, or by custom. The reason is that it is repugnant for an inferior to enjoy authority over the law of his superior.

Questions

Question 1. Can the Pope dispense in divine law?

Response. Concerning this matter there is much controversy among theologians; but that controversy is merely speculative, and rather pertains to the mode of speaking, namely whether the word dispensation is to be employed or not. For each part of those disagreeing equally consents to this, that, pontifical authority intervening from a just cause, a bond which is said to be of divine right can be taken away. - Cf. St. Thomas, 2-2, q. 88, art. 12. - St. Alphonsus, n. 189; and *Hom. Ap.* n. 56. - Baller., note (a), p. 101.

Question 2. In what laws can a Bishop dispense?

Response. Bishops and other local Ordinaries are able to dispense in diocesan laws, and in the laws of a provincial and plenary Council according to the norm of can. 291, § 2; but not in laws which the Roman Pontiff has specially made for that particular territory, except according to the norm of can. 81 (Can. 82). The Ordinary can dispense in laws, even invalidating and inhabilitating laws, in doubt of fact, provided that it concerns laws in which the Roman Pontiff is accustomed to dispense. - Cf. Can. 15. From the general laws of the Church, Ordinaries below the Roman Pontiff cannot dispense, not even in a particular case, unless this power has been explicitly or implicitly granted to them, or unless recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay, and the matter concerns a dispensation which is customarily granted by the Apostolic See (Can. 81).

Question 3. Can a Bishop dispense with pilgrims in vows, oaths, and common precepts of the Church?

Response. Affirmatively, as is clear from canons 1245 for the observance of feasts, abstinence, and fasting; 1313 for vows; 1320 for an oath. - Cf. St. Alphonsus, n. 158. - Baller., note (c), p. 101.

Question 4. Are Pastors able to dispense in some things?

Response. Pastors are able to dispense neither from a general law nor from a particular law, unless this power has been expressly granted to them (Can. 83).

This power indeed has been granted by law in singular cases and for a just cause, both in relation to subjects even absent and in relation to pilgrims present in their territory, for the observance of feasts, abstinence, and fasting. - Cf. Can. 1245, § 1; Can. 1044.

Question 5. Can a superior dispense with himself?

Response. Affirmatively, if he is primary; indeed also if he is secondary, if he has the general faculty of dispensing with others. - Cf. St. Alphonsus, *Hom. Ap.* n. 64.

Question 6. Can one delegated subdelegate?

Response. § 2. Power of jurisdiction delegated by the Apostolic See can be subdelegated either for an act, or even habitually, unless the industry of the person was chosen or subdelegation was prohibited.

§ 3. Power delegated for a universality of affairs by one who below the Roman Pontiff has ordinary power can be subdelegated in individual cases.

§ 4. In other cases delegated power of jurisdiction can be subdelegated only from a concession expressly made, but delegated judges can subdelegate some non-jurisdictional article even without an express commission.

§ 5. No subdelegated power can again be subdelegated, unless this has been expressly granted (Can. 199).

As regards § 2, thus C. 43 *de officio et potestate delegati*, 1, 29: "But he to whom it is enjoined that he personally execute the affair can, provided the parties consent, delegate this to others; except if we should command that an inquiry be made, or that provision be made for churches concerning prelates or other ministers; since in all these cases we seem to choose the industry and fidelity of the person to whom we commit such things." Cf. St. Alphonsus, n. 193; and *de Sacr. Poenit.* n. 566.

Article II. On the Causes Required for Dispensing

I say, 1st. For the liceity of a dispensation some cause is always required. The reason is that otherwise the superior will not be a faithful dispenser. For this reason he also sins who in such a case asks for a dispensation; for he induces the dispenser to an illicit thing, and therefore sins in the same kind of sin in asking as the legislator does in granting. - Cf. St. Thomas, 1-2, q. 97, art. 4.

I say, 2nd. But for validity no cause is required on the part of the one granting, if he dispenses in his own law or in the law of an inferior. The reason is that he who can bind can also loose; but it is otherwise if he dispenses in the law of his superior, because he is not presumed to have received the power of dispensing rashly.

I say, 3rd. For validity on the part of the petitioner, it is required that there be no essential obreption or subreption in the petition, or one which falls upon the motive cause, because the superior does not dispense except under a tacit condition, namely, if the prayers rest upon truth. Concerning pontifical matrimonial dispensations of a lesser grade, see below n. 921. - Cf. St. Alphonsus, n. 185.

These three statements are now confirmed by canon 84:

§ 1. From an ecclesiastical law let no dispensation be made without a just and reasonable cause, having taken into account the gravity of the law from which dispensation is made; otherwise a dispensation given by an inferior is illicit and invalid.

§ 2. A dispensation, in doubt concerning the sufficiency of the cause, is licitly sought and can licitly and validly be granted (Can. 84).

Questions

Question 1. Does a superior dispensing without cause in a grave matter sin gravely?

Response. Negatively, probably of itself, as regards the legislator; because, scandal or harm to others having been set aside, grave disorder in the commonwealth will not arise from the fact that one or another person does not observe the law by dispensation. But it must be said otherwise as regards an inferior, because he is not judged delegated to dispense except for a just cause; and therefore if he acts otherwise, he gravely abuses the power granted to him, and admits a fault grave from its kind. - Cf. St. Alphonsus, nn. 178-180.

Question 2. Is it licit to ask for or grant a dispensation in doubt whether the cause suffices?

Response. Affirmatively, as to both; as is clear from the canon 84, § 2, cited just now. - Cf. St. Alphonsus, n. 187.

You Will Resolve. 1st. A dispensation granted from a just cause to some wicked person, whom the superior reputed upright, is valid, even if, had the wickedness been known, he would not have dispensed; the reason is that uprightness is not reputed a motive cause, but merely an impulsive cause. Except unless someone was moved on account of uprightness.

2nd. A dispensation is valid, although several false causes, even causes motive of themselves, have been set forth with true and sufficient causes; because where some true motive cause is present, a sufficient foundation of dispensation is supplied.

3rd. A dispensation granted by a superior is valid, although it had already been denied by an inferior and no mention is made of this denial.

4th. A dispensation obtained for someone ignorant of it, or even unwilling, is valid when necessity demands this. - Cf. St. Alphonsus, n. 186.

Article III. On the Cessation of Dispensation

I say, 1st. A dispensation which has a successive tract ceases in the same ways as a privilege, and also by the certain and total cessation of the motive cause (Can. 86). A dispensation which is virtually multiple, as in the Lenten fast, and, so to speak, renewed on individual days, has a successive tract.

A dispensation which does not have a successive tract, but an indivisible effect, for example, of taking away incapacity or an impediment, is judged to have been granted absolutely and is esteemed perpetual, and does not cease as the former dispensation does.

I say, 2nd. A dispensation altogether ceases when the express revocation of the superior supervenes, because obligation or deobligation depends on the will of the superior. Yet revocation without a just cause would be illicit. But it does not cease on account of the revocation of an inferior without a just cause, because the faculty of revoking is not in his arbitrary power. - Cf. St. Alphonsus, n. 197. - Nor does it cease if the revocation is made, even from a just cause, by one delegated for a particular dispensation; because his delegated power is extinguished after the dispensation has been granted. But it ceases if an inferior Prelate, by ordinary right or by delegation for the universality of causes,

granted the dispensation and revoked it from a just cause; because his power is not taken away after the concession has been made. - Cf. Wernz, *Jus Decret*. v. 1, n. 126.

I say, 3rd. A dispensation also ceases through renunciation; but for its validity acceptance by the superior is required, because only the superior can bind the will, just as he can also loose it from the bond of law. - Cf. St. Alphonsus, n. 198.

A dispensation does not cease by non-use, or by contrary use, or by a new dispensation, or by departure from the territory of the one granting a perpetual dispensation.

Chapter XI. On the Cessation of Law

I say. Law can cease in various ways, namely: 1st, by abrogation or derogation, according as it is abolished entirely or only in part; for just as a superior can make a law, so he can take away or restrict the same law; 2nd, by cessation of the adequate motive cause, or of the total end, on account of which it was made with respect to the whole community; for when the cause of the law ceases, the legislator cannot reasonably urge it; 3rd, by desuetude, or by a contrary custom clothed with due conditions; for then at least the legal consent of the superior accedes. Thus most commonly.

A later law, made by competent authority, obrogates a prior law if it expressly states this, or is directly contrary to it, or wholly orders anew the entire matter of the prior law; but with the prescription of can. 6, n. 1 remaining firm, a general law in no way derogates from the statutes of special places and singular persons, unless something else is expressly provided in the law itself (Can. 22).

In doubt, revocation of a preexisting law is not presumed, but later laws are to be drawn to prior laws and, as much as can be done, reconciled with them (Can. 23).

Question. Does a law cease when the final cause ceases only in a particular case, that is, with respect to some persons?

Response. A distinction must be made. If the end of the law ceases contrarily, the law ceases; for in that case the observation of the law is harmful or more difficult than is just. But if it ceases only negatively, the law does not cease; for the adequate end of the law regards those things which commonly happen, but not particular cases. Therefore these do not prevent the end of the law, and therefore the law itself, from persevering. Hence spouses are not exempted from the proclamation of banns, even if they know certainly that no impediment underlies the marriage. - This sentence concerning the obligation remaining when the end of the law ceases negatively is certain and to be held by all; and thus the Code of Canon Law says concerning a law founded on the supposition of danger: laws made for guarding against a general danger urge, even if in a particular case the danger is not present. Can. 21.

Note. - Precepts given to individuals urge those to whom they are given everywhere, but cannot be urged judicially and cease when the right of the one commanding has been resolved, unless they were imposed by a legitimate document or before two witnesses (Can. 24).

Part II. On the Principal Species of Laws

Chapter I. On Natural Law

Natural law, according to St. Thomas, is "the participation of the eternal law in the rational creature." If you unfold this definition a little, you will be able to say that natural law is a necessary divine command, manifested by natural light, commanding that right order be preserved, forbidding that it be disturbed. - For there exist essential relations of man to God, to himself, and to his neighbor; the complex of these constitutes the essential order, to the preserving of which God cannot not oblige the rational creature, because otherwise He would contradict Himself. Wherefore the author of natural law is God; the subject is the rational creature; the herald is the light of reason; the object, insofar as the law is prohibiting, is intrinsically evil actions, or actions which directly overthrow those relations; but insofar as it is commanding, the object is intrinsically good actions. The former, however, fall under precept at individual moments; the latter only then when, if they were not placed, that essential order would be violated. - Cf. St. Thomas, 1-2, q. 91, art. 2.

Question. Can the object of the law of nature sometimes be unknown?

Response. The primary principles of this law, for example, good is to be done, evil is to be avoided, do not do to another what you do not wish to be done to you, cannot be unknown by anyone. Likewise proximate conclusions, such as most precepts of the Decalogue, likewise cannot be unknown except either rarely or for a short time among the rude and children. But remote conclusions can be unknown, and often are unknown, as is clear from so many controversies which have always been agitated among the Doctors. Cf. St. Thomas, 1-2, q. 94, art. 4. - St. Alphonsus, nn. 170 and seq.; and *de Consc.* n. 8.

Chapter II. On Positive Divine Law

Positive divine law is twofold, namely old and new, and concerning each let it suffice to observe these few things.

I. The old law, or the law of the Old Testament, contained precepts of a threefold kind, namely: 1st, moral, which regarded moral rectitude and established that which had already been prescribed by natural law, as, for example, the precepts of the Decalogue; 2nd, ceremonial, which were referred to the worship of God and established ceremonies and sacrifices; 3rd, judicial, which pertained to political and economic administration, or to the right governance of the people.

The old law was abrogated by Christ, as being "set until the seed should come to whom He had promised," as the Apostle says, Galat. iii, 19. But the moral precepts which were contained in it have force by the force of natural and evangelical law.

II. The new or evangelical law, which is called the law of grace or of liberty, or the New Testament, contains documents of a threefold kind, namely: 1st, moral precepts, concerning virtues, especially theological virtues; 2nd, ceremonial precepts, concerning the sacraments and the sacrifice of the Mass; 3rd, mere counsels, but worthy of great reward.

The new law differs from the old law especially in the following: 1st, the old was shadow and figure; the new is light and truth. - 2nd, the old was a law of fear; but the new is a law of grace and love.

The old law is called imperfect, not indeed in itself, but relatively to a more perfect law. For it was perfect in itself, since it had God as author, and God through it attained the end which He had fixed for Himself.

The new law was made for all, and therefore obliges all, although those to whose notice it has not yet come are excused from observing it. For thus Christ says, Matth. xxviii, 19, 20: "Going therefore teach all nations, baptizing them in the name of the Father, etc., teaching them to observe all things whatsoever I have commanded you."

Chapter III. On Ecclesiastical Law

An ecclesiastical law is said to be one which is made by ecclesiastical power for the right governance of the Church and the eternal salvation of souls. - But the collection of various ecclesiastical laws constitutes canon law.

The body of canon law consists of six parts, constituting three volumes. They are: the *Decree of Gratian*, the *Decretals*, the *Sext*, the *Clementines*, the *Extravagants of John XXII*, and the *Common Extravagants*. Therefore:

I. The first part contains the *Decree of Gratian*, so called from Gratian, a Benedictine monk, collected and published in the year 1151 under the title: *The Concordance of Discordant Canons*. The work is distributed into three other parts, of which the first treats of ecclesiastical persons, the second of actions or of the matter and form of judgments, and the third of sacred things. - The first of these three parts is divided into one hundred and one distinctions, which are subdivided into chapters or canons; thus they are usually indicated: cap. *Jejunium* 7, dist. 76; or also: dist. 76, cap. 7. - But the second part is divided into thirty-six causes; the causes are divided into questions, and the questions into chapters. It is cited in the following way: cap. *Qui viderit* 13, quaest. 5, causa 32; or, causa 32, q. 5, cap. 13. - The treatise *de Paeniten.*, which is found toward the middle of cause 33 and has seven distinctions, is cited thus: cap. *Mensuram* 86, dist. 1, *de Paenitentia*; or, *de Paenitentia*, dist. 1, cap. 86. Finally, the third part consists of five distinctions, which are divided into various chapters. They are cited thus: cap. *Est unitas* 49, dist. 4, *de Consecrat.*, or, *de Consecrat.* dist. 4, cap. 49. For this part treats of the consecration of churches, altars, etc.

II. The second part of the body of law contains the *Decretals*, omitted by Gratian or issued after him, collected by St. Raymond of Penafort, of the Order of Preachers, by command of Gregory IX, and published in the year 1230. It is divided into five books, which have titles and chapters; moreover, they are cited in this way: cap. *Pervenit* 28, *de Appellationibus*; or, *Decretal.* lib. 2, tit. 28, cap. 28. - A chapter indicated in this latter way is found much more easily.

III. The third part contains the *Sext*. - The *Sext*, or sixth book of the Decretals, is so called because it is added to the five books of the Decretals of Gregory IX, and contains the Decretals issued from Gregory IX up to Boniface VIII. It appeared in the year 1298 by the authority of Boniface VIII; it is divided into five books, which also have titles and chapters. It is cited in the same way, but there is added *in Sexto*, or *apud Bonifacium*.

IV. The fourth part contains the *Clementines*, so called from Clement V, who commanded them to be collected after the Council of Vienne, over which he presided in the year 1311, and which are nothing other than Constitutions issued by Clement himself or by the Council of Vienne. John XXII

promulgated them in the year 1317 in five books, which, no otherwise than the Decretals and the Sext, consist of titles and chapters. They are likewise cited in the same way, but *in Clementinis* is added.

V. The fifth part contains the *Extravagants of John XXII*, or Constitutions which he himself issued in the prior years of his pontificate. They are so called because they wander outside the body of law collected up to this point. They are usually indicated thus: *Extrav. Joannis XXII*, tit. 4, cap. I.

VI. Finally, the sixth part contains the *Common Extravagants*, which are so called because they were issued by John XXII and by several other Pontiffs. These also are divided into five books, which have chapters with titles, but not numbered. They are ordinarily cited thus: cap. *Vas electionis, de Haereticis, Extravag. communib.*, or *Extrav. comm.* lib. 5, *de Haereticis*, cap. 2.

Other Constitutions of the Councils of Constance and Trent, and of the Roman Pontiffs, were afterward issued, but they had not yet been collected into the body of law.

The New Code of Canon Law. Pius X, "as soon as he took up the Pontificate ... entered upon the plan of gathering into one, in lucid order, all the laws of the Church issued up to these times; removed from it those things which were already abrogated or obsolete; others, where there was need, more suitably accommodated to our present morals; others also, if sometimes it seemed necessary or expedient, newly constituted."

Thus speaks the Supreme Pontiff Benedict XV concerning his Predecessor, who took care that the new Code of Canon Law be made with great daring. The matter had already long been among common desires, very arduous, scarcely possible to be done. But that great Pius, having shrunk from nothing which would enlarge the glory of God, set his hand to the work; he consulted the sacred Prelates of the Catholic world; he constituted a Council or Pontifical Commission with which rested the care of the whole affair; over this council, consisting of some Cardinals of the Holy Roman Church, the Pontiff himself presided constantly; the Cardinal Fathers chose some Consultors from men most expert in canon law and theology. Although very many theologians of the Church gave themselves wholly to this duty of codification, like a giant among all stood out Cardinal Peter Gasparri of the Holy Roman Church, a new star of ecclesiastical sciences, the eye of the council or commission and the heart of the whole work. When the codification was nearing its end, the volumes of the various books in which it was printed were transmitted to the Prelates, that they might make their observations known to the Apostolic See. Cardinal Gasparri expanded these and brought them to the Cardinals of the special Council, who were to examine what had to be changed in the canons.

But behold, fatal times entered the world; the Supreme Pontiff, mourning and to be mourned by the whole world, departed from life when the Code was almost complete. Benedict XV, gloriously reigning, was substituted for him; he left nothing undone that an end might be imposed upon the affair. At last, by his Constitution *Providentissima Mater Ecclesia*, on the feast day of Pentecost in the year 1917, he promulgated in these words the Code, arranged by command of Pius X and begun twelve years before: "Therefore, having invoked the aid of divine grace, relying on the authority of the Blessed Apostles Peter and Paul, by Our own Motu proprio, from certain knowledge and from the fullness of Apostolic power with which We are endowed, by this Our Constitution, which We will to be valid perpetually, We promulgate the present Code as it has been arranged, and decree and command that henceforth it have the force of law for the universal Church."

Then he decreed that it would have the force of obliging from the nineteenth day of the month of May in the year one thousand nine hundred eighteen.

Secretariat of State. - Concerning the Prescripts of Some Canons of the Code. - Bishops or other local Ordinaries, quite numerous, humbly asked Our Most Holy Lord Pope Benedict XV that, with no delay interposed, the prescripts of the Code begin to have force, that is, those which follow:

1st. Of canon 859, § 2;

2nd. Of canon 1108, § 3;

3rd. Of canon 1247, § 1;

4th. Of canons 1250, 1251, 1252, 1253, 1254.

The Most Blessed Father, in the audience given on the 19th day of the month of August to the undersigned Cardinal, benignly receiving the related petitions, decreed that the prescripts of the canons of which above have force from this very day; and besides, by Motu proprio, he granted that the Cardinals of the Holy Roman Church already now enjoy all and each of the privileges which are described in can. 239, § 1, 240, 600, n. 3, 1189, 1401 of the same Code. He commanded that all these things be promulgated, anything whatsoever to the contrary notwithstanding. From the Vatican buildings, on the 20th day of the month of August in the year 1917. P. Card. Gasparri, from the Secretariate of State.

This first Code of ecclesiastical laws, arranged by command of the Supreme Pontiff Pius X and promulgated by the authority of Benedict XV, is divided into five books. The first book, embracing General Norms, contains six titles, and canons 1-86. The second book, *On Persons*, contains three parts: one *On clerics both in general and in species*; another *On religious*; the third *On lay persons*; the first part has two sections, eight titles, and canons 108-486; before this part are placed canons 87-107 concerning various questions pertaining to diverse kinds of persons. The second part of the second book, *On religious*, contains nine titles, and canons 487-681. The third part of the same book, *On lay persons*, contains two titles, and canons 682-725. The third book, *On Things*, contains six parts: the first, *On the Sacraments*; the second, *On sacred places and times*; the third, *On divine worship*; the fourth, *On the ecclesiastical magisterium*; the fifth, *On benefices and other non-collegial ecclesiastical institutes*; the sixth, *On the temporal goods of the Church*. The first part of the third book, *On the Sacraments*, contains eight titles, and canons 731-1153; before this part are placed five canons concerning simony, 726-730; the second part, *On sacred places and times*, contains two sections, six titles, and canons 1154-1254; the third part, *On divine worship*, has five titles, and canons 1255-1321; the fourth part, *On the ecclesiastical magisterium*, contains five titles, and canons 1322-1408; the fifth part, *On benefices and other non-collegial ecclesiastical institutes*, contains two titles, and canons 1409-1494; the sixth part, *On the temporal goods of the Church*, contains four titles, and canons 1495-1551. Book fourth, *On Processes*, contains three parts: one *On trials*; another *On causes of beatification of the Servants of God and canonization of the Blessed*; the third, *On the mode of proceeding in certain affairs to be expedited or penal sanctions to be applied*. The first part, *On trials*, contains two sections, twenty-one titles, and canons 1556-1998; before this part are placed the more universal canons 1552-1555 *On trials*; the second part, *On causes of beatification*, etc., contains five titles, and canons 1999-2141; the third part, *On the mode of proceeding*, etc., contains seven titles, and canons 2142-2194. Book fourth, *On Delicts and Penalties*, contains three parts: one *On delicts*; another *On penalties*; the third *On penalties for individual delicts*. The first part contains three titles, and

canons 2195-2213; the second part contains two sections, seven titles, and canons 2214-2313; the third part contains nine titles, and canons 2314-2414.

For better understanding, interpreting, and applying this Code, the following canons or General Norms will be of service. Since these and the rest ordinarily are very perspicuous and brief, for the most part we shall cite them word for word, so that in any occurring question it may be clear to anyone what the law commands, and with what words it is expressed.

Although in the Code of Canon Law the discipline also of the Oriental Church is often referred to, nevertheless the Code itself regards only the Latin Church, and does not oblige the Oriental Church, unless it concerns those things which from the very nature of the matter also affect the Oriental Church (Can. 1).

The Code, for the most part, decrees nothing concerning the rites and ceremonies which the liturgical books, approved by the Latin Church, command to be observed in the celebration of the most holy sacrifice of the Mass, in the administration of the Sacraments and Sacramentals, and in the performance of other sacred things. Wherefore all liturgical laws retain their force, unless some one of them is expressly corrected in the Code (Can. 2).

The canons of the Code in no way abrogate agreements entered into by the Apostolic See with various Nations, nor do they obrogate anything from them; therefore these will continue to have force just as at present, the contrary prescripts of this Code in no way notwithstanding (Can. 3).

These agreements therefore remain in their full force. The question is of concordats, therefore not of this or that concession perhaps made to this or that nation. Concordats have force as if the Code did not exist.

Rights acquired by others, and likewise privileges and indults which, granted by the Apostolic See up to these times to persons whether physical or moral, are still in use and have not been revoked, remain entire, unless they are expressly revoked by the canons of this Code (Can. 4).[1]

A person is either physical or moral. By baptism a man is constituted a person with all the rights and duties of Christians, unless, as regards rights, an obstacle stands in the way, impeding the bond of ecclesiastical communion, or a censure imposed by the Church; the Catholic Church and the Apostolic See have the character of a moral person from divine ordination itself; other inferior moral persons in the Church obtain it either from the very prescript of law or from a special concession of the competent ecclesiastical Superior, given by formal decree for a religious or charitable end.

Privileges, etc., granted by the Apostolic See to these two persons, which are still in use and have not been revoked, remain entire unless they are expressly revoked by the canons.

Customs presently in force against the statutes of these canons, whether universal or particular, if indeed they are expressly reprobated by the canons themselves, are to be corrected as corruptions of law, even if they are immemorial, and are not to be permitted to revive in the future; others, which indeed are centenary and immemorial, can be tolerated if the Ordinaries, according to the circumstances of places and persons, judge that they cannot prudently be removed; the rest are to be held suppressed, unless the Code expressly provides something else (Can. 5).

The Code for the most part retains the discipline in force up to this point, although it introduces opportune changes. Therefore:

1st. Any laws whatsoever, whether universal or particular, opposed to the prescripts of this Code, are abrogated, unless concerning particular laws something else is expressly provided;

2nd. Canons which refer the old law in its entirety are to be esteemed from the authority of the old law, and therefore from interpretations received among approved authors;

3rd. Canons which agree only in part with the old law, insofar as they agree, are to be esteemed from the ancient law; insofar as they differ, they are to be judged from their own sentence;

4th. In doubt whether some prescript of the canons differs from the old law, there is not to be a departure from the old law;

5th. As regards penalties of which no mention is made in the Code, whether they are spiritual or temporal, medicinal or, as they call them, vindicative, latae or ferendae sententiae, they are to be held as abrogated;

6th. If any of the other disciplinary laws which have been in force up to now is contained neither explicitly nor implicitly in the Code, it must be said to have lost all force, unless it is found in approved liturgical books, or the law is of divine right, whether positive or natural (Can. 6).

Under the name Apostolic See or Holy See in this Code come not only the Roman Pontiff, but also, unless from the nature of the matter or from the context of speech something else appears, the Congregations, Tribunals, and Offices through which the same Roman Pontiff is accustomed to expedite the affairs of the universal Church (Can. 7).

On the Roman Curia. The Roman Curia consists of Sacred Congregations, Tribunals, and Offices, as they are enumerated and described below (Can. 242).

§ 1. In the individual Congregations, Tribunals, and Offices, discipline is to be observed and affairs are to be handled according to the norms, both general and particular, which the Roman Pontiff has furnished to them.

§ 2. All who belong to the Congregations, Tribunals, and Offices of the Roman Curia are held to preserving secrecy within the limits and according to the mode determined from the discipline proper to each one (Can. 243).

§ 1. Nothing grave or extraordinary is to be done in these Congregations, Tribunals, and Offices unless it has previously been signified to the Roman Pontiff by their Moderators.

§ 2. Any graces and resolutions whatsoever need pontifical approval, excepting those for which special faculties have been bestowed upon the Moderators of those Offices, Tribunals, and Congregations, and excepting the sentences of the Tribunal of the Sacred Roman Rota and of the Apostolic Signatura (Can. 244).

A controversy, if any should arise, concerning competence among the Sacred Congregations, Tribunals, or Offices of the Roman Curia, is settled by a group of Cardinals of the Holy Roman Church whom the Roman Pontiff shall have designated on each occasion (Can. 245).

[1] Cf. Addenda, p. 1105, n. 47.

Article I. On the Sacred Congregations

Over each Congregation there presides a Cardinal Prefect, or, if the Roman Pontiff himself presides over them, a Cardinal Secretary directs them; to these are joined the Cardinals whom the Pontiff shall have judged should be assigned to them, together with other necessary ministers (Can. 246).

§ 1. The Congregation of the Holy Office, over which the Supreme Pontiff himself presides, protects the doctrine of faith and morals.

§ 2. It judges concerning those delicts which are reserved to itself according to its own proper law, with the power of seeing these criminal causes not only in the grade of appeal from the Tribunal of the local Ordinary, but also in first instance, if they have been brought directly to it.

§ 3. It alone takes cognizance of those matters which, whether directly or indirectly, in law or in fact, concern the privilege, as they say, Pauline, and the matrimonial impediments of disparity of cult and mixed religion; and likewise the faculty of dispensing in these impediments pertains to it. Wherefore any question whatsoever of this sort is to be referred to this Congregation, which nevertheless can, if it so judges and the case bears it, remit the question to another Congregation or to the Tribunal of the Sacred Roman Rota.[1]

§ 4. To the same Congregation pertains not only to examine diligently books brought before it, to prohibit them if need be, and to grant dispensations; but also to inquire ex officio, by whatever way will be more opportune, what writings of any kind should be condemned when they are published among the people, and to bring back to the memory of Ordinaries how religiously they are bound to take notice of pernicious writings and to denounce them to the Holy See, according to the norm of can. 1397.

§ 5. It alone is competent concerning all those things which regard the eucharistic fast for priests celebrating Mass (Can. 247).

§ 1. The Prefect of the Consistorial Congregation is the Roman Pontiff himself. Besides others, there belong to it ex officio the Cardinal Secretary of the Holy Office, the Prefect of the Congregation of Seminaries and Universities of Studies, and the Secretary of State. Among its Consultors there are always the Assessor of the Holy Office, the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs, and the Secretary of the Congregation of Seminaries and Universities of Studies.

§ 2. To this congregation it pertains not only to prepare the matters to be treated in Consistories, but besides, in places not subject to the Congregation of the Propagation of the Faith, to constitute new dioceses and provinces and chapters, both cathedral and collegiate; to divide dioceses already constituted; to propose Bishops, Apostolic Administrators, Coadjutors, and Auxiliaries of Bishops to be constituted; to order canonical inquiries or processes concerning those to be promoted, and diligently to weigh the acts and scrutinize their doctrine, saving the prescript of can. 255.

§ 3. On this Congregation depend all those things which pertain to the constitution, conservation, and state of dioceses. Wherefore it watches over the fulfilled or less fulfilled obligations by which Ordinaries are held; it takes cognizance of those things which are related in writing by Bishops concerning the state of their dioceses; it orders apostolic visitations and examines those already

finished, transmitting in each case to the individual Congregations, for deliberation, the affairs which pertain particularly to them (Can. 248).

§ 1. To the Congregation set over the discipline of the Sacraments has been entrusted the entire legislation concerning the discipline of the seven Sacraments, saving the right of the Congregation of the Holy Office concerning those things which are stated in can. 247, and of the Congregation of Sacred Rites concerning the rites and ceremonies which ought to be observed in confecting, administering, and receiving the Sacraments.

§ 2. Therefore to it pertain all those things which are customarily decreed and granted both in the discipline of marriage and in the discipline of the other Sacraments, and also in the celebration of the Eucharistic Sacrifice, excepting only those things which have been reserved to other Congregations.

§ 3. It also and exclusively takes cognizance of the fact of non-consummation of marriage and of the existence of causes for granting dispensation, and also of all those things which are connected with these. Nevertheless it can remit cognizance of all these matters, if it has judged it expedient and the case bears it, to the Sacred Roman Rota. Likewise, questions concerning the validity of marriage can be brought to it, which nevertheless, if they require a more accurate discussion or investigation, it remits to the competent tribunal. In the same way to it pertains to see concerning obligations annexed to major orders, and to examine questions concerning the validity of sacred ordination, or to remit them to the competent tribunal. And so on concerning the other Sacraments (Can. 249).

§ 1. To the Congregation of the Council that part of affairs is committed which is referred to the universal discipline of the secular clergy and of the Christian people.

§ 2. Wherefore it is for it to take care that the precepts of Christian life be observed; with the faculty of opportunely dispensing the faithful from the same; to moderate those things which regard pastors and canons; or which touch pious sodalities, pious unions, even if they depend on religious or are erected in their churches or houses, pious legacies, pious works, Mass offerings, benefices or offices, ecclesiastical goods, movable and immovable, diocesan taxes, episcopal curial taxes, and other things of this sort. To it is reserved also the faculty of exempting from the conditions required for the obtaining of benefices, as often as the collation of them pertains to Ordinaries; of admitting to composition those who occupy ecclesiastical goods, even belonging to religious; of permitting the faithful to acquire ecclesiastical goods usurped by civil power.

§ 3. It also sees concerning all those things which pertain to ecclesiastical immunity, and likewise concerning controversies about precedence, saving the right of the Congregation concerning religious members and of the Ceremonial Congregation.

§ 4. To it pertain all those things which are referred to the celebration and recognition of Councils and to assemblies or conferences of Bishops, outside places which are subject to the Congregation of the Propagation of the Faith.

§ 5. But this Congregation is competent in all controversies touching affairs committed to it which it has judged must be handled in a disciplinary line; the rest are to be referred to the competent tribunal (Can. 250).

§ 1. The Congregation set over the affairs of religious societies claims to itself exclusively those things which regard the governance, discipline, studies, goods, and privileges of religious societies of

either sex, bound both by solemn and by simple vows, and of those who, although without vows, nevertheless live a common life in the manner of religious, and likewise of secular third orders, saving the right of the Congregation of the Propagation of the Faith.

§ 2. Therefore, questions to be handled by judicial order having been remitted to the competent tribunal, and with the right of the Congregation of the Holy Office and of the Congregation of the Council remaining always unimpaired concerning affairs pertaining to them, this Congregation settles all questions concerning affairs within its competence in a disciplinary line; but if the question concerns a religious member and a non-religious person, it can also, especially at the instance of a party, if it has judged it equitable, remit the same question to another Congregation or tribunal.

§ 3. Finally, to this Congregation is reserved the concession of dispensations from common law for religious members, with the prescript of can. 247, § 5 remaining firm (Can. 251).

§ 1. The Congregation for the Propagation of the Faith presides over missions for preaching evangelical and Catholic doctrine, constitutes and changes necessary ministers, and has the faculty of treating, acting, and executing all things necessary and opportune in this matter.

§ 2. It takes care of all those things which pertain to the celebration and recognition of Councils in places subject to it.

§ 3. Its jurisdiction is circumscribed by those regions where, the sacred hierarchy not yet having been constituted, the state of mission perseveres. To this Congregation are also subject regions which, although a hierarchy has been constituted there, still remain in an inchoate state. To it are likewise subject societies of ecclesiastics and Seminaries which have been founded exclusively for this end, that missionaries for external missions be instituted in them, especially as regards their rules, administration, and opportune concessions required for sacred ordinations of students.

§ 4. But this Congregation is held to refer to the competent Congregations affairs which either touch faith, or matrimonial causes, or general norms concerning the discipline of sacred rites to be handed down or interpreted.

§ 5. But as regards religious members, the same Congregation claims to itself whatever touches religious as missionaries, whether taken individually or together. But whatever touches religious as such, whether individually or together, it remits or leaves to the Congregation set over the affairs of religious (Can. 252).

§ 1. The Congregation of Sacred Rites has the right of seeing and establishing all those things which practically regard the sacred rites and ceremonies of the Latin Church, but not those things which more broadly are referred to sacred rites, of which sort are rights of precedence and other things of that kind, concerning which there is disputation either with judicial order observed or in a disciplinary line.

§ 2. Therefore it especially belongs to it to watch that sacred rites and ceremonies be diligently observed in celebrating the Sacred [Sacrifice], in administering the Sacraments, in performing the divine offices, and finally in all those things which regard the worship of the Latin Church; to grant opportune dispensations; to bestow insignia and privileges of honor, both personal and temporary, and local and perpetual, which pertain to sacred rites or ceremonies; and to take care lest abuses creep into these things.

§ 3. Finally, it handles all those things which are referred in any way to the beatification and canonization of Servants of God or to sacred relics (Can. 253).

§ 1. To the Ceremonial Congregation pertains the moderation of ceremonies to be observed in the Pontifical Chapel and Court, and of the sacred functions which the Cardinal Fathers perform outside the pontifical chapel; and likewise the same Congregation takes cognizance of questions concerning the precedence both of the Cardinal Fathers and of Legates whom various Nations send to the Holy See (Can. 254).

To the Congregation for Extraordinary Ecclesiastical Affairs it pertains to constitute or divide dioceses, or to promote suitable men to vacant dioceses, as often as these matters must be handled with civil Governments; moreover, the Congregation applies itself to those affairs which are subjected to its examination by the Supreme Pontiff through the Cardinal Secretary of State, especially from those which have something joined with civil laws and are referred to pacts agreed upon with various Nations (Can. 255).

§ 1. The Congregation of Seminaries and Universities of Studies watches over all things which pertain to the governance, discipline, temporal administration, and studies of Seminaries, with the right of the Congregation of the Propagation of the Faith remaining unimpaired. To the same is likewise committed the moderation of the governance and studies in which athenaea, or those which they call Universities or Faculties, which depend on the authority of the Church, ought to be engaged, including those which are directed by members of some religious family. It weighs and approves new institutions; it grants the faculty of conferring academic degrees and hands down norms by which they ought to be conferred; and where there is question of a man commended by singular doctrine, it can itself confer them.

§ 2. In this Sacred Congregation are numbered, among others, the Cardinal Secretary of the Consistorial Congregation and, among the Consultors, the Assessor of the same Congregation (Can. 256).

§ 1. Over the Congregation for the Oriental Church the Roman Pontiff himself presides. To this Congregation are reserved all affairs of every kind which are referred either to the persons, or to the discipline, or to the rites of the Oriental Churches, even if they are mixed, that is, which by reason either of the matter or of the persons also touch Latins.

§ 2. Wherefore for Churches of the Oriental rite this Congregation possesses all faculties which the other Congregations obtain for Churches of the Latin rite, with the right of the Congregation of the Holy Office remaining unimpaired according to the norm of can. 247.

§ 3. This Congregation settles controversies by disciplinary way; but those which it has judged must be settled by judicial order it will remit to the tribunal which the congregation itself shall have designated (Can. 257).

[1] Cf. Addenda, p. 1146, n. 119.

Article II. On the Tribunals of the Roman Curia

§ 1. Over the Sacred Penitentiary is placed the Cardinal Major Penitentiary. The jurisdiction of this tribunal is restricted to those things which regard the internal forum, even the non-sacramental forum; wherefore this tribunal for the internal forum alone grants graces, absolutions, dispensations,

commutations, sanations, and condonations; besides, it examines questions of conscience and settles them.

§ 2. It is also for the same tribunal to judge concerning all those things which pertain to the use and concession of indulgences, saving the right of the Holy Office of seeing those things which regard dogmatic doctrine concerning the same indulgences or concerning new prayers and devotions (Can. 258).

Causes requiring judicial order are handled before the Sacred Roman Rota and before the Supreme Tribunal of the Apostolic Signatura within the limits and according to the norms handed down in can. 1598-1605, saving the right of the Congregation of the Holy Office and of the Congregation of Sacred Rites in causes proper to themselves (Can. 259).

Article III. On the Offices of the Roman Curia

§ 1. To the Apostolic Chancery, over which presides the Cardinal Chancellor of the Holy Roman Church, this proper duty belongs: to expedite apostolic letters or bulls for the provision of consistorial benefices and offices, for the institution of new provinces, dioceses, and chapters, and for the carrying out of other greater affairs of the Church.

§ 2. These letters or bulls are not to be expedited except by mandate of the Consistorial Congregation concerning affairs pertaining to its competence, or by mandate of the Supreme Pontiff concerning other affairs, with the limits of the mandate itself observed in individual cases (Can. 260).

To the Apostolic Dataria, which is moderated by the Cardinal Datary of the Holy Roman Church, it is committed to take cognizance of the suitability of those to be promoted to non-consistorial benefices reserved to the Apostolic See; to draw up and expedite apostolic letters for their collation; to exempt, in conferring a benefice, from the required conditions, as often as its collation does not pertain to the Ordinary; and to take care of the pensions and burdens which the Supreme Pontiff shall have imposed in conferring the aforesaid benefices (Can. 261).

To the Apostolic Camera, over which presides the Cardinal Camerarius of the Holy Roman Church, belongs the care and administration of the temporal goods and rights of the Holy See, especially at the time when it is held vacant; and then the norms established in the constitution of Pius X *Vacante Sede Apostolica*, 25 Dec., 1904, are to be observed with exactness (Can. 262).

The Office of the Secretariat of State, whose moderator is the Cardinal Secretary of State, consists of three parts in this order:

1st. The first part, over which presides the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs, is occupied with affairs which must be subjected to the same Congregation for examination, according to the norm of can. 255, the rest being remitted, according to their diverse nature, to particular Congregations;

2nd. The second part, over which the Substitute presides, applies itself to ordinary affairs;

3rd. The third part is directed by the Chancellor of Apostolic Briefs, who is devoted to the expedition of Briefs (Can. 263).

To the Secretariats of Briefs to Princes and of Latin Letters belongs the duty of writing in Latin the acts of the Supreme Pontiff committed to them by the same (Can. 264).

The Council or Commission for authentically interpreting the canons of the Code was instituted by the Supreme Pontiff Benedict XV, by Motu proprio *Cum juris*, on the fifteenth day of the month of September in the year 1917.

1. To this Commission alone will belong the right of authentically interpreting the canons of the Code, yet with that Sacred Congregation heard in matters of greater moment whose proper affair it is. It consists of some Cardinals, one of whom presides over the assembly; to these there will be added an approved man who will be Actuary of the Sacred Council, and Consultors from both clergies; the Council will have the right of interrogating the Consultors of the Sacred Congregations, each according to his own matter.
2. Let the Sacred Roman Congregations from now on not make new General Decrees, unless grave necessity persuades otherwise. Therefore their ordinary duty will be both to take care that the prescripts of the Code be religiously observed, and to issue Instructions which bring greater light to the same precepts and produce efficacy. These documents are to be composed so that they are and appear as certain explanations and complements of the canons.
3. When the good of the universal Church will demand that a new decree be established by some Congregation, let that Congregation establish the decree; but if it disagrees with the prescripts of the Code, let it warn the Supreme Pontiff concerning the discrepancy. The Congregation is to refer the decree approved by the Supreme Pontiff to the Council, whose role it will be to draw up a canon according to the sentence of the Decree. If the Decree disagrees with a prescript of the Code, let the Council indicate for which law of the Code the new law is to be substituted; if the matter concerns a thing about which the Code is silent, let the Council establish in what place the new canon is to be inserted, with the number of the canon which immediately precedes repeated twice, three times, etc., lest any canon be moved from its place or the series of numbers be disturbed. All these things, after the Decree of the Sacred Congregation, are to be reported in the *Acta Apostolicae Sedis*.

Sacred Congregation for the Oriental Church. To it are reserved all affairs of whatever kind which are referred either to the persons, or to the discipline, or to the rites of the Oriental Churches, even if they are mixed, that is, which by reason either of the matter or of the persons also touch Latins. The Supreme Pontiff presides over it; he created it by Motu proprio *Dei providentis* on the 1st day of the month of May, in the year 1917.

Cf. Ferreres, *Razon y Fe*, t. 491; *La Civilta Cattolica*, an. 1917, 1918; Boudinhon, *Revue du Clerge Francais*, t. 92; *The Irish Ecclesiastical Record*, 1917, 1918; *The Irish Theological Quarterly*, 1917, 1918. - *The American Ecclesiastical Review*, 1917, 1918; Papi, *Religious Profession* - Marc, *Institutiones Morales*, Ed. 15, Supplement, 1917.

Chapter IV. On Civil Law

Civil law or civil right is a collection of laws by which each nation is directed to the common good, whatever finally may be its form of government. - But in a stricter sense, by the name civil law sometimes is understood a certain special collection of laws by opposition, for example, to military, criminal laws, etc. - Indeed among us civil law (*the civil law*) is taken to denote Roman right. - Cf. Bouvier, *Law Dictionary*, under the word *Law*. - Kenrick, *Append.* to tract. 6, *de leg. civ. variet.*

Question. Of how many kinds especially is the right in force in this our region?

Response. Roman right (*the civil law*), common right (*the common law*), and statute right (*the statute law*). - I have said especially, because in Louisiana, for example, much of French right is in force, especially as regards inheritance and succession of goods, and something of Spanish right. - Therefore:

I. Roman right, which elsewhere is called common, and among us civil, has always been held in great honor as full of wisdom and as if written reason. It is contained in the celebrated Code, or body of civil law, published by order of Justinian. This volume is distributed into four parts. In the first part are the *Institutes of Justinian*, which, as rudiments and elements for beginners of civil law, are contained in four books. But in the second part are the *Digests* or *Pandects*, which are distributed into 50 books. - In the third is the code, called *Of Repeated Reading*, divided into 12 books. - Finally, in the fourth part are contained 68 *Authentics* or *Novels*, which are designated in numerical order.

II. Common right is the complex of principles, customs, and norms of acting which among us are applied for the protection of persons and property, and which are not founded on an express and positive declaration made by legislative assemblies.

III. Statute right is the complex of laws which emanate from legislative assemblies, by a positive and express act. - Cf. Kent, vol. I, nn. 447, 472 and 473. - Bouvier, *Law Dictionary*, under the word *Law*. - Kenrick, *Append.* to tract. 6, *de leg. civ. variet.*, n. 1.

Chapter V. On Penal Law

A penal law is that which does not oblige in conscience to doing or omitting something, except under a temporal penalty, that is, to accepting the penalty as just, after it has been inflicted.

I say. A simply penal law is not repugnant; but it would be repugnant if it were purely penal, that is, if it in no way obliged in conscience. The reason for the first is that for the essence of law it is sufficient that some obligation be imposed in conscience, whatever that may be. But the reason for the second is that otherwise that law would lack some essential element, namely the force of binding, and rather would have to be called counsel. Cf. St. Alphonsus, n. 145.

Questions

Question 1. Can it be said that, at the present day, all civil laws are penal?

Response. If it is a question of right, it is certain that any legislators whatever can so will; for law obtains force from their will. But as regards fact, it is generally admitted that all laws regarding taxes imposed on merchandise which is transported, and which are called customs duties, are penal; but concerning other laws there is not a little doubt. A few only, perhaps not improbably, contend that at the present day there is sufficient certainty concerning this will, because legislators seem to trust not indeed to consciences, but only to force and penalties. - Whatever the case may be, it is altogether better never to speak of this matter among the people, especially the more untaught, and to lead them gently to fulfilling all laws. - Cf. St. Alphonsus, n. 147. - Kenrick, tract. 6, chap. 3, n. 20. - *Acta S. Sedis*, vol. 7, pp. 219 and seq.

But concerning our laws it cannot be said universally that they are merely penal. For certainly, if the manner of acting of the legislators is considered, it is clear that they not only do not spurn but also consult the authority of God in framing laws: something which daily is to be seen in our legislative halls. The same men enact the laws as men who know that the greatest bond of unity and obedience is reverence owed to authority. Therefore, since the affirmative opinion among us rests upon no such presumption at all, it must altogether be said that the legislators themselves wish to issue laws in a manner suitable and necessary to the republic: but this manner, in very many matters, is to compel in conscience to acting according to the law: thus, for example, where the object of the law pertains directly to promoting the good morals of the republic and restraining offenses; or is held necessary for preserving its peace, for protecting the rights of the family and of individuals, for keeping agreements safe and sound, for public offices to be discharged sincerely; in these and similar cases laws in no way are to be held as merely penal, but as truly obliging under fault and penalty.

Question 2. Are there any laws of the Church simply penal?

Response. It is certain that the rules of many religious Orders are simply penal; but that it is in the power of the Church to establish laws of this kind, if she wishes, even with regard to the universality of the faithful, cannot be doubted. Nevertheless she rarely uses, indeed perhaps has never used, this power, because she for the most part does not enact laws except concerning things necessary, or at least of great moment, pertaining to the salvation of souls, in which it is more expedient that conscience be obliged than that penalty be inflicted. Besides, since in fact she lacks the means for coercing, her legislative power would be diminished. - Cf. Reuter, n. 126.

Note. - § 2. Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from any penalty, whether *latae* or *ferendae sententiae*, even in the external forum, if the excuse for the external forum is established (Can. 2218, § 2).

Chapter VI. On Invalidating Law

An invalidating law is that which establishes that some act is invalid from the beginning, or is to be invalidated by the sentence of a judge; and therefore some laws invalidate by the fact itself, while others do so only after sentence. Besides, some are invalidating absolutely, and others conditionally, namely if the required conditions are lacking. Finally, some immediately invalidate the act itself, and others mediately, by rendering the persons themselves incapable. Cf. however below, n. 928.

I Say 1st. Every legislator can establish invalidating laws. The reason is that this is required for the common good; for otherwise frauds and dangers of human society could not be sufficiently warded off.

I say 2nd. Laws which establish that acts can be rescinded do not invalidate them before the sentence of a judge, as is clear from the terms, and therefore before the sentence of the same judge they do not obtain force. But when the sentence has been rendered, one must altogether stand by it in all those things which intrinsically arise from the invalidation, because the commanding authority must be obeyed.

I say 3rd. In canon law only those laws are to be held as invalidating or inhabilitating by which either that an act is null or that a person is incapable is expressly or equivalently established (Can. 11). But

these do not press in a doubt of law; and in a doubt of fact they can be dispensed from by the Ordinary. - Cf. Can. 15.

Questions

Question 1. Does an invalidating law oblige in conscience to avoiding the act?

Response. Affirmatively, if it is at the same time invalidating and prohibiting, as are laws establishing impediments of marriage; otherwise, if it is invalidating only, because then the end of the law is sufficiently obtained by the sole invalidation of the act, as in many civil contracts. Cf. Reuter, n. 232.

Question 2. Does invincible ignorance impede the effect of invalidation?

Response. Negatively, because ignorance does not supply the defect of a thing essentially required, nor does it remove the grave inconveniences which would follow if the law did not invalidate in every case. As is clear from the Code:

§ 1. No ignorance of invalidating or inhabilitating laws excuses from the same, unless something else is expressly said (Can. 16). And also: Ignorance of irregularities, whether from delict or from defect, and of impediments does not excuse from the same (Can. 988). Cf. Sanchez, *de Matrim.*, lib. 9, disp. 32, n. 17.

Question 3. Does an invalidating law invalidate, notwithstanding a very grave inconvenience?

Response. Affirmatively, unless it is a question of common harm; the reason is both because an invalidating law affects the act rather than the person, and because if otherwise were said, men would more easily imagine inconveniences for themselves, and the law would lose its whole force.

Chapter VII. On Unwritten Law, or on Custom

Custom considered causally, or as others say, custom of fact, is the frequency of similar acts of some community; but regarded formally, or custom of right, it is a certain right arisen from the frequency of similar acts of some community. Custom of fact often is nothing but an abuse, and the discourse here is not about it, but only about custom of right.

Custom is chiefly divided into custom beside the law, according to the law, and against the law. The first is a certain new law, which therefore constitutes right where written law commands or prohibits nothing. The second is that which interprets or confirms a law already existing, and this constitutes right, not where law is wholly lacking, but where it is lacking as regards interpretation, or firmness and observance. Finally the third is that which is established against the reception of a law, or for abolishing a law already received, and this establishes derogatory right where a written abrogating law is lacking. - Cf. Bouix, *de Princip.*, pp. 350 and seq.

I say. Custom, clothed with the due conditions, introduces right, and has force after the manner of written law. This is clear from very many places of canon law, especially from cap. *In his*, Dist. 11, from the unanimous consent of the Doctors, and specially from St. Thomas, 1-2, q. 97, art. 3.

Questions

Question 1. What are the conditions required for legitimate custom?

Response. Several are enumerated by the Canonists; the chief ones are the following:

(a) On the part of the custom itself it is required that it be reasonable, not indeed in this sense, that it is not sinful, for ordinarily those who first introduce it against the law sin, but that it is not against divine or natural right, nor breaks the nerve of ecclesiastical discipline. - Cf. St. Thom. ib. - Bouix, *de Princip.*, p. 362.

(b) A community which is at least capable of receiving ecclesiastical law can introduce a custom which obtains the force of law (Can. 26), and the reason is that custom is a law which binds the whole community, and therefore must arise from the whole community. Cf. Scavini, n. 285. - Bouix, *de Princip.*, p. 357.

(c) On the part of the acts it is required that these be 1st. free, because otherwise the efficient cause would be lacking, namely the consent of the people; 2nd. frequent and uniform, otherwise it could not be known that this consent is present; 3rd. continuous, because prescription ceases through interruption; 4th. done with the intention of obliging themselves or of introducing a custom, because custom is a law which does not oblige unless there is present a will of binding; 5th. of long duration, otherwise prescription would not be had. - Cf. Bouix, ibid.

(d) Custom in the Church obtains the force of law solely from the consent of the competent ecclesiastical Superior (Can. 25). For if the Superior in no way consents, and *a fortiori* if he resists, nothing can be established by subjects for the good of the community. Personal consent is either express or tacit; the first is easily understood; the other is present when the Prince knows the custom and yet does not contradict it, though he can conveniently contradict it. But legal consent, which is also called general or juridical, is that which is given through law, or through right itself, which in advance and universally approves all reasonable and legitimately prescribed customs. For consent of this kind it is not required that the Prince know the custom. The opinion of the Doctors is most common that legal consent is admitted by canon law as sufficient for strengthening a custom, provided that it is reasonable and has endured for the time required for prescribing. This is clear from cap. *Cum tanto*, 11, tit. 4, *de Consuetudine*, lib. 1, Decret. - Cf. Reiffenstuel, in 1, Decret., tit. 4, § 5, n. 138. - Bouix, *de Princ.*, p. 370.

Question 2. Whether length of time is always required, and what sort it ought to be?

Response. If the Prince expressly or tacitly consents to the custom, length of time is not required; for as soon as the will of the Prince accedes to the will of the subjects, all are obliged. But it is required if custom is to be strengthened through legal consent: for thus the laws demand, and indeed wisely, lest more quickly than is fitting, while the Prince is unaware, new laws be introduced or old ones be abrogated.

§ 1. No custom can in any way derogate from divine right, whether natural or positive; but neither does it bring prejudice to ecclesiastical right, unless it has been reasonable and legitimately prescribed through forty continuous and complete years; but against an ecclesiastical law which contains a clause prohibiting future customs, only a reasonable centenary or immemorial custom can prescribe.

§ 2. A custom which is expressly reprobated in law is not reasonable (Can. 27).

A custom beside the law, which has knowingly been observed by the community with the intention of obliging itself, introduces law, if likewise it has been reasonable and legitimately prescribed

through forty continuous and complete years (Can. 28). - Cf. St. Alphonsus, n. 107; and *Hom. Ap.*, n. 11.

Note. - With the prescript of can. 5 remaining firm, a custom against the law or beside the law is revoked by a contrary custom or law; but, unless it shall have made express mention of the same, a law does not revoke centenary or immemorial customs, nor does a general law revoke particular customs (Can. 30).

Chapter VIII. On Favorable Law, or on Privilege

A privilege is a constant and permanent grace conceded by a superior to certain persons or certain dignities, against or beside common law. - It is distinguished in many ways, for it is: 1st. personal, local, or real, according as it is conceded to a certain person, or to the inhabitants of a certain place, or to some thing, for example, to a certain Church; 2nd. against the law or beside the law, according as through it derogation is made from some law or otherwise; 3rd. favorable or odious, according as it benefits the privileged person with the burden of others excluded, or burdens others while favoring one.

I Say 1st. A privilege against the law can be conceded only by those who are able validly to dispense from the law, and indeed to subjects alone, no otherwise than if it were a question of dispensation, because it is a certain kind of dispensation. But a privilege beside the law, or a privilege improperly so called, can be conceded even to non-subjects, because it is not an act of jurisdiction, but an act of mere faculty and as it were a donation. Thus a Prince can concede to a foreigner the privilege of hunting in his territory.

I say 2nd. A favorable privilege is to be interpreted broadly; but an odious privilege ought to be of strict interpretation. Each is shown from law, and the common consent of the Doctors accords.

I say 3rd. No one is bound of himself to use a privilege, because each one can renounce his own right; yet sometimes by accident the privileged person is obliged to the use of the privilege: 1st. by reason of charity; thus one who has the faculty of absolving from reserved cases is bound to hear a sinner who has reserved sins and is placed in grave necessity; 2nd. by reason of the common good, namely when the privilege is not personal but real, attached to a place or dignity or state; thus all clerics ought to use the privilege of immunity, and regulars cannot renounce the privilege of exemption. - Cf. St. Alphonsus, *Append. de privileg.*, nn. 3 and seq.

All these things are confirmed in the new Code: No one is compelled to use a privilege conceded only in his own favor, unless an obligation arises from another head (Can. 69).

I say 4th. § 1. Privileges can be acquired not only through direct concession of competent authority and through communication, but also through legitimate custom or prescription.

§ 2. Centenary or immemorial possession introduces the presumption of a conceded privilege (Can. 63).

Questions

Question 1. In what way does a privilege cease?

Response. § 1. Privileges cease through renunciation accepted by the competent Superior.

§ 2. Any private person can renounce a privilege constituted only in his own favor.

§ 3. It is not lawful for private persons to renounce a privilege conceded to some community, dignity, or place.

§ 4. Nor is it within the power of the community or body itself to renounce a privilege given to itself after the manner of law, or if the renunciation yields to the prejudice of the Church or of others (Can. 72).

When the right of the one granting is dissolved, privileges are not extinguished, unless they have been given with the clause: *at our good pleasure*, or another equivalent clause (Can. 73).

A personal privilege follows the person and is extinguished with him (Can. 74).

Real privileges cease through the absolute destruction of the thing or place; but local privileges, if the place is restored within fifty years, revive (Can. 75).

A privilege also ceases if, in the progress of time, the circumstances of things are so changed, in the judgment of the Superior, that it has become harmful, or its use becomes illicit; likewise when the time has elapsed or the number of cases for which the privilege was conceded has been completed, with the prescript of can. 207, § 2 remaining firm (Can. 77).

Question 2. In what place can one use his privilege?

Response. If in the concession some local restriction has been added, this is to be observed accurately. If such a restriction has not been added, in general one can use his privilege in the whole territory of the one granting; indeed he can also use it outside this territory if the privilege is personal. Nevertheless it must be noted that travelers, from general custom, can enjoy the privileges of the place through which they travel.[1]

Note. - § 1. Habitual faculties which are conceded either in perpetuity or for a predefined time or a certain number of cases are reckoned among privileges beside the law.

§ 2. Unless in their concession the industry of the person has been chosen, or something else has been expressly provided, habitual faculties conceded by the Apostolic See to a Bishop or to others of whom in can. 198, § 1, do not vanish when the right of the Ordinary to whom they were conceded is dissolved, even if he has begun to execute them, but they pass to the Ordinaries who succeed him in governance; likewise those conceded to a Bishop also belong to the Vicar General.

§ 3. A conceded faculty carries with itself also the other powers which are necessary for its use; wherefore in the faculty of dispensing there is included also the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation (Can. 66).

A privilege is to be judged from its own tenor, nor is it lawful to extend or restrict it (Can. 67).

In doubt privileges are to be interpreted according to the norm of can. 50; but that interpretation is always to be employed by which those enriched with a privilege may seem to have obtained some grace from the indulgence of the one granting (Can. 68).

[1] Cf. Addenda, p. 1142, n. 113.

Chapter IX. On the Reckoning of Time and Rescripts

I. - On the Reckoning of Time

Saving liturgical laws, time, unless something else is expressly provided, is to be reckoned according to the norm of the canons which follow (Can. 31).

§ 1. A day consists of 24 hours to be reckoned continuously from midnight, a week of 7 days.

§ 2. In law under the name of a month comes a space of 30 days, but under the name of a year a space of 365 days, unless month and year are said to be taken as they are in the calendar (Can. 32).

§ 1. In reckoning the hours of the day one must stand by the common usage of the place; but in the private celebration of Mass, in the private recitation of the canonical hours, in receiving sacred communion, and in observing the law of fast or abstinence, even if the usual reckoning of the place is otherwise, one can follow the time of the place, or local time, whether true or mean, or legal time, whether regional or some other extraordinary time.[1]

§ 2. As regards the time for urging the obligations of contracts, unless it has been otherwise agreed by express compact, the prescript of the civil law in force in the territory is to be observed (Can. 33).

§ 1. If month and year are designated by their proper name or equivalently, for example, in the month of February, in the next future year, they are to be taken as they are in the calendar.

§ 2. If the term *from which* is assigned neither explicitly nor implicitly, for example, suspension from the celebration of Mass for a month or two years, three months of vacations in a year, etc., the time is reckoned from moment to moment; and if the time is continuous, as in the first example brought forward, months and years are taken as they are in the calendar; if interrupted, a week is understood as 7 days, a month as 30, a year as 365.

§ 3. If the time consists of one or several months or years, one or several weeks, or finally several days, and the term *from which* is assigned explicitly or implicitly:

1st. Months and years are to be taken as they are in the calendar;

2nd. If the term *from which* coincides with the beginning of the day, for example, two months of vacations from the 15th day of August, the first day is computed for completing the enumeration and the time is ended at the beginning of the last day of the same number;

3rd. If the term *from which* does not coincide with the beginning of the day, for example, the fourteenth year of age, the year of novitiate, eight days from the vacancy of the episcopal see, ten days for appealing, etc., the first day is not computed and the time is ended when the last day of the same number has been completed;

4th. But if the month lacks a day of the same number, for example, one month from the 30th day of January, then according to the diverse case the time is ended at the beginning or at the completion of the last day of the month;

5th. If it is a question of acts of the same kind to be renewed at fixed times, for example, three years for perpetual profession after temporary profession, three years or some other space of time for renewing an election, etc., the time is ended on the same recurring day on which it began, but the new act can be placed through the whole of that same day (Can. 34).

Useful time is understood as that which so belongs to someone for the exercise or prosecution of his right that it does not run for one who is ignorant or unable to act; continuous time, that which suffers no interruption (Can. 35).

[1] Cf. Addenda, p. 1126, n. 84.

II. - On Rescripts

§ 1. Rescripts both of the Apostolic See and of other Ordinaries can be obtained freely by all who are not expressly prohibited.

§ 2. Graces and dispensations of every kind conceded by the Apostolic See are valid even for those bound by censure, saving the prescript of can. 2265, § 2, 2275, n. 3, 2283 (Can. 36).

A rescript can be obtained for another even without his assent; and although he himself can choose not to use the grace conceded through the rescript, nevertheless the rescript is valid before his acceptance, unless something else appears from the added clauses (Can. 37).

Rescripts by which a grace is conceded without an executor interposed have effect from the moment at which the letters were given; the others from the time of execution (Can. 38).

Conditions in rescripts are then only considered essential for the validity of the same when they are expressed by the particles *if*, *provided that*, or another of the same signification (Can. 39).

In all rescripts there is understood, even if not expressed, the condition: If the petitions rest upon truth, saving the prescript of can. 45, 1054 (Can. 40).

In rescripts of which there is no executor, the petitions must rest upon truth at the time at which the rescript was given; in the others at the time of execution (Can. 41).

§ 1. The concealment of truth, or subreption, in the petitions does not prevent the rescript from having force and being valid, provided that those things have been expressed which according to the style of the Curia must be expressed for validity.

§ 2. Nor does the statement of falsehood, or obreption, prevent it, provided that either the one cause proposed, or at least one motive cause out of several proposed, is true.

§ 3. A defect of obreption or subreption in only one part of the rescript does not weaken another part, if several graces are conceded together through one rescript (Can. 42).

A grace denied by one Sacred Congregation or Office of the Roman Curia is invalidly conceded by another Sacred Congregation or Office, or by the local Ordinary, even one having power, without the assent of the Sacred Congregation or Office with which or with whom the matter had begun to be treated, saving the right of the Sacred Penitentiary for the internal forum (Can. 43).

§ 1. Let no one seek from another Ordinary a grace denied by his own Ordinary, with no mention made of the denial; but when mention has been made, let the Ordinary not concede the grace, unless the reasons for the denial have been had from the prior Ordinary.

§ 2. A grace denied by the Vicar General and afterward obtained from the Bishop with no mention made of this denial is invalid; but a grace denied by the Bishop cannot validly be obtained from the Vicar General, even when mention of the denial has been made, if the Bishop does not consent (Can. 44).

When the clause *Motu proprio* is added to rescripts obtained at the petitions of someone, these indeed are valid if in the petitions a truth otherwise necessarily to be expressed is kept silent, but not if a false final cause, and that the only one, is proposed, saving the prescript of can. 1054 (Can. 45).

Rescripts, even those conceded *Motu proprio*, to a person incapable by common law of obtaining the grace in question, and likewise those issued against the legitimate custom or special statute of some place, or against a right already acquired by another, are not sustained unless an express derogatory clause is added to the rescript (Can. 46).

Rescripts are not rendered void because of an error in the name of the person to whom or by whom they are conceded, or of the place in which he resides, or of the thing concerning which the matter is treated, provided that, in the judgment of the Ordinary, there is no doubt concerning the person or thing itself (Can. 47).

A rescript of the Apostolic See in which no executor is given must be presented to the Ordinary of the one obtaining it only when this is prescribed in the same letters, or when it concerns public matters, or when it is necessary to verify certain conditions (Can. 51).

Rescripts for the presentation of which no definite time has been set can be exhibited to the executor at any time, provided fraud and deceit are absent (Can. 52).

The executor of a rescript invalidly performs his duty before he has received the letters and has recognized their authenticity and integrity, unless previous notice of the same has been transmitted to him by the authority of the one rescripting (Can. 53).

§ 1. If in a rescript the mere ministry of execution is committed, the execution of the rescript cannot be denied, unless either it is manifestly clear that the rescript is null by defect of subreption or obreption, or in the rescript there are added conditions which the executor knows have not been fulfilled, or the one who obtained the rescript seems so unworthy, in the judgment of the executor, that the concession of the grace would be for the offense of others; but if this last thing happens, the executor, with execution suspended, is immediately to inform the one rescripting concerning the matter.

§ 2. But if in a rescript the concession of the grace is committed to the executor, it belongs to him, according to his prudent judgment and conscience, to concede or deny the grace (Can. 54).

Treatise IV. On Sins

Part I. On Sins in General

Chapter I. On the Nature of Sin

Sin is commonly said to be the free transgression of any law obliging in conscience, or, from St. Thomas after St. Augustine, a word, deed, or desire against the eternal law of God. - Cf. St. Thom. 1-2, q. 71, art. 6. - St. Alphonsus, n. 1.

Sin is distinguished in many ways: for it is 1st. actual or habitual, according as it is an act or omission not conformed to law, or the state of sin not yet blotted out; 2nd. mortal or venial, according as it dissolves divine friendship, or does not dissolve it and is only a slight offense of God, which can easily merit pardon; 3rd. of commission or omission, according as it is done by the placing of a prohibited act, or by the omission of a commanded act; 4th. against God, neighbor, or oneself, according as the sinner violates duties owed to God, to neighbor, or to himself; 5th. of malice, ignorance, or infirmity, according as it is committed from mere malice, from vincible ignorance, or from mere frailty; 6th. formal or material, according as some law obliging in conscience is violated knowingly and freely, or altogether involuntarily. - Cf. St. Thom. 1-2, qq. 72 and 88.

Principle

For any formal sin there is essentially required advertence of the mind and consent of the will. For formal sin, as is gathered from its very definition, must necessarily be a human act: but it is repugnant that any human act be given without advertence of the mind and consent of the will. Therefore. - Besides, according to that saying of Matt. xv, 19: "From the heart come forth evil thoughts, murders, adulteries, fornications, thefts, false testimonies, blasphemies," sin is completed by the heart, namely, by the will; but since the will is a blind faculty, it cannot seek the malice of sin unless it is enlightened by the aid of the intellect. Therefore for formal sin there is essentially required advertence of the mind and consent of the will. - Cf. St. Thom. 1 p. q. 19, art. 1; and 1-2, q. 74, art. 1 and 5. - St. Alphonsus, n. 5.

You Will Resolve. 1st. Evil acts have that malice which is apprehended; wherefore, if cognition occurs concerning such malice, or malice so specified, this is truly contracted through the act of the will, whatever finally may be the objective malice considered in itself.

2nd. If ignorance which is vincible, and consequently culpable in the beginning, afterward becomes invincible, the evil act which is placed by force of this ignorance is not sin in itself, but the whole account of sin is to be repeated from the cause alone, namely from the degree of culpability of that ignorance together with foresight of future acts. Moreover ignorance is to be called invincible if no thought any longer occurs concerning past negligence, or concerning actual ignorance.

3rd. If some sin has been foreseen in its cause, and then is placed with advertence, by an act formally distinct from the prior act, there will be had a twofold sin, namely 1st. in the voluntary cause, 2nd. in

itself.

4th. The blinded and those accustomed to sin, although, because of defect of clearer cognition, perhaps sometimes they sin less gravely in act than others, nevertheless are not excused. Yet if sometimes they perpetrate evil acts from custom altogether inadvertently, although these acts cannot be called sins in themselves, for here and now they are not voluntary, nevertheless, since they are voluntary in their cause, they are imputed to them: indeed the strict obligation of correcting an evil custom always presses.

5th. The same thing must be said of other sins which are voluntary merely in their cause; namely, then guilt is formally contracted when the cause is placed, and since the whole guilt resides formally in the cause, it will be present in the same way whether acts of this kind follow or not, and whether these same acts are repeated in fewer or greater number: but when they actually follow, each of them constitutes one evil act with the cause. - Cf. St. Alphonsus, n. 4. - Baller., note (a), p. 125; and note (a) and (b), p. 126.

6th. However much the soul is struck by the stimuli of evil tinder or of evil concupiscence, and however clear the cognition of these stimuli may be, there will never be any stain of sin unless the will in some way consents to them. The reason is that sin, in its whole extent, is completed by the will, but not by imagination or by the stimuli of the flesh. Wherefore the Council of Trent, sess. 5, can. 5, says: "This holy Synod confesses and judges that concupiscence or tinder remains in the baptized: and since it has been left for combat, it cannot harm those not consenting, and those manfully resisting by the grace of Christ Jesus."

7th. But these stimuli or motions of concupiscence, after advertence of reason, must be resisted at least in some way, nor is it sufficient then to bear oneself negatively or neutrally. The reason is both because these motions always bring with them some danger of consent, and because they contain some disordering of nature. But if you ask what sort of sin it is so to bear oneself negatively or neutrally, the answer is, according to the truer opinion, that it is only venial, with always excluded the case in which the danger of consent is grave, or at least is apprehended as grave.

8th. But if all motions must be resisted, this must especially be said of the motions of concupiscence in a venereal matter, which must not be retained even under the pretext of struggle and exercise of virtue. Nevertheless there is no obligation to resist them directly, since such resistance sometimes stirs them up more; much less is material resistance necessary.

9th. Not only as regards carnal motions, but also as regards motions against faith and charity, merely indirect resistance through distraction of the mind is to be advised, rather than any direct resistance or assault.

10th. Nor likewise are we bound to direct resistance against every temptation which is prolonged for a long time; for this would be too troublesome and liable to innumerable scruples. - Cf. St. Alphonsus, nn. 6 and seq.

Chapter II. On the Gravity of Sin

The gravity of sin is the quantity or measure of malice by which sin is more or less offensive to God: it is called mortal if, because of the violation of a law gravely obliging, it dissolves divine friendship

and renders man guilty of eternal damnation; otherwise it will be venial. - Cf. St. Thom. 1-2, q. 88, art. 1.

It must be noted here that some sins are said to be mortal from their whole genus, and others simply mortal from their genus (not whole). The former are those whose matter, of itself, setting aside erroneous conscience, semi-full advertence, or imperfect consent, always contains grave disorder within its whole genus, as happens in lust, blasphemy, heresy, etc. But the others are those whose matter, within its genus, is now grave, now slight, of which sort are sins against justice. - But sins are said to be venial from their genus which, considered according to the matter or nature of the object, do not admit grave guilt within their genus, and therefore, until they are transferred into another genus by a new mortal deformity accruing from elsewhere, they cannot be mortal. Cf. St. Alphonsus, n. 51. - Lacroix, n. 199.

I say 1st. Not all sins are equal, but some are graver than others. Proof 1st. from Sacred Scripture: Jerem. vii, 26: "And they have done worse than their fathers." St. John xix, 11: "He who handed me over to you has the greater sin." Proof 2nd. from reason. What is said, with due proportion, of the injuries of men against God must be said of the injuries of sons against parents, or of subjects against Princes; but these certainly differ among themselves by reason of gravity: therefore those also. Besides, sins are opposition to virtues and precepts; but some virtues are more excellent than others, and some precepts are graver than others; therefore opposition to these will be graver or less grave. From another side also the evil intention of the delinquent can admit various degrees of malice, as is clear. Therefore.

I say 2nd. There are mortal sins. Proof 1st. from Sacred Scripture. I Cor. vi, 9, 10: "Do not err: neither fornicators, nor those serving idols, nor adulterers, nor the effeminate, nor those who lie with males, nor thieves, nor the avaricious, nor drunkards, nor revilers, nor the rapacious will possess the kingdom of God." Rom. i, 32: "Those who do such things are worthy of death." I St. John iii, 14: "He who does not love remains in death." Add innumerable other testimonies of Sacred Scripture, from which it is very clearly established that many men, because of their sins, are to be rejected by God and tormented with eternal penalties. Proof 2nd. from the authority of the Church: for the Church teaches that there are mortal sins. Thus Trent, sess. 6, can. 27: If anyone shall have said that there is no mortal sin except that of infidelity, or that grace once received is lost by no other sin, however grave and enormous, except the sin of infidelity, let him be anathema. Likewise sess. 14, c. 5 says: It is necessary that all mortal sins be recounted by penitents in confession.

I say 3rd. There are merely venial sins. Proof 1st. from Sacred Scripture: Prov. xxiv, 16: "The just man will fall seven times." Therefore he who falls or sins while he is just does not sin mortally, since he is not deprived of justice: therefore only venially. Therefore. Likewise St. James iii, 2: In many things we all offend; but we do not all sin mortally, since many are just before God, as is clear from many places of the Old and New Testament, for example, as is said of Zachariah and Elizabeth, Luke i, 6; of St. Joseph, Matt. i, 19, etc. Therefore there are just persons not immune from sin; therefore there are venial sins. Proof 2nd. from the definition of the Church; in Trent, in the place cited above, it is said: "Venial sins, by which we are not excluded from the grace of God, and into which we fall more frequently, can be expiated by many other remedies (besides the Sacrament of Penance)." It is clear also from proposition 20 of Baius, condemned by Pius V and other Supreme Pontiffs, which sounds thus: "There is no sin venial by its own nature, but every sin merits eternal penalty." Proof 3rd. from

reason: for among friends there are slight offenses which do not dissolve friendship; therefore similarly such offenses ought to be given toward God. Therefore.

Questions

Question 1. What things are required for mortal sin?

Response. Three things are necessarily required, namely grave matter either in itself or because of circumstances; full advertence to the grave malice of the act; full consent of the will into the transgression. Therefore:

There is required 1st. grave matter, otherwise a law obliging under grave sin could not be had.

There is required 2nd. full advertence of mind, otherwise there will not be full deliberation.

There is required 3rd. full consent of the will, because unless the sinner, with full consent and full deliberation, prefers the object of sin to God, and thus establishes his ultimate end in the creature, he cannot be said to withdraw totally from God. Besides, it is altogether alien to the divine goodness to consign man to eternal damnation either because of a slight transgression or because of an act not perfectly free and voluntary. Cf. St. Alphonsus, nn. 5, 6, and 53.

Question 2. What things are required for venial sin?

Response. For venial sin there are required and suffice some advertence, however slight, to the malice of the act, and some consent of the will, however imperfect: they are required indeed because, when these have been removed, there can be no cognition and volition of evil, and therefore no sin; but they suffice because, when these have been posited, cognition and volition of evil, which are necessary for constituting sin, are had in some way.

Question 3. In what way can sins be recognized as mortal by reason of matter?

Response. A threefold rule is assigned.

Rule I. Recourse must be had to Sacred Scripture, and those sins must be judged mortal which in Sacred Scripture are declared worthy of death, or exclude from the kingdom of heaven, or which are expressed with the particle *woe*, which indeed denotes truly grave deformity. Thus the Apostle says concerning the works of the flesh, Galat. v, 19: "Which are fornication, uncleanness, immodesty, luxury ... I foretell to you, as I have foretold, that those who do such things will not possess the kingdom of God." - Recall also the long series of mortal sins which the Apostle enumerates, I Cor. vi, 9 and 10.

Rule II. Recourse must be had to the Church, or to the definitions of the Supreme Pontiffs, to the Decrees of general Councils, etc., in which many things are declared mortal, or only venial. For the Church is the pillar of truth, and therefore from her doctrine the rule and measure of morals is to be taken.

Rule III. Recourse must be had to the Holy Fathers, to the Doctors of the Church, and also to the common doctrine of theologians. For the Holy Fathers and Doctors were placed by God in the midst of the Church as burning lamps for driving away the darkness of error, and for illuminating the faithful in the way of truth. But theologians know better than others how to interpret the testimonies of Scripture and of the Fathers, and the Decrees of the Church, and how to compare cases not defined

with defined ones, cases not declared with declared ones, and from parity or similitude to draw opportune conclusions. Therefore those things which by them unanimously or almost unanimously are held as mortal are to be judged as such; for the consent of Doctors is an indication of truth.

But when the preceding rules are lacking, it is very difficult to determine when a sin is grave or slight. Generally there are judged grave 1st. all sins which are directly against God or some perfection of his: likewise all sins which tend to the grave prejudice of the human race, as are the species of lust; 2nd. all sins which gravely repugn the end of great moment intended by the law, such as the omission of fast, Mass, annual confession, paschal communion, etc.; 3rd. all sins by which the neighbor is gravely injured in the goods of life, fortune, reputation, etc., such as homicide, detraction very harmful to the neighbor, notable theft, etc.

For the rest, the limits between mortal and venial sin very often can in no way be determined, as is clear from the innumerable controversies of the Doctors concerning this matter. But a mortal sin is not to be asserted unless it is certainly established concerning it, as St. Alphonsus rightly notes. Cf. *Systema Mor.*; and *de Sacram. Poenit.*, nn. 604 and 605.

128. Question 4. In what way does a sin mortal from its genus become venial, and vice versa?

Response. A sin mortal from its genus can become venial in a fourfold way, namely by reason of: 1st. smallness of matter; 2nd. imperfect advertence; 3rd. imperfect consent; 4th. erroneous conscience. But a sin venial from its genus can become mortal: 1st. by reason of erroneous conscience; 2nd. by reason of scandal; 3rd. by reason of an end gravely evil; 4th. by reason of formal contempt of the law, or of the authority commanding; 5th. by reason of an evil affection toward a thing otherwise slightly evil, so that one is prepared to transgress even a precept obliging gravely; 6th. by reason of danger or of a proximate occasion of falling into mortal sin; 7th. finally by reason of any circumstance which contains mortal malice in itself and accedes to the act, as St. Thomas well observes, in such a way that it changes its species. - Cf. St. Thom. 1-2, q. 88, art. 1, 2, and 5. - St. Alphonsus, n. 54.

Question 5. Would he sin gravely who wished to avoid only mortal sins, and cared not at all about committing venial sins?

Response. Negatively, more probably, according to a sufficiently common opinion of theologians, even if this were done from purpose, and not from mere carelessness, provided contempt or peculiar frailty is excluded. The reason is that a soul so disposed does not of itself and necessarily introduce a proximate danger of sinning gravely. But in practice the matter is slippery, since facility in sinning venially is the cause why the soul is gradually weakened, and more easily at length is overcome by grave temptations, according to that saying of Ecclus. xix, 1: "He who despises little things will fall little by little." - Cf. St. Alphonsus, *de Praeceptis partic.*, n. 12.

Question 6. Does he sin gravely who deliberates about furnishing consent to a gravely illicit thing, if at last he does not consent?

Response. The solution of the question depends on the quality of the deliberation; for if this is imperfect, namely if it is nothing but a certain hesitation, or an omission of resistance arising from torpor, sluggishness, or negligence, the sin will not exceed venial. - But if the deliberation is full, the sin will certainly be mortal, because the will then implicitly places some created good before God; for by the very fact that it seriously deliberates, weighing on either side the advantages and temporal

evils arising from sin, it shows itself prepared to violate the law if it shall have perceived some utility in this violation. - Cf. Lacroix, nn. 226 and seq. - Sanchez, *in Decalog.*, lib. 1, cap. 1, n. 16.

Question 7. Does he sin gravely who, without sufficient cause, places an action from which he is going to suffer base motions?

Response. 1st. Affirmatively, when a man stirs up these evil motions deliberately. For such a one consents to evil delectation to such a degree that he expressly seeks it.

2nd. Negatively, when, no cause being given on the part of the one suffering, these motions arise naturally and spontaneously, and the danger of consent is absent, as the matter is evident.

3rd. Affirmatively, when he places an action which of itself gravely influences these evil motions, and which itself is a grave sin in the genus of lust. Thus St. Alphonsus, lib. 3, n. 482: "If the cause of pollution gravely influences it and the man does not abstain from placing that cause or action, it is clear that the pollution is imputed as sin, even if it was not intended, provided that it was foreseen at least in a confused way. Causes of this kind are without doubt all those which of themselves are grave faults in the genus of lust. Therefore all pollutions arising from these causes certainly are mortal. And then (note this) that base act which is the cause of pollution has a special malice against nature." And again in the same place, n. 484: "The common and more probable opinion teaches that it is not mortal unless it arises from a cause mortal of itself in the genus of lust. The reason why the cause ought to be mortal is that, since pollution is not willed in itself but only in the cause, it will be evil in that degree in which the cause itself is evil. The reason why the cause ought, besides, to be evil in the same genus of lust is that, since the cause concurs only slightly toward pollution, there is not a grave obligation of avoiding it on account of pollution, which happens beyond intention."

Therefore if there is present a just reason for placing a licit action, for example, to study, to heal, to hear confessions, no guilt is contracted from these effects: likewise no guilt, if a cause outside the genus of lust in no way influences of itself the evil effects, but these follow only by accident: there will be only slight guilt if a cause outside the genus of lust only slightly influences the effects. If the action is within the genus of lust, an indirectly voluntary gravely evil effect will be imputed only when the action itself gravely and proximately influences this effect and is a mortal sin against the sixth.

You Will Resolve. 1st. Where it is not clear that some sin is grave, the confessor ought not to be hasty in judging that it is actually grave, both objectively and subjectively, because in doubt one must stand for the minimum, or at least the matter is to be left to divine judgment. - St. Alphonsus, n. 52.

2nd. In doubt concerning perfect consent you will judge in favor of the penitent: 1st. if he is of a timorous conscience and habitually prepared rather to die than to offend God; 2nd. if, becoming more fully advertent to the temptation, he was terrified and at once repelled it; 3rd. if he does not know whether, awake or sleeping, whether fully master of himself, he did or willed anything evil. Elbel, n. 578. - St. Alphonsus, lib. 6, n. 476.

3rd. A confessor does not satisfy his office if he applies no care by which he removes the penitent from frequency of venial sins, especially of those which are admitted with full advertence. For one who strives in no way at all to avoid venial sins is accustomed little by little at length to slip into mortal sin. - See Cases, n. 144 and seq. - Roncaglia, c. 1.

Chapter III. On the Distinction of Sins

Article I. On Specific Distinction

The specific distinction of sin arises from a special malice, or from the diverse deformity by which one sin differs essentially from another.

Various rules are assigned by theologians for knowing this specifically diverse deformity. The first of all, and the more fundamental, they take from the diversity of objects; for as all human acts, so also sins are distinguished primarily and of themselves in species according to their objects. - Cf. St. Thom. 1-2, q. 72, art. 1. But precisely because this rule is fundamental and remote, the Doctors establish two others, which are proximate, easier, and more accommodated to practice.

Rule I. The specific distinction of sins is taken from opposition to diverse virtues, or from opposition indeed to the same virtue but according to the diverse offices which it prescribes to be observed, or finally from opposition to the same virtue according to its extremes. The reason for the first is clear, because individual virtues have their own special and altogether distinct goodness; therefore sins opposed to them also necessarily contract a special turpitude. Thus denial of revealed truth, despair, and hatred of God differ among themselves in species, because they are opposed to three diverse virtues, namely faith, hope, and charity. - The reason for the second is that a virtue which demands that diverse offices be observed is virtually multiple, and to violate it according to these imports a diverse repugnance to the moral order. Thus homicide, theft, and detraction differ among themselves in species, although they are opposed to the same virtue, namely justice, because they are opposed to diverse offices of the same virtue, which commands that no one be injured whether in the goods of life, or in the goods of fortune, or in the goods of reputation. The reason for the third is that extremes are contraries, and contraries, according to St. Thom. 1-2, q. 72, art. 8, differ according to species; thus presumption and despair differ among themselves in species, because one through excess, the other through defect, is opposed to the same virtue of hope. - Cf. St. Alphonsus, n. 31.

Rule II. The specific distinction of sins is taken also from violation of precepts morally diverse. For sin is transgression of law or of a precept; therefore where precepts differ among themselves in moral species, the sins opposed to them also ought to differ in species. Thus omission of Mass on a feast day, omission of the commanded fast, omission of annual confession or paschal communion, differ among themselves in species. But precepts are called morally diverse as often as they have a diverse object, such as fast, hearing of Mass, abstinence from meats; or as often as the intrinsic motive of the precept is diverse, although the object is the same. Thus he who in Lent omits the fast to which from another source he is bound by reason of sacramental penance commits a twofold sin diverse in species. On the contrary, theft is one sin, although it is prohibited by divine and human law, because the reason of the prohibition is the same. - Cf. St. Alphonsus, n. 33.

But if someone rightly attends, he will perceive that this second rule either is reduced to the first, or at least cannot in any way be brought into use without the first. For the objects of various precepts are diverse in the genus of morals only because they pertain to diverse virtues, or to diverse offices of the same virtue; but the intrinsic motive of each precept is the very virtue or office of virtue to which the precept is referred.

You Will Resolve. 1st. He commits four diverse sins who, bound by a vow of chastity, sins with a married blood-relative, because he violates four diverse virtues, namely chastity, religion, piety, and

justice.

2nd. He sins in a threefold way who kills a priest or religious in a church; because he violates justice by killing, and religion in two specifically diverse ways, namely by violating a sacred person and a sacred place.

3rd. He does not commit sins diverse in species who omits Mass on a Sunday on which another feast of precept falls, for example, the Assumption of the Blessed Virgin Mary, nor he who violates the fast of a vigil or of Ember Days falling in Lent, because those precepts are not formally diverse, since the intrinsic and primary motive is the same.

4th. On the contrary, he perpetrates three sins diverse in species by one act who omits a fast to which on the same day he is obliged from a precept of the Church, from a vow, and from sacramental penance; for this reason in confession the violation of this threefold obligation must be disclosed.

Article II. On Numerical Distinction

It is certain that sins which are distinguished specifically are much more still distinguished in number; wherefore here it is asked only in what way the numerical distinction of sins within the same species is known.

Rule I. The numerical distinction of sins is taken from the diversity of total objects, or objects morally diverse. The reason is that the object, as St. Thomas teaches, is in some way the form of the act; and therefore it necessarily brings it about that the act is such as the object itself is. Therefore where there are several objects in number in the genus of morals, there are several acts in number in the same genus; where there is one object, the act is reputed to be one. Therefore there are as many sins as there are total objects. Cf. St. Thom. 1-2, q. 18, art. 2. - St. Alphonsus, n. 36. - But in the present matter we call that object total which either by its own nature so effects one moral thing that it is neither a part of another, nor is referred to another which completes it; or, if it can be referred to another as a part or complement, is not so intended by the one acting. Thus one total object is had in completed copulation, one likewise in a wound inflicted with the intention only of wounding; and therefore one and the same object, when by its nature it is not total, can be or not be total according to the varied manner in which it is intended.

Rule II. The numerical distinction of sins is also taken from the multiplicity of acts morally interrupted. For when acts of the will are morally interrupted, the individual acts become complete in themselves, nor can the following act be called a continuation of the preceding. Thus he who, on several occasions morally interrupted, strikes another or steals, commits as many sins as there are strikes or thefts, because these constitute so many diverse acts. - Cf. St. Alphonsus, n. 36.

But acts of the will are interrupted in a threefold way, namely: 1st. By retraction or express revocation of the will, because this prevents the later act from being joined with the former, for example, if someone retracts an evil will of acting badly, and afterward resumes it. 2nd. By voluntary cessation from the act, or by application of the mind to a diverse object, for example, if someone freely ceases from an evil purpose, and then returns to it. 3rd. By a sufficiently notable involuntary cessation, regard being had to the nature of the act, according to the judgment of prudent persons, for example, through sleep, distraction, occupation, etc.

But in order that these principles may be applied more easily, the following things must be kept before the eyes.

1st. Merely internal acts, which have no order to an exterior effect, for the most part are morally completed as soon as they are physically interrupted, and therefore of themselves are multiplied as many times as they are physically interrupted. The reason is that such acts, because of their simplicity both on the part of the object and on the part of the will itself, and because of the lack of any exterior effect in which they agree, speaking of themselves, are not morally continued, nor do they coalesce into one, since they have nothing, neither in themselves nor in another, by which they may be united with each other. Hence the penitent ought in confession to express, if he can, how many times he adhered to an internal temptation; but if he cannot, let him say approximately; or at least whether he gave consent very frequently during the course of the day. - I said of itself or for the most part that the matter is so, because if sometimes several acts of this kind proceed from the same impulse of passion, they will constitute one mortal sin, although some brief interval may have intervened between the acts. - Cf. St. Alphonsus, n. 37.

2nd. Internal acts with the purpose of placing an external action are multiplied as many times as the evil purpose is formally renewed, that is, as many times as through retraction or voluntary cessation it ceases to be, and afterward is assumed anew: for then the later act cannot be judged morally a continuation of the prior, and a new act of the will formally distinct intervenes. But if it ceases through involuntary cessation, it is judged to persevere virtually for some time, but not always and indefinitely, and therefore, when it is again assumed, it is not held as morally interrupted, provided that too long an interval of time has not intervened. But what such an interval ought to be can be defined only by the judgment of wise persons. For the same purpose endures for a greater or lesser time according to the varying intensity, and also according to the varying circumstances of persons, age, sex, disposition, etc. St. Alphonsus thinks that the impulse of one act, ordinarily speaking, can with difficulty be prolonged for more than two or three days. Hence, he says, one who so perseveres virtually in an evil will beyond two or three days ought in confession to explain the time, so that thus the number of internal acts concerning external sins may be understood morally. - Cf. Baller., note (a), p. 138.

3rd. External acts, or acts externally consummated, are multiplied as many times as the object is disparate, or terminated in itself; but they are not multiplied, even when a notable interval of time has been interposed, when they are as it were parts of a more principal act, or when they tend to one end. The reason is that then they effect one moral thing, which is not completed unless the principally intended act has been consummated. Thus he who has determined to perpetrate theft commits one sin, although through several days he has thought about it, has renewed the evil purpose more often, has undertaken a way to this, has sought an opportune time, etc.; for the prior act of the will is judged to persevere virtually in that very effect or external work. Cf. St. Alphonsus, n. 40.

You Will Resolve. 1st. He commits one sin who, intending fornication, touches a woman basely, kisses her, entices her by base conversations, and at last fornicates; for all those previous acts are ordered to consummating the act. But if from the beginning he had willed only to touch the woman, and afterward, induced by lust, completed copulation, there will be a twofold sin, and therefore it will not be enough if he confesses only the copulation. Cf. St. Alphonsus, n. 43.

2nd. A priest who wills to omit the whole Office on one day makes one sin, because the individual Hours on one side bespeak an order to completing one Office, and on the other their omissions are intended after the manner of one thing. But he would make two sins who first had willed only to omit Matins, and afterward refused to recite the remaining Hours, because there would be a twofold act of evil will plainly distinct.

3rd. He perpetrates one sin who, from the same impulse of passion, repeats an evil act many times, for example, several times basely touches himself or another, even with some interruption; several times strikes an enemy, or imprecates very many evils upon him, etc.; for there is one evil affection of the will, and those various actions are morally united. - Cf. St. Alphonsus, n. 50.

4th. He makes one sin who denies several articles of faith at the same time, because the motive of faith is one; therefore he is equally an unbeliever who denies one article and he who denies all. - Likewise probably he makes one sin who by the same act blasphemes the twelve Apostles; because all blasphemies against the Saints take their malice from one relation to God. - Cf. St. Alphonsus, n. 47.

5th. He makes one sin who, intending to steal some determined sum of money, takes it away on several occasions lest he be detected, because there is one evil act of the will, which is consummated in the last theft. On the contrary, he perpetrates several sins who on several occasions steals from the same mass of money, without having determined from the beginning to carry off the whole, because the individual thefts effect an object total in itself. - Cf. Baller., note (a), p. 141.

6th. He makes several sins who fornicates several times with the same woman; for each fornication is terminated in itself, or constitutes a total object by its own nature. - The same must be said concerning diverse pollutions. - Cf. St. Alphonsus, n. 46.

Questions

Question 1. Whether one sin or several sins are committed by one who by one act detracts from an entire religious community, or by one blow kills several men, or snatches a purse belonging to several associates?

Response. It is greatly controverted: according to St. Alphonsus and many others, several sins are committed in these cases, both because the rights of several are violated, and because detraction, a blow, or theft of this kind is virtually multiple in the judgment of prudent persons. - But many others, and theologians of great note, probably hold that only one sin is committed, because there is one act of the will, one account by which that multiple object is apprehended, and one external manifestation of the malice of the will. But to the reason taken from the violation of the rights of several, they respond that when someone does not obey different superiors commanding the same thing, he certainly commits one sin, although he violates the rights of several. - *A fortiori* the same Doctors teach that one sin is committed when, by one act of the will, one tends ineffectively to several objects apprehended after the manner of one thing, for example, if someone by one act should desire several women by simple affection or complacency. But in the case of an efficacious purpose of perpetrating something which would have to be reached by diverse external acts, there would be several sins; and therefore he would sin several times who efficaciously willed to omit several fasts, to approach several women, or the same woman several times. - Cf. St. Alphonsus, n. 45. - Lacroix, n. 149. - Baller., note (b), p. 141.

Question 2. Does he make several sins who detracts before several persons?

Response. Probably he makes only one sin, because to detract before several persons is only an aggravating circumstance: for the right to reputation is one among all, not multiple. Wherefore, practically speaking, there is no obligation of explaining in confession the number of persons before whom someone has detracted, but it suffices to say: I detracted before several persons. - Cf. St. Alphonsus, n. 49.

Question 3. Must the means employed for sinning be explained in confession, if the sin afterward was not consummated?

Response. Some affirm this, even if those means were not evil in themselves, as to undertake the journey, to carry a ladder for theft, etc., and their reason is that the sin then does not remain only internal, but becomes external by those means. For those actions, although they are indifferent in themselves, nevertheless become evil from the evil end.

But others probably deny it, unless those means are evil in themselves; in which case they ought to be indicated, and indeed all of them if they are diverse in species, as touches or obscene words employed for soliciting. Indeed others say that the means are not necessarily to be explained even when they are evil in themselves and diverse in species; but that it suffices if the sinner accuses himself thus, for example, I willed to commit fornication, but although I employed certain means, I could not. - Cf. D'Annibale, 1, n. 287, n. 15. - De Lugo, *De Poenit.*, n. 566. - Varceno, vol. 1, p. 259. - Baller., note (b), p. 143.

Question 4. Does he commit several sins who wishes several diverse evils upon an enemy?

Response. Affirmatively, of itself, if the intention of the one imprecating is borne determinately to evils of diverse species, for example, infamy and death; because desire takes its species from the desired object, as will be said below. But by accident there would be one sin, namely when these diverse evils are apprehended almost under the general account of evil, as means to ruin; which is accustomed to happen when imprecations proceed from an impulse of anger. - Cf. St. Alphonsus, n. 50; and *Hom. Ap.*, n. 65.

Part II. On Sins in Species

Chapter I. On Internal Sins

A threefold class of them is distinguished, namely:

1st. Morose delectation, or free complacency in an evil thing exhibited through imagination as present, without desire.

2nd. Joy, or deliberate approval of an evil work performed either by oneself or by another, by which the will holds the perpetrated evil as pleasing and acceptable.

3rd. Desire, or an act of the will seeking an evil thing as to be obtained, and therefore to be carried out by work. It is called efficacious if there is present an absolute purpose of carrying it out; inefficacious if there is present only conditioned consent, for example, if someone says: I would steal if I could; or I would fornicate with this woman unless I feared infamy, etc. Cf. St. Alphonsus, n. 15.

Therefore morose delectation is concerned with the object, not as it is in itself, but as here and now it is presented to the imagination; joy, on the contrary, and desire are concerned with the object as it once was or will be in itself.

I Say 1st. Desire of an evil thing, even inefficacious, is truly sin, and takes on the species both of the object and of the circumstances. The reason for the first is that it is base and dishonorable to desire absolutely or conditionally what it is not lawful to carry out. The reason for the second is that every desire, even inefficacious, tends toward its object, and therefore is a willing of the special malice of that object, and so contracts it. The reason for the third is the same; for desire, since it tends toward the object as to be carried out by work, reaches that object as it is in itself with its circumstances. Therefore it contracts the whole malice also of the circumstances. - Hence in confession, for example, of a desire of fornicating, there must be declared the circumstances of consanguinity, affinity, matrimonial bond, or vow of chastity which affect the desired person. - Cf. St. Alphonsus, n. 12.

I say 2nd. Joy likewise is sin, and indeed of the same species as the evil action with which it is concerned, and it likewise takes on the species of the circumstances annexed to it, no otherwise than desire itself. The reason is that joy, as we said above, is approval of past evil, which necessarily embraces the sinful act as it existed in itself, clothed namely with its circumstances. Hence one who, in the recollection of past sins, takes complacency in them and approves them, ought in confession to explain the object of this complacency and the circumstances changing the species, just as if he had sinned again in act.

To joy are to be reduced boasting concerning a committed sin, displeasure concerning an evil not perpetrated, and also sadness concerning a good performed.

I say 3rd. Morose delectation is certainly sin, and certainly also takes on the gravity and species of the objects exhibited to the mind. The reason for the first is that it is repugnant to rational nature and divine law for the will to hold as pleasing that which is discordant with right reason and displeases God. Besides, deliberate delectation concerning an evil object argues affection toward it; but affection toward an evil object is an evil affection, as is clear of itself. Therefore ... Hence in Osee ix, 10, it is said: "They became abominable like those things which they loved." But the reason for the second is that whoever takes delight in an object evil in itself approves it and adheres to it by his affection; and therefore the malice of that delectation will plainly be evil with the same gravity and species by which the object is evil. - Cf. St. Thom. 1-2, q. 74, art. 8. - St. Alphonsus, n. 15.

Questions

Question 1. Does morose delectation take on also the specific malice of the circumstances of the object, as desire and joy do?

Response. Negatively, probably, according to many theologians; and the reason is that simple delectation does not tend toward the object as it really exists, but rests in it as it is represented by phantasy. Moreover this, neither from the nature of the thing nor in fact, is accustomed to represent all circumstances, but only that one which moves the delectation more. - Cf. St. Alphonsus, n. 15. - Baller., note (a), p. 148.

Question 2. Is it lawful to desire an evil under the condition, if it were licit?

Response. Affirmatively, if the condition added removes the whole malice of the thing, because such an affection involves no disorder, neither in itself nor in the object from which by the condition malice is altogether excluded. But the response would be negative in another hypothesis, because such an affection tends toward an evil object, and indeed absolutely, since the condition does not remove malice from the object even as represented, as would be blasphemy, perjury, etc. Nevertheless he would probably be excused from grave sin who by such a desire certainly did not will that what is intrinsically evil should become licit, but only showed his propensity toward that object. - Cf. St. Alphonsus, n. 27; and *Hom. Ap.*, n. 50.

For the rest, no one fails to see how dangerous desires of this kind are, even if the condition added would remove the whole malice, especially in things prohibited by natural right, yet licit in some case or state; for example, I would kill my enemy if God commanded; I would take a wife if I were not a priest or bound by vow; I would gladly marry Bertha if I did not have a wife. Cajetan deservedly calls these desires foolish and diabolical temptations. Indeed also other conditioned desires concerning things prohibited only by positive right are to be dissuaded, because for the most part they are idle, and sometimes can labor under some disordered affection. - Cf. Cajet., under the title *Sins of Thought*.

Question 3. Is it lawful to be delighted concerning the inculpable omission of some precept left aside from forgetfulness?

Response. Although it is never lawful to rejoice or take delight either concerning an evil omission or concerning an evil work, even when inculpably admitted, according as they were evil in themselves; yet it is lawful, of itself, that is, with the danger of consent to delectation concerning the evil cause excluded, to rejoice or take delight concerning the good and honorable effect which arose from them.

But whether it is also lawful to rejoice or take delight concerning the evil cause itself, not according as it is evil, but according as it was the cause of a good effect, many affirm with Lessius, Suarez, Cardinal de Lugo, and others; but St. Alphonsus, with several others, denies it, alleging proposition 15, condemned by Innocent XI, which holds thus: "It is lawful for a son to rejoice over the parricide of his parent perpetrated by himself in drunkenness, on account of the great riches thereafter obtained from the inheritance." - But it must be said that it is not clear whether by this proposition absolutely every joy concerning an inculpable evil work was condemned; or rather only the joy was reprobated by which the son, against the right order of charity, places the good of a much inferior order, namely the riches obtained from it, before the death of his parent. Cf. St. Alphonsus, n. 20. - Lessius, *de just. et jure*, lib. 4, cap. 3, n. 105. - Suarez, disp. 5, sect. 7, n. 15. - Lugo, *de poenit.*, disp. 16, n. 389. - Viva, in the cited proposition, n. 12. - Baller., note (a), p. 152; and note (c), p. 186.

You Will Resolve. 1st. It is not lawful to be delighted concerning nocturnal pollution according to itself and on account of its pleasure, but it is certainly lawful to be delighted concerning it according as it is an exoneration or alleviation of nature. For the defect of free consent through sleep, although it cannot make licit a delectation inherent in an evil work which thereafter is freely taken, nevertheless can very well excuse the exterior work from fault. And this is the true doctrine of St. Thomas, who also refers a base dream to the natural cause of pollution, to which can be reduced also the touches or motions following that same dream. "For when," he says, "seminal humor abounds in the body, or when a resolution of the humor has been made, ... the one sleeping dreams those things which pertain to the expulsion of such abundant or resolved humor; just as also happens when nature is burdened from some other superfluity; so that sometimes phantasms pertaining to the

emission of such superfluities are formed in the imagination." - Cf. St. Thom. 2-2, q. 154, art. 5; and in 4, dist. 9, q. 1, art. 4, q. 1, ad 5. - St. Alphonsus, n. 20. - Baller., note (b), p. 149.

2nd. The confessor ought to act cautiously with those who rejoice concerning an advantage coming to them from their own sin or another's, or from the harm or death of another; for sometimes delectations of this kind arise not from the advantage alone, but from joy concerning the sin itself or the evil of the neighbor. The same is to be feared concerning one who says that he rejoices concerning the spiritual good of the neighbor, but one which arises from his misfortune, for example, from grave infirmity, loss of temporal things, etc. For sometimes joy concerning the evil of the neighbor can creep in rather than concerning the good effect arising from it, especially if he previously bore enmity against him; therefore the confessor, if the matter seems to demand it, should not neglect prudently to look into the mind of the penitent.

- Cf. St. Alphonsus, ibid.

3rd. Although it is one thing to be delighted concerning an evil thing, and another to be delighted concerning the manner, for example, an ingenious one, by which the evil thing was performed (which indeed can of itself be free from fault), nevertheless the confessor ought easily to suspect morose delectation in those who gladly hear base things, although these do not seem to be narrated except for manifesting the ingenious manner by which they were done, especially when a habit of consenting to evil delectation confirms this suspicion.

4th. It is not mortal to be sad concerning an obligation not essentially commanded, insofar as it is only troublesome, or in the divided sense of the law, for example, concerning the trouble of fasting.

5th. If the penitent accuses himself of some evil thought, he is to be asked whether he knew it to be sin; and if he responds that he detested it as soon as he knew it to be base, he is to be judged altogether immune from sin. - If he responds that for some time he had some confused cognition of malice and adhered to it, but without fully adverting to its gravity, then indeed he is easily to be excused from grave sin, but not from venial sin. But if he does not know how to extricate himself from these questions, ordinarily it is to be presumed that he did not consent, or at least that full consent or perfect advertence was lacking in him, especially if he is of a timorous conscience.

Chapter II. On Capital Sins

Capital sins are so called because they are as it were the heads or fountains of other sins. Hence they should be called vices rather than properly sins, if they are considered in general.

Seven are enumerated, namely: 1st. Pride; 2nd. Avarice; 3rd. Lust; 4th. Envy; 5th. Anger; 6th. Sloth; 7th. Gluttony. But how fittingly all sins are reduced to seven heads St. Thomas explains excellently, 1-2, q. 84, art. 4.

We shall say very few things here about the individual capital sins, but we shall carefully indicate the places of St. Thomas and St. Alphonsus to which recourse must be had for a fuller exposition of the doctrine.

I. - On Pride

Pride is the disordered love of one's own excellence, and is distinguished into perfect, or complete and consummated in its own genus, and imperfect. It is called perfect when a man so stands in himself and is pleased with himself that he is in the disposition of gravely transgressing the law rather than obeying the commands of superiors. But this, by that very fact, always includes mortal sin in itself. In other cases it is called imperfect, and then of itself it is accustomed to introduce only venial sin. From pride proceed ambition, vain glory, presumption, boasting, ostentation, and hypocrisy. - Cf. St. Thom. 2-2, q. 162; and QQ. DD. *De Malo*, qq. 8 and 9.

II. - On Avarice

Avarice is the disordered appetite of temporal goods. It is opposed to justice or to liberality. If the former, it will easily issue into mortal sin, namely as often as it impels one to grave injustice toward the neighbor. - If the latter, of itself it will produce only venial sins. For the rest, excessive affection toward earthly things can impel, and indeed is accustomed to impel, into other even grave sins. From avarice also proceed hardness of heart toward the miserable, disquiet of soul, perfidy, deceit, etc. - Cf. St. Thom. 2-2, q. 118; and QQ. DD. *De Malo*, q. 13.

III. - On Lust

Lust is the disordered appetite of a venereal thing. Lust is a grave sin from its whole genus; but this is to be understood if venereal delectation is deliberate in itself and directly willed. But if it is only indirectly voluntary, it sometimes admits smallness of matter, as will be said more fully below where the sixth precept of the Decalogue is treated.

Blindness of mind, inconsideration, inconstancy, hatred of God, languor of faith, indeed even loss of faith, are effects of lust. - Cf. St. Thom. 2-2, qq. 153 and 154; and QQ. DD. *De Malo*, q. 15.

IV. - On Envy

Envy is sadness concerning the good of another, insofar as it is judged as one's own evil, or at least as one's lesser good. To it is reduced joy concerning the evil of another, which is judged an increase of one's own good. Envy is directly against charity, and from its genus, although not from its whole genus, imports grave sin. From envy proceed detraction, calumny, whispering, contumely, etc. - Cf. St. Thom. 2-2, q. 36; and QQ. DD. *De Malo*, q. 10.

V. - On Anger

Anger is the kindling of the soul, and a disordered motion against someone or something; or it is a disordered appetite of vengeance. Irascibility is the habit of anger. Anger is mortal from its genus, if it is an appetite of vengeance; but venial, if it is only a disordered motion of the soul. - Anger generates indignation, rancor, shouting, insults, blasphemies, etc. - Cf. St. Thom. 2-2, q. 158; and QQ. DD. *De Malo*, q. 12. - St. Alphonsus, nn. 80 and seq.

VI. - On Sloth

Sloth in general sounds the same as laziness; but more strictly it is torpor of mind and weakness of will, from which distaste for spiritual things flows because of the labor and trouble attached to them. - If it is so great that grave obligations are omitted from it, it must be held grave; if otherwise, it is to

be judged slight. Torpor, wandering of the mind, nausea in prayer, etc., are the fruits of sloth. Cf. St. Thom. 2-2, q. 35; and QQ. DD. *De Malo*, q. 11. - St. Alphonsus, n. 84.

VII. - On Gluttony

Gluttony is the disordered appetite of food or drink, and from its genus it is nothing but venial sin. But it becomes grave if it gravely harms health, or if it renders someone unfit for duties. - From gluttony come drunkenness, about which more fully presently, dullness of mind, buffoonery, much speaking, and uncleanness of every kind. Cf. St. Thom. 2-2, q. 148 and 150; and QQ. DD. *De Malo*, q. 14. - St. Alphonsus, nn. 74 and seq.

Note. - It would perhaps be very fitting to consult St. Thomas concerning sobriety. Sobriety is especially concerned with drink having the power of making drunk. For sobriety preserves measure: "and therefore," says the Angelic Doctor, 2-2, q. 149, a. 1, "it especially assigns to itself that matter in which it is especially praiseworthy to preserve measure. But of this kind is drink capable of making drunk, because its measured use contributes much and a moderate excess harms much, because it impedes the use of reason more than excess of food." And ibid. ad 3: "although measure is required in all things, nevertheless sobriety is not properly said in all things, but in those things in which measure is especially necessary." Now then, "it pertains to moral virtue to preserve the good of reason against those things by which it can be impeded. And therefore," he says ibid. a. 2, "where a special impediment of reason is found, there it is necessary that there be a special virtue for removing it. But intoxicating drink has a special account of impeding the use of reason, insofar as namely it disturbs the brain by its fumes. And therefore ... a special virtue is required, which is sobriety." And although "food and drink commonly can impede the good of reason, by absorbing it through immoderation of delectation, ... drink capable of making drunk impedes according to a special account." Would that also the following words of the Angelic Doctor were noted by some: "in all drinks capable of making drunk there is one and the same account of impeding the use of reason. And thus that diversity of drinks is related accidentally to virtue." Ibid. ad 3. No food or drink, speaking according to itself, is illicit. Yet drink can be rendered illicit by accident, either "because by wine [a man] is easily harmed, or because by a special vow he is obliged not to drink wine," or "from the manner of drinking, because namely he exceeds measure in drinking," or "on the part of others who are scandalized by this." Ibid. art. 3. To the objection that the use of wine is totally illicit, because it impedes wisdom without which someone cannot be in the state of salvation, the Angelic Doctor responds: "Wisdom can be had in two ways. In one way according to the common mode, insofar as it suffices for salvation. And thus it is not required for having wisdom that someone altogether abstain from wine, but that he abstain from the immoderate use of wine. In another way according to a certain degree of perfection. And thus it is required in some persons, for perceiving wisdom perfectly, that they altogether abstain from wine, according to the conditions of certain persons and places." ad 1. But for women and young people, if we regard proneness to pursuing bodily pleasures, "for old men in whom reason ought to flourish for the instruction of others, and for Bishops or any ministers of the Church who with devout mind ought to insist upon spiritual offices, and for kings who by wisdom ought to govern the subject people, sobriety is specially enjoined." Ibid. a. 4. - Cf. the places to be cited at n. 148 from St. Thom. 1-2, q. 88, a. 5, ad 1; 2-2, q. 150, a. 2.

On Drunkenness

Drunkenness is a voluntary excess in drink unto disturbance of reason, whether this is done from or with pleasure, or without pleasure. But it is divided into perfect and imperfect. The first is had when the use of reason is altogether taken away, so that the drunk man is incapable of acting morally; but the other is that by which the mind is indeed disturbed, yet still has the power to discern between good and evil.

But many others, following St. Thomas, define the vice of drunkenness as: superfluous drink without necessity and from the pleasure of wine alone unto deprivation of the use of reason.

Principle

Perfect drunkenness is always a mortal sin, but imperfect drunkenness of itself is only venial. The reason for the first is gathered both from the consent of theologians and the estimation of God-fearing men, and because to deprive oneself of the use of reason in a violent and unnatural way, and indeed in such a way that it cannot immediately be recovered, gravely repugns rational nature; and finally because in the Scriptures, for example, I Cor. vi, 10, drunkards are excluded from the kingdom of God. But the reason for the second is both because there is no grave disordering as long as one can act morally, and because the consent of theologians so holds. - Cf. St. Thom. 2-2, q. 150, art. 2. - St. Alphonsus, n. 75. But St. Thomas speaks thus, 1-2, q. 88, a. 5, ad 1: "Concerning drunkenness it must be said that according to its own account it has this, that it is a mortal sin. For that a man without necessity renders himself unable to use reason, through which man is ordered to God and avoids many sins that occur, from the pleasure of wine alone, is expressly contrary to virtue. But that it is venial sin happens on account of a certain ignorance or infirmity, for instance when a man does not know the strength of wine or his own weakness, whence he does not think that he will be made drunk: for then drunkenness is not imputed to him as sin, but only overabundance of drink. But when he is frequently made drunk, he cannot be excused through this ignorance, without his will seeming to choose rather to suffer drunkenness than to abstain from superfluous wine, whence the sin returns to its own nature." Therefore the drunk man is guilty of a twofold disordering according to St. Thomas: by drinking wine from pleasure alone; and by drinking from excess unto the loss of the use of reason without any motive which would justify even the account of excessive drink. Cf. Baller., tr. 4, n. 381, seq. - Azor., l. 7, c. 33, q. 5. - Lessius, lib. 4, c. 3, d. 3, n. 13. - Dicastillo, lib. 1, disp. 3, d. 11, n. 104.

You Will Resolve. 1st. It is lawful to use any liquors whatever, as medicine for driving away diseases, for example, typhus, even if drunkenness is foreseen as going to follow, provided nevertheless that it is not directly intended, and the salvation of the soul is not placed in danger. It is required namely 1st. that drunkenness follow only indirectly, and 2nd. that no danger be present that the sick man die without reception of the sacraments. Cf. St. Thom. 2-2, q. 150, a. 2, ad 3. - St. Alphonsus, n. 76. St. Thomas speaks thus: "When someone drinks much according to the counsel of medicine ... the drink is not reputed superfluous." l. c.

2nd. The same seems able to be said of those of our country who take a great quantity of liquor in order to expel or restrain the poison which they have drawn from the bites of serpents; for drunkenness, if any follows in such a case, would be said to have followed only indirectly. In this case it is not taken from the pleasure of wine alone nor without necessity.

3rd. It can never be lawful to assume drunkenness as a means for obtaining some effect, however good, because evils are not to be done that goods may come. But if a great quantity of liquor were taken, not indeed for violent deprivation of the use of reason, but for relaxing and thus soothing the nerves, so that from this some surgical operation may be done more easily, it does not appear why this would be illicit, since it is said to be lawful to use opium or ether for performing similar operations.

4th. Those mothers or nurses are altogether to be condemned who, for quieting the tears of children, use alcoholic or opiated drinks, and thus from the first age introduce an evil custom into them.

5th. *A fortiori* doctors are to be condemned who recur to the same remedy in order to provoke the sick to gladness or to lessen pains of the body; for those acting thus, although perhaps they can be excused from the sin of drunkenness, because they procure it only indirectly, nevertheless certainly introduce an evil custom into the sick if they recover; or, if they die, expose them to the danger of eternal damnation.

6th. Certainly they sin gravely who by command, counsel, or provocation induce others to drunkenness, or induce them to drink with foresight of future drunkenness: something which here and there is done under the vain pretext of friendship or civility.

7th. Likewise he who drinks to excess in order to free himself from the death which another threatens against him does not drink from the pleasure of wine alone or without cause; hence it is not sin.

Questions

Question 1. What must be said concerning the promise not to drink (*the pledge*) as it is accustomed to be made among us?

Response. Although a promise of this kind is good in itself, and, as daily experience establishes, offers an excellent remedy for amending the life of many, nevertheless the practice of receiving it is not without difficulties. For if it is said openly, what theologically speaking is certainly true, namely that violation of that promise is no sin or only venial sin, it will scarcely not happen that the whole efficacy of the remedy vanishes. But from the other side, if nothing is said, many and grave sins will be perpetrated from an ill-formed conscience; since there are many who judge violations of that promise to be graver sins than perfect drunkenness. Therefore much prudence and discretion is needed in receiving promises of this kind. - Wherefore, if there are those who doubt concerning the quantity of that obligation and inquire about it, or if they are not so untaught that they can easily grasp an explanation, or are not drawn to liquors by an utterly mad and ruined love, it will be useful, indeed necessary, to explain to them what the nature of that promise is; for since this is not a vow, but only a purpose manifested to a priest, it cannot of itself oblige under grave sin. But in the other hypothesis perhaps it would be better to say nothing, and to bear oneself permissively concerning those grave sins which would follow; for the lessening of drunkenness will be a sufficient reason for permitting them. - Cf. *Irish Ecclesiastical Record,* May 1883, pp. 338 and seq.

Question 2. What must be said concerning those sodalities recently instituted for extirpating the vice of drunkenness?

Response. That they are very good and are preferred by many apostolic laborers to the other remedy which consists in the promise not to drink. The reason is that these more recent remedies, while from one side they foster piety more, which is the beginning of every true conversion, from the other side offer no occasion of new sins. The Fathers of the Second Plenary Council of Baltimore indeed alluded to these remedies in the following words: "Since monstrous scandals arise from excessive drinking, we exhort pastors, and beseech them by the bowels of Jesus Christ, that they put every zeal into eliminating the vice of drunkenness. To this end, we judge worthy of praise the zeal of those faithful who abstain from every ardent liquor in order to decline more safely the danger of excesses. But those who spontaneously enter a society among themselves, so that by mutual examples of virtues they may help and strengthen one another, ought first of all to employ those aids which Christ the Lord left in the Church, by which human vices are amended and infirmity is sustained; and by prayer, frequent reception of the sacraments, and other exercises of piety, to obtain heavenly aid for themselves, and to trust not in themselves, nor in their purposes, but in God, without whom human effort profits nothing." But the Fathers of the Third Plenary Council of Baltimore, speaking more explicitly, say: "The societies which come under the name of 'Catholic Union for promoting Total Abstinence' and 'Sacred Thirst,' we acknowledge as worthy of great praise; for they are governed by a truly Catholic spirit, and seek the necessary strength not so much in firmness of their own will as in the power of prayers and of the sacraments. Moreover it is known that the Head of the whole Church and Vicar of Christ on earth has more than once enriched them with his apostolic blessing and with the indulgences of the Church. Therefore we also exhibit to the same the signs of our benevolence, and that they may flourish the more, we commend them to the paternal care of all our priests, that they may not only add courage to them but also always show them the Catholic path." Cf. *Conc. Plen. Balt. II*, nn. 470 and seq.; and *Conc. Plen. Balt. III*, nn. 260 and seq.

Very recently special spiritual graces in favor of the faithful enrolled in societies of Temperance or Abstinence from intoxicating drink were conceded by the Supreme Pontiff Pius X on 21 May 1914 - namely: indulgences both plenary and partial, and also an altogether singular favor by virtue of which all Masses which are applied by any priest whatsoever for the soul of some deceased member can assist that soul as if they had been celebrated at a privileged altar. These graces were granted by the Supreme Pontiff wishing to show his more favorable will toward the aforesaid Societies and to find their Members more eager in advancing so salutary a purpose. - *Acta Apost. Sed.*, v. VI, p. 309.

Question 3. Is it lawful to induce someone to drunkenness so that he may be turned away from a greater evil?

Response. Affirmatively, if drunkenness is only material to him; because a material evil can be permitted for a grave cause. Thus commonly against Collet, Concina, etc. But they more commonly deny it if drunkenness is formal; because evils are not to be done that goods may come: nevertheless St. Alphonsus, n. 77, admits the opposite opinion as probable with several others, "because it is lawful to induce another to a lesser evil so that he may be impeded from a greater." For when someone can be deterred from perpetrating a greater evil by no other means, to persuade the lesser evil has the account of good. See below n. 185. Q. 5th.

Note. - 1st. Habitual excessive drink produces enormous harms for the individual, the family, and society. It harms the health, fortune, and morals of individuals: domestic peace departs from the family, horrible crimes are committed, reason itself day by day becomes degenerate and more vicious.

Personal remedies: for all to avoid the occasions of this sin and those persons and assemblies by whom temperance is violated; to acquire strength by exercise of this virtue and of Christian mortification, and by consideration of motives both natural and supernatural by which men may become stronger against the vice of drunkenness, finally by petition of divine aid. - *Dictionnaire de Theol. Cath.*, under the word *Gourmandise*.

2nd. The use of morphine, chloroform, and other medicines bringing exile of reason must be ruled by these general principles. The use of morphine, etc., for calming grave pains by soothing the senses is permitted in surgical operations, in more difficult births, and in general when there is a just cause. The use of morphine, etc., taken habitually induces an unquenchable thirst, to which follows unfitness for performing grave duties, and servitude under the medicine itself: such use is gravely prohibited; indeed doctors sin gravely who so frequently prescribe these things to the sick that there is proximate danger of inducing this habit or desire for morphine. The use of morphine which does not bring with it this danger but only a lessening of pains is not illicit of itself. The use of morphine, etc., inducing the loss of the exercise of reason for a long time without cause is certainly a grave sin.

The use of morphine, etc., employed with the dying without their consent so that they may remain in a state of semi-wakefulness is a grave sin and against natural right: such use in those circumstances, that is, with one dying, is gravely illicit when he is not prepared by the sacraments for dying, nor is it lawful for him to consent to it. If he is prepared and there is no danger of falling into grave sin, doctors are to be deterred from employing these means. But what if the pains are most bitter and extraordinary, for example, if someone is burned by slow fire in a conflagration, and cannot be removed from the flames themselves, because, say, he is held by the beams of the house? Is it lawful in this case, when there is no danger of falling into a state of sin, without the consent of the dying man so to soothe his senses that he will remain in fainting until death? It is not lawful: because he has a right to acquire enormous merits. What if he himself wishes it, or if there is danger of falling into grave sin? In those most difficult circumstances let the priest assist him with every help and exhortation so that he may suffer the pains bravely. If at last the sacred minister himself fears, let him be silent; indeed it does not seem altogether certainly prohibited so to soothe the senses, because in the case, morally speaking, he is a prepared sick man: to this indeed he is bound, but it is not clear that he is bound to acquire greater merits. It is his right: but whether a grave obligation rests upon him, this is not evident. Cf. Villada, *Cas.*, v. 3, p. 309. Lehmkuhl speaks more severely, n. 892, ed. 11a.

3rd. Nor does artificial sleep seem illicit, by which, induced by medicinal injections, a woman giving birth does not fully perceive the pains of birth. During this state, so it is reported, she is not deprived of the use of the senses; afterward, however, she is said not to remember those things which then happened, and the sleep is called twilight. Moreover we affirm that if the woman in that state is duly protected, if the doctor is prudent, if care is applied so that nothing harmful happens either to the woman or to the fetus, the matter is done licitly. But another thing would have to be said if these conditions were not verified.

Treatise V. On Virtues

Virtue, generally, is a habit of acting according to right order. Virtues are distinguished in many ways; for they are 1st. natural or supernatural, according as they are acquired and increased by natural powers, or by the aid of supernatural grace; 2nd. infused or acquired, according as they are infused by God himself, or are acquired by repeated acts of the agent; 3rd. theological or moral, according as they have for their formal object either God immediately, or the honesty of the action.

There are four cardinal moral virtues to which the others are reduced, namely prudence, justice, fortitude, and temperance. But since discourse concerning the moral virtues is made here and there throughout this whole Compendium of Moral Theology, here we shall treat specifically of the theological virtues, namely of faith, hope, and charity.

Chapter I. On the Virtue of Faith

With those things wholly omitted which are handed down at length by dogmatic theologians concerning the nature, division, and formal object of faith, all of which you may see, if you please, in Mazzella, *de Virtutibus Infusis*, disp. 2 and 3, here it will be said only concerning the necessity of faith, concerning its material object, and concerning the vices opposed to it.

Article I. On Necessity

I Say 1st. The internal act of faith is necessary for all adults by necessity of means for justification, and also by necessity of precept sometime in life. The first is clear both from the Apostle saying, Hebr. xi, 6, "Without faith it is impossible to please God," and from the Council of Trent, sess. 6, cap. 6, where the mode of preparation for justification is described, and among other things necessarily required faith is assigned. But the other is clear from proposition 1 condemned by Alexander VII, which holds thus: "Man at no time of his life is bound to elicit an act of faith, hope, and charity, by force of the divine precepts pertaining to those virtues." - Cf. Mazzella, disp. 3, art. 10.

I say 2nd. There exists both a negative precept prohibiting one from denying the true faith, and an affirmative precept sometimes obliging one to confess it, even with danger to life. The reason for the first is that to deny the faith is to deny God himself. But the reason for the second is that the honor of Christ sometimes demands that the faithful despise even life for confessing him. Hence Christ himself says, Luke ix, 26, "He who shall be ashamed of me ... of him the Son of man will be ashamed, when he shall come in his majesty." - I said sometimes, for this affirmative precept, precisely because it is affirmative, does not oblige always and for always, but only then when the honor due to God, or the spiritual utility of the neighbor, would be withdrawn in a notable way; for example, if from omission of the confession of the true faith there would follow contempt of religion, or scandal, or the perversion of others; as is clear from Can. 1325, § 1.

§ 1. The faithful of Christ are bound openly to profess the faith as often as their silence, evasion, or manner of acting would bring with it implicit denial of the faith, contempt of religion, injury to God, or scandal of the neighbor (Can. 1325).

§ 1. It is by no means lawful for the faithful in any way actively to assist or take part in the sacred rites of non-Catholics.

§ 2. Passive or merely material presence can be tolerated, for the sake of civil office or honor, for a grave reason to be approved by the Bishop in a case of doubt, at the funerals, weddings, and similar solemnities of non-Catholics, provided danger of perversion and scandal is absent (Can. 1258). - Cf. St. Thom. 2-2, q. 3, art. 2. - St. Alphonsus, n. 10.

Questions

Question 1. When does the precept of eliciting the internal act of faith press?

Response. It certainly presses of itself not only after the use of reason has been completed, or after the truth of our faith has been sufficiently proposed to an adult infidel, for beginning the Christian life, but also more often in life, as theologians commonly hold, and as is sufficiently clear both from

the condemnation of the proposition already cited and from proposition 17, condemned by Innocent XI, which lies thus: "It is enough to elicit an act of faith once in life." - But the particle *more often* is understood in different ways by different persons, but it can safely be held that it does not include greater frequency than once a year. - But it presses by accident as often as some end is to be obtained for which an act of faith is necessarily required.

Yet note that this precept, as St. Alphonsus holds, is sufficiently fulfilled by those who have already learned and believed the truths to be held by faith, by exercising other acts of religion in which an act of faith is implicitly contained, for example, by devoutly hearing Mass, adoring the crucifix, receiving the sacraments, etc. Hence:

1st. It follows that the faithful who live as Christians, or at least once a year approach the sacraments of Penance and the Eucharist, are not to be disturbed concerning the fulfillment of this precept.

2nd. It follows that the question whether the dying are bound of themselves, namely by force of a special obligation imposed by the virtue of faith itself, to eliciting some act of it, has been resolved, at least practically. For the dying are certainly bound to some acts of religion, especially to receiving the last sacraments; but they cannot perform this without eliciting an act of faith. - Cf. St. Alphonsus, n. 7; and *Hom. Ap.*, n. 13. - Baller., note (a), p. 161, note (b), p. 174, note (c), p. 178, and note (a), p. 180. - *Amer. Eccl. Review*, Vol. 2, p. 442.

Question 2. When questioned concerning the faith, can you use ambiguous words?

Response. Negatively, when evasion or silence is equivalent to denial, or to shame which from the circumstances is known to yield to contempt of God and scandal of the neighbor. Besides, as regards public power questioning, this is clear from proposition 18, condemned by Innocent XI, which sounds thus: "If someone is questioned by public authority, I counsel him to confess the faith ingenuously, as glorious to God and to the faith; I do not condemn silence as sinful of itself." - But Kenrick says: "Among us, where the laws wish that no account be had of the religion or faith of citizens, one will generally be able to use his own right and reject the interrogation as out of order." - Cf. St. Alphonsus, n. 13. - Kenrick, n. 30. - *Amer. Eccl. Review*, Vol. 2, p. 266.

Question 3. Is it lawful to use the signs or garments of infidels?

Response. Affirmatively, if they are garments or signs proper to some region, although this whole region is infidel; because these of themselves are not referred to religion. But if they are garments and signs of religion, a subdistinction must be made, and again it must be affirmed, if it is done for a grave cause and the garments are not only distinctive of sect from sect, because then their primary use is for covering the body, and only secondarily for distinguishing the sect. - But the response must be negative if the garments or signs are instituted either uniquely or primarily for professing the sect, as are the garments and ornaments which priests use in the exercise of their functions. - Cf. Salmant., tract. 21, cap. 2, n. 110.

153. Question 4. Who are bound by canon law to emit the profession of faith?

Response. By ecclesiastical law, as is clear from Canon 1406, § 1:

§ 1. By the obligation of emitting the profession of faith, according to the formula approved by the Apostolic See, there are bound:

1st. Before the president or his delegate, those who attend an Ecumenical or particular Council or diocesan Synod with a vote, whether consultative or deliberative; but the president before the same Council or Synod;

2nd. Before the Dean of the Sacred College, the Cardinals first in the order of priests and deacons, and the Camerarius of the Holy Roman Church, those promoted to the cardinalitial dignity;

3rd. Before a delegate from the Apostolic See, those promoted to an episcopal see, even a non-residential one, or to the rule of an Abbey or Prelature *nullius*, an Apostolic Vicariate, or an Apostolic Prefecture;

4th. Before the cathedral Chapter, the Capitular Vicar;

5th. Before the local Ordinary or his delegate and before the Chapter, those who have been promoted to a dignity or canonry;

6th. Before the local Ordinary or his delegate and before the other consultors, those assumed to the office of diocesan consultors;

7th. Before the local Ordinary or his delegate, the Vicar General, pastors, and those for whom provision has been made concerning any benefices, even manual ones, having care of souls; the rector and professors of sacred theology, canon law, and philosophy in Seminaries, at the beginning of any scholastic year or at least at the beginning of the office undertaken; all who are to be promoted to the order of subdiaconate; censors of books, of whom in can. 1393; priests designated for hearing confessions and sacred preachers, before they are endowed with the faculty of exercising those duties;

8th. Before the Ordinary or his delegate, the Rector of a University or Faculty; but before the Rector of the University or Faculty or his delegate, all professors in a canonically erected University or Faculty, at the beginning of each scholastic year or at least at the beginning of the office undertaken; likewise those who, after examination, are endowed with academic degrees;

9th. Before the Chapter or Superior who nominated them or their delegate, Superiors in clerical religions.[1]

§ 2. Those who, the prior office having been dismissed, obtain another office or benefice or dignity even of the same species, must again emit the profession of faith according to the norm of this canon (Can. 1406).

He does not satisfy the obligation of emitting the profession of faith who emits it through a procurator or before a layman (Can. 1407).

The prescriptions concerning Councils of vigilance and the anti-modernist oath remain in their full force until it shall have been otherwise established concerning this matter. - S. Off., 22 Mar., 1918.

[1] Cf. Addenda, p. 1143, n. 114.

You Will Resolve. 1st. He would deny the faith externally: 1st. who, when asked whether he were a Romanist or Papist, would respond that he is not such, unless nevertheless from the circumstances it were gathered that he had rejected words of this kind as being full of envy and insult; 2nd. who, among Quakers, would sit silent and as if meditating; but not if he used only their garments, for example, a large hat; 3rd. who would approach places where conversions of Presbyterians,

Methodists, and others are received, and, praying among them, would bend the knees, as if about to receive the spirit; but not if, standing at a distance, he looked upon their manner of acting from levity or curiosity. - Cf. Kenrick, n. 30.

2nd. He should not be accused of denied faith who on days of abstinence would eat meats in order to avoid troubles from heretics; and much less a girl who does the same, fearing lest her father become violently inflamed when he perceives that she has passed over to the Catholic Church. The reason is that from one side we are not always bound externally to profess the true faith, and from the other the eating of meats of itself does not necessarily import denial of the faith, since often this is done from gluttony or from necessity. Indeed someone can hide conversion to the true faith for avoiding very grave evils, when neither the honor due to God nor the good of the neighbor demands manifestation of the faith. - Cf. Kenrick, ibid. - *Il Monitore Ecclesiastico*, Sec. Ser., Vol. 1, p. 211.

3rd. He does not sin against faith who flees in time of persecution; indeed flight generally is in some way commanded, as is clear from the words of Christ, Matt. x, 23: "But when they persecute you in this city, flee into another." - But this especially holds if someone's salvation is necessary for the utility of the faithful, or someone fears a fall. - Cf. St. Alphonsus, n. 14. - Kenrick, n. 31.

4th. He does not sin against faith who goes to the temples of heretics or infidels for the sake of mere curiosity, without any communication in sacred rites: indeed he sins in no way, or certainly not gravely, if neither scandal is present, nor danger of perversion, nor a particular law forbidding this approach. The reason is that, as to approach profane buildings, so also to approach the temples of heretics is an act indifferent of itself, which is made evil only by an evil end or from circumstances. Thus S. Congr. S. O., 14 Jan. 1818, Dub. 3 (in Cretoni, vol. 1, p. 544, note C). - Cf. St. Alphonsus, n. 16.

5th. Yet he will sin against faith if such approach has been commanded by a heretical government as a protestation of heretical faith, or if in any way it is commonly held as a mark of one and the same religion between Catholics and non-Catholics.

6th. Catholics regularly are not permitted to be present at the sermons, baptisms, and marriages of heretics or schismatics. Thus S. Cong. S. O., on 10 May 1770. - It is said regularly, because if the presence is merely material, as can sometimes happen, and from the circumstances it is sufficiently perceived to contain or show no participation with the rites of heretics, it can be excused from sin, especially among us, where this is held as an indication of civil respect. - Cf. Kenrick, n. 33.

7th. To perform the office of sponsor in the baptism of heretics, or to enter marriage before a heretical minister, is always illicit because of cooperation and communication in divine things, as S. Cong. S. O. expressly declared in the cited decree in the year 1770, and S. P. Pius VI, both in the Instruction of 26 Sept. 1791 and in the Responses to the clergy of France of 28 May 1793. - As regards funerals, a distinction must be made: those things which pertain to a merely civil office, such as accompanying the body, can be permitted; other things which have the nature or appearance of communion with heretics are to be prohibited. - Cf. Kenrick, ibid.

8th. Servants can carry their masters to the temples of heretics, and accompany their daughters or wives to them for the sake of protection; for this is held as an office of service, but not as participation of worship. By the same reason a maidservant is excused who holds an infant in her arm while he is baptized by a minister. - Cf. Kenrick, ibid.

9th. Among us it seems lawful for Catholics on Government ships, in fortresses, in prisons, and in other public places, to stand by at the prayers of heretics; for from one side this is demanded for the sake of order rather than favor of the sect, and from the other they would incur great inconvenience if any refused it. Nor is it valid to say that Paul V prohibited this to English Catholics, because there at that time the circumstances were entirely different. - Cf. Kenrick, nn. 33 and 34.

10th. It does not seem able to be permitted to Catholics, in this region, that they play organs or sing in the temples or assemblies of heretics, unless perhaps in some very rare case and with the following conditions acceding: 1st. that there be nothing in the hymns and songs which is opposed to the true faith; 2nd. that no scandal or danger of perversion be had; and 3rd. that a very grave necessity press. The reason for this tolerance is that, when all the aforesaid conditions have been verified, the malice does not seem to hold itself on the part of the act, but only on the part of the agents, and therefore the cooperation will be only material, which, when a just cause intervenes, can be permitted. But if anywhere it has been solemnly declared by the local Ordinary that tolerance of this kind must in no way be admitted, in practice one must stand by this declaration. Indeed such tolerance seems to us illicit in itself. For to sing, while religious offices are exercised in temples, is an active part of the worship of that assembly to which the temple belongs, which then worships God by its own religious rites. But actively to participate in heretical worship is intrinsically evil. In the mouth of men commonly such an act is held as protestative of heresy. Besides, singers entice men to these churches of heretics and thus give favor to heresy. Wherefore let it be lawful for us to depart from the milder opinion and to affirm that to sing in the temples of heretics, while heretical worship is exercised there, is intrinsically evil and never to be permitted. He who places some work which by its intrinsic nature and here and now is directly and immediately ordered to an evil action formally cooperates in that action: hence the intention of the one singing does not change the signification of this act placed here and now. - Bucceroni, *Cas.*, v. 2, n. 30.11. - Lehmkuhl, v. 1, n. 813.

11th. Likewise it does not seem able to be permitted to Catholics that they contribute money to the increase or splendor of fairs, bazaars, or suppers (*oyster suppers*), when it is known that these fairs or suppers are instituted for this purpose, that money may be obtained for building synagogues or temples of heretics. Nevertheless otherwise would have to be said if sometimes from the circumstances it appears that Catholics wish to show not indeed favor of sects, but only a sign of grateful spirit or benevolence.

12th. In danger of death, when a Catholic priest is lacking, it is lawful to seek absolution from a heretical or schismatic priest, provided scandal is not offered to the other faithful, nor is there danger that the faithful person be perverted by the heretic, and it is probably believed that the heretical priest will administer this sacrament according to the rites of the Church. (S. Off., 7 Jul. 1864.) But outside the case of death it is not lawful, as is clear from this response: "In no case, not even of necessity, is it lawful for a Catholic to confess his sins and obtain absolution from a schismatic priest." S. C. de Prop. Fide, 17 Feb. 1761.

13th. "Communication with heretics can be either in a matter of approved doctrine or in rites or other signs protestative of a false sect with scandal of the faithful, for which reason communion with them is forbidden by the Church, lest faith be understood either to be lost or to be placed in danger. Hence St. John the Evangelist commands so severely: 'If anyone comes to you and does not bring this doctrine, do not receive him into the house, nor say "hail" to him; for he who says "hail" to him

communicates in his evil works.' II St. John 10. Most evidently from these words it is inferred that whatever expresses a hail of this kind is to be prohibited, as are liturgical actions which were instituted for signifying ecclesiastical unity. Wherefore we read it sanctioned by the Fathers of the Council of Carthage, 'with heretics neither must one pray nor sing psalms,' as Benedict XIV reports, *de Syn.*, c. 5, lib. 6. Therefore it is illicit in sacred functions to invite heretics into the choir, to sing psalms alternately, to give them peace, sacred ashes, and other things of this kind of external worship, which by right and merit are judged signs of an interior bond and agreement, both in the active sense, namely by giving similar things to them, and in the passive, by receiving them from them in their sacred rites." - S. C. S. Off., 22 Jun. 1859.

Besides, the Most Holy Lord Pope Alexander VII, 9 May 1663, proposed the following question to be resolved by the Qualifiers of the Holy Office: What things can with a safe conscience be permitted to be done or omitted for hiding the Catholic religion and what things cannot ...? "All present agreed that those actions which, the circumstances having been considered, are indifferent for signifying worship of a false religion can be permitted; but those which determinately signify, either of themselves or from circumstances, the worship of a false religion are not to be permitted." And when certain special actions which can be permitted had been proposed, it is added: "These things are understood with contempt of the faith, scandal, and danger of perversion excluded." Finally the case of a Baron or petty ruler wishing to embrace the faith but entangled in difficulties is resolved: "All likewise said: since it is certain that no signs protestative of heresy can be permitted to the aforesaid petty ruler ... we judged that first there must be explained what we understand by the name of a sign protestative of heresy. And this indeed we say is that sign, seen or heard which, commonly all conceive that the one using such a sign is a heretic. But we say that sign is indifferent, seen or heard which, commonly, a presumption of heresy is not determinately conceived." Once the questions concerning presence or assistance at heretical worship had been resolved, it is added: "But truly, that ecclesiastical precepts concerning foods, hearing Mass, etc., can be not observed: for this disobedience is not determinately a sign of a false religion, and moreover precepts of this kind do not seem to oblige with so great an inconvenience." - *Jur. Pontif. de P. F.,* Part ii, p. 126 and seq.

It is not permitted for Catholics to be present at dances and other recreations which are accustomed to be held by members of a masonic society, and as such.

§ 7. Praise of a perpetrated delict, participation in its fruits, concealment and reception of the delinquent, or other acts following upon a delict already fully completed, can constitute new delicts, namely if they are punished by a penalty in the law; but, unless there had been agreement with the delinquent concerning those acts before the delict, they do not bring with them imputability of the perpetrated delict (Can. 2209).

14th. 1. Whether the decree by which Catholics are prohibited from being present at the Masses of schismatics and their prayers is understood also for places in which Catholic priests are not found and concerning prayers in which nothing against the faith and Catholic rite is had? S. C. of the Office, 7 Aug. 1704, responded to I: His Holiness judged: Affirmatively.

15th. It is not lawful for Catholics to give alms of Masses to schismatic priests. S. C. de Prop. Fide, 12 Mar. 1789.

16th. That it is not only lawful, but that Catholics are bound to adore the Most Holy Sacrament when they meet a Schismatic Priest carrying it to a sick person, but that they are bound nevertheless to abstain from accompanying him, the S. C. de Prop. Fide responded, 15 Dec. 1764, ad 4.

Concerning many other solutions pertaining here, discourse will be had below, where scandal and cooperation are treated. - For the rest, in all these things attention must be paid to the customs of the region, and to peculiar circumstances, from which it can happen that the same action has a different signification among us than elsewhere. Wherefore not all the responses which are reported in *Amer. Eccl. Review*, Vol. VI, p. 152, ought to be applied to those who live in this region.[1]

[1] Cf. Addenda, p. 1143, n. 115.

Article II. On the Material Object of Faith

The material object of faith, concerning which alone we treat here, is that which we believe by divine and Catholic faith, or, as is clear from canon 1323, § 1, all those things which are contained in the written or handed-down word of God, and are proposed by the Church, whether by solemn judgment or by ordinary and universal magisterium, as divinely revealed and to be believed. - But it is not required that all revealed truths be believed explicitly, provided that all are believed implicitly. Indeed, among those truths themselves to be believed explicitly, those which are of necessity of means must be distinguished from those which are of necessity of precept. - Cf. Mazzella, disp. 2, art. 7, § 1.

I Say 1st. It is certain that these two things must necessarily be believed by necessity of means for salvation, namely that God exists, and that he is the Rewarder. The first is clear from the fact that it is impossible to obtain salvation, namely the ultimate end, unless we tend toward him; but we tend through faith, and this cannot be had unless before all things the existence of God is believed. The other is clear from proposition 22 condemned by Innocent XI, which holds thus: "Only faith in one God seems necessary by necessity of means, but not explicit faith in the Rewarder." But both are confirmed from the Apostle, Hebr. xi, 6: "One approaching God must believe that he is, and that he is a rewarder to those seeking him." - Cf. Mazzella, disp. cited, § 3, nn. 864 and seq.

I say 2nd. By necessity of precept all the faithful are bound explicitly to believe 1st. all those things which are contained in the Apostles' Creed, and 2nd. the divine efficacy of the principal sacraments, namely Baptism, Penance, and the Eucharist, and also of the other sacraments when they are proximately to be received. The reason for the first is that the very nature of Christian profession which is contained in the Creed demands this. It is clear also from the practice of all the faithful. - But the reason for the second is that the sacraments cannot be received worthily unless their divine efficacy is known, and this cannot be known by any other account except through faith, since they are of positive institution.

Questions

Question 1. Is explicit faith in the mystery of the Most Holy Trinity and of the Incarnation required by necessity of means?

Response. It is controverted, but the negative opinion is certainly probable. The reason is that before Christ implicit faith in these mysteries sufficed; therefore also after his advent it ought to suffice; for

justification ought not to be said to have been made more difficult. Besides, only that faith is required which is necessary and suffices for justification, or for an act of love of friendship: but implicit faith in these mysteries suffices for this. Therefore. - Nor does the proposition condemned by Innocent XI, under n. 64, stand in the way, which lies thus: "A man is capable of absolution, however much he labors under ignorance of the mysteries of faith; and even if through negligence, even culpable negligence, he does not know the mystery of the Most Holy Trinity and of the Incarnation of Our Lord Jesus Christ": it does not stand in the way, I say; for deservedly it could be condemned by reason of the first part, in which generally, or in every case, it is asserted that a man is capable of absolution, however much he labors under ignorance of the mysteries of faith. Cf. St. Alphonsus, n. 2. - Suarez, disp. 12, sect. 4. - Lugo, disp. 12, n. 91. - Mazzella, disp. 3, n. 875.

Question 2. Can a penitent invincibly ignorant of the mysteries of the Most Holy Trinity and Incarnation be licitly absolved?

Response. Negatively, outside a case of necessity, for example, danger of death. The reason is that the opinion affirming that explicit faith in these mysteries is required by necessity of means is probable, indeed to some, such as St. Alphonsus, it seems more probable; and therefore the confessor absolving a penitent of this kind would expose the sacrament to danger of nullity. Hence the confessor ought either to dismiss him until he has been sufficiently instructed, or, what in many cases would be better, to instruct him, at least as much as is enough for eliciting an act of faith here and now, namely by clearly proposing those two mysteries and seeking assent to them.

But if the penitent were certainly in a state of vincible ignorance of these mysteries and did not wish to learn them, or invincibly ignored those things which are certainly of necessity of means, he could in no way be absolved even in danger of death, because he would be altogether incapable of receiving justification. - Cf. St. Alphonsus, n. 3. - Baller., (a) and (b), p. 165.

Question 3. Is there an obligation of believing explicitly the precepts of the Decalogue?

Response. Many affirm this, because the precepts of the Decalogue were revealed that they might be observed by all; but several rightly contradict it, both because precepts of this kind can be known in another way than through revelation, and because these precepts were given not for believing, but for acting. - Nor should you say that the sacraments also were given for acting rightly; for the response is that they cannot be received worthily unless they are first believed to have been divinely instituted.

For the rest, although these precepts need not necessarily be known through faith, nevertheless they must be known under grave obligation; not indeed in order and as to the individual words, but as to substance. The same must be said concerning the precepts of the Church and concerning the Lord's Prayer, and some add also concerning the Angelic Salutation.

Article III. On the Vices Opposed to Faith

§ I. On Infidelity in General

Infidelity, taken generally, is lack of faith, and a threefold kind is distinguished, namely: 1st. positive or formal, which is lack of faith in him to whom faith itself has been sufficiently proposed, and who positively rejects it; 2nd. negative or material, which is lack of faith in him who has never heard anything concerning the true religion, or indeed has heard, yet not sufficiently; 3rd. privative, which

is lack of faith in him who, when the occasion has been given, neglects to obtain for himself knowledge of faith.

I Say. As infidelity both positive and privative is a most grave sin, so negative infidelity is no sin, but only the penalty of sin. The reason for the first is that in positive infidelity there is had explicitly, and in privative infidelity virtually, contempt of the first truth and of the authority of God revealing. But the reason for the second is both because no sin can exist where invincible ignorance is had, and because the following proposition, which is the 68th of Baius, "Purely negative infidelity in those among whom Christ has not been preached is a sin," was condemned by St. Pius V and Gregory XIII.

§ II. On Heresy

Heresy is error against some truth of faith proposed by the Church, in one who received the faith through baptism. But it is: 1st. formal, which is heresy properly so called, and is had when the error is voluntary and pertinacious, or material, by which someone ignorantly adheres to error; 2nd. purely internal, or purely external, or manifested, according as it is had only internally or externally, or in both ways; 3rd. occult or notorious, according as it is known to no one or to only a few, or to many.

To heresy is referred apostasy, which is total defection from the Christian faith.

I Say. Formal heresy is always a most grave sin, but material heresy is free from every fault. The reason for the first is both because heresy is opposed to one of the chief virtues, namely faith, and because heresy tends directly and immediately to contemning God. The reason for the second is that a material heretic, as is supposed, errs from invincible ignorance.

Question. What are the signs of material and formal heresy?

Response. He is to be judged a material heretic only: 1st. who is prepared to submit himself to the judgment of the Church as soon as he shall have known it; 2nd. who, born among heretics, has known nothing concerning the true faith and has never doubted concerning his own religion; 3rd. who, doubting, has studied to know the truth as much as he could, and has not yet arrived at it. - But he will be reputed a formal heretic: 1st. who doubts, and from pertinacity does not wish to inquire further; 2nd. who again from pertinacity maliciously turns his intellect away from the motives of truth, so that he may adhere to his own sect; 3rd. who, having acknowledged the truth, still contradicts the Church.

Canon 1325, § 2, most clearly indicates who is and is to be judged a heretic, who an apostate, who a schismatic:

§ 2. After baptism has been received, if anyone, while retaining the Christian name, pertinaciously denies some truth from among those to be believed by divine and Catholic faith, or doubts concerning it, he is a heretic; if he totally withdraws from the Christian faith, he is an apostate; finally, if he refuses to be subject to the Supreme Pontiff or refuses to communicate with the members of the Church subject to him, he is a schismatic (Can. 1325).

Those who submit themselves to Christian Science for being healed sin gravely, because they formally participate in that damnable superstition, whose characteristic and special act is to heal. As is evident, he would deny the faith who gave his name to such a superstition.[1]

It is not enough to avoid heretical depravity, but it is also necessary diligently to flee those errors which approach it more or less; wherefore all must also observe the constitutions and decrees by which evil opinions of this kind have been proscribed and prohibited by the Holy See (Can. 1324).

On the Care of Non-Catholics:

§ 1. Let local Ordinaries and pastors hold as commended to themselves in the Lord the non-Catholics dwelling in their dioceses and parishes.

§ 2. In other territories the whole care of missions among non-Catholics is reserved solely to the Apostolic See (Can. 1350).

Let no one be compelled unwillingly to embrace the Catholic faith (Can. 1351).

With relation to discussions, especially public ones, can. 1325, § 3 establishes thus:

§ 3. Let Catholics beware lest they have disputations or conferences, especially public ones, with non-Catholics, without permission of the Holy See or, if the case presses, of the local Ordinary.

[1] Cf. Addenda, p. 1094, n. 28.

Chapter II. On the Virtue of Hope

Hope is a supernatural virtue through which, with certain confidence from the promise of God, we expect future beatitude and the means for obtaining it.

The primary material object of hope is God to be possessed. But the secondary object is all the means necessary for obtaining beatitude, such as remission of sins, the grace of God through the merits of Christ, etc.

But the acts included in hope, or the formalities of hope itself, are love, desire of eternal beatitude, firm confidence of arriving at it, and raising up of the soul against occurring difficulties. - Cf. Mazzella, disp. 5, art. 2, § 1; and art. 3, § 2.

The sins opposed to hope are despair and presumption. The former is voluntary diffidence of obtaining beatitude and the means necessary for attaining it. - But the latter is disordered confidence of obtaining beatitude without the means ordained by God.

I Say. Hope in adults is required both by necessity of means and by necessity of precept. The first is clear from the fact that man cannot arrive at obtaining God, his ultimate end, unless by his own acts he tends toward him: but this tendency necessarily supposes hope, indeed, as we said, it is one of the formalities of hope itself. - The other is clear both from the Apostle saying, I Tim. vi, 17: "I command ... not to hope in the uncertainty of riches, but in the living God," and from proposition 1 proscribed by Alexander VII and related above, n. 152.

But when, and in what manner, the precept of hope presses is to be determined by the same rules which we established above, n. 153, concerning faith.

Questions

Question 1. Can smallness of matter be had in the sin of presumption?

Response. Affirmatively, both because it is commonly admitted by theologians that the sin of presumption is indeed mortal from its genus, but not from its whole genus, and because the malice of this sin finally consists in this, that a good thing is expected in an undue way. Besides, this sin is ordinarily committed by presuming to obtain eternal life either by one's own powers alone, or without any labor, and from divine mercy alone: but through this an injury is not inflicted on God directly and immediately. Therefore. - Cf. St. Alphonsus, n. 21.

Question 2. Is it presumption to commit the same sin several times, because one committed several times is accused as easily as one committed once?

Response. Negatively, because the penitent sins more easily not from the facility of obtaining pardon, but from the lesser difficulty of confessing, although this is an evil disposition most injurious to God. - For the rest, he who sins, or perseveres in sin, from hope of pardon as from a motive of sinning, or under hope of pardon with the purpose of persevering in sin, must be distinguished from him who sins from frailty or passion, yet with hope and purpose of repenting, and thus of obtaining remission of sins. The first certainly admits presumption, but not the other, who rather sins less, because as St.

Thomas says: "Through this he seems to have a will less firmly fixed upon sinning." - Cf. St. Thom. 2-2, q. 21, art. 2, ad 3. - St. Alphonsus, n. 22. - Baller., note (a), p. 175.

Question 3. Can the sin of despair be venial by reason of matter?

Response. Negatively, and the reason is that to admit deliberate diffidence of obtaining eternal beatitude or the means necessary for obtaining it is to deny the attributes of God, and especially his mercy, which certainly is mortal from its whole genus. - But despair can be, and sometimes is, only a venial sin, when it arises from sadness or impatience, because then perfect consent is lacking.

Question 4. What are the remedies of despair?

Response. The chief ones are the following: 1st. consideration of the infinite goodness and mercy of God; 2nd. frequent recollection of those men who after very many and very grave sins obtained pardon; 3rd. meditation on the parables of the holy Gospel, especially of the lost sheep; 4th. special devotion toward the Blessed Virgin, refuge of sinners; 5th. confidence in Christ fastened to the cross for us, etc. Yet let the confessor attend to the following practical rules.

Rule I. Let him examine from what root especially despair arises in the penitent, so that he can apply fitting remedies according to the diverse cause. - But for the most part it is accustomed to be born proximately from apprehension of certain damnation; but remotely: 1st. from sloth, by which someone thinks the means of salvation too grave, and therefore is deterred from employing them; 2nd. from lust or other inveterate sins, which turn the mind away from heavenly things and, because of the difficulty of amendment, lead to despair; 3rd. from melancholy, which inclines to sadness and turns away from confidence, which is accustomed to generate joy of soul; 4th. from scruples, by which the soul is cast down and oppressed.

Rule II. Penitents given to despair are to be moderated with great circumspection, prudence, and patience, according to the diversity of characters and the varied genus of despair. For those who from malice, or from the weight of sins and a disgraceful life, have been driven into despair are to be directed in one way; those who from pusillanimity or from diabolical temptation are impelled to it in another.

Rule III. Penitents who exhibit themselves as such are not immediately on first appearance to be judged as carried off by despair, especially if they live as Christians. For there are found souls, even devout ones, which are agitated by almost continual temptations of despair; nor is it easily to be believed that they have sinned, especially gravely, although they think that they have furnished consent to them; just as neither is excessive fear concerning the danger of salvation to be confused with despair properly so called.

Chapter III. On the Virtue of Charity

Charity is the virtue by which we love God as the supreme good on account of himself, and our neighbor on account of God. Hence there is a twofold material object of charity, namely God as the primary object, and neighbor as the secondary object. Here it will be necessary to treat distinctly concerning each.

Article I. On Love of God

I Say. There exists a special precept of loving God above all things, as is clear both from the words of Christ, Matt. xxii, 37: "Thou shalt love the Lord thy God with thy whole heart ... this is the greatest and the first commandment," and from proposition 1 proscribed by Alexander VII, and already mentioned several times.

But this precept, insofar as it is affirmative, obliges one to love God above all things appreciatively, as is clear from the natural law; not, however, necessarily intensively, because the essence of charity does not consist in degrees. Namely, it is enough that God be in fact preferred to all goods, and the highest degree of intensity or fervor in loving is not required. For that intensity would have to be highest either absolutely or relatively; if the first, it would follow that man could never satisfy this precept; if the other, it would follow that today satisfaction could not be made by an act which yesterday was perfect. - Cf. St. Alphonsus, n. 22. Baller., note (a), p. 178.

Questions

Question 1. When does the precept of charity press?

Response. It obliges both of itself and by accident, like the precept of faith. Of itself indeed, when the use of reason is perfectly developed for ordering life toward God, and besides several times in life, as is clear from the condemnation of several propositions, especially from the 6th condemned by Innocent XI, which is as follows: "It is probable that the precept of charity toward God, of itself, does not oblige rigorously even every five years." - But if you further ask what that particle several times properly imports, practically speaking, the response is that although St. Alphonsus says that the opinion of those who require an act of charity once a month is to be recommended, nevertheless the opinion of those who oblige to it only once a year can safely be held. Indeed, according to the same Holy Doctor, the faithful who live as Christians and often devoutly recite the Lord's Prayer are not to be disturbed, because then, if not expressly, at least in exercise, they elicit an act of charity. But it obliges by accident when the precept of contrition presses; for example, if a priest conscious of mortal sin had to celebrate, when there is not available any supply of a confessor. Cf. St. Alphonsus, *Hom. Ap.*, n. 13.

Question 2. Are the dying bound to eliciting an act of charity?

Response. They are certainly bound if they are conscious of any mortal sin, and no other means of justification is available to them. But if they have already received the sacrament of Penance with attrition, they are not to be obliged to elicit an act of charity, not because this is contained in simple attrition, but because a special precept is not established, even though the contrary opinion is much

more common. For the rest, the dying are to be urged and most opportunely excited to elicit and repeat acts of charity. Cf. Baller., note (a), p. 180.

Article II. On Love of Neighbor

Of three things it will be necessary to speak here, namely:

1. concerning the precept of love of neighbor in itself,
2. concerning the works of charity to be fulfilled from it,
3. concerning the vices opposed to charity toward neighbor.

§ I. On the Precept of Love of Neighbor in Itself

Point I. On the Precept of Charity Toward All in General

I Say 1st. There is a precept of loving one's neighbor with a true and internal affection. This is clear both from the natural law, because also in one's neighbor there exists the same formal motive of love, namely the participated goodness of God; for all men have been created to his image, and are capable of the friendship of God and of eternal beatitude; and from proposition 10 condemned by Innocent XI, which is thus stated: "We are not bound to love our neighbor by an internal and formal act."

But he who lives as a Christian satisfies this precept sufficiently, as to the internal act, by praying in general for his neighbor or by reciting the Lord's Prayer. But as to external acts he satisfies it by succoring the necessities of his neighbor, whether temporal or spiritual, according to the rules to be established below.

I Say 2nd. Some order of charity is to be observed in the love of neighbor. The reason is that the persons to be loved are joined to us more or less closely, and the goods to be desired for them are of different kinds and of different necessity. I said 1st, of different kinds; for some are spiritual, and others temporal; and these again are distinguished into goods of life, goods of reputation and honor, and goods of fortune. - I said 2nd, of different necessity; for this is either temporal or spiritual, and each can be 1st, extreme, when the danger of eternal damnation, or of death, or of another evil nearly equal to death, so presses upon one's neighbor that he, morally speaking, cannot escape it without the help of another; 2nd, grave, when from the circumstances eternal salvation is rendered very difficult, or temporal life very burdensome; 3rd, common, in which one can provide for himself without great difficulty. In this, in the spiritual order, are ordinary sinners, who, if they wished to apply some effort, would rise again from their evil state; but in the temporal order generally mendicant poor persons suffer it, for whom life, according to their condition, is not too burdensome and miserable.

For the practical application of this precept, the following rules are very useful.

Rule I. Each person is bound to love himself simply and absolutely more than his neighbor. The reason is that each person is nearer to himself than any other. This is clear besides from the natural and invincible inclination to love oneself more than one's neighbor; hence the common axiom: Well-ordered charity begins from oneself. Moreover love of self is the rule of love of neighbor according to that saying: "Thou shalt love thy neighbor as thyself." But the rule is prior and more excellent than the thing ruled.

Rule II. Yet we must succor our neighbor, even with our own advantages placed after his, according to the following order:

1st. In extreme spiritual necessity one's neighbor must be succored even with certain danger of life, provided there is certain hope of helping him, and there is no other by whom he may be relieved, nor does a graver evil threaten from it; because the eternal life of one's neighbor is a good more excellent than our own temporal life.

2nd. In extreme temporal necessity one's neighbor must ordinarily be succored with a great inconvenience indeed, but not with the greatest, such as the donation of a great sum of money would be even for a rich man. The reason is that, on the one hand, the life of one's neighbor is a good more excellent than some good of ours; and, on the other hand, since love of self precedes in order, no one is obliged to undergo so great an inconvenience for others.

3rd. In grave necessity of either order no one is bound to succor his neighbor with his own grave inconvenience, while excluding, however, a title of justice, piety, or office. For from what has been said it follows that we are bound to furnish some help, but not with grave loss of one's own good.

4th. In common necessity of either order one's neighbor is to be succored with some inconvenience indeed, because love of neighbor requires this, but only with a slight one; for there can be only a slight obligation of charity when one's neighbor can rather easily extricate himself from that necessity, or when it is not too burdensome to him. But we are not bound to help all who are placed in common necessity, both because this would be impossible, and because, if at some time it could be done, it would then no longer be a slight inconvenience.

Rule III. Among the various persons to be loved, other things being equal, those are to be preferred who are more closely joined to us by blood, friendship, office, religion, common life, etc., since God has bound them to us by stricter bonds. Hence, outside extreme necessity, first of all a wife is to be succored, because she is one flesh with her husband; 2nd, children; 3rd, parents, and indeed the father before the mother; 4th, brothers, sisters, then relatives, domestics, and intimates. I said outside extreme necessity, because in this, parents, by reason of the fact that they gave life, are more probably to be preferred even to wife and children. - Cf. St. Alphonsus, nn. 27 and following; and *Hom. Ap.*, nn. 15 and following.

Questions

Question 1. Is it contrary to the charity due to oneself to wish for death on account of the misfortunes of life?

Response. Negatively, if it is done from desire for a better life or eternal happiness, as is evident; but the answer is otherwise if it is done from weariness of life, or from dejection of soul. Yet they do not sin who desire death when life is so burdensome that it is judged harder than death itself. - Cf. St. Alphonsus, n. 30.

Question 2. Is it contrary to charity to desire temporal evil for one's neighbor, or to rejoice over it, on account of a good end?

Response. Negatively, if the due order of charity is observed, that is, if it is done on account of a greater good, or for a lesser evil. Hence this is licit: 1st, on account of the spiritual good of the

neighbor himself; 2nd, on account of the common good, whether spiritual or temporal; 3rd, on account also of the good of many persons, of much greater moment, for example, of a family, a community, etc. - But otherwise one must speak when the order of charity is perverted, as is clear from proposition 14 condemned by Innocent XI, which is as follows: "It is licit by an absolute desire to wish for the death of one's father, not indeed as an evil of the father, but as a good of the one wishing, because namely a rich inheritance will come to him." - But we know from Fr. Viva that this was the cause of the condemnation. Hence a wife cannot desire the death of her husband from the fact that she is unjustly badly treated by him, nor the death of her daughter because on account of deformity she cannot marry. - Cf. Baller., note (c), p. 186.

You Will Resolve. - 1st. A mother is not bound to undergo danger of life so that her offspring may be baptized, when it is uncertain whether it will survive for baptism. A pastor is bound in time of plague to succor his own and administer the necessary sacraments either by himself or by an equally suitable substitute.

2nd. He sins against charity toward himself, gravely or lightly, who neglects due care of soul or body. Yet it is licit to deprive oneself of non-necessary spiritual goods for the temporal or spiritual good of one's neighbor, for example, to omit Mass on a weekday. Indeed someone can desire and procure for his neighbor greater non-necessary spiritual goods than for himself, excluding contempt of them.

3rd. It is never licit to commit any sin for procuring the good of one's neighbor, whether spiritual or temporal; nor is it licit to expose oneself to proximate danger of sinning when a fall appears morally certain. Yet it is licit to expose oneself to remote danger. Indeed, as St. Alphonsus teaches, l. 6, n. 453, sometimes someone will even be bound to a work of charity when a fall is otherwise very probable, if one's neighbor is placed in extreme spiritual necessity; provided one forearms himself with opportune means, because one can certainly and justly hope for the help of God. - Baller., note (a), p. 186.

Point II. On the Precept of Charity Toward Enemies in Particular

Only he is called an enemy who has injured another either by mere offense or by injury. - Besides, it must be noted that signs of love are of a twofold kind; namely, some common, and others special. The former are owed, and in fact are mutually given, by those who belong to the same state or social condition. The latter, which are called by St. Thomas friendly benefits, and proceed from familiarity, are freely exhibited to certain particular persons by reason of friendship. Both these signs are diverse according to diversity of customs and regions. Cf. Baller., note (a) and (c), p. 188.

I Say. There exists a precept of loving enemies. It is clear both from the words of Christ, Matt. v, 44: "But I say to you, love your enemies"; and because even in enemies the divine goodness shines forth, not insofar as they are enemies, but insofar as they are rational creatures. - Cf. St. Thom. 2-2, q. 25, art. 8.

St. Thomas teaches in this article: 1st, enemies as such are not to be loved from charity, because "this is perverse, repugnant to charity"; 2nd, but according to their nature, that is, in the universal, "love of enemies is of the necessity of charity: namely so that someone loving God and neighbor does not exclude his enemies from that generality of love of neighbor"; 3rd, "love of enemies can be considered in the special, namely so that someone in the special is moved by a movement of love toward an enemy: and this is not of the necessity of charity absolutely, because neither is it of the necessity of

charity to be moved by a movement of love in the special toward each and every man individually: because this is impossible. Yet it is of the necessity of charity according to preparation of soul, namely so that a man have his soul prepared for this, that he would love an enemy in the singular if necessity occurred," namely not only by interior love, which does little toward necessity, but also by exterior love by which he may assist one suffering necessity: and therefore not only in affection, but in effect. But that without an article of necessity a man should fulfill even this act, so that he loves an enemy on account of God, this pertains to the perfection of charity.

But so that the practical application of this precept may be seen more easily, attention must be given to the following rules:

Rule I. Of themselves the common signs of love are owed to enemies, because denial of them would be an act of vengeance and a manifestation of hatred, which is repugnant to charity. I said of themselves, because sometimes a reasonable cause is present for denying them for a time, for example, by reason of due correction, of a good effect in children or inferiors, or on account of prudent fear of quarrels from the sight or conversation of an enemy, etc., likewise on account of the expression of just sorrow conceived from injury, etc.

Rule II. Of themselves special signs of love are not owed to enemies, because friendship is owed to no one. Hence you are not bound, for example, to visit them when sick, console them when sad, receive them with hospitality or at a banquet, in those circumstances indeed in which actions of this kind are not regarded as common signs of love. I said of themselves, for by reason of avoiding scandal, or if by a particular and obvious sign of benevolence you can without grave inconvenience placate an enemy and bring it about that he lay aside hatred, you are sometimes bound to furnish this sign for his salvation. - Cf. Baller., note (a), p. 189.

Rule III. Indeed sometimes even those special signs of benevolence must be exhibited, and if they were omitted, someone would morally show and conduct himself as an enemy. Hence to one seeking pardon and offering a satisfaction congruent to the injury, if any intervened, particular signs also of special love, if any previously used to be given, generally speaking, are not to be refused, although there is not an obligation afterward to repeat those signs and preserve the former friendship. - Cf. St. Thom. in 3, dist. 30, q. 1, art. 2, ad 5. - Baller., note (b), p. 189.

Questions

Question 1. What order must be observed in making reconciliation?

Response. He who offended another ought, of himself, first to employ the means toward reconciliation, as natural equity dictates. But if the offense is mutual and equal, let him who first offended first promote reconciliation; but if it is unequal, let him go first who offended more gravely. For the rest, absolute rules cannot be assigned, but the circumstances must be considered.

Question 2. Must an offender seek pardon from the one injured?

Response. Affirmatively, unless some other means or more fitting mode of reconciliation is available, for example, by furnishing various duties or benefits; or unless a petition for pardon seems to profit nothing toward placating the offended person. They also except the case if the offender is far superior to the offended, or if the offended is prudently judged to condone it. Cf. Lacroix, lib. 2, n. 189.

Question 3. Is there an obligation to greet an enemy encountered on the way?

Response. Affirmatively, if circumstances of state, condition, or other similar things demand that all greet one another indiscriminately, or if it is a question of a subject toward his superior, or if the enemy greeted you first. But otherwise, if greeting and conversation are regarded as special signs, excluding however the case in which these are required to avoid scandal or to gain one's brother; but then the obligation, according to St. Alphonsus, is not grave, nor does it seem to be urged strongly, because acts of this kind bring no small difficulty in the offended person. - Cf. St. Alphonsus, n. 28. Baller., note (b), p. 190.

Question 4. Are penitents who accuse themselves of hatred immediately to be reproved concerning sin, especially grave sin?

Response. Negatively, because penitents often confuse hatred properly so called, or enmity, with hatred of abomination, or of a quality or defect. Often also, especially the ruder, or those who are of a more ardent nature, labor only under some natural and invincible aversion of soul, or suffer a certain indignation. - Cf. St. Alphonsus, n. 30. - Voit, n. 703.

Question 5. Are those to be absolved who, although they say that they have no hatred properly so called, nevertheless refuse to speak to an enemy?

Response. A distinction must be made; for either that speaking, from the circumstances, is reckoned only a special sign of love, and besides no reason is present, from those which were assigned above, by force of which, by accident, this sign, although special, ought to be given to an enemy, or not. If the first, the penitent who refuses to speak to an enemy can and must be absolved; if the other, it will be necessary to weigh whether hatred of this kind properly so called is or is not a mortal sin. For just as the inflicting of evil, so also the desire of another's evil admits smallness of matter; and if this holds with those who have injured us in nothing, *a fortiori* it ought to hold with an enemy, who through an unjust injury has provoked one to just indignation. - Cf. Baller., note (b), p. 192.

§ II. On Works of Mercy

Works of mercy are some corporal, as to furnish food to the poor, to clothe the naked, etc.; and others spiritual, as to correct those sinning, to teach the ignorant, to console the sorrowful, etc. We shall speak about only two, because they have special difficulties, namely 1st, concerning alms, 2nd, concerning fraternal correction.

Point I. On Alms

I Say 1st. There exists a true precept of dispensing alms to the needy. This is clear both from the general law of charity, by which we are obliged to love our neighbor, and consequently to bring him help in necessity; and from Sacred Scripture, because it is said, Ecclus. iv, 1: "Defraud not the poor of alms"; and Matt. xxv, 42: "Depart from me, you cursed, into everlasting fire ... for I was hungry, and you gave me not to eat; I was thirsty, and you gave me not to drink."

I Say 2nd. This precept is hypothetic in two ways, because it supposes not only indigence or necessity in the one receiving alms, but also superfluity in the one giving. Now just as a threefold necessity is assigned by theologians, namely extreme, grave, and common, as was explained above, so a twofold superfluity is distinguished. For some goods of fortune are superfluous to life or nature, because

without them some persons, and those whose care they have, can exist or live; others are superfluous to state or decency, when some persons, and those whose care they have, do not need them in order to live honestly or decently according to their state, for example, by supporting servants, receiving guests, and establishing banquets according to custom. - Cf. St. Thom. in 4, dist. 15, q. 2, art. 4, q. 1; and 2-2, q. 32, art. 5. - Baller., note (a), p. 194.

But so that you may apply this doctrine practically, attention must be given to the following rules:

Rule I. In extreme necessity one's neighbor must be succored even and only from goods necessary to one's state; even indeed, because the right order of charity requires that the life of one's neighbor prevail over our good that is far inferior; but only, because our life is nearer to us than the life of one's neighbor.

Rule II. In grave necessity which approaches extreme necessity, one's neighbor must be succored from goods in some way necessary to one's state, or with moderate detriment to one's state. But in that necessity which is not so great, it is enough that he be succored from goods which are superfluous to state or decency. - Cf. Viva, on proposition 12 condemned by Innocent XI, n. 8. - St. Alphonsus, n. 31.

Rule III. In common necessity, although there is no obligation of giving alms to this or that person in particular, nevertheless, by the common opinion of the Doctors, he cannot be excused from sin who, having goods even superfluous to his state, would never wish to bestow any alms. - Cf. Suarez, disp. 7, sect. 3, n. 7.

Questions

Question 1. Does the precept of alms oblige under grave sin?

Response. The precept of giving alms is indeed grave of itself, like the very precept of charity; but it must not be said that it always presses under grave sin in every necessity. In extreme necessity indeed, and in grave necessity which approaches extreme necessity, or can soon turn into it, it is commonly taught that it presses under grave sin. But it is controverted among the Doctors not only whether there is a grave obligation of giving alms to some poor man in particular who asks it while he labors under simply grave necessity, but also whether someone is bound under grave sin to relieve the poor in general who are in common necessity. Cf. Baller., note (b), p. 194, note (a), p. 195, and note (a), p. 196.

Question 2. What quantity of goods must be given to the poor?

Response. In extreme necessity, or one so grave that it can easily become extreme, as much must be given as suffices here and now for relieving this necessity, unless there are others who are willing to assist him. Yet no one is bound to dispense a great sum of money to free a poor man from danger of death, or to procure extraordinary and costly remedies for him. But in common necessity a determined quantity cannot be assigned, but it seems more probable that it is enough to dispense the fiftieth part of those things which remain over one's state. - Cf. St. Alphonsus, nn. 31 and 32; and *Hom. Ap.*, n. 19.

Point II. On Fraternal Correction

Fraternal correction, or rather reproof, is an admonition of a brother concerning the amendment of faults, fraternal, proceeding from charity.

I said 1st, rather reproof, because the amendment of a brother is procured not through fear of what is sorrowful, but through hatred and fear of what is disgraceful. I said 2nd, fraternal, because even when it is done by a prelate, it is done outside the order of prelacy. I said 3rd, of faults, and not of sins, because it regards more and properly the omission which is in transgression than the perversity of the transgression. - Cf. St. Thom. in 4, dist. 19, q. 2, art. 1. Baller., note (a), p. 200.

I Say 1st. There exists a true precept of fraternal correction. This is clear both from the law of charity, by which we are obliged to remove the evils of our neighbor, and from Sacred Scripture, for example, Ecclus. xix, 14: "Correct thy neighbor ... lest perhaps he repeat it"; and Matt. xviii, 15: "If thy brother shall sin against thee, go and correct him between thee and him alone. If he shall hear thee, thou shalt gain thy brother."

I Say 2nd. For the strict obligation of this precept there is required: 1st, that there be certainty concerning the transgression or fault of one's neighbor; 2nd, that there shine forth some hope, indeed a greater probability, of amendment; 3rd, that there not be another equally suitable person who is believed likely to correct; 4th, that the correction can be made without grave inconvenience of the one correcting; 5th, that it is judged necessary for the amendment of the delinquent, and that there be at least no probable hope that he will amend himself of his own accord. - Cf. St. Alphonsus, n. 38 and following.

Questions

Question 1. Does the precept of fraternal correction oblige under grave sin?

Response. Affirmatively, if the required conditions are present, and it is a matter of grave matter. Hence he can sin gravely who, from vain fear that his neighbor may be offended somewhat, or that he himself may suffer a slight detriment from it, omits correction in a grave matter, where he thinks that it would truly be useful. Indeed, sometimes it can happen that in religious orders there is a grave obligation, although the matter is light, when namely venial transgressions are of such a kind that they dissolve or even greatly diminish the vigor of discipline. - Cf. St. Thom. 2-2, q. 33, art. 2. - St. Alphonsus, n. 37. - Baller., note (p), p. 200.

Question 2. Does the precept of correction have place where someone sins from ignorance?

Response. Affirmatively, if it is a question of vincible ignorance, because this does not excuse from sin. But if the ignorance is invincible, it is not so much a question of fraternal correction as of warning by which one's neighbor is taught the truth. Now in the case charity can impel in many ways, namely: 1st, on account of harm to a third party; 2nd, on account of harm to the ignorant person himself; 3rd, on account of scandal; 4th, on account of the honor of God; 5th, on account of irreverence toward religion. But if no harm or inconvenience would follow, there will be almost no obligation of giving warning, except as regards those who by their office ought to teach others, among whom there is also the confessor. But they are to be taught, both because ignorance is an evil of the ignorant person himself, and because other inconveniences can and usually do flow from it.

Question 3. What order must be observed in fraternal correction?

Response. The order assigned by Christ himself is to be observed, unless circumstances advise otherwise. Hence 1st, correct secretly; 2nd, before witnesses, if the first admonition does not suffice; 3rd, refer the matter to the superior. - Sometimes that order can and must be inverted, namely: 1st, if

the sin is public or soon to be made public; 2nd, if it is gravely harmful to another; 3rd, if secret admonition is not judged likely to profit; 4th, if it is better to manifest the matter at once to the superior; 5th, if the delinquent has yielded his right, as happens in various religious orders. Cf. St. Alphonsus, n. 40.

You Will Resolve. 1st. Fraternal correction is to be made with true charity, even as to the manner; therefore it ought to be paternal toward inferiors, kind among equals, and reverential toward superiors.

2nd. Private persons among themselves are rarely bound to correction, at least under grave sin, unless they are joined among themselves familiarly; because rarely are all the required conditions found; still more rarely toward superiors.

3rd. For the most part prudence advises that correction be omitted toward those whose disposition is wholly unknown, lest by receiving correction with an evil spirit they become worse.

4th. The scrupulous are ordinarily excused from the office of fraternal correction, because either they are wearied too much by it, or they are entirely unsuited for it; for, disturbed by scruples and anxieties, they lack the necessary discretion for correcting, and are unable to attend to excusing causes.

5th. In communities living under rule, in colleges, seminaries, etc., it is for the most part expedient that correction be made by way of denunciation to the superior, either by oneself or through another; nor can members or fellow residents be absolved who do not consent to denunciation of this kind, where it is a question of grave harm to the community or to religion. Likewise, by natural law, corrupting priests who inflict great spiritual harm on the faithful, or are certainly foreseen as going to inflict it, must be denounced to ecclesiastical superiors.

6th. Yet the denunciation which is made to the superior as to a father, and which is called evangelical, must be carefully distinguished from the other which is made to him as to a judge, and is called judicial. The former, which properly pertains to fraternal correction, regards the good of the one denounced; the latter tends to the good of others, especially the common good, or of the denouncer himself. - Now where a denunciation is made to a superior merely as to a father, he can in no way proceed as judge. Cf. Baller., note (b), p. 203.

7th. With relation to those who have yielded their right, let the following things be noted. If it is certain that a brother has amended an occult sin, and there is no need to fear danger of relapse or harm to himself or another, it is not licit, unless he consents, to denounce him to a superior. For although justice would not be injured, charity would certainly be injured, which obliges us to succor our neighbor with the least harm to him, and not to do to another what you do not want done to yourself. Besides, if an immediate superior by himself alone can amend the delinquent so that no danger of relapse or harm to himself or the community threatens, it does not seem licit to manifest the fault to a mediate superior. - Cf. St. Alphonsus, n. 42.

8th. Whenever there is fear that some grave harm will follow from a brother's vice, let the matter be referred to the superior, as to a father, sincerely, from a pure intention, with prayer having been premised; let the bare fact be narrated, without exaggeration, in the manner in which you would wish a similar fact of yours to be narrated. In this way you will often gain your brother for Christ, while on

the contrary, if this fraternal disclosure is neglected, it can happen that your brother becomes worse day by day.

9th. It must be noted 1st, that there is in no way an obligation of investigating; for this is the duty only of superiors; 2nd, nor is it lawful for anyone to investigate the deeds of others, Prov. xxiv, 15: "Seek not wickedness in the house of the just and waste not his rest"; 3rd, that such inquiry is vicious, for it generates many harms.

10th. Voluntary accusers not only are not easily to be heard, but rather to be guarded against and even warned that, taking care of themselves, they should forget others. Often such persons are enemies of domestic peace.

§ III. On the Vices Opposed to Charity toward Neighbor

The chief ones are hatred, envy, quarrel, scandal, and cooperation in the sins of others. We shall speak only of the two latter, since concerning the others treatment has already been made above, or is to be made in the fifth precept of the Decalogue.

Point I. On Scandal, Either in General or in Particular

Scandal is a saying or deed less right, furnishing to someone an occasion of spiritual ruin. - I said 1st, a saying or deed, under which name omission also is understood. - I said 2nd, less right, that is, what is either evil in itself or has the appearance of evil. I said 3rd, furnishing an occasion, because the proper cause of sin is the will of the one acting. - I said 4th, of spiritual ruin, which can be grave or light; for by this name sin is understood, whether mortal or venial. - Cf. St. Thom. 2-2, q. 43, art. 1; and *de Verit.*, q. 15, art. 1.

Scandal is divided: 1st, into direct and indirect, according as the evil action of another is intended in itself, or only in a cause by which one's neighbor is incited to sin; 2nd, into active and passive, according as the saying or deed itself which furnishes an incitement or occasion of sin is considered, or rather the incitement itself already taken up.

But two things are to be noted here:

1st. Direct scandal is also called diabolical when the spiritual ruin of one's neighbor is formally intended. But if the spiritual ruin of another is not intended, but only one's own utility or pleasure, it is called simply direct.

2nd. Any scandal whatsoever can be active or given, without being passive or accepted; because an action apt of itself for scandal can be posited, without one's neighbor taking from it an occasion of spiritual ruin. And vice versa there can be accepted scandal, without its being given; but in that case scandal is not properly to be attributed to the action of another, but rather to the ignorance, imagination, or even malice of him who suffers scandal or admits it without foundation. If it is taken up from weakness or ignorance, it is called scandal of the little ones; but if it arises from the mere malice of the subject, it is called pharisaical. - Cf. St. Alphonsus, n. 43.

I Say 1st. Scandal, even indirect, is a grave sin from its genus, because from its genus it is opposed by commission to charity, since it is directly opposed to fraternal correction: for this draws one's neighbor away from sin, but that on the contrary draws him to sinning. Wherefore besides the proper

malice of the action, which is called scandalous, there is had the specific malice of scandal, by which charity is injured. - Cf. St. Thom. 2-2, q. 43, art. 3.

I Say 2nd. Scandal of the little ones or of the weak is to be avoided whenever it can be done without grave inconvenience, by omission both of an indifferent work and also of a good work not prescribed. The reason is that by charity we are bound to impede the ruin of our neighbor who needs our help, when we easily can, for example, by abstaining from an action not very useful, or by deferring it, or by explaining our manner of acting, etc.; but the little ones need help, since because of ignorance or weakness they are placed in a certain spiritual necessity. Therefore. - But St. Thomas well observes that scandal of the little ones after admonition for the most part becomes pharisaical. Cf. St. Thom. 2-2, q. cited, art. 7.

I Say 3rd. Pharisaical or malicious scandal, at least ordinarily, is not necessarily to be avoided either by omission of a good work or by omission even of an indifferent work not having the appearance of evil. The reason is that those suffering scandal from their malice alone are not in a necessity from which they cannot easily free themselves without the help of another, and otherwise a place would be given to the wicked for impeding good works whenever they wished.

Questions

Question 1. In scandal is there had not only a sin against charity, but also against the virtue to violating which one's neighbor is induced?

Response. Affirmatively, as to direct scandal; for any virtue specially forbids not only that it be violated, but also that someone directly induce another to violate it. But as to indirect scandal there is much dispute, but the negative opinion which Lugo defends with others seems probable. The reason is both that virtues do not oblige us to impede the opposite vices in others, but only not to induce our neighbor positively and directly to violate them; and that otherwise he who by his example moves another to steal would be bound to restitution, which the Doctors most commonly deny. In this opinion it is enough that the penitent express generally the sin of scandal, without being bound to add the species of sin to which others were indirectly induced. Much less is it necessary to express circumstances which perhaps add a species to the sins of others, for example, whether those who are induced to lust by foul speech are married or bound by vow, etc. Cf. Lugo, *de Paenit.*, disp. 16, n. 159. - Baller., note (b), p. 207.

Question 2. Are precepts sometimes to be omitted on account of scandal of the little ones?

Response. Negatively, as to negative precepts of natural law, because these oblige always and for always, and works contrary to them are intrinsically evil. But affirmative precepts, because these do not oblige for always, it is sometimes licit and indeed necessary to omit, for example, the precept of correcting sinners, if graver ruin is to be feared from it; or rather it must be said that then the law itself ceases. As to positive human precepts, there is controversy. The more probable opinion affirms, excluding grave inconvenience, because the precept of avoiding scandal to one's neighbor, as being natural, is to be preferred to positive precepts. Hence a woman knowing that she will be shamefully desired by someone, if she goes to the prescribed Mass, is bound to omit it once or twice, if there is hope that afterward the scandal will cease; but not several times, on account of the grave inconvenience which would result from it. But because the negative opinion is also probable, a

burden concerning which there is no certainty must not be imposed. - Cf. St. Alphonsus, n. 51. - Baller., note (a) and (b), p. 206.

Question 3. Are you bound to give up temporal goods in order to avoid scandal?

Response. Negatively, ordinarily speaking, because charity toward neighbor does not oblige with so great an inconvenience. Hence you are not bound to pay more than is fair to a workman or coachman, although you foresee that otherwise he will blaspheme; for that inconvenience, although light in itself, can occur rather often, and thus easily becomes grave; nay, it could rather often be an incitement to blaspheming. - Cf. St. Alphonsus, n. 52.

Question 4. Must one sinning with an accomplice declare in confession the circumstance of solicitation?

Response. Negatively, more probably, provided either from the nature of the sin, or from the mode in which the sin is accused, the confessor sufficiently understands that some accomplice was present. The reason is that by the simple communion of crime it is effected that there was mutual scandal, and indeed active on each side, between the one soliciting and the one consenting, and therefore, once that has been declared, the sin of scandal also is declared. But that one of the accomplices placed the cause of scandal before the other is a merely aggravating circumstance, which does not change the species of sin. Cf. St. Alphonsus, n. 46.

Question 5. Is it licit to persuade someone determined upon a greater evil to a lesser evil?

Response. Affirmatively, more probably with St. Alphonsus. Yet some limit this if the lesser evil is contained in some way in the greater, as beating in homicide, etc.; which limitation, however, does not seem necessary to the Holy Doctor. Certain other theologians, as, for example, Cardinal de Lugo, posit another limitation, namely provided that to one willing to inflict greater harm on one person, you do not persuade lesser harm to be inflicted on another. But others deny that this limitation also is required. - But the reason of the solution is that this kind of counsel tends formally to this, that a greater sin not be committed; from which it happens that he from whom a robber steals what is less is not reasonably unwilling concerning him who gave the counsel. - Cf. Vasquez, *Opuscul. de scand.*, art. 1, dub. 2, n. 14. - Baller., note (b), p. 208.

Thence you conclude that if someone persuades another to inflict a lesser harm so that a greater evil may be avoided, he is not bound to restitution: not by reason of a thing received, because he has received nothing; not by reason of unjust damaging, because by his counsel he rather usefully managed the matter of another. Nor is the one giving counsel bound to restitution who has brought help to another, for example, to a robber, because he manages the master's matter usefully. And this conclusion is of very grave moment, namely lest an obligation of restitution be imposed where there truly is none. Sanchez, *de Matr.*, l. 7, disp. 11, nn. 17, 18; De Lugo, *De Just. et Jure*, disp. 19, n. 44.

Question 6. Is it licit to permit an occasion of sinning so that the guilty person may be corrected?

Response. Affirmatively, because to permit is not to induce, and often there is a sufficient reason for permitting sin. Hence parents and masters are of themselves to be excused from sin who allow sons or servants to sin, in order that they may find an opportune place of correcting them. Indeed it is licit also, at least probably, to place an occasion of sin, provided the act is indifferent, and a just cause is present for placing it. Hence a master ought to be excused from sin who, deliberately, leaves the key

attached to the chest in which money is stored, in order to test the doubtful fidelity of a servant; but in no way can a father be excused who keeps a prostitute at home, in order that he may take an experiment of his son's chastity. - Cf. St. Alphonsus, n. 58.

Note. - From the doctrine handed down thus far, all cases concerning scandal could already be solved, but because of special difficulties it will be useful to say something in particular concerning luxury, bad books, dances, and spectacles.

Concerning Luxury. To do, represent, or display those things which notably provoke to lust is indeed most grave scandal; because no subtler poison can be offered to the soul. Hence those are guilty of most grave scandal: 1st, who represent shameful things in plays or other assemblies; 2nd, who compose or sing shameful songs or poems; 3rd, who make or expose obscene statues or images; 4th, who seduce pupils entrusted to them by bad examples, etc. But especially attention must be given to the following.

Questions

Question 1. Does a woman sin gravely by displaying nudities on the breast and arms?

Response. Affirmatively, if the nudity is immoderate or very notable, notwithstanding any contrary custom whatsoever. But if it is not so immoderate, custom will easily excuse from grave sin, because it notably diminishes the force of concupiscence, since things customary excite the imagination less. - Cf. St. Alphonsus, n. 55.

Question 2. What is to be said concerning women's adornment and cosmetics?

Response. The doctrine of St. Thomas concerning this matter is reduced to the following heads: 1st, women sin mortally if they adorn themselves with the intention of provoking to lust; 2nd, but venially, if they do this merely from vanity, levity, or boasting; 3rd, to wear superfluous adornment is only a venial fault from its genus; 4th, there is no sin of itself if the custom of the country and condition of state is observed; 5th, women licitly add something of adornment, so that they may please husbands either whom they have or whom they ought to receive; 6th, cosmetics will be mortal if they are applied for lasciviousness; venial, if merely to feign beauty; but none, if to hide some defect. - Cf. St. Thom. 2-2, q. 169, art. 1 and 2; and *Comm. in Isai.*, chap. 4. - Baller., note (a), p. 210.

Question 3. Is it licit to rent a house to prostitutes?

Response. Affirmatively, probably, especially if there are not other renters present, or if it is easy for the prostitutes to obtain another house. Yet except the case if the prostitutes gravely harm honest neighbors, or by the location of the dwelling furnish a greater occasion for sinning. - Cf. St. Alphonsus, n. 70.

Question 4. What is to be said concerning the exposure of images along public ways, as is accustomed to be done among us by merchants?

Response. Often exposure of this kind is gravely scandalous, for those images sometimes, both because they are painted with more vivid colors and because they display immoderate nudities, gravely move the imagination and entice to sin. Nor should you say that scandal is not intended, because those images are exposed only either for showing the art, or for attracting buyers; for the response is that an end, even if good, can never be obtained by illicit means.

Concerning Bad Books. Among every kind of scandals, none is more execrable than that which is produced from impious and obscene books. This is the most dreadful plague of all, because it infects not one region or age only, but is diffused to all places and times. Therefore the reading, printing, and spreading of books altogether opposed to faith and morals is never to be permitted, even independently of the positive prohibition concerning which there will be discussion in the tract on censures. Wherefore altogether wisely the Fathers of the Third Council of Baltimore, after they had bitterly complained about the abuse of the excellent art of typography, warn pastors of souls, confessors, and preachers with most grave words concerning the obligation of keeping the faithful away from the reading of bad books. - Cf. *Conc. Plen. Balt.* III, nn. 224 and following.

Questions

Question 1. Can books which are partly good, partly bad, be committed to type?

Response. Negatively, generally speaking, unless they have been accurately purged; otherwise, however, if the danger to be feared from them is not so grave, and this seems to be compensated by a great utility to be taken from them. But printers should diligently ask learned and experienced men, especially ecclesiastical superiors, what is to be done in doubtful matters.

Question 2. Can bad books sometimes be sold?

Response. They can in no way be sold indiscriminately, namely to any buyer, as is clear. Yet sometimes they can be sold to prudent and learned men, who can read books of this kind usefully, for example, to refute them, etc. Except books altogether obscene, which are to be rooted out completely. The same, with proportion observed, is to be said concerning donation or rental of the same books.

Question 3. Can books of this kind be returned to the owner who has rented them?

Response. Negatively, unless prudent fear of some grave inconvenience suggests otherwise. This flows of itself from the principles handed down above. But it is to be judged a grave inconvenience if you fear grave quarrels, blasphemies, hatreds, and other things of this kind from the owner. Slight sadness, or even fear of dissolving friendship, certainly would not be judged a reason, at least for the most part, for returning bad books to a friend.

Concerning Dances. Dances of themselves are not illicit, if they are done in an honorable manner, that is, with every immodest touch, gesture, or act removed; for dances of themselves are acts of gladness, and are prohibited by no law. But by reason of nudities, the manner of dancing, words, gestures, and songs, dances can become gravely illicit. But as to the fact, among dances gravely illicit certain more recent dances which among us are called round dances are reckoned by some. - Yet since, the case of a special prohibition always excluded, the malice of these dances consists only in danger, which is essentially relative, and therefore diverse for diverse persons, it will belong to the confessor to judge concerning particular cases. - Cf. St. Alphonsus, *de sexto praec. Decal.*, n. 429.

You Will Resolve. 1st. Those who are so weak that they undergo grave danger of sinning in dances even honorable ones must abstain from them under mortal sin; unless perhaps sometimes a certain necessity presses, and then, at least probably, proximate danger of consent is absent.

2nd. To be present at honorable dances, even without necessity, excluding however danger and notable scandal, and to dance decently in them, not only is not mortal, but can easily also be free of every sin. For there are found sometimes men, and not rarely women, to whom no danger or only very remote danger threatens. Although these persons are to be dissuaded from dances, nevertheless a promise of avoiding dances would be demanded from them altogether imprudently.

3rd. To legitimate the practice of those confessors who indiscriminately deny absolution to all those who lead dances commonly called among us round dances, it is not valid to say that those dances were condemned by the Fathers of Baltimore. For when the Baltimore Fathers name the aforesaid dances in the Pastoral Letters, they do not impose a precept, but only furnish an admonition. But when they speak more severely in Decree 472, they not only make no mention of those dances in particular, but neither do they impose a precept on all the faithful, and they require only that pastors of souls "attack immodest dances and condemn them altogether." - Cf. *Conc. Plen. Balt.* II, n. 472, and the Pastoral Letters, n. x.

4th. Nor did the Fathers of the Third Plenary Council of Baltimore properly condemn any dances whatsoever, or even the aforesaid dances, when in n. 290 they imposed the following precept: "We command also that priests take care that the abuse by which banquets are prepared with dances (balls) for promoting pious works be altogether removed."

5th. Generally speaking, it is not expedient publicly in preaching to reprehend certain dances by name, because the preacher would accomplish nothing, indeed perhaps he would entice some persons to them. It is rather expedient to act indirectly against dances, and directly against the sins which are accustomed to be committed in them.

6th. Generally speaking, dances with masks (masked balls) are illicit and altogether to be condemned, because experience establishes that they incline very much to lust, from the fact that they suppress modesty, which is the guardian of decency.

7th. Certain very recent dances have seemed gravely indecent to many; hence because of the dangers connected with them, especially young persons of either sex are generally to be kept away from them altogether. Wherever there is a special prohibition, there indeed they are in no way to be permitted. It is wholly clear that the holding of them must never be favored. But when the confessor encounters particular cases, let him judge concerning them according to the circumstances of the singular case.

Sacred Consistorial Congregation. Decree concerning certain dances in the United States of North America and in the Canadian region. - In the last century, in the Federated States of North America, there had begun a custom of calling together Catholic families to dances which were accustomed to be prolonged for many hours of the night with banquets and other recreations. The reason and cause of this thing was given, namely that Catholics might mutually know one another and be united more intimately by bonds of love and charity, and at the same time that subsidies necessary for this or that pious work might be procured. But those who were accustomed to announce these gatherings and preside over them were for the most part presidents of some pious work, and not rarely rectors of churches themselves or pastors. But the Ordinaries of the places, although they did not doubt concerning the right end of those who promoted these dances, nevertheless, perceiving the harms and dangers of the introduced practice, judged that it belonged to their office to proscribe them; and therefore in can. 290 of the Plenary Council of Baltimore they established these things: "We

command also that priests take care that the abuse by which banquets are prepared with dances (balls) for promoting pious works be altogether removed." But, as often happens in human affairs, those things which had most justly and wisely been commanded from the beginning gradually began to come into oblivion, and the use of dances again to prevail, indeed also to be diffused into the neighboring region of the Canadian dominion. Knowing these things, the Most Eminent Fathers of the Sacred Consistorial Congregation, having heard several Ordinaries of the places, and with the matter subjected to examination with much study, judged that one must altogether stand by the sanctions established by the Third Council of Baltimore: and, with the approval of Our Most Holy Lord Benedict XV, Pope, they decreed that all priests, whether secular or regular, and other clerics, are altogether prohibited from promoting and fostering the mentioned dances, even if for the relief and subsidy of pious works, or for any other pious end; and moreover that all clerics are forbidden from being present at these dances, if perhaps they are promoted by laymen. But the Supreme Pontiff commanded that this decree be made public law and be observed religiously by all, anything whatsoever to the contrary notwithstanding. Given at Rome, from the buildings of the Sacred Consistorial Congregation, on the day of March 31, 1916.

To a certain Ordinary asking: Whether the dances of which the decree of the Sacred Consistorial Congregation of March 31, 1916 treats, and which the same Sacred Congregation proscribed, are sometimes licit, or are not comprehended in the reprobation, if they are held during daytime hours, or only in the first hours of the night, and are not too greatly prolonged, or even if they are held without banquets or by that method which commonly is accustomed to be called picnic? The Sacred Congregation responded: "They are comprehended in the reprobation: and therefore all clerics are prohibited from promoting them, even in the mentioned circumstances, and if they are promoted by others, they are prohibited from being present at them." Sacred Consistorial Congregation, Dec. 10, 1917.

Concerning Spectacles. Concerning spectacles nearly the same thing is to be held as concerning dances, namely that they are not illicit of themselves, but can become evil because of circumstances. The reason is that they are opposed to no law, neither natural nor positive. - Cf. St. Thom. 2-2, q. 168, art. 3.

You Will Resolve. 1st. He does not sin mortally who, scandal being set aside, is present at a play not gravely shameful, unless perhaps he knows by experience that he is vehemently moved by games of this kind toward lust with proximate danger of consent, so that the spectacle is for him a proximate occasion of sinning. - Cf. St. Alphonsus, *de sexto praec. Decal.*, n. 427.

2nd. If in plays things notably shameful were represented, or in a shameful manner, it would indeed be mortal to watch them on account of delight arising from the shameful things themselves; but venial on account of curiosity only or vain enjoyment, excluding however danger of consent in shameful delight, which will easily be present in adolescents, or in others of little timorous conscience, and unless scandal is present; and it would plainly be present if clerics or religious were present at shameful plays. - Cf. St. Alphonsus, ibid. and *Hom. Ap.*, tract. 9, n. 10.

3rd. Deservedly, because of the scandal of others, both those who by money or applause cooperate in notably shameful plays are condemned of mortal sin, and those also who are bound to impede them and, when they conveniently can, do not impede them; but *a fortiori* those who represent them. - Cf. St. Alphonsus, ibid.

Point II. On Cooperation, Either in General or in Particular

Cooperation in general is concurrence with another principally acting. But insofar as it can be opposed to charity, it is a certain participation in the evil action of another. Cooperation is distinguished in many ways; for it is: 1st, immediate or mediate, according as the cooperator acts with the sinner in the very act of sin, or posits other actions having some connection with the sin of another; 2nd, proximate or remote, according as the action of the cooperator is connected more closely or more remotely with the evil action of another; 3rd, positive or negative, according as the cooperator either posits some action influencing the sin of another, for example, by helping him, or omits a due act, for example, if he does not obstruct, when he ought to obstruct; 4th, formal or material: the former concurs with the evil will of another, and participates in his evil action insofar as it is evil; the latter concurs only with the action, insofar as it is something physical and indifferent, abstracting from the end and malice of the principal agent.

Cooperation is made chiefly in nine ways, namely by commanding, counseling, consenting, praising, furnishing recourse, participating in the action or profit, by being silent, by not obstructing, by not manifesting. Hence the verses:

> Command, counsel, consent, praise, recourse, One participating, mute, not obstructing, not manifesting.

Principle

Formal cooperation is never licit; but material cooperation can become licit if there is present a just cause proportioned to the gravity of the sin of another and to the proximity of the concurrence to the execution of the sin. The reason of the first is taken from the very definition of formal cooperation. But the reason of the second is that, when you cooperate only materially, you do not contract the malice of the action itself, for this is supposed to be good or indifferent; nor do you sin by virtue of any evil intention whatsoever, because this must be wholly absent; nor finally do you become guilty by virtue of the sin of another, because if he wishes to abuse your cooperation for executing sin, you are not bound except from charity to impede it, and because charity does not oblige with grave inconvenience, therefore, when a just and proportionate cause intervenes, you are excused from every sin. - Cf. St. Alphonsus, n. 63.

From the application of this principle all solutions concerning cooperation must be gathered. But this application, if it is considered speculatively, appears easy; but practically speaking, nothing in all moral theology is more difficult. For often it can scarcely be determined whether cooperation is formal or material, which indeed would always have to be determined in the first place. Then, once it is posited that it is known that cooperation in some case is only material, it does not follow from that that it is in fact licit, but only that it can be licit if the aforesaid required conditions have place. Now the verification of those conditions cannot be known from some physical mark of discernment or scale, but from rules of prudence and discretion, the application of which has always been difficult. Wherefore we add here several particular solutions, so that they may be an example for obtaining other similar ones.

Questions

As Regards Servants. - Question 1.

Is it licit for a servant to bring wine to the table, by which the master and guests will become drunk, or to prepare and serve meats on days of abstinence?

Response. Affirmatively, more probably as to each; for on the one hand cooperation of this kind seems certainly material, and on the other a servant could scarcely refuse those and other services of this kind without at the same time being bound to refuse any service whatever, at least among us, which certainly imports a grave inconvenience. Add that often it is difficult to foresee excess in drink or to know certainly that no reason or dispensation is had for eating meats. - Cf. St. Alphonsus, nn. 68 and 69. - Kenrick, n. 137.

Question 2. Is it ever licit for a servant to put his shoulders under, or to carry a ladder for, a master climbing up to fornicate, to open a door by force, and similar things?

Response. Affirmatively, more probably, because these actions are indifferent of themselves, at least in relation to fornication, and the whole malice is held on the part of the master requiring them. But the sole reason of service, or fear of any notable detriment whatsoever, does not suffice for excusing, but fear of death, mutilation, or similar most grave harm is required. The reason is taken not only from the condemnation of the proposition to be cited immediately, but also from the proximity of the influence which cooperation has upon the sin. - Cf. St. Alphonsus, nn. 66 and 68. - Kenrick, n. 141.

Question 3. Can a maidservant open the door of the house to a prostitute?

Response. The Doctors more commonly affirm, and very many excuse her by the sole reason of service, but not when another who would open is lacking. - But other theologians contend that it is never licit to open the door to a prostitute, and they rely on the following proposition, which is the 51st condemned by Innocent XI: "The servant who, with shoulders placed under, knowingly helps his master to climb through windows to violate a virgin, and many times subserves him by carrying a ladder, opening a door, or cooperating in something similar, does not sin mortally if he does this from fear of notable detriment, for instance lest he be badly treated by the master, lest he be looked upon with fierce eyes, lest he be expelled from the house." - But these words, opening a door, manifestly ought to be understood of opening by force the house of another, as is clear from the context. Cf. Viva on this proposition. - St. Alphonsus, n. 66. - Kenrick, n. 140.

Question 4. Can a servant by reason of service saddle a horse for a man about to go forth to sin, or accompany him?

Response. Affirmatively, probably, if the servant only saddles the horse, because in this he does not seem to cooperate more with the sin of the master than if he should hand shoes or a hat to him when he is going to leave the house. But according to St. Alphonsus it would not be permitted to him to accompany his master to the place where the sin is to be perpetrated, unless he must incur some grave harm. But there are not lacking grave theologians who indeed require some other grave harm in the case in which the master would not go to sin without the servant, because then the cooperation would be more necessary and therefore more proximate; but if another servant would not be lacking, or the master would go equally without the servant, then they teach that the sole reason of service suffices for accompanying him. Yet all make exception for the case in which the master would be rendered more emboldened for sinning by the servant accompanying him, because then the cooperation would be formal, which is never licit.

Applying this solution to another similar case, we can say that it is licit for a coachman to carry someone to a brothel by the sole reason of service or of the fare accepted, since, if he refused, another coachman would not be lacking. Yet he seems to cooperate formally who would lead someone ignorant of where the brothel is to that place, or would furnish his work for carrying him there more secretly and safely. Cf. St. Alphonsus, n. 64. - Kenrick, n. 137. - Baller., note (b), p. 218. *Revue des sciences ecclés.*, vol. 9, p. 161.

Question 5. Is it licit for a servant to write or transmit letters inciting to shameful things, or to carry gifts to a prostitute?

Response. It indeed seems never to be licit to write or transmit letters of this kind, when what they contain is known, because to utter shameful things or suggest them to another is intrinsically evil. - But if in those letters it is said only that the prostitute should wait at such a place, should come to the house at such an hour, or something else of this kind, then the malice is held only on the part of the agent, and therefore the cooperation would be only material, which, a proportionate cause being posited, can be excused. The same must be said concerning the transmission of gifts, which is not evil except from the intention and end of the master. Thus it seems that what is taught in diverse ways by different authors concerning a servant carrying love letters or gifts must be explained. - Cf. Baller., note (a), p. 219, and note (a), p. 220. - *Revue des sciences ecclés.*, loc. cit., pp. 158 and following.

As Regards Workmen. - Question 1.

Is it licit for workmen to build temples of heretics?

Response. Negatively, if this is demanded by heretics in hatred of religion; but otherwise in another hypothesis, when a just cause presses, excluding however scandal, which among us scarcely has place.

Question 2. Is it licit to make statues of false gods?

Response. Affirmatively, if these are not to be employed for false worship, but for the ornament of streets, buildings, etc.; but otherwise, if they are to be handed over to a pagan. - Cf. St. Alphonsus, n. 69.

Question 3. Is it sometimes licit to cooperate in publishing bad books?

Response. It is licit for a grave cause to cooperate mediately or remotely, for example, to prepare ink or paper or arrange printed books. But to cooperate immediately in the printing of such books, for example, to arrange the type, to direct the printing, etc., generally speaking, does not seem licit. I said generally speaking, because in a case of most grave detriment, for a brief time, Laymann indicates that some such thing can be furnished materially, *de Caritate*, chap. 13, n. 5.

Question 4. What is to be said concerning the cooperation of clerks among bankers?

Response. Kenrick has this: "Clerks among bankers are not bound to judge concerning their manner of acting whether it is just; nor are they considered to concur effectively in fraud, if perhaps there is any, since they furnish a bare ministry according to defined rules. Otherwise one must speak if they themselves persuaded others to sell promissory notes at an unjust price, or if they compose accounts falsely for fraud." - Cf. Kenrick, n. 154.

Question 5. Is it licit for a Catholic to make masonic signs?

Response. Negatively, unless there is a truly grave cause.

As Regards Merchants. - Question 1.

Is it licit for merchants to sell dice, swords, cosmetics, women's adornments, etc., when future abuse is foreseen?

Response. Affirmatively, because a sale of this kind is not evil of itself, since those things are indifferent, and can be turned to a good use. Therefore the only reason for doubting is taken from the foreseen sin of the buyer, which charity obliges you to impede. But charity does not oblige with grave inconvenience, and this could easily be present, especially among us, if merchants, suspecting or even certainly foreseeing future abuse, refused to sell to someone in particular wares exposed to all and indifferent of themselves. - Cf. St. Alphonsus, n. 71. - Baller., note (a), p. 223.

Question 2. Is it licit to sell poison?

Response. Affirmatively, unless it is morally established that the buyer will use it badly; the reason is that today poisonous potions or herbs are employed for many effects, either good or indifferent, and therefore it can easily be presumed that poison is not bought for perpetrating evil. But the answer is otherwise if it is a question of the sale of those instruments (male protectors) which today are frequently employed for sinning more freely.

As Regards Innkeepers. - Question 1.

Is it licit for innkeepers to give liquors to those who are foreseen as about to make themselves drunk?

Response. It is not licit without a grave reason, as is clear. But it is licit on account of fear of some grave harm, for example, acts of violence, quarrels, etc. ...; because charity does not oblige us to turn another away from sin with grave inconvenience. Likewise for preventing blasphemies, which are graver evils. - Cf. St. Alphonsus, n. 69.

Question 2. How must one act with innkeepers who admit dances in their buildings, so that they may attract more guests?

Response. Generally they are to be turned away from this insofar as can be done, because dances, especially those which are held in an inn, for the most part are done less honorably and furnish an occasion to many sins. Nevertheless absolution is not always to be denied to them, but the circumstances and the ordinary manner in which those dances are held must be considered.

Question 3. Is it licit for masters of inns to propose any public journals whatsoever to be read by guests?

Response. They cannot admit those which evidently and ordinarily are opposed to religion and good morals, even if guests cease to flow to them on that account. Yet they can admit all those which treat of merely political matters. Nor do they seem bound to reject some journal because it sometimes contains something less right against the faith, provided it is not generally opposed to religion.

As Regards Nuns and Other Catholics Serving the Sick. - Question 4. Is it licit for them to call a heretical minister to one dying?

Response. To call spontaneously a heretical minister, so that he may furnish the dying person with the consolations of religion, is illicit on account of forbidden communication in divine things. For the

same reason it is illicit for nuns having care of the sick in a hospital to comply with the custom of a dying heretic asking the help of a minister of his sect, as the Holy Office responded in a particular case on March 14, 1848. The decree is as follows:

"D. Evens ... humbly sets forth that in the city of Neutz ... there exists a hospital, of which he himself is Rector and Chaplain, and in which Nuns have the care of the sick. ... But since in this hospital followers of a non-Catholic religion are from time to time received, and the same repeatedly ask for a heretical minister from whom they may receive the aids and consolations of religion, it is asked whether it is licit for the aforesaid nuns to call a minister of false religion? It is asked moreover whether the same solution is to be given where a sick heretic stays in the private house of a certain Catholic; namely whether then the Catholic can licitly call a heretical minister?

"Response. According to the things set forth, it is not licit; and according to the mind." The mind is, "that they conduct themselves passively." In the Declaration to the Vicar Apostolic of Egypt of February 5, 1872 the sense of the words they conduct themselves passively is explained: "The mind of the Most Eminent Fathers is that the Prelate Orator be notified that to Nuns or other Catholic persons assigned to the direction or service of the Hospital, it is not licit to furnish their work directly to non-Catholic sick persons for calling their own minister, and it will be well if, when the occasion has been given, they declare this; but the Most Eminent Fathers add that for calling the minister the ministry of some person belonging to the respective sect of those asking can be employed. And thus the doctrine remains intact with relation to forbidden communication in divine things." This Leo XIII approved on Dec. 26, 1898. Cf. *Analecta Ecclesiastica*, year 7, pp. 98, 99, where you will find the Declaration rendered into Latin. But if no non-Catholic is present, it is illicit for Catholics to call the minister, so that he may perform his heretical rites. But to say to the minister: this sick person wishes that you visit him, seems licit on account of a most grave reason, for example, on account of hatred against the Church and other harms otherwise going to arise. Cf. Genicot, vol. 1, n. 201. Lehmkuhl, vol. 1, n. 652.

It Must Be Noted. "In hospital ... X ... whose ownership belongs to the Sisters of the Congregation of S. N., the Superior is anxious: 1. Whether she ought to inquire into the doctors by questioning them themselves or by another means, whether they rightly observe the Decree of the Sacred Congregation of the Roman and Universal Inquisition of May 4, 1898, with its declaration of March 5, 1902. The reason for the doubt is that practicing doctors are chosen by the Sisters. 2. Or whether it suffices that they choose conscientious doctors, to whom they leave both the manner of proceeding and the responsibility, without themselves inquiring." The Sacred Penitentiary responded to the proposed doubts: To 1 ... Negatively. To 2 ... Affirmatively, nor is the Superior bound to obstruct the work of such doctors, unless in the case in which their intention of prevaricating will evidently betray itself. Sacred Penitentiary, July 7, 1911. - *Nouvelle Rev. Théol.*, v. 44, p. 35.

Treatise VI. On the Precepts of the Decalogue

On the First Precept of the Decalogue

I am the Lord thy God ... thou shalt not have strange gods. - Exod. xx, 2.

This precept, as affirmative, prescribes in the first place acts of religion, by which due worship is given to God; as negative, it prohibits vices opposed to religion.

Chapter I. On the Acts of the Virtue of Religion

The chief acts of religion are adoration, prayer, sacrifice, vow, oath, and sanctification of certain days. Concerning the last three there will be discussion in the 2nd and 3rd precept; but concerning sacrifice in the tract on the Eucharist. Here therefore only concerning adoration and prayer.

Article I. On Adoration

Adoration taken more broadly is an act by which someone exhibits his own subjection to another in testimony of the other's excellence; thus princes and others constituted in dignity are said to be adored in some way. But more strictly adoration is the honor exhibited to God on account of his highest excellence and supreme dominion.

I Say. There is a true precept of adoring God. This is clear both from natural right, by virtue of which we are obliged to acknowledge the highest majesty of God and his supreme dominion over creatures, and from positive divine right, because it is said, Matt. iv, 10: "The Lord thy God shalt thou adore, and him only shalt thou serve." - But as pertains to practice, the faithful are not to be disturbed concerning the fulfillment of this precept who sufficiently satisfy the precept of praying to God, concerning which there will be treatment below; for it is altogether impossible to pray to God and not adore him.

Related to adoration is worship, which, insofar as it is habitually furnished to God, can be defined: the complex of those acts by which we testify to the infinite excellence of God and exhibit service to him. - Cf. Scavini, lib. 2, tract. 5, n. 7.

Omitting those things which are handed down at length in dogmatic theology concerning the necessity and divisions of worship, here we add certain things concerning the worship, relics, and images of the Saints, insofar as they can pertain to practice.

§ 1. To the Most Holy Trinity, to the single Persons of the same, to Christ the Lord, even under the sacramental species, the worship of latria is owed; to the Blessed Virgin Mary, the worship of hyperdulia; to others reigning with Christ in heaven, the worship of dulia.

§ 2. To sacred relics also and images there is owed veneration and relative worship of the person to whom the relics and images are referred (Can. 1255).

Worship, if it is offered in the name of the Church by persons legitimately deputed to this and by acts from the institution of the Church to be exhibited only to God, Saints, and Blessed, is called public; otherwise, private (Can. 1256).

It is good and useful suppliantly to invoke the Servants of God reigning together with Christ, and to venerate their relics and images; but before the rest, let all the faithful follow the Most Blessed Virgin Mary with filial devotion (Can. 1276).

§ 1. It is licit to venerate with public worship only those Servants of God who by the authority of the Church have been numbered among the Saints or Blessed.

§ 2. To those canonically numbered in the roll of Saints the worship of dulia is owed; Saints can be honored everywhere and by any act of that kind of worship; but the Blessed cannot, except in the place and mode which the Roman Pontiff has conceded (Can. 1277).

The ministers of the Church in exercising worship ought to depend solely on ecclesiastical Superiors (Can. 1260).

When the decree has been published by which in the name of the Supreme Pontiff it is declared that all the virtues of a Servant of God in heroic degree, or martyrdom, have been well proved, the Servant of God can be called Venerable; which title imports no permission of public worship. - Cf. can. 2115, § 2.

§ 1. Notable relics or precious images, and likewise other relics or images which are honored in some church by great veneration of the people, cannot validly be alienated nor perpetually transferred into another church without permission of the Apostolic See.

§ 2. Notable relics of Saints or Blessed are the body, head, arm, forearm, heart, tongue, hand, leg, or that part of the body in which a martyr suffered, provided it is whole and not small (Can. 1281).

§ 1. Notable relics of Saints or Blessed cannot be preserved in private houses or oratories without the express license of the Ordinary of the place.

§ 2. Relics not notable can be kept with due honor even in private houses and piously carried by the faithful (Can. 1282).

§ 1. Only those relics can be honored with public worship in churches, although exempt, which are established as genuine by an authentic document of some Cardinal of the Holy Roman Church, or of the Ordinary of the place, or of another ecclesiastical man to whom the faculty of authenticating has been conceded by apostolic indult.

§ 2. A Vicar General cannot declare relics authentic without a special mandate (Can. 1283).

Ordinaries of places should prudently remove from the worship of the faithful a relic which they know certainly not to be authentic (Can. 1284).

§ 1. Relics, when they are exposed, must be enclosed and sealed in reliquaries or cases.

§ 2. Relics of the most holy Cross are never to be exhibited for public veneration in the same reliquary with relics of Saints, but must have their own separate reliquary.

§ 3. Relics of the Blessed, without a particular indult, are not to be carried about in processions, nor exposed in churches, except where their office and Mass are celebrated by concession of the Apostolic

See (Can. 1287).

It is unlawful to sell sacred relics; and therefore Ordinaries of places, vicars forane, and others having care of souls should diligently take care lest sacred relics, especially of the most holy cross, be sold, or pass into the hands of non-Catholics. - Cf. Can. 1289.

An unusual image is not to be placed in Churches, even exempt ones, and in other sacred places, unless it has been approved by the Ordinary of the place; who is not to approve an image to be publicly exposed which does not agree with the usage of the Church, or which is of false dogma, or which does not display due decency, or which furnishes to the rude a particular occasion of error. - Cf. can. 1279.

Article II. On Prayer

Prayer taken more broadly is the elevation of the mind to God, or any pious affection of the soul toward God and supernatural things. But in the stricter sense it is the petition of fitting things from God. - Cf. St. Thom. 2-2, q. 83, art. 1.

I Say 1st. Prayer is certainly necessary for all adults by necessity of precept, as is proved from many places of Scripture, for example, Matt. xiv, 38: "Watch and pray": and Luke xviii, 1: "It is necessary always to pray and not to fail." Moreover, according to many, prayer is also necessary by necessity of means, because it is the ordinary means established by God for obtaining necessary graces. - Cf. St. Alphonsus, n. 1.

I Say 2nd. The precept of praying obliges frequently, as is clear from the cited texts, yet not without interruption, which is impossible to human weakness. Therefore the words, it is necessary always to pray, by the common interpretation of the Doctors, signify that one must pray frequently at an opportune time, and never cease from weariness, torpor, or dejection of soul; or also that our actions generally are to be directed toward God.

Questions

Question 1. When does the precept of prayer press?

Response. It is certain that it often presses by accident, namely whenever some end is to be obtained, for the attainment of which prayer is required as a means. It is also certain that the precept of prayer presses of itself several times in life, or, as was said, frequently; but what the force of these particles may be, nothing is more uncertain among the Doctors. Yet in practice the opinion can be held which teaches that those who pray to God at least once a year are not to be condemned of grave sin, both because it is not disapproved by St. Alphonsus, and because it is more conformable to those things which we said concerning acts of faith, hope, and charity. For the rest, the confessor ought to be more solicitous in inculcating the necessity of frequent prayer than in determining the grave fault of omitted prayer. - Cf. Baller., note (a), p. 228.

Question 2. Does he sin, at least venially, who omits morning or evening prayers?

Response. Negatively, of itself, because there is given no law which prescribes determinate prayers for single days and at certain hours. - I said of itself, because in practice some fault of negligence or sloth is rarely absent.

Chapter II. On Vices Opposed to Religion

Article I. On Superstition

Superstition, according to St. Thomas, is a vice opposed to religion according to excess, not because it exhibits more for divine worship than true religion, but because it exhibits divine worship either to one to whom it is not owed, or in a manner in which it is not owed. Wherefore a twofold superstition must be distinguished: one by reason of mode, and the other by reason of object. Again by reason of mode it is distinguished according as the worship which is furnished to the true God is either false, as it would be to observe ceremonies of the old law which signified Christ to come, or superfluous, as it would be, for example, to hear Mass before sunrise with a certain number, position, or order of candles, or of a priest who has the age of Christ dying. Yet the Doctors attend more to superstition by reason of object, which can be committed in many ways, as will be clear from the following. - Cf. St. Thom. 2-2, q. 92, art. 1. - St. Alphonsus, n. 3.

§ I. On Idolatry

Idolatry is an action by which worship due to God alone is given to a creature; but this is done not only by sacrifice, but also by any sign of honor by which someone intends to submit himself to a creature as to God, for example, by genuflection. - Cf. St. Alphonsus, n. 12.

A twofold idolatry is distinguished: one is material and the other formal. The first is inculpable, and has place when from ignorance of every kind divine honor is rendered to some creature, for example, if a priest from invincible error should exhibit for adoration a host not consecrated. The other is 1st, perfect, when someone, reckoning in his mind that an idol is the true God, adores it; 2nd, imperfect, when someone, knowing certainly that the idol does not deserve worship, nevertheless renders this to it from hatred toward God or from some other evil end; 3rd, simulated, when from fear of some harm someone exhibits only external worship. Although each of these three is a most grave sin, nevertheless the worst of all is imperfect idolatry, which is so called not by reason of malice, which certainly is greatest, so that by some it is called simply malicious, but because it honors the idol only by will, not by intellect. - Cf. Scavini, lib. 2, tract. 5, n. 138. - Baller., note (a), p. 231.

§ II. On Vain Observance

Vain observance is superstition which employs means neither proportioned nor instituted by God for obtaining a certain effect. But it is of three kinds, namely: 1st, notory art, or the art of acquiring knowledge without labor; 2nd, the art of healings, or the art of healing by various signs or sacred things; 3rd, the observance of events, by which from consideration of some fortuitous event someone conjectures what is going to be favorable or unfavorable, and thence moderates his actions. Cf. St. Alphonsus, n. 14.

I Say 1st. Vain observance is a grave sin, because it attributes divine honor to a creature, while it expects from it what is to be expected from God alone, and because it rests on an implicit pact with the demon. Yet it can often be venial from imperfection of the act, from simplicity, from some ignorance, or from timidity, as happens especially among the rude in the observance of events. - Cf. St. Alphonsus, n. 15.

I Say 2nd. Vain observance is discerned especially: 1st, from the insufficiency of the cause for producing the effect naturally; 2nd, from the addition of a vain or false circumstance as if necessarily required; 3rd, from the infallibility which is attributed to means in no way infallible.

I Say 3rd. In doubt whether effects proceed from a natural cause or from the demon, they can be attributed to the powers of nature; and therefore it is licit to procure them, because it is not established that the thing is evil; yet advisedly a protestation against the intervention of the demon is premised. But in doubt whether effects are produced by the demon or by God, if it is certainly established that they cannot proceed from a natural cause, they are to be attributed to the demon, unless the holiness of the one operating or other clear indications persuade the contrary, because it is rash to think that miracles are always being done. Hence it is not licit then to test whether the effect is going to follow or not. Cf. St. Alphonsus, n. 20. - St. Thom. 2-2, q. 96, art. 1, and others commonly. - Hence:

1st. Those are guilty of superstition who wear amulets marked with certain characters; who invoke certain unknown names, or employ a certain number of crosses or prayers for healing wounds, for making themselves invulnerable, etc.

2nd. Likewise those who carry certain prayers to St. Bridget or other prayers, expecting an altogether infallible effect from them. - Yet those are not to be blamed, indeed are very much to be praised, who carry pious medals, sacred images, or relics of Saints, hoping that they will specially obtain divine help for themselves.

3rd. Likewise those are guilty of superstition who hold some days as favorable, but others as unfavorable, so that they direct their actions from this, or who for expelling diseases require herbs collected on such a feast, etc.

4th. But it is not superstitious to observe the moon or times more suitable for gathering herbs, cutting trees, etc., nor to carry sacred things or words of Sacred Scripture for the honor of God or the Saints, and for imploring their help. Likewise neither to recite a certain number of prayers, nor to do all those things which can increase devotion, provided an infallible force is not attributed to them. - Cf. St. Alphonsus, nn. 16 and 17.

5th. Provided every vain observance and the danger of falling into it is removed, it is licit to swallow small paper images of the Blessed Virgin Mary dissolved in water or rolled up after the manner of a pill for obtaining health. Holy Office, Aug. 3, 1903.

§ III. On Divination

Divination is inquiry into hidden things by the help of the demon. Hence it agrees with vain observance, insofar as each rests on an express or at least implicit pact with the demon; but it differs insofar as divination is ordered only to knowledge of hidden things, and vain observance, taken generally, extends itself to any effect, even external. Moreover it differs from notory art, because this directly seeks an infusion of knowledge without labor; but divination employs certain means, although disproportionate. Finally it differs from the observance of events, because this uses observations without reason and art, and for arranging one's own acts; but that uses them artfully, and for speculative knowledge of hidden things. - Cf. Baller., note (b), p. 231.

Various kinds of divination are distinguished; of this kind especially are: 1st, judicial astrology from the stars; 2nd, augury from the chattering of birds; 3rd, auspice from their flight; 4th, haruspicy from the entrails of animals; 5th, chiromancy from the lines of the hand; 6th, geomancy from signs in the earth; 7th, omen from a fortuitous event; 8th, necromancy from invocation of the dead; 9th, oneiromancy from dreams; 10th, sortilege from lots; 11th, oracle from idols; 12th, vaticination from seers or cards. - Cf. St. Alphonsus, nn. 5 and 6.

I Say 1st. Express divination, namely that which is made through express invocation of the demon, can never be excused from mortal sin. This is clear both from many places of Sacred Scripture, for example, Deut. xviii, 10, Lev. xx, 6, etc.; and because expressly to invoke the demon and to bargain with him is the same as to acknowledge his dominion and authority, which is intrinsically evil.

I Say 2nd. Tacit divination, by which namely the demon is invoked by employing means in no way proportioned to attaining the effect, even if someone openly protests that he intends no commerce with the demon, is also of itself a grave sin; yet sometimes it can be excused from mortal sin because of simplicity or ignorance or defect of certain faith. The reason of the first is that recourse to the demon, in whatever way it is made, contains in itself a grave offense of God. But the reason of the second is taken from the imperfection of the act. I said even if someone, etc., because he acts against his protestation, and action is more efficacious than words. - Cf. St. Alphonsus, nn. 7 and 8. - Voit, n. 416.

Every knowledge useful and necessary to us which you cannot obtain by natural power is to be sought by you from God. It is also superstitious to ask from the demon what by natural power you can know or do; thus you leave God and ask help from his and your enemy, who always uniquely desires to obtain from man the worship due to God alone. The faithful are to be kept away altogether from every divination, even from games which are instituted for the sake of jest without any credence applied. For these are always dangerous, and the devil always holds himself ready to obtain by these means the evil which he hopes for. But especially care must be taken lest boys and girls become accustomed to these things, even if they are led only by reason of curiosity or levity. ... Bal. Palmieri, *Opus Morale*, vol. 2, pp. 226 and following.

Questions

Question 1. Are those to be condemned of divination who from the song and flight of birds, or the appearance of stars, conjecture a future storm?

Response. Negatively, and the reason is that often there is present, or can be present, a natural nexus between signs of this kind and the predicted effect proceeding from a necessary cause. Likewise they are not to be condemned, for the same reason, who conjecture a character or state of soul from the color of the face or other external signs, although in practice one must for the most part abstain from conjectures of this kind on account of the danger of rash judgment.

Question 2. Do those sin gravely who inquire from diviners (fortune tellers) concerning their fortune or future life?

Response. Negatively, generally speaking, because firmness of belief is lacking; for just as seers are ordinarily moved by the promise of money, so those who inquire for the most part act from simplicity, jest, or curiosity. Wherefore penitents are to be questioned concerning the credence which

they furnished, unless it is known from elsewhere. But if they indeed acted jokingly, yet the diviners conducted themselves seriously, they can with difficulty be excused from gravely culpable cooperation. Cf. St. Alphonsus, n. 10. - Reuter, n. 43. - Kenrick, tract. 12, n. 43.

Question 3. Is the use of lots sometimes licit?

Response. Divisory lots, by which it is discerned what is to be attributed to each person in settling lawsuits, or in distributing things, are certainly licit, since indeed they are wholly free from every superstition. But consultory lots, by which the divine will is investigated so that it may be known what is to be done, are not licit unless they are done by a special impulse of God, or it is a question of a grave matter in which other counsel is lacking. The reason is that from ordinary providence God does not will that inquiry be made in this way concerning his will, but that recourse be made to prudent men or ecclesiastical superiors. Finally divinatory lots, by which the manifestation of a hidden thing is sought, for example, from the casting of dice, etc., are always gravely illicit, as containing at least tacit invocation of the demon. Superstition of this kind is properly called sortilege, although by this name other kinds of superstitions also commonly come. - Cf. St. Alphonsus, n. 11.

Question 4. Is it licit to conjecture future things from dreams?

Response. Negatively, ordinarily speaking, because dreams almost always proceed from natural causes, for example, from disturbance of the humors, etc. From another source, dreams sent by God are conjoined with signs by which they can certainly be discerned from natural or diabolical dreams. - Cf. St. Alphonsus, n. 9.

Question 5. Is the use of a divining rod licit?

Response. It is certainly to be condemned whenever the rod is moved or is not moved at the mere intention of him who presses it with his hand; and when it is employed for detecting those things with which the movement of the rod has no connection. But the use of the rod does not seem to be condemned for detecting waters or metals, if the rod is moved over these equally in every case, whether they are sought or are not sought, provided that by protestation against diabolical operation which perhaps could be present, every superstitious intention is excluded. - Thus the more recent writers more commonly, although St. Alphonsus reproves the use of the divining rod in every case.

Question 6. What is to be said concerning rotating tables, concerning the use of magnetism, concerning spiritism, and concerning hypnotism?

Response 1st. A twofold effect of rotating tables is usually assigned, namely their simple movement, and the returning of responses either by striking the floor, or by writing with the help of an attached pen. This last is certainly illicit on account of at least the implicit invocation of the demon; for so great an effect cannot be attributed either to a natural cause, because it would not be proportioned, or to God, because the indecency and levity of the act would be reflected back upon him. - But whether simple movement is illicit for this same reason is controverted; yet certainly it is not to be permitted by reason of scandal, danger, etc., which can easily be present.

Response 2nd. Especially a threefold effect or degree of magnetism is exhibited. The first effect is a state of sleep, by which the senses are wholly lulled, so that often not even the greatest crash stirred up by art at the very ears of the sleeper, or any force of glowing iron, is able to wake him. The second is the state of somnambulism, by which someone, wholly deprived of the use of the senses,

nevertheless sees, hears, speaks, and responds to all things which are asked of him. Finally the third effect is clear intuition, or wondrous knowledge of himself and of remedies for driving away diseases; and also the vision of actions of other men, even far distant. Now to use magnetism for obtaining the second or third effect is certainly illicit, both because the demon evidently has his part there, and because it was thus declared by the Sacred Penitentiary, July 1, 1841. - But the use of magnetism for causing the first effect, namely sleep, does not seem to be illicit by virtue of the same reasons; because that sleep could at length proceed from a merely natural cause; nor do the words of the declaration of the Sacred Penitentiary of themselves extend to it. Yet certainly it is illicit from another head, namely on account of the violent privation of the use of reason, danger of injuring chastity, scandal, and other circumstances. - Cf. Baller., several notes, pp. 238 and following. - *Conc. Plen. Balt.* II, nn. 33 and following.

Response 3rd. Spiritism, or evocation of the dead, is truly diabolical and divination properly so called, condemned by Sacred Scripture itself. "Let there not be found in thee one who ... seeks truth from the dead. For all these things the Lord abominates." Deut. xviii, 12, 13.

"For it is established by faith," says Palmieri, *Opus Morale*, 2, p. 250, "that God does not will the souls of the dead to be evoked by men, nor does he will that by some art or by the nod or will of men commerce be instituted by these with those; and he does not will these things in such a way that such evocation is not only illicit, but altogether ineffective. This is the certain doctrine of the Church. Therefore when such evocations are made, neither the souls called respond, nor a good angel, who cannot contradict the decree of God, and nevertheless some spirit responds. It remains therefore that this is he who is the prince of this world, who is the tempter, who is permitted to deceive those acting against God, that is, Satan or some angel of his. Therefore spiritism is commerce with the devil, to whom men hand themselves over to be taught and ruled."

Hence modern spiritism differs very little indeed from the primitive. We know that very many assemblies exist which follow this superstition. To give one's name to these assemblies is prohibited by natural and divine law. "To publish, read, or retain books in which sortileges, divination, magic, evocation of spirits, and other superstitions of this kind are taught or recommended" is unlawful. - Const. *Officiorum ac Munerum*, sec. 12. - *The Americana*, vol. 14, Spiritualism. - *Conc. Plen. Balt.* II, nn. 36 and following. Cf. Can. 1399, 7th.

You Will Resolve. 1st. Titius, excluding every pact with the malign spirit, is accustomed to evoke the souls of the dead. He is accustomed to act thus. Alone and doing nothing else, he directs a prayer to the prince of the heavenly host, that contact with the spirit of a determined person may be permitted to him. A few moments pass, and he notices that the hand which he holds prepared for writing begins to move, and thus he becomes conscious of the presence of the spirit. All things which he wishes to know are manifested, and the hand writes responses to the things asked. These responses agree with the faith and doctrine of the Church concerning the future life. For the most part the responses concern the state of the soul of the dead person, the necessity under which it labors for suffrages, and its sorrow arising from the ingratitude of relatives.

To this case the Holy Office on March 30, 1898 responded: "As it is set forth, it is not licit." Leo XIII approved the response.

The Holy Office, to the proposed doubt: "Whether it is licit through a Medium, as they call it, or without a Medium, with hypnotism employed or not, to be present at any spiritistic conversations or manifestations whatsoever, even those displaying an appearance of honesty or piety, whether by questioning souls or spirits, or by hearing responses, or only by looking on, even with a tacit or express protestation that one does not wish to have any part with malign spirits?" on April 24, 1917 responded: "Negatively in all things."

2nd. He is not free of fault who, using disproportionate means for receiving some knowledge, protests that he intends no commerce with the demon.

Response 4th. Concerning hypnotism it seems that they act imprudently and against the truth who either deny all the phenomena which are related concerning it, or, when these have been admitted, seek a certain and complete explanation of them from diabolical intervention. But the faithful are diligently to be deterred from its use and practice, because the matter is full of dangers; nor, independently of a particular case in which a dishonorable end is sought, does there seem to be another malice of it. But because what is called dangerous is not always and absolutely illicit, otherwise we could never use either weapons or poison, it follows that not all and absolutely are to be condemned who would wish, with cautions employed, to test hypnotism for a good end, for example, for curing diseases not otherwise curable. But whenever it is brought into use, cautions are to be employed: that the hypnotizer be upright and experienced, that there be a trustworthy witness, that the consent of the hypnotized person be had, that a protestation be made. - Cf. *Amer. Eccl. Review*, vol. 3, pp. 257 and following, and vol. 12, pp. 120 and following. - Lehmkuhl, vol. 1, n. 994 note. - Genicot, vol. 1, n. 275. - Berardi, *Praxis Confessar.*, vol. 1, n. 484.

It will be helpful to relate the following case and Response of the Sacred Roman and Universal Inquisition given on July 26, 1899:

"Most Blessed Father,

"N. N., Doctor in the medical art, prostrate at the feet of Your Holiness, in order to consult the tranquillity of his conscience, humbly asks whether he can have a part in the discussions which are now being held at the Society of Medical Sciences N. concerning hypnotic suggestions in curing sick children. It is a question not only of discussing experiments already made, but of making new ones, whether they admit a natural explanation or not. Wherefore, lest he expose himself to the danger of erring, the orator with docile soul awaits the oracle of the Holy See." This case, proposed in Italian, the Congregation of the Sacred Inquisition resolved thus on July 26, 1899:

"As regards experiments already made, that they can be permitted, provided danger of superstition and scandal is absent; and moreover that the Orator be prepared to stand by the mandates of the Holy See and not act the part of a theologian. - As regards new experiments, if it is a question of facts which certainly exceed the powers of nature, they are not licit; but if this is doubted, with a protestation premised that he wishes to have no part in preternatural facts, it is to be tolerated, provided danger of scandal is absent."

It Must Be Noted. - § 1. Let Ordinaries of places watch that the prescriptions of the sacred canons concerning divine worship are diligently observed, and especially lest any superstitious practice be introduced into divine worship, whether public or private, or into the daily life of the faithful, or

anything be admitted foreign to faith or discordant from ecclesiastical tradition or displaying the appearance of base gain.

§ 2. If the Ordinary of the place has issued laws for his territory in this matter, all religious also, even exempt, are held by the obligation of observing the same; and the Ordinary can visit their churches or public oratories for this purpose (Can. 1261).

§ IV. On Magic and Malefice

Magic taken broadly, or natural or artificial magic, which is also called white magic, is the art of doing wondrous things at least apparently through natural causes or human industry, without any ministry of the demon. But strictly speaking, magic is the art of doing wondrous things which, although they are not supernatural, nevertheless surpass the powers of man, and therefore can be done by the help of the demon alone, explicitly or implicitly invoked.

But malefice is the art of harming with the intervention of the demon. A twofold kind is distinguished, namely amatory and poisonous. Amatory malefice, which is also called a philter, is a diabolical art by which lustful love or hatred is vehemently excited in some person toward another through a more vivid disturbance of the humors. Poisonous malefice is precisely the art of harming one's neighbor by the help of the demon, and that in various ways, for example, by diseases, dullness, etc. - Cf. St. Alphonsus, n. 23.

Malefice is commonly called sortilege, because through it an evil lot is cast upon those against whom vengeance is exercised by diabolical operation. Hence in canon law and ecclesiastical history magicians and witches are called male and female *sortiarii*.

Question. Whether and how do magic and malefice differ from the other species of superstition?

Response. Magic does not differ from vain observance except that its effects are more wondrous, for example, the alteration of bodies, etc. But in moral species it differs neither from vain observance nor from divination, because it matters little whether knowledge of hidden things or wondrous effects are sought from the demon. But malefice differs in species from other superstitions because, besides the sin opposed to religion, it adds harm to one's neighbor.

Article II. On Irreligiosity

Irreligiosity is a special irreverence which is inflicted on God, either immediately in himself or mediately in sacred persons or things. Its chief species are: tempting God, sacrilege, simony, blasphemy, and perjury. Concerning the last two there will be discussion in the 2nd precept; but now concerning tempting God, sacrilege, and simony.

§ I. On Tempting God

Tempting God is a saying or deed by which someone explores whether God is powerful, wise, merciful, or endowed with another perfection. - But it proceeds from a twofold vice, namely either from infidelity, when someone, doubting concerning some perfection of God, says or does something with the intention of obtaining from God a manifestation of that perfection; or from mere presumption, when someone, doubting nothing concerning the perfections of God, without necessity wishes to obtain either a manifestation of the divine will or special help of God through prodigies. - Cf. St. Thom. 2-2, q. 97, art. 1.

The temptation of God is distinguished into formal or express, and virtual or interpretative. The former is had when the manifestation of divine perfections is directly intended, and this for the most part arises from infidelity, although it can also proceed from mere curiosity or presumption. But the latter is that by which a manifestation or exploration of this kind is not properly intended, but something is said or done which, with the circumstances considered, of its own nature seems to be referred to it. Thus he interpretatively tempts God who in a dangerous illness rejects all remedies, wishing to be healed by God alone.

I Say. Express temptation of God, if it proceeds from infidelity, is a mortal sin from its whole genus; but if it proceeds from curiosity or imprudent confidence, it is indeed mortal, but not from its whole genus. The reason of the first is that then there are properly two sins, one against the virtue of religion, and the other against faith, which does not admit smallness of matter. But the reason of the second is taken not only from the general doctrine that sins against religion alone are indeed mortal, but can become light by reason of matter, but also from this, that in that case properly there is not had an exploration of some divine perfection, but rather a presumptuous imploration of divine help, which certainly admits smallness of matter. But *a fortiori* smallness of matter must be admitted in interpretative temptation of God. - Cf. St. Alphonsus, nn. 29 and following. - Baller., note (a) and (b), p. 255. - Hence:

1st. He sins gravely against religion who demands that his innocence be proved by duel, glowing iron, etc., or who offers himself spontaneously for martyrdom, unless he is excused by good faith or divine inspiration. Yet it is licit to ask a miracle from God under condition, if it shall have pleased him, whenever a grave cause is present for our salvation or that of others, or for fulfilling the divine will; for then it is not to tempt God, but to demand the help of God at an opportune time. - Cf. St. Thom. 2-2, q. 97, art. 2.

2nd. Likewise he sins gravely who without just cause exposes himself to danger of death because he expects divine help; but if he acts only rashly, without trusting certainly in divine Providence, he does not sin against religion, but only against the fifth precept of the Decalogue.

3rd. He sins only lightly who in a light illness, having rejected remedies, hopes for health from God; because there is not a grave disorder there. Indeed he is excused from every fault if he hopes to be freed naturally from such an illness, with God's help. - Cf. St. Alphonsus, n. 30.

§ II. On Sacrilege

Sacrilege is the violation or unworthy handling of a sacred thing. A threefold kind is distinguished, namely personal, local, and real.

Here sacred is said of whatever is deputed to divine worship by public rite from divine or ecclesiastical institution, and therefore merits special reverence. Hence:

1st. Sacred persons are those who are deputed to divine worship by sacred tonsure or by religious vows.

2nd. Sacred places are those which are deputed to divine worship or the burial of the faithful by the consecration or blessing which approved liturgical books prescribe for this (Can. 1154).

3rd. Goods are called sacred which by consecration or blessing are destined for divine worship, as sacraments, consecrated vessels, relics or images of Saints; likewise those which pertain to the adornment of the Church or of ministers; finally ecclesiastical goods, even movable ones. Cf. St. Thom. 2-2, q. 99, art. 3. - Can. 1497.

Things consecrated, or blessed with a constitutive blessing, are to be treated reverently and not employed for profane or non-proper use, even if they are in the ownership of private persons (Can. 1150).

I Say. Sacrilege, which indeed differs in species according as it affects a person, place, or sacred thing, because the sanctity itself of the person, place, or sacred thing morally differs one from another, is indeed a mortal sin from its genus, but not from its whole genus. The reason of the first is that it is opposed to the most excellent virtue, namely religion; and the reason of the second is that through sacrilege no injury is inflicted on God directly and immediately, and therefore smallness of matter is admitted in it.

Questions

Question 1. How are the diverse species of sacrilege committed?

Response 1st. Personal sacrilege is committed: 1st, by inflicting violent hands upon a Cleric or Religious; 2nd, by acting lustfully with persons dedicated to God by major orders or religious profession of vows, even by touches alone; 3rd, by subjecting ecclesiastical persons to the judgment of a forum, excepting cases foreseen by common law or a particular concordat, or even determined by special law, as among us was done by the Third Plenary Council of Baltimore, n. 84. - But it will not be sacrilege to detract from a priest, because only his person is sacred, but not his reputation. - Cf. St. Alphonsus, n. 35.

Response 2nd. Local sacrilege is committed by all sins by which a church is violated, namely homicide, injurious and grave shedding of blood, impious or sordid uses, burial of an infidel or of one excommunicated after sentence, provided the acts are certain, notorious, and posited in the church itself. From a church having been violated it does not thence follow that the cemetery has been violated. - Cf. Can. 1172. - Cf. St. Alphonsus, n. 36.

It must be noted that there is a general decree, issued by command of Pius X on Dec. 10, 1912 by the Sacred Consistorial Congregation, by which any projections and cinematographic representations whatsoever are altogether prohibited from being done in a Church. - *Acta Apos. Sedis*, v. 4, p. 724.[1]

Response 3rd. Real sacrilege is committed: 1st, by unworthy administration or reception of the sacraments; 2nd, by unworthy handling of sacred relics, images, etc.; 3rd, by profanation of sacred vessels, instruments, and ornaments; 4th, by theft of a thing pertaining to divine worship or to the church; 5th, by abuse of Scripture, for example, by twisting its words to vain things, etc.; 6th, by neglect of sacred vessels, corporals, etc., by those who ought religiously to care for these. - Cf. St. Alphonsus, nn. 40 and 48.

[1] Cf. Addenda, p. 1087, n. 3.

Question 2. Is it sacrilege to violate a person bound by a simple vow of chastity outside religion?

Response. There is controversy; for some affirm, because, they say, a man is consecrated to God by any vow whatsoever of chastity; but others probably deny, because for rendering some person sacred, private will does not suffice, but public authority of the Church is required. - For the rest, all hold that violation of that vow contains a twofold malice, one against chastity, and the other against religion, and the whole controversy is whether the sin against religion is to be called true and strictly said sacrilege, or rather a sin of irreligiosity, or of perfidy toward God, or even sacrilege, but said in a broad sense. - Cf. Suarez, *de Relig.*, tract. 3, lib. 3, chap. 1. Laymann, lib. 4, tr. 10, chap. 7, n. 2. - Baller., note (a), p. 259.

Question 3. Are all sins of luxury committed in a church sacrileges?

Response. Merely internal sins, namely morose delectation and desires of sinning externally outside the church, are not to be held as sacrileges, because they do not seem specially to affect the sacred place; but one must speak otherwise of desires of sinning externally in the church, whether these were conceived in it or outside it. But as to external sins, it is certain that sacrilege is committed by consummated acts, namely by voluntary pollution, fornication, etc., because by those acts the church is polluted. But whether it is committed also by other grave external sins, for example, gravely shameful touches, is controverted among the Doctors, and the negative opinion seems probable. - Cf. St. Alphonsus, n. 43; and *de sexto praec. Decal.*, n. 459.

Question 4. Is every theft in a church sacrilege?

Response. It is established that every theft of a sacred thing is sacrilege, and also of a thing not sacred but committed to the custody of a sacred place, as is clear from canon law, cap. *Quisquis*, 21, § 2, causa 17, question 4, where it is read: "Likewise sacrilege is committed by removing the sacred from a sacred place, or the non-sacred from a sacred place, or the sacred from a non-sacred place." - But as regards things which by chance or by accident are found in a church, as purses, a watch, etc., there is controversy; but the negative opinion is certainly probable. Cf. St. Alphonsus, n. 39.

Question 5. Can sacred vessels and vestments be converted into profane use?

Response. Affirmatively, if the thing is totally changed in such a way that it is reduced to common use, for example, if a chalice by fire or iron is made a mass of silver. But otherwise, if it is not totally changed. Hence it is not licit to mend profane garments from an old chasuble, nor to apply ornaments of priests to profane uses. But otherwise concerning those things which are not blessed, as carpets, candelabra. - Cf. St. Alphonsus, n. 41.

Sacred things are not to be lent for a use which is repugnant to their nature (Can. 1537).

§ 1. Sacred furnishings blessed or consecrated lose blessing or consecration:

1st. If they have undergone such injuries or changes that they have lost their former form, and are no longer held suitable for their uses;

2nd. If they have been employed for indecorous uses or exposed for public sale (Can. 1305).

Question 6. Is it sacrilege to touch sacred vessels?

Response. Negatively, if it were done by clerics, or by lay regular sacristans, and also by nun sacristans. But if it were done by other lay persons, sacrilege would indeed be present, but would not exceed venial sin, and this too would cease when a reasonable cause intervenes. - But if the sacred

vessels actually contain the most holy Eucharist, no one can touch them without grave sacrilege, except priests and deacons, excluding however the case of necessity and danger of profanation.

§ 1. Care must be taken lest the chalice with the paten and, before washing, the purificators, palls, and corporals which were employed in the sacrifice of the Mass, be touched except by clerics or by those who have their custody.

§ 2. Purificators, palls, and corporals employed in the sacrifice of the Mass are not to be handed over to be washed by lay persons, even religious, unless they have first been washed by a cleric constituted in major orders; but the water of the first washing is to be poured into the sacrarium, or, if this is lacking, into the fire (Can. 1306). Cf. St. Alphonsus, n. 48; and *de Euchar.*, nn. 382 and following.

§ III. On Simony

Simony, so called from Simon Magus, is the studious will of selling or buying for a temporal price something spiritual, or something temporal annexed to the spiritual. It is called studious will not only because, not otherwise than other sins, it requires deliberation, but also because for its essential malice it is not required that a pact be completed by mutual consent, or in reality, but an interior or one-sided simoniacal affection suffices, namely the will of bargaining or of obliging.

Questions

Question 1. What is simony of divine law?

Response. § 1. The studious will of buying or selling for a temporal price a thing intrinsically spiritual, for example, Sacraments, ecclesiastical jurisdiction, consecration, indulgences, etc., or a temporal thing annexed to a spiritual thing in such a way that the temporal thing can in no way exist without the spiritual, for example, an ecclesiastical benefice, etc., or that the spiritual thing is the object, even partial, of the contract, for example, consecration in the sale of a consecrated chalice, is simony of divine law (Can. 727).

Question 2. What is simony of ecclesiastical law?

Response. § 2. But to give temporal things annexed to the spiritual for temporal things annexed to the spiritual, or spiritual things for spiritual things, or even temporal things for temporal things, if this is prohibited by the Church on account of the danger of irreverence toward spiritual things, is simony of ecclesiastical law (Can. 727).

A temporal price is distinguished in canon law as of three kinds, namely: 1st, a gift from the hand, or recompense of any temporal thing estimable by price; 2nd, a gift from the tongue, or patronage, under which name come praises, recommendations, prayers, etc., to be interposed from a pact in favor of the one conferring the spiritual thing; 3rd, a gift from service, or any service or duties furnished to another, for example, service as a servant or any similar office.

Likewise there is a threefold temporal thing annexed to the spiritual: 1st, antecedently, as are sacred vessels, blessed oil, a prayer crown; 2nd, consequently, what depends on the spiritual as on a cause or root, as the right of receiving tithes; 3rd, concomitantly, as labor in sacred functions.

When simony is treated, buying-selling, exchange, etc., are to be taken broadly for any convention, although not brought to effect, even tacit, in which namely the simoniacal intention is not expressly

manifested, but is gathered from the circumstances (Can. 728).

A threefold simony is distinguished: 1st, mental, if, with no pact intervening, the temporal or spiritual is conferred with simoniacal intention, that is, with the intention of obliging the other to return a spiritual or temporal thing; 2nd, conventional, if a pact indeed intervenes, but has been commanded to execution either in no way or only on one side. If the first, it is called pure conventional; if the other, mixed; 3rd, real, if the pact is fulfilled on both sides, at least inchoatively.

There is added confidential simony, whose matter is only ecclesiastical benefices. This is then had when someone, in election or presentation to benefices, or in the resignation of these, from confidence, or from an express or tacit pact and by his own authority, reserves something for himself or for another concerning the fruits of the benefice, or concerning the benefice itself.

I Say 1st. For simony there is required that the temporal be given or received, whether expressly and formally or virtually, for the spiritual thing itself and in exchange for it, so that an equalization of the spiritual thing with the temporal, or an exchange from the primary motive of having one for the other as price or just compensation, is made. The reason is clear from the very definition of simony. Hence if some honorable motive intervenes, by virtue of which the temporal thing and in turn the spiritual thing is bestowed, one would no longer be the motive of the other, but only its impulsive cause, and therefore there would not be simony.

I Say 2nd. Simony is not had when the temporal is given not for the spiritual thing, but on its occasion from a just title recognized by the sacred canons or by legitimate custom; likewise when a temporal thing is given for a temporal thing which as a subject has something spiritual annexed, for example, a consecrated chalice, provided the price is not increased because of the annexed spiritual thing (Can. 730).

Something can licitly be received for a sacred ministry by reason of stipend or support, as is clear from the practice of the Church. For natural equity demands that honorable support be conceded to those who are occupied for the utility of others. Hence Christ says, Luke x, 7: "The workman is worthy of his wage." - And the Apostle, I Cor. ix, 13: "Know you not that they who work in the sanctuary eat the things that are of the sanctuary; and they who serve the altar partake with the altar? So also the Lord ordained for those who announce the Gospel, to live from the Gospel."

I Say 3rd. Simony is a most grave sin; and if it is of divine and natural law, it does not admit smallness of matter. But if the simony is of ecclesiastical law, it can admit smallness of matter, according to St. Alphonsus. The reason is that any spiritual thing whatsoever, from comparison with a temporal thing, is vilified with great injury to God himself. This is clear also from the words of St. Peter to Simon Magus, Acts viii, 20: "Let thy money be with thee unto perdition, because thou hast thought that the gift of God is possessed with money." - Cf. St. Alphonsus, n. 50.

I Say 4th. Renunciation of an ecclesiastical office made simoniacally is invalid by the law itself. - Cf. Can. 185.

§ 2. Presentation infected by a simoniacal stain is invalid by the law itself, and even renders a subsequent institution perhaps invalid (Can. 1465). - Cf. Can. 1441.

Questions

Question 1. Is it simony to give a temporal thing principally indeed on account of a spiritual thing, but not uniquely?

Response. Affirmatively, and the reason is that then comparison of the temporal thing with the spiritual thing is also present. For the added motive, however honorable it may be, does not destroy the malice and impiety of the prior motive, because a temporal thing is principally given. This is clear also from proposition 45 condemned by Innocent XI, which is as follows: "To give a temporal thing for a spiritual thing is not simony, if the temporal is not given as a price, but as a motive for conferring or effecting the spiritual." - Cf. Viva on this proposition. - St. Alphonsus, n. 54.

Question 2. Is it simony to redeem oneself with money from unjust vexation concerning benefices, or another spiritual good, for example, sacraments, etc.?

Response. Negatively, at least more probably, because liberation from vexation, which alone is directly intended, is something temporal. - Hence you can give money to your enemy if he attempts by fraud to impede the electors lest they favor you. The Doctors agree in the same, even if he should wish to impede only by prayers. But you cannot give money to those who can harm or benefit by electing or presenting to a benefice; for to offer money to them lest they harm would be the same as to offer it so that they benefit, namely so that they do not deny consent. Nor is it licit for you to give money to your competitor so that he desist from competing for the benefice, because there is no unjust vexation to be redeemed by you, and you would directly prepare for yourself the way to the benefice through money, which is simoniacal. - Cf. St. Alphonsus, nn. 99 and following.

Not every condition added to the conferral of a spiritual thing induces simony, but only that which brings a new burden or a new obligation of justice by way of exchange. Therefore it is not simony if I give the spiritual thing in order that I may obtain a temporal thing which is owed to me by title of justice but is denied by injustice alone. Baller., note (a), p. 284.

Question 3. Is it simony to give or receive something for entrance into Religion?

Response. § 1. Unless it is provided in the constitutions or by express agreement that something is to be paid for food and religious habit upon entering postulancy or novitiate, nothing can be exacted for the expenses of postulancy or novitiate (Can. 570).

Finally, it is certain that it is licit for Nuns to exact a dowry from those about to enter, as is clear from the usage received everywhere and from several decisions of the Sacred Congregation of the Council in Benedict XIV, *de Synodo*, lib. 11, chap. 6. Yet they must take care not to receive unsuitable persons solely on account of the dowry or some other temporal emolument; for that would be simoniacal. Cf. Can. 547.

Question 4. Does a priest commit simony who exacts for a Mass a stipend above the customary tax or the tax established by the Bishop?

Response. Negatively, as regards the internal forum and before God, unless he acts with a simoniacal mind; because, since he has a title for exacting remuneration, comparison between the spiritual and the temporal is lacking. He would indeed sin against obedience or justice by exacting more than is fair, but not at all against religion. Nevertheless in the external forum he would be held as simoniacal, because an increase of this kind would be presumed to be exacted not for support, but as

the price of a spiritual thing; for this reason several theologians and canonists affirm absolutely that in that case true simony is committed. - Cf. Voit, n. 497. - Baller., note (a), p. 276.

Question 5. What is especially to be said concerning the tax of Masses for this our region?

Response. Concerning this matter the Baltimore Fathers speak thus: "... The quantity of a just stipend can scarcely be determined universally. The Sacred Congregation of the Council, having been asked, 'how great the alms of manual Masses ought to be,' on Nov. 15, 1698 responded: 'the custom of the place, or the synodal law insofar as it is present, is to be attended to; but if not, a competent alms is to be established by the Bishop according to his judgment.' But in that which pertains to the quantity of the alms to be determined by the Bishop, the same and universal rule cannot be established for all places in these provinces so extended far and wide, since, regard having been had to the circumstances of places and times, in diverse places it ought to be lesser or greater. Whence, leaving it to the individual Ordinaries, that with the circumstances of things well considered, they determine for their clergy the quantity of stipend which seems just to them, we establish this only, that no one exact more nor regularly less than shall have seemed opportune and just to his Bishop." - Cf. *Conc. Plen. Balt.* II, n. 369.

Question 6. Whether and what can be received, without stain of simony, for the administration of sacraments and for other ecclesiastical functions, especially in this region?

Response 1st. For the administration of Sacraments let the minister exact or ask nothing for any cause or occasion, whether directly or indirectly, except the offerings concerning which in can. 1507, §1 (Can. 736).

§ 1. With the prescription of can. 1056 and can. 1234 saved, to fix beforehand taxes to be paid in the whole ecclesiastical province for various acts of voluntary jurisdiction, or for the execution of rescripts of the Apostolic See, or on the occasion of the ministration of Sacraments or Sacramentals, belongs to the provincial Council or the meeting of the Bishops of the province; but no such prefixed determination has force unless it has first been approved by the Apostolic See (Can. 1507). - Cf. St. Alphonsus, n. 55. - Reiff., lib. 5, tit. 3, nn. 186 and following.

Therefore in this region the following statute of the Baltimore Fathers must be attended to: "Since, by command of Christ the Lord, spiritual gifts received freely are to be given freely, and since, according to the witness of the Apostle, avarice is a certain service of idols, which indeed in a Christian man is a grave harm, but in a minister of the Sacred Things of the true God is a most shameful crime, we declare that no one should dare to exact, ask, or bargain for anything for the administration of the sacraments." - Cf. *Conc. Plen. Balt.* II, n. 221.

Response 2nd. For which sacraments and functions in particular, according to the custom received among us, some alms can be received, we add in the following:

1st. For Baptism and Matrimony, if anything is offered, it is received with impunity. "Those things which from the zeal of piety," say the Baltimore Fathers, n. 221, "after Baptism or Matrimony has been conferred, are spontaneously offered by the faithful in the name of alms, the priest, if he wishes, may receive; for custom tolerates this among us, nor does the Church disapprove."

2nd. For Confirmation, Kenrick, tract. 12, n. 63, has these things: "On the occasion of administering Confirmation nothing is accustomed to be given; but provisions are to be furnished to a Bishop

making visitation of his diocese. ... In the Mexican Provinces the individual faithful who have been confirmed are accustomed to contribute a half silver coin for the expenses of the Bishop; which custom displays an evil appearance. Among us the pastor supplies food."

3rd. For the Eucharist, nothing at all is accustomed or able to be received.

4th. For Penance, it is strictly forbidden that anything be received under any title whatsoever; indeed confessors should not permit even the Mass alms to be offered to themselves in the sacred tribunal of penance. - Cf. *Conc. Plen. Balt.* II, n. 289.

5th. For Extreme Unction, if the priest has made a long journey, nothing forbids the necessary expenses of the journey to be received. Cf. Kenrick, tract. 12, n. 66.

6th. For Order, according to the Council of Trent, sess. 21, c. 1, "let Bishops receive nothing even spontaneously offered, under any pretext whatsoever." - But those who must undertake a journey are not held by this prohibition, because then they can receive its expenses. - Cf. Kenrick, n. 67.

7th. For ecclesiastical burial the Baltimore Fathers have the following:

"We earnestly exhort and beseech Ordinaries of places in the Lord that they take care that the discipline concerning burials be exacted as soon as possible, and as much as can be done, according to the norm established by the Most Holy Canons. 'The poor, to whom when dead nothing or so little remains that they cannot be buried at their own expense, are to be buried altogether gratis.' But if someone wishes some place in a cemetery reserved for himself and his heirs in perpetuity, so that no one else, if they are unwilling, can ever be buried there, a price can be paid for a right of this kind, as they say, exclusive. From moneys procured in this way there is no doubt that a sum is had which suffices for preserving, restoring, and adorning cemeteries. If anything remains over, let it be applied, by judgment of the Ordinary, for promoting works of charity or religion. But we strictly forbid that ecclesiastical men should ever dare, under any pretext whatsoever, without permission of the Ordinary, to make their own the moneys which are derived from cemeteries; but if they attempt this, let them be struck with most severe penalties." - Cf. *Conc. Plen. Balt.* II, n. 393. - Kenrick, n. 69.

Question 7. What penalties are laid upon simoniacs?

Response. All, even those increased with episcopal dignity, who knowingly have promoted through simony to orders, or have been promoted, or have ministered or received other Sacraments, are suspected of heresy; clerics moreover incur suspension reserved to the Apostolic See (Can. 2371).

With the prescription of can. 729 remaining firm, those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities whatsoever:

1st. Incur excommunication *latae sententiae* simply reserved to the Apostolic See;

2nd. By the fact itself remain deprived in perpetuity of the right of electing, presenting, or nominating, if they have any;

3rd. If they are clerics, moreover let them be suspended (Can. 2392).

Question 8. What is the value of a simoniacal contract?

Response. The penalties established by law against simoniacs remaining firm, the simoniacal contract itself, and, if simony is committed concerning benefices, offices, or dignities, the subsequent

provision lacks every force, although the simony was committed by a third person, even without the knowledge of the one provided, provided this is not done in fraud of the same provided person or with him contradicting it. Wherefore:

1st. Before any sentence of a judge, the thing simoniacally given and accepted, if it is capable of restitution and reverence owed to the spiritual thing does not stand in the way, must be restored, and the benefice, office, or dignity given up;

2nd. One simoniacally provided does not make the fruits his own; but if he has perceived them in good faith, it is permitted to the prudence of the judge or Ordinary to condone the fruits perceived in whole or in part to the same (Can. 729).

Question 9. Is it licit to sell sacred things?

Response. What is annexed to the spiritual in such a way that it is presupposed to the spiritual and to which the spiritual afterward comes, if a special prohibition of the Church is absent, can be sold by reason of the material or workmanship, even if the consecration or blessing is inseparable from it, provided it is not therefore sold more dearly, but only according to the value which it has independently of those things. - Lacroix, l. III, p. 1, n. 153. - And therefore chalices, Agnus Dei, sacred vestments can of themselves be sold, provided they are sold at the price of the material.

§ 1. In the sale or exchange of sacred things, no account of consecration or blessing is to be had in the estimation of the price (Can. 1539).

Nevertheless sacred furnishings blessed or consecrated lose blessing or consecration ... if they have been exposed for public sale. Cf. Can. 1305.

On the Second Precept of the Decalogue

Thou shalt not take the name of the Lord thy God in vain. - Exod. xx, 7.

By this precept any irreverence toward God is prohibited, whether through vain usurpation of his most holy Name, or through blasphemy, or through an oath or vow either illicit or violated.

Chapter I. On Vain Usurpation of the Name of God and Blasphemy

The most holy name of God is said to be usurped in vain when it is assumed without reasonable cause or without due reverence. But this can happen in many ways, for example, from impatience against creatures; from admiration by way of ordinary exclamation; or also superfluously by way of interjection, as from mere formula or custom.

But blasphemy is speech against God by way of insult. This speech can be made not only by words, but also by exterior signs, for example, by gestures or by some indecent action. In whatever way it is made, if it is insulting toward God, it contains in itself the whole malice of blasphemy; if, however, it is a question of reservation or of other penalties inflicted for blasphemy, only oral blasphemy is properly understood.

Blasphemy is distinguished in three ways, namely: 1st, direct or indirect, according as the dishonoring of God is directly and formally intended by the blasphemer, or is not intended in itself, yet is contained in sayings injurious to God which are uttered by him with advertence to the sense

which the words contain, with the intention, for example, of jesting or manifesting anger; 2nd, immediate or mediate, according as it immediately affects God himself or only mediately, namely the Saints or sacred things, and in them the sanctity of God which they participate; 3rd, heretical, imprecatory, and merely reproachful, according as it contains heresy, or imprecation, or mere insult.

I Say 1st. To usurp the name of God in vain is indeed always a sin, excluding the case of inadvertence; but of itself it does not exceed venial sin. The reason of the first is taken both from the law of nature, which openly prohibits usurpation of this kind, and from positive law, for in Ecclus. xxiii, 10, it is said: "Let not the naming of God be continual in thy mouth." But the reason of the second is that, since that irreverence is not toward the very person of God, it is not apprehended as something grave, as is clear from the common interpretation of theologians and the sense of the faithful. - I said of itself because it can become mortal by reason of contempt, or of anger against God; for then it is judged to participate in the malice of blasphemy. Hence:

1st. Those expressions employed among our people, "by God" or "God damn," of themselves contain only venial malice, because they are reduced to vain usurpation of the name of God.

2nd. The same must be said, with proportion observed, concerning the useless usurpation of the names of Saints and words of Sacred Scripture. But to utter the name of the demon uselessly and frequently tastes only of some indecency.

3rd. To utter the most holy name Jesus with anger, and with eyes turned upward to heaven, or in such a way that from the circumstances contempt appears to be present, is a grave sin, because it contains the malice of blasphemy, concerning which it will be spoken at once.

I Say 2nd. Any formal and deliberate blasphemy, whether it is direct or indirect, immediate or mediate, is a mortal sin from its whole genus. The reason is that the malice of insult is taken from the excellence of the person to whom it is inflicted; and since in this case it is infinite, blasphemy always and by its nature has a certain infinity, and therefore will always be a mortal sin. - I said 1st, formal and deliberate, because sin can become venial from imperfection of the act. - I said 2nd, whether direct or indirect, because although the indirect voluntary is less intense, if you attend to the degree, nevertheless if you attend to the theological species of the sin, it does not differ from the direct. - I said 3rd, whether immediate or mediate; for St. Thomas says: "Just as God is praised in his Saints insofar as the works which God effects in the Saints are praised, so also blasphemy which is made against the Saints, consequently redounds against God." - Cf. St. Thom. 2-2, q. 13, art. 1 and 3.

I Say 3rd. Words are to be held as blasphemous of themselves which, from common apprehension, or the usage of the country or region, or from a derisive or angry manner of speaking, or other circumstances, contain dishonoring of God and from common apprehension are reputed as blasphemous, although of themselves they do not properly sound blasphemy. The reason is that words and formulas of speaking do not have efficacy merely from grammatical force, but also from the sense attached to them by common usage and estimation. - Cf. Reuter, n. 442. - Kenrick, tract. 3, nn. 37 and following.

Questions

Question 1. Is it necessarily to be opened in confession whether the blasphemy was direct or indirect, immediate or mediate?

Response. Negatively, probably, for just as for blasphemy to be direct is only an aggravating circumstance, so to be mediate is only a diminishing one, but the specific malice is the same in either case. But if the blasphemy was heretical, that must certainly be opened, because then besides the virtue of religion, faith is injured. - Cf. Baller., note (c), p. 291, and note (a), p. 293.

Question 2. Is it blasphemy to curse creatures?

Response. It is certainly blasphemy to curse creatures with relation to God, for example, rain or winds, as commanded by God, or with the word God added; likewise to curse a creature which of itself has a special relation to God, for example, our soul, the Catholic faith, heaven, and similar things. But one must speak otherwise if indignation is directed toward creatures without relation to God. Wherefore that formula accustomed to be employed by our people, "God damn your soul," whether "to hell" is added or not, of itself is blasphemous. Indeed, besides the malice of blasphemy it also contains another specific malice against charity. I said of itself, for often each malice is lacking, because the soul is not usurped as a creature in which divine goodness shines forth in a special way, and because there is not an affection or desire of harming one's neighbor. - Cf. St. Alphonsus, n. 128. - Kenrick, n. 44.

You Will Resolve. It is greatly to be commended to the faithful that they associate themselves with those Sodalities which in a special way turn members away from blasphemy and other sinful modes of speaking of this kind, such as, for example, is the Society named from the Most Holy Name.

Chapter II. On Oath

An oath is the invocation of the divine Name as witness of truth; and it is distinguished in many ways, namely:

1st. Assertory or promissory, according as it is assumed for asserting things present or past, or for confirming something future. But this is called promissory, not because every oath concerning the future contains a promise, but either because more often it is ordered to confirming that, or because, even with any pact excluded, it is equivalent to a promise, insofar as it induces the obligation of carrying out the sworn proposal.

2nd. Solemn or simple, according as it is made in the form required by law, and with solemn ceremonies, or with these excluded.

3rd. Explicit or implicit, according as God is expressly invoked as witness, or creatures are employed in testimony in which divine attributes specially shine forth.

4th. Attestatory or execratory or imprecatory, according as the one swearing invokes God only as witness, or also as avenger of perjury.

Article I. On the Conditions of an Oath

I Say 1st. For the essence of an oath two things are required, as is clear from its definition, namely, the intention of swearing, at least virtual, and some formula or sign by which it is sufficiently expressed that God is invoked as witness, either explicitly or implicitly through creatures, unless, however, the oath is directed to God alone. - I said 1st, unless, etc., because when an oath is directed to God alone, it can be wholly completed in the mind of the one swearing by interior words. - I said

2nd, some formula or sign, because an oath uttered among men must be considered both with regard to the law of nature alone and with regard also to positive law; in the first case any external sign suffices, in the other a certain formula of words or a certain rite can be required under pain of nullity. - Cf. St. Alphonsus, n. 134. Hence:

1st. A fictitious or merely external oath is not valid because of defect of intention; nevertheless one swearing thus sins, as is clear from proposition 25 proscribed by Innocent XI, which has itself thus: "With cause it is licit to swear without the intention of swearing, whether the matter is light, or whether it is grave." But according to the more probable opinion, speaking of itself, only a venial sin is then committed, because nothing is uttered except a lie with vain usurpation of the name of God. Yet often this is mortal by reason of common or particular damage. - Cf. St. Alphonsus, *Hom. Ap.*, n. 17.

2nd. It is an oath to say: I swear by God, by the Saints, by the temple, the cross, the altar, the Gospel, the Catholic faith, the Church, heaven, earth. - Likewise to say: I call God to witness. ... Let God be witness to me. ... I invoke God as witness. It is otherwise if someone should swear by creatures in which divine goodness or power does not specially shine forth, for example, by the beard, etc. Cf. St. Alphonsus, nn. 134 and following.

3rd. It is not an oath to say: God knows. ... I speak before God, etc., if these are uttered narratively; but otherwise, if invocatively, which is discerned from the circumstances or the intention of the speaker. Nor is it an oath to say: This is as true as God exists ... as I exist ... as I am in this place ... on the faith of a good man ... by my faith ... by conscience ... may I die ... or may the devil destroy me, if it is not so. Indeed, according to St. Alphonsus, it is not an oath to say: I swear, or I swear that it is so, unless a question about taking an oath has preceded. - Cf. St. Alphonsus, ibid.

I Say 2nd. For the liceity of an oath, however, three conditions are required according to that saying of Jeremiah, iv, 2: "Thou shalt swear: The Lord liveth, in truth, and in judgment, and in justice." - And so there is required, 1st, truth, namely conformity of the assertion with the intention and knowledge of the one swearing, and therefore a lie is excluded, but not error. In an assertory oath truth regards the existence of the fact; in a promissory oath, the existence of the intention. There is required, 2nd, judgment, that is, that it be made with discretion, prudence, and reverence, and not without grave cause, of which sort would be peace to be confirmed in families, or greater security in contracts, etc. There is required, 3rd, justice, that is, that the oath be concerning a thing or promise, proposal, or assertion that is licit and honorable. - Cf. St. Alphonsus, n. 144; and *Hom. Ap.*, n. 14.

§ 2. An oath which the canons require or admit cannot validly be taken through a procurator (Can. 1316).

Questions

Question 1. What kind of sin is it to swear without truth, judgment, and justice?

Response to the 1st. It is always mortal even in light matter; because to bring God forward as witness of falsity is to will to destroy his truthfulness. This is also clear from proposition 24 condemned by Innocent XI, which has itself thus: "To call God as witness of a light lie is not so great an irreverence that on account of it he would wish or could condemn a man." Yet this does not prevent someone

from being able to swear with moral certainty alone of the truth, or with a restriction that is not purely mental. - Cf. St. Alphonsus, *Hom. Ap.*, nn. 14 and 15.

Response to the 2nd. It is venial of itself, that is, with the danger of perjury excluded, because it is only vain usurpation of the name of God.

Response to the 3rd. Certainly it is mortal in a promissory oath, if it concerns perpetrating a grave sin, because it savors of grave irreverence to invoke God as guarantor of some grave iniquity. Indeed, according to St. Alphonsus it would be mortal also if it concerned committing only a venial sin; but Suarez with others denies this, because then, they say, the irreverence would be light by its nature. - Cf. Suarez, *de Relig.*, tract. 5, lib. 3, chap. 19, n. 3. - Baller., note (a), p. 307.

But in an assertory oath, more probably it is only venial of itself, because the oath of itself falls upon the assertion, not as evil, but as true. Thus he who boasts under oath about fornication committed, although by this boasting he sins lethally, nevertheless by virtue of the oath does not of itself confirm the boasting, but only the truth of the fornication. Except, unless the oath is assumed as an instrument or means of sinning, for example, to confirm detraction. - Cf. St. Alphonsus, n. 146.

Question 2. What must be said concerning an oath of observing the American Constitution?

Response. It is altogether licit, for Kenrick says: "The oath to observe the Constitution, which American citizens emit, must be understood in the popular sense, namely, the one which is received among all; nor is each one judged to embrace with the judgment of his mind whatever things are contained in it, but he promises obedience to magistrates and to laws according to the tenor of the Constitution. The things which are handed down concerning liberty of opinions and of worship, concerning the right of divorce, and concerning whatever other matters, do not necessarily demand the assent of the mind; but one is held to obey, and to help that the laws be entrusted to execution, always with the right and law of God preserved." - Cf. Kenrick, tract. 3, n. 68.

Question 3. Is it licit for foreigners who have emitted an oath of fidelity in their own fatherland to immigrate here, and to bind themselves by a new oath for obtaining civil rights?

Response. Affirmatively, for the obligation of an oath of fidelity is to be understood according to the natural obligation of remaining in one's fatherland, which does not subsist whenever a fair cause of utility is given for acquiring a new fatherland without detriment to the former one. - Cf. Kenrick, tract. 5, n. 19.

Question 4. Is it licit among us to swear by kissing Protestant Bibles?

Response. Negatively, as it seems, because such an act is of itself approbative of that book and besides could give rise to scandal. Nor should you say that it is difficult to act otherwise, for a Catholic version is usually given to the one asking, or he who is about to swear is even permitted to bring it with him.

NOTE. Concerning oaths of preserving a secret, which are accustomed to be made among societies of workers, it will be said where secret societies are treated in the tract on censures.

Article II. On the Obligation of a Promissory Oath

I Say 1st. Every promissory oath concerning a licit and honorable thing, besides the obligation of fidelity or even of justice, also induces an obligation of religion; but it in no way obliges if it is

concerning an illicit or plainly useless thing. The reason of the first is that, when a new bond imposed by a different virtue has been added, a new obligation ought to arise. But the reason of the second is that an oath, as an act of religion, cannot be a bond of iniquity or of an idle thing; nor does that oath afterward revive, even if the thing ceases to be idle or illicit, for according to the rule of law 18, in 6: "What does not subsist in law from the beginning is not made firm by the passage of time." - Cf. Baller., note (b), p. 307.

§ 1. He who freely swears that he will do something is held by a peculiar obligation of religion to fulfill what he has confirmed by oath (Can. 1317).

I Say 2nd. The obligation of an oath is to be interpreted strictly, and it follows the nature of the act or contract to which it is added, and all its conditions. The reason of the first is that one swearing is judged to have wished to oblige himself as little as he could; but the reason of the second is that an oath does not change the nature of the act, but superadds to it only the obligation of religion, and therefore ought to have the same conditions. - Besides, the obligation of an oath is to be interpreted according to the tacit conditions included or understood in it, which are: 1st, if I can without grave damage; 2nd, if the thing shall not have been notably changed; 3rd, if the rights or will of a superior do not stand in the way; 4th, if the other has kept reciprocal faith; 5th, unless the other yields concerning his right. - Cf. St. Alphonsus, n. 180.

§ 3. An oath taken neither by force nor by fraud, by which someone renounces a private good or favor granted to him by law, must be observed whenever it does not incline to the detriment of eternal salvation (Can. 1317).

I Say 3rd. § 1. A promissory oath follows the nature and conditions of the act to which it is added.

§ 2. If an oath is added to an act directly tending to the damage of others or to the prejudice of the public good or of eternal salvation, the act obtains no firmness from it (Can. 1318).

I Say 4th. An oath is to be interpreted strictly according to the law and according to the intention of the one swearing, or, if he acts by fraud, according to the intention of him to whom it is sworn (Can. 1321).

Questions

Question 1. Is there smallness of matter in the transgression of a promissory oath?

Response. Affirmatively, probably. For in a promissory oath two things are to be distinguished, namely the actual truth of the promise, or of the intention of carrying out the promise, and the future execution itself of the promise. Now God is indeed invoked as witness of the truth of the intention; but as regards the execution itself, he is brought forward only as guarantor, or as a person furnishing authority to the obligation which arises from the promise made before him and otherwise valid, just as a prince by his authority renders pacts contracted before him firmer. But since we now suppose that the intention of fulfilling the sworn promise was sincere, the malice of this transgression is to be measured not from injury toward the truthfulness of God, but only from irreverence inflicted upon his authority. But since this is not direct and formal, nor greater - indeed according to St. Thomas less - than that which is had in the transgression of a vow, it follows that smallness of matter can exist in the transgression of a promissory oath. - Cf. St. Alphonsus, n. 173; and *Hom. Ap.*, n. 13. Baller., note (a), p. 308.

Question 2. Does a promissory oath emitted through error or fraud oblige?

Response. Negatively, if the error or fraud concerns the substance of the thing, because then a simple contract would be invalid; but if it affects only accidental circumstances, one must subdistinguish: it indeed obliges in onerous contracts, but not in gratuitous ones, at least probably, if the circumstances, although accidental, are nevertheless such that if they had been foreseen from the beginning, they would have deterred one from both the promise and the oath. - Cf. St. Alphonsus, n. 175. - Baller., note (b), p. 308.

Question 3. Does a promissory oath extorted by grave and unjust fear oblige?

Response. § 2. An oath extorted by force or grave fear is valid, but can be relaxed by an ecclesiastical Superior (Can. 1317).

Question 4. In what way does the obligation of an oath cease?

Response. The obligation induced by a promissory oath ceases:

1st. If it is remitted by him for whose advantage the oath had been emitted;

2nd. If the sworn thing is changed substantially, or, the circumstances having been changed, becomes either evil or altogether indifferent, or finally impedes a greater good;

3rd. If the final cause or condition under which perhaps the oath was given is lacking;

4th. By irritation, dispensation, commutation, according to the norm of can. 1320 (Can. 1319).

Question 5. Can he who has a delegated faculty of dispensing in vows also dispense in oaths?

Response. Affirmatively. Those who can irritate, dispense, or commute a vow have the same power and by the same reason concerning a promissory oath; but if the dispensation of the oath inclines to the prejudice of others who refuse to remit the obligation, only the Apostolic See can dispense the oath on account of necessity or the utility of the Church (Can. 1320).

Chapter III. On Vow

A vow is a deliberate and free promise made to God concerning a possible and better good. - It is distinguished in four ways, namely:

§ 1. A vow is public, if it is accepted in the name of the Church by a legitimate ecclesiastical Superior; otherwise private.

§ 2. Solemn, if it has been recognized as such by the Church; otherwise simple.

§ 3. Reserved, the dispensation of which only the Apostolic See can grant.

§ 4. Personal, by which the action of the one vowing is promised; real, by which some thing is promised; mixed, which participates in the nature of the personal and the real (Can. 1308).

Article I. On the Conditions Required for a Vow

The conditions required for the validity of a vow are contained in the very definition of a vow, and there are two principal ones, namely, true intention and suitable matter. Wherefore:

I Say 1st. For the validity of a vow there is required a true and deliberate intention of emitting a vow, or a true promise of itself suitable to inducing an obligation; for a vow is like a certain law, which the one vowing, otherwise capable of weighing the burden which he assumes, imposes upon himself. Hence a vow essentially differs from a proposal, because a proposal, however firm, does not produce a bond of obligation, nor is omission of the thing proposed a sin, except perhaps sometimes by accident, for example, on account of inconstancy, weariness, or negligence, which of themselves do not exceed venial sin. - Cf. St. Alphonsus, nn. 196 and following.

I Say 2nd. The matter of a vow ought to be not only morally possible, but also morally good, indeed better than its opposite. The reason of the first is that no one can oblige himself to something morally impossible to him; and the reason of the second is that God is not worshiped by an action whose placing is not better than omission. But a better good is here understood not only absolutely in itself, but also relatively to circumstances. - Cf. St. Alphonsus, n. 202.

I Say 3rd. § 1. A vow, that is, a deliberate and free promise made to God concerning a possible and better good, must be fulfilled from the virtue of religion.

§ 2. Unless they are prohibited by law, all possessing suitable use of reason are capable of a vow (Can. 1307).

Questions

Question 1. How great ought deliberation to be in emitting a vow?

Response. It is commonly taught by theologians that the deliberation which suffices for mortal sin suffices for a vow. But this is indeed so if in each case the relation of the deliberating mind to the object is considered; but if attention is given to the fact that it is more difficult to deliberate about some obligation to be assumed than about the violation of some law, it must be said that greater discretion of judgment or deliberation is required for emitting a vow than for perpetrating mortal sin. - Cf. Baller., note (c), p. 313.

Question 2. Is a vow valid which has been made with inadvertence to an obligation already known?

Response. Affirmatively, if he who emits the vow habitually knows clearly its obligation, although actually he does not attend to it; or also if he who vows, even if he does not know the obligation clearly, nevertheless apprehends it confusedly and wills it implicitly, while, for example, he wills to vow this or that, as others are accustomed to vow. - Nevertheless it must generally be held that no greater obligation is induced beyond that which someone wills to impose upon himself and has apprehended. - Cf. St. Alphonsus, n. 201.

Question 3. Is a vow emitted from error valid?

Response. Affirmatively, if the error regards accidental circumstances of lesser moment; for he who vows is judged to oblige himself to undergoing merely accidental inconveniences which can occur in fulfilling the vow. But one must answer otherwise if the error concerns the substance of the thing, or accidental circumstances indeed, but which are principally intended, or notably change the substance itself, or are of such a nature that, if they had been known, the vow would not have been emitted; for then the promised thing could not be said to be sufficiently known and willed. - Nevertheless vows emitted after the novitiate in any approved order must always be excepted; for these are not invalid

except by error properly and strictly substantial. The reason is that otherwise they would not be sufficiently accommodated to the firmness which is essential to the religious state. - Cf. St. Alphonsus, n. 198. - Lugo, *de jure et just.*, disp. 22, n. 88. - Baller., note (b), p. 314, and note (a), p. 315.

Question 4. Is a vow made through fear valid?

Response. Affirmatively, if the fear, however grave, provided it does not remove the use of reason, arises from within, or from a necessary extrinsic cause; for those things which are done from fear are simply voluntary. But can. 1307, § 3, says that a vow emitted from grave and unjust fear is null by the law itself. The reason is that the law of nature, which demands that an injured right be restored in its entirety, dictates that what is extorted from someone through injury cannot be acceptable to God. It is also clear from canon law as regards solemn vows of Religion, and more probably also as regards other vows, according to the more common interpretation of theologians. - I said if it is grave; for light fear never invalidates a vow, at least for the external forum. Cf. St. Alphonsus, n. 197. - Baller., note (b), p. 315.

Question 5. Is he who doubts whether he emitted a vow or a mere proposal held by the vow?

Response. Negatively, as is clear from what has been said concerning probabilism. Nevertheless it must be noted that if he who thus doubts believed, in promising, that he would sin if perhaps he did not carry out the proposed thing, it can be judged that he truly vowed. I say can, and not ought, because simple people who propose before a priest to recite some pious prayers at their proper time, or never to drink a certain kind of liquor, surely think that they would sin if afterward they violated that promise, and yet it is certain that they emit no vow. - Cf. Baller., note (a), p. 316.

Question 6. Is a vow not to sin valid?

Response. Affirmatively, if the vow regards all mortal sins or fully deliberate venial sins, or sins of a certain kind, for example, a vow never to lie. But a vow of avoiding all sins, even the very lightest, would not be valid, because without a special privilege this is impossible. Cf. Mazzella, *de Gratia*, disp. 2, art. 5.

Question 7. Is a vow concerning matter already commanded from elsewhere valid?

Response. Affirmatively, both because it is not repugnant for a debtor to be obliged by different titles, and because a vow of this kind concerns a thing good in itself, otherwise it could not have been commanded; it is also concerning a better good, since the new bond can contribute to greater fidelity and devotion in fulfilling the law. - Cf. St. Alphonsus, n. 203.

Question 8. Is a vow of a good thing with an evil end or an evil condition valid?

Response to the 1st. Negatively, if the evil end holds itself on the side of the thing vowed, for example, if you vow alms in order to obtain the successful outcome of a theft, or in thanksgiving for robbery. The reason is that the giving of alms for such an end is a blasphemous action, as if God were bringing help for sinning. - But one must answer otherwise, according to the common opinion, if the evil intention only accidentally accompanies the vow, and the evil end, as St. Alphonsus says, holds itself entirely on the side of the one vowing, for example, if someone, vowing for the glory of God, afterward from vain ostentation more willingly vows externally. Cf. St. Alphonsus, n. 206.

Response to the 2nd. Affirmatively, if the vow is made from affection toward the good thing, as it is good, even if joined with an evil cause or condition, as if someone vows alms if he is not caught in theft. For although theft is evil, nevertheless not to be harmed is not evil, but a gift of God; and the vow does not fall upon the evil, but upon the good, insofar as it is good in itself. Much more, however, is this valid if the vow is made from detestation of the evil condition; as if someone vows alms, if and as often as he blasphemes. - Cf. Laymann, lib. 4, tract. 5, chap. 2, n. 7.

Article II. On the Obligation of a Vow

I Say. The obligation of a vow is always light in light matter; but in grave matter it is light or grave according to the intention of the one vowing. The reason is that a vow is, as it were, a certain private law which someone imposes upon himself. - Cf. St. Alphonsus, nn. 211 and 213; and *de Legibus*, n. 143.

Questions

Question 1. Can someone be bound by another's vow?

Response. Negatively, at least by reason of the vow; because a vow does not oblige, by reason of itself, except the one emitting it (Can. 1310, § 1), and therefore no one can promise the thing or action of another. - Hence vows of parents devoting children to some Religion, or imposing upon them an obligation, for example, of fasting on certain days, etc., cannot bind them. Yet the parents are bound to this, that as much as is in them, with the liberty of the children preserved, they opportunely move them to embrace that which they had vowed for them, and much more that they not stand in the way if the children wish to embrace it. - § 2. The obligation of a real vow passes to heirs, likewise the obligation of a mixed vow for the part by which it is real (Can. 1310); and from obedience at least, which transfers the obligation to the genus of the virtue with a view to which it is induced, subjects are held, both those who now live and those who in the future will become members of the community, to fulfill vows emitted in their name by a civil magistrate, with the Bishop assenting, or by religious superiors. - Cf. St. Alphonsus, nn. 213 and 216. - Baller., note (a), p. 320.

Question 2. What delay is to be judged grave in fulfilling a vow which indeed obliges gravely, but which has not been fixed to a determinate time?

Response. If the vow is for the perpetual service of God, say, of entering Religion, of serving the infirm through one's whole life, etc., it seems probable that its fulfillment can be deferred for two or three years without grave fault, especially if there is a just cause, and the age of the one vowing is not advanced. But if the vow has been emitted for a temporary service of God, as would be a vow of so many fasts, pilgrimages, etc., then, excluding the case in which by the delay the danger is induced of never fulfilling the vow, it seems probable that any delay whatever does not reach mortal sin. Cf. Baller., note (a), p. 321.

You Will Resolve. 1st. Real vows are to be discharged from one's own property; but he who cannot discharge them from his own property is not held to beg from another so that he can satisfy them. Nevertheless he satisfies if another, whether asked or spontaneously, wishes to discharge for him, although he himself could satisfy; because what the other gives, with the consent or ratification of the one vowing being added, becomes his own. Except if the matter of the real vow has been determined; for then that very thing in particular must be given out. - Cf. St. Alphonsus, n. 217.

2nd. A vow indeterminate as to cessation of time, for example, concerning a daily rosary, or a fast to be made every Saturday, obliges perpetually, unless something else is gathered from the circumstances. In doubt whether the vow is temporary or perpetual, or for a month or year, the minimum is to be held. Cf. St. Alphonsus, n. 221.

3rd. He who has vowed to hear Mass for a month or year is more probably not held on feasts to hear two Masses, unless he has explicitly vowed this; because the end of the vow is that on individual days he should gather the fruit of the sacrifice. Likewise he is not held to fast on Sunday who has vowed to fast for a month, a year, or his whole life, unless he has expressly obliged himself to this; because he is judged to vow fasting according to the custom of the Church. - Cf. St. Alphonsus, n. 224.

4th. He who has vowed a fast on the vigil of some Saint, if this falls on a Sunday, can fulfill the vow on Saturday, according to the custom of the Church. - Cf. St. Alphonsus, ibid.

Article III. On the Cessation of a Vow

A vow ceases by lapse of the time appointed for ending the obligation, by substantial change of the matter promised, by failure of the condition on which the vow depends or of its final cause, by irritation, dispensation, commutation (Can. 1311).

§ I. On the Irritation of Vows

Irritation of a vow is its annulment or suspension made by him to whose power the will of the one vowing or the matter of the vow is subject. But it is called direct, if it falls directly upon the person or upon the will of the one vowing; indirect, if it falls only upon the matter of the vow. In the former case the vow is altogether annulled; but in the latter only its obligation is suspended.

I Say 1st. § 1. He who legitimately exercises dominative power over the will of the one vowing can validly, and from a just cause also licitly, render his vows invalid, so that in no case does the obligation afterward revive (Can. 1312). The reason is taken from the right which the superior then has of directing their will, and consequently of preventing them from taking up a new obligation. Hence particular vows of Regulars and Nuns can be irritated: 1st, by the Supreme Pontiff as supreme Prelate of all Regulars; 2nd, by superiors, even women, of the Order or house; 3rd, by the proper Bishop, if the Orders are not exempt from his jurisdiction. - Cf. St. Alphonsus, n. 227.

I Say 2nd. § 2. He who has power not indeed over the will of the one vowing, but over the matter of the vow, can suspend the obligation of the vow as long as fulfillment of the vow brings prejudice to him (Can. 1312); because each one has a right not to be injured in things subject to his dominion. Hence:

1st. A husband can irritate the vows of a wife which prejudice conjugal right, the education of children, or the governance of the house.

2nd. A wife can irritate the vows of a husband which injure the rights of marriage, such as a vow of chastity, of a long pilgrimage, of putting on the habit of a hermit, etc.

3rd. A master can irritate or suspend the vows of servants which impede or lessen the service owed, such as a vow of hearing Mass daily. - Cf. St. Alphonsus, nn. 241 and following.

Vows emitted before religious profession are suspended as long as the one vowing has remained in religion (Can. 1315).

Questions

Question 1. Can a father directly irritate all the vows of children?

Response. Affirmatively, if the children are impubescent, as is clear from canon law, C. *Puella*, causa 20, q. 2, c. 2, determining natural law. Indeed not only can the vows of the impubescent be directly irritated by the father, but also, in default of the father, by the paternal grandfather, by a tutor, and, these being lacking, by the mother; indeed also, at least probably, by the mother when the father or tutor is present and yet does not contradict. - But if the children are pubescent, it will also be answered affirmatively if it is a question of vows emitted before puberty, and they still remain under paternal power. - Cf. St. Alphonsus, nn. 229, 230 and 238.

Question 2. Can a husband irritate all the vows of his wife?

Response. It is controverted; for some deny it, and say that a husband can only indirectly irritate those vows which stand in the way of his rights; but others with St. Alphonsus attribute to the husband the right also of irritating directly vows emitted during matrimony, because, as the Apostle says, Ephes. v, 22 and 23: "let women be subject to their husbands ... because the man is the head of the woman." - From this it follows that spouses who by mutual consent have emitted a vow of continence can again use matrimony, if the husband first directly irritates the vow of the wife, and she afterward, having recovered the right of petitioning what is due, indirectly irritates the vow of the husband. - Cf. St. Alphonsus, n. 234. - Baller., note (b), p. 326.

Question 3. Can irritation be made without cause?

Response. Affirmatively, as regards validity, because an owner validly disposes of his own thing even without cause. Indeed also as regards liceity, speaking of itself, or by reason of the irritation itself; for the vows of subjects are emitted under the condition of the consent of the superior, which the superior of himself is not held to give. But by accident, or by reason of circumstances, some fault will rarely be absent, either because the act is imprudent or because the spiritual progress of the subject is irrationally impeded, etc. Yet this of itself, with an evil affection or grave harm of the subject excluded, scarcely exceeds venial sin. - Cf. St. Alphonsus, n. 228. - Baller., note (a), p. 328.

Question 4. Can a superior irritate vows ratified by himself?

Response. Affirmatively, because he cannot take away from himself the power which he has over subjects. But on the other hand, if the superior who once irritated the vow of a subject later repents, the vow is not for that reason revalidated. The reason is that by direct irritation a vow is extinguished; but that something extinguished may revive, the repentance of the superior who irritated does not avail, but the will of the subject who again obliges himself by a vow is required. - Cf. St. Alphonsus, n. 239. - Baller., note (b), p. 326, and note (a), p. 327.

§ II. On Dispensation of Vows

Dispensation of a vow is its absolute condonation, made in the name of God by a legitimate superior.

I Say 1st. Non-reserved vows can be dispensed for a just cause, provided that the dispensation does not injure a right acquired by others:

1st. The Ordinary of the place, as regards all his subjects and also pilgrims;

2nd. The Superior of an exempt clerical religion, as regards the persons who are enumerated in can. 514, § 1;

3rd. Those to whom the power of dispensing has been delegated by the Apostolic See (Can. 1313). - Cf. St. Alphonsus, n. 256. Canon 514 enumerates professed, novices, or others living day and night in a religious house by reason of service or education or hospitality or infirm health.

I Say 2nd. For the validity of dispensation, a just cause is always required, because since vows are made to God alone, man cannot dispense from them except as delegated; but a delegate cannot validly dispense without a just cause, as has been said in the tract on Laws, n. 101. Thus commonly with St. Alphonsus, n. 250.

Questions

Question 1. What are the just causes of dispensing in vows?

Response. The good of the Church, of society, of the family, and also of him who is bound by the vow; for example, if on account of the vow he is oppressed by scruples or grave temptations; if he experiences notable difficulty in fulfilling the vow; if the act of vowing was not perfectly deliberate, etc. - Cf. St. Alphonsus, n. 252.

Question 2. In vows made for the utility of some third party, can a superior dispense without the consent of him in whose favor they were made?

Response. Affirmatively, if the vow was not accepted, as is clear of itself; indeed even if it was accepted, provided, however, that the vow is principally in honor of God, and the promise is not onerous, that is, imposes no burden which has already been accepted. The reason is that then God is the principal cause of the promise, and that third party in whose favor the vow was made, if he acquired any right, did not acquire it except dependently upon the good pleasure of God. - Cf. St. Alphonsus, n. 254. Baller., note (a), p. 329.

Question 3. What vows are reserved to the Pope?

Response. Besides vows emitted in a religious community, the private vows reserved to the Apostolic See are only the vow of perfect and perpetual chastity and the vow of entering a religion of solemn vows, which have been emitted absolutely and after completion of the eighteenth year of age (Can. 1309). - But these are not reserved unless they are absolute, determinate, perfect by reason of matter and liberty. Therefore reservation does not obtain, 1st, if a vow is emitted from fear, even only light fear, unjustly inflicted; 2nd, if someone obliges himself to emit a reserved vow after ten years; 3rd, if the vow is conditional, even according to the more common opinion when the condition has been fulfilled, because a vow ought to be emitted from sole and perfect affection toward the promised thing; 4th, if the vow is penal, as, I vow to enter Religion if once I shall have become drunk; for the same reason as in a conditional vow; 5th, if it does not tend directly to the virtue to which the matter of the vow pertains; 6th, if the vow is disjunctive, as, I vow either to enter Religion or to fast for a month; 7th, if it is emitted with the mind of inducing only a light obligation. Besides, circumstances

added to a vow are not reserved, as, I vow to enter Religion this year. - Cf. St. Alphonsus, n. 258. - Lacroix, nn. 544 and following.

The vow of virginity or of mere integrity of the flesh and the vow not to marry are not reserved.

By whom and in what manner vows which are accustomed to be emitted in some diocesan institutes can be dispensed, you may see in *Conc. Plen. Balt.* III, n. 93.

§ III. On Commutation of Vows

Commutation of a vow is the substitution of some work in place of the one promised. It can be made in three ways, namely into a better good, into an equal good, into a lesser good.

I Say 1st. Whoever has the power, even simply delegated, of dispensing from vows has by that very fact the faculty of commuting them; for he who can do the greater can also do the lesser in the same genus. - Cf. St. Alphonsus, n. 246.

I Say 2nd. A priest delegated for merely commuting vows cannot commute them into a notably lesser work, because otherwise he would in great part dispense, and thus would exceed the faculty received. It is said notably, because the faculty of commuting vows is not to be interpreted so strictly that it is confined to an entirely equal work, but is to be taken in a broader sense, so that it extends itself to a work somewhat lesser; for otherwise it would be liable to innumerable difficulties and scruples, since it is most difficult to find equality in things altogether disparate. Moreover, commutation ought to be made for the alleviation of him who has bound himself by vow. - Cf. St. Alphonsus, n. 247.

I Say 3rd. He who emitted a vow cannot commute it into a lesser good by his own authority; for he ought to give to God whatever he promised. Nevertheless, even without a special cause, he can commute his vow into a work evidently better, because while someone performs a work more perfect than the thing promised, by that very fact he observes what he had promised, since the perfect is included in the more perfect. It is also clear from canon law, cap. 3, *de Jurejurando*. - But in this matter that work is judged better which conduces to the greater spiritual utility of the one vowing and to greater service of God. Yet except vows reserved to the Pope, unless the change is made into the religious state. - Cf. St. Alphonsus, n. 243.

Thus canon 1314: The work promised by a non-reserved vow can be commuted into a better or equal good by the one vowing himself; but into a lesser good by him to whom there belongs the power of dispensing according to the norm of can. 1313.

Questions

Question 1. Is some cause required for a vow to be commuted into an equal work, or one a little lesser?

Response. Affirmatively, as regards liceity, because otherwise a delegate would commute prodigally, and would abuse the power of commuting. But as regards validity, the opinion denying this is called probable by St. Alphonsus. - Cf. St. Alphonsus, n. 245.

Question 2. Once commutation has been made, is it licit to return to the first work?

Response. Affirmatively, if the commutation was made into a lesser or equal work, because the first work is equally pleasing to God; indeed even if it was made into a better work, because commutation

is made in favor of the one vowing. - Cf. St. Alphonsus, n. 248.

Question 3. Must you return to the first work if the second becomes impossible?

Response. Negatively, if the change was made by the authority of another, even if by your fault it became impossible, because the prior obligation has been dissolved by the commutation itself. But otherwise if you made the commutation by your own choice, because then the prior obligation is not dissolved, but is only supposed to be supplied by an equal or better one. - Cf. St. Alphonsus, n. 249.

Question 4. When a reserved vow has been commuted, does the substituted matter also remain reserved?

Response. Negatively, more probably, because that matter which is substituted is not reserved of itself, although it has the same bond of vow. - St. Alphonsus, n. 260, and others commonly.

On the Third Precept of the Decalogue

Remember that thou sanctify the Sabbath day. - Exod. xx, 8.

The third precept of the Decalogue is natural, insofar as it commands that some time be dedicated to public divine worship; but insofar as it determinately designates the Sabbath day, it is divine and to be counted among ceremonial things, but abrogated in the new law; since in place of the Sabbath day the Church substituted the Lord's Day in memory of the resurrection of our Lord Jesus Christ. Besides the Lord's Day, however, the Church instituted other feast days for recollecting the benefits of our Redemption, or the merits and examples of the Saints, and commands that they, no otherwise than Sundays, be sanctified.

This precept, insofar as it is affirmative, commands certain works, and insofar as it is negative, prohibits certain others.

Sacred times are feast days; and to these are added days of abstinence and fast (Can. 1243).

On feast days of precept Mass must be heard; and one must abstain from servile works, forensic acts, and likewise, unless legitimate customs or peculiar indults bear otherwise, from public markets, fairs, and other public buyings and sellings (Can. 1248).

§ 1. Not only Ordinaries of places, but also pastors, in singular cases and for a just cause, can dispense subjects individually committed to them, individual faithful or individual families, even outside the territory, and in their territory also pilgrims, from the common law concerning the observance of feasts and likewise concerning the observance of abstinence and fast, or also both.

§ 2. Ordinaries, from a peculiar cause of great concourse of the people or of public health, can dispense a whole diocese or place from fast and abstinence or also from both laws at once.

§ 3. In an exempt clerical religion the Superiors have the same power of dispensing in the manner of a pastor, as regards persons mentioned in can. 514, § 1 (Can. 1245).

These persons are professed, novices, or others living day and night in a religious house by reason of service or education or hospitality or infirm health. - Cf. Can. 514, § 1.

The reckoning of a feast day, and likewise of a day of abstinence and fast, is to be made from midnight to midnight, with the prescription of can. 923 saved (Can. 1246).

Chapter I. On Those Things which are Commanded on Feast Days

Article I. On the Obligation of Hearing Mass

I Say 1st. All the faithful having the use of reason are held under grave obligation to be present at Mass on individual Sundays and feast days, as is clear from canon 1248. - I said under grave obligation; for it is a question of a grave matter, both in itself and according to the common estimation of the faithful and the unanimous consensus of theologians.

I Say 2nd. Beyond this, by virtue of the positive precept, the faithful are held to perform nothing else. For although servile works have therefore been prohibited so that the faithful can more easily devote themselves to divine things, nevertheless these are prescribed by no law; otherwise the end of the precept would not fall under the precept. - I said by virtue of the positive precept, for by natural law they would be held to assist at sermons or catechesis on feast days if the sermon is necessary for Christian instruction or the formation of morals. - Cf. Suarez, *de Relig.*, tract. 1, lib. 2, chap. 16, n. 4. - Elbel, nn. 385 and following.

For Mass, however, to be heard rightly, three things are required: 1st, presence of body; 2nd, attention of mind; 3rd, due place. Concerning each one it will be said specially.

§ I. On Presence of Body

I Say. For Mass to be heard rightly there is required a moral and continuous presence of body: moral, insofar as someone ought to be so present where the Sacred Rite is taking place that he can be said to be one from the number of those assisting and offering the Sacrifice; but continuous, insofar as someone ought to persevere from the beginning to the end of Mass, so that he sins gravely if he omits a notable part of it, and venially if he omits a small part.

Questions

Question 1. Is it required for such moral presence that someone see the priest or hear his words?

Response. Not at all, negatively; for he is truly said to be one of those assisting who distinguishes the parts of the Mass by the sound of the bell, by the chant of the choir, etc., even if he is behind a column or wall, or also stands outside the church itself in which the crowd of the faithful cannot be contained, provided, however, that he is not very far from the door. But how great this distance can be, although to Lugo a space of thirty paces does not seem too great, must be determined from the circumstances of places. - Cf. St. Alphonsus, n. 312. - Lugo, *de Euchar.*, disp. 22, n. 21. - Baller., note (a), p. 334.

Question 2. What omission in Mass is to be regarded as grave or light?

Response. It cannot easily be determined; for although, according to all, a third part of the Mass is notable, nevertheless it is not clear what the third part is, since a notable part ought to be judged not only from duration, but also from dignity. Yet according to the common opinion these things can be established:

1st. It is certainly light to omit everything up to the Epistle exclusively, and more probably also inclusively, indeed probably also up to the Gospel inclusively, although St. Alphonsus regards the opposite opinion as more probable. And this must be said even if the Creed is omitted, because the Creed is not a regular part. Hence one present at Mass while the priest greets the people before he reads that little verse which formerly was called the antiphon, and now is called the offertory, can be excused from mortal sin. The reason is that the things which precede do not pertain to the sacrifice, but are remote preparation for it. - Cf. St. Alphonsus, n. 310.

2nd. It is grave, according to all, to omit everything before the Gospel and at the same time everything after communion; but not to omit only those things which follow communion, indeed not even to omit everything before the Epistle and everything after communion. - Cf. St. Alphonsus, n. 310. - Lacroix, n. 666.

3rd. Grave is the omission of the canon from the consecration up to the *Pater* exclusively, because it is a notable part by duration and dignity. But the omission of the offertory is reputed light, taking this word according to its twofold acceptance, namely for the recitation of the little verse which in the Missal is placed after the Gospel, and for the oblation of bread and wine. But the Gospel of St. John at the end is probably not part of the Mass, because before it the people are already dismissed by the blessing.

4th. It is grave to omit the consecration and communion; indeed also one consecration alone, because it is the most dignified part, in which, at least principally, the nature of the sacrifice consists. Indeed it is more probably grave to be absent from one consecration only, because the essence of the sacrifice more probably consists in each consecration. - But whether to pass by communion alone is grave is controverted; the affirmative opinion is more probable to St. Alphonsus, because he judges that the essence of the sacrifice also consists in communion. But the more common and truer opinion places it in consecration alone. - Cf. St. Alphonsus, *Hom. Ap.*, n. 33.

Question 3. Does he satisfy the precept who hears two halves of Masses from diverse priests, either simultaneously or successively?

Response. Negatively, if he hears simultaneously. The reason is deduced from the common interpretation of the law, and is confirmed by proposition 53 condemned by Innocent XI, which sounds thus: "He satisfies the precept of the Church concerning hearing the Sacred Rite who hears two parts of it, even four at the same time from diverse celebrants." But if he hears successively, again one must deny it if the consecration and communion are not in the same part; because the Church commands the faithful to be present at an entire and perfect sacrifice. But that is not had, at least as regards integrity, unless both consecration and communion come together in the same Mass. Otherwise, however, one must say probably, if the consecration and communion are found in the same part of the Mass, because then the entire nature of the sacrifice is had in the same part. - Cf. St. Alphonsus, n. 311; and *Hom. Ap.*, n. 34.

Question 4. Must one hear the remainder, who comes after the consecration?

Response. Negatively, probably, because the essence of the sacrifice is now lacking; therefore the obligation of assisting at that Mass ceases, since the precept cannot be fulfilled by this means. But he who comes before the consecration is held to the remaining part of the Mass for the contrary reason, and by the common authority of the Doctors. - Cf. St. Alphonsus, n. 310. - Baller., note (b), p. 336.[1]

[1] Cf. Addenda, p. 1144, n. 116.

§ II. On Attention of Mind

Attention at Mass is distinguished as twofold, namely internal and external. The first is had when someone applies his mind to those things which are being performed by the priest, and this again is distinguished in three ways according as the mind is applied either to the material words themselves and actions of the priest, or to the sense of the words and mysteries, or finally to God himself through pious prayers and meditations. - But external attention consists in avoiding any external action which impedes application of the mind, for example, conversing, painting, etc.

I Say. Any internal attention from the three ways just set forth suffices for rightly hearing Mass, but external attention alone, joined with the will of hearing Mass, is required for fulfillment of the precept. The reason of the first is both because by any of those attentions the mind is directed to divine worship, and because all theologians, even the more rigid, agree in this. But the reason of the second is that by external attention together with the will of hearing Mass there is sufficiently had a human, moral, and religious presence, and consequently one suitable for worshiping God. But exactly this, and this alone, is required for satisfying the precept. Therefore. - Cf. St. Alphonsus, n. 313. - Lugo, *de Euchar.*, disp. 22, n. 23.

Question. Does he satisfy the precept who confesses sins during the time of Mass?

Response. It is controverted; but certainly they are not to be disturbed, not only those who, guilty of some grave sin, cannot put off confession to another hour without great inconvenience, at least because then they are excused from the hearing of Mass, but neither pious penitents who complete confession in a few moments. But those who make a more prolonged confession probably, according to many, satisfy, provided nevertheless that they attend to the Mass in some way. - Cf. Baller., note (a), p. 339.

You Will Resolve. 1st. Sacristans, musicians, organists, tympanists, etc., satisfy the precept of Mass, because their acts are referred to the worship of God, nor do they impede the necessary attention to those things which are performed at the altar. - Cf. St. Alphonsus, n. 317.

2nd. Those who collect alms satisfy, provided they attend to Mass at least confusedly. But if they foresee that they cannot give this attention, let them hear another Mass, if they conveniently can.

3rd. Those who examine their conscience during the time of Mass in order to confess, or discharge sacramental penance, or also make prayer owed by whatever title, satisfy; because in that way the mind is directed to God, and besides two precepts can be satisfied at once, if the things commanded can be performed at the same time. Likewise those who read some spiritual book, but not sacred histories with the mind of learning style. - Cf. St. Alphonsus, n. 314.

4th. Those also satisfy who are involuntarily distracted, even during the whole time of the sacrifice, unless they are so carried away by alien thoughts that they do not attend at all; for then they do not satisfy any more than those involuntarily sleeping through a notable part of Mass, although they are excused from sin. But one dozing at times during the Sacred Rite satisfies, or at least does not gravely fail, provided he in some way adverts to that which is being done. - Cf. St. Alphonsus, n. 316.

5th. But by no means do those satisfy who converse about a serious matter for a notable part of Mass, or attentively consider images, survey the furnishings of the church with their eyes, read

inscriptions or other profane things, paint, or perform other similar things, unless these are done interruptedly or in such a way that they do not altogether impede attention. - Cf. St. Alphonsus, n. 317.

§ III. On the Due Place

He satisfies the law concerning hearing the Sacred Rite who is present at Mass, by whatever Catholic rite it is celebrated, under the open sky or in any church or public or semi-public oratory and in private cemetery chapels mentioned in can. 1190, but not in other private oratories, unless this privilege has been granted by the Apostolic See (Can. 1249).

Chapels erected in a cemetery by families or private persons for their own burial are private oratories (Can. 1190).

As Regards Oratories

I Say 1st. § 1. An oratory is a place destined for divine worship, yet not for this chief end, that it should be for use by the whole people of the faithful for publicly cultivating religion.

§ 2. But an oratory is:

1st. Public, if it has been erected chiefly for the convenience of some college or even of private persons, yet in such a way that all the faithful, at least at the time of divine offices, have a legitimately proved right of approaching it;

2nd. Semi-public, if it has been erected for the convenience of some community or assembly of the faithful coming together there, and it is not free for each one to approach it;

3rd. Private or domestic, if it has been erected in private houses for the convenience of only some family or private person (Can. 1188).

§ 1. Public oratories are governed by the same law as churches.

§ 2. Wherefore in a public oratory, provided it has been dedicated in perpetuity to the public worship of God by the authority of the Ordinary through blessing or consecration, according to the norm of can. 1155, 1156, all sacred functions can be celebrated, with the contrary prescription of the rubrics saved (Can. 1191).

§ 1. Semi-public oratories cannot be erected without the license of the Ordinary.

§ 2. Let the Ordinary not grant this license unless first, by himself or by another ecclesiastical man, he has visited the oratory and found it decently furnished.

§ 3. But once the license has been given, the oratory cannot be converted to profane uses without the authority of the same Ordinary.

§ 4. In colleges or boarding schools for instructing youth, in gymnasia, lyceums, citadels, military posts, prisons, hospitals, etc., besides the principal oratory, let other smaller ones not be erected, unless in the judgment of the Ordinary necessity or great utility requires it (Can. 1192).

In semi-public oratories legitimately erected, all divine offices or ecclesiastical functions can be celebrated, unless the rubrics stand in the way or the Ordinary has excepted something (Can. 1193).

In private cemetery chapels mentioned in can. 1190, the Ordinary of the place can habitually permit even the celebration of several Masses; in other domestic oratories, only of one Mass, by way of act, in some extraordinary case, for a just and reasonable cause; but let the Ordinary not grant these permissions except according to the norm of can. 1192, § 2 (Can. 1194).

A chapel having a fixed place on a ship is to be held as public for those sailing; and in that chapel, even while the ships are found in port, all those being present at the most holy sacrifice of the Mass fulfill the precept. S. R. C., March 4, 1901, to V; May 10, 1901.

§ 1. In domestic oratories by indult of the Apostolic See, unless something else is expressly provided in the same indult, after the Ordinary has visited the oratory and approved it according to the norm of can. 1192, § 2, one Mass, and that a read Mass, can be celebrated on individual days, except on more solemn feasts; but let other ecclesiastical functions not be made there.

§ 2. But the Ordinary, provided just and reasonable causes are present, different from those on account of which the indult was granted, can permit by way of act the celebration of Mass also on more solemn feasts (Can. 1195).

§ 1. Domestic oratories can be neither consecrated nor blessed in the manner of churches.

§ 2. Although domestic and semi-public oratories are endowed with the common blessing of places or houses, or with no blessing, nevertheless they must be reserved for divine worship alone and free from all domestic uses (Can. 1196).

I Say 2nd. It is certain that all who are comprehended in the Indult satisfy the precept of hearing Mass in a private Oratory, namely the master of the oratory with his own people and domestics who, being assigned to his service, are actually necessary to him by reason of service at the time of Mass. The days of principal feasts are excepted, namely Easter, Pentecost, Christmas of the Lord, Epiphany, Ascension, Assumption, St. Peter, and All Saints; Thursday in the Supper of the Lord; and indeed on these days it is altogether interdicted to celebrate in oratories of this kind, unless the contrary is expressly obtained. But outsiders do not satisfy, as is clear from the words of the Indult, which ordinarily sounds thus: "We will that those who are not of the family are not judged free from the obligation of hearing Mass in a church." - Cf. St. Alphonsus, nn. 319 and following.

Question. Is the master held to use the privilege, if he cannot go to church?

Response. Negatively, because no one is compelled to use a privilege granted only in his own favor, unless an obligation arises from another head (Can. 69). Besides, what is granted on account of someone's favor is not to be turned back to his detriment. - Cf. Ball. Palm., n. 800. - Genicot, n. 344.

Article II. On Causes Excusing from Mass

I Say. Any moderately grave cause excuses from hearing Mass, or one which involves a notable and at least moderate inconvenience or damage in the goods of the soul or body, one's own or the neighbor's. This is clear from the common doctrine of theologians, and from the custom of the faithful, which is the best interpreter of laws. - Cf. St. Alphonsus, n. 324.

You Will Resolve. 1st. The sick, the infirm, convalescents whom going outdoors harms are excused, even if this harm should appear only probable. Likewise those who must guard the sick. - Cf. St. Alphonsus, n. 325.

2nd. Those who guard the house, or who must prepare food, or perform similar necessary things, are excused. - Cf. St. Alphonsus, n. 326.

3rd. Mothers and nurses who have no one to whom they may leave little children, nor can they bring them to church, are excused. - Cf. St. Alphonsus, ibid.

4th. Often those are excused who are distant far from the church, so that they cannot approach it without great difficulty, especially in winter time.

5th. Servants are excused if they cannot omit their service without grave detriment to the master, or if they are prohibited by him, and cannot easily find another master. Nevertheless they ought diligently to take care to remove impediments, if they can. - Cf. St. Alphonsus, n. 327. - Reuter, n. 288.

6th. Those are excused who, if they heard Mass, would lose the occasion of notable gain. Cf. St. Alphonsus, n. 332. - Elbel, n. 368.

7th. Those are excused who would suffer notable embarrassment if they went to church; for embarrassment, especially for women, is regarded as a greater inconvenience than cold or a long journey on foot. Wherefore women pregnant from a delict can be excused, or those who do not have decent clothing suitable to their proper state, or when their matrimonial banns must be made. Cf. St. Alphonsus, n. 330. - Kenrick, tract. 4, part 2, nn. 20 and 21.

Question. What distance excuses from Mass?

Response. It cannot be assigned absolutely, but is to be determined from the circumstances of persons, places, and times. - According to many, regularly the distance of three miles excuses, or a journey on foot of one hour, and even something less if it were raining or snowing. But this distance among us could often seem small, especially in cities, where carriages are at hand, and also in the country, where men often and very easily use horses. Cf. St. Alphonsus, n. 329; and *Hom. Ap.*, n. 41. - Kenrick, tract. 4, part 2, n. 19.

Chapter II. On Those Things which are Prohibited on Feast Days

Works of three kinds are to be distinguished: 1st, servile works or works of the body, namely those which are exercised through the body, and are immediately ordered to the utility of the body, and are customarily done by servants or wage-workers; 2nd, liberal works or works of the mind, which are rather performed by the powers of the mind, and pertain to cultivating the mind, and are ordinarily exercised by free persons; 3rd, common or natural works, which are done by all indiscriminately. Forensic works are also distinguished, which pertain to the judicial forum or to the market. Yet note that the best method of distinguishing among these diverse works is to be taken from custom and the common estimation of men. - Cf. St. Alphonsus, n. 272. - Kenrick, tract. 3, n. 78. - Baller., note (a), p. 347.

I Say 1st. On feast days of precept Mass must be heard; and one must abstain from servile works, forensic acts, and likewise, unless legitimate customs or peculiar indults bear otherwise, from public market, fairs, and other public buyings and sellings (Can. 1248).

Therefore from this canon there are prohibited, from midnight to midnight of the feast, and indeed under grave obligation, for all the faithful:

1st. servile works properly so called;

2nd. Forensic works, namely forensic acts, which are had with judicial apparatus, such as interrogating parties, hearing witnesses and advocates, pronouncing sentence, etc.; if a criminal case already begun could not be interrupted without grave inconvenience or damage, the law would not urge;

3rd. Public market, fairs, and other public buyings and sellings, unless custom or indults permit otherwise.

I Say 2nd. Liberal works, common works, and some works which seem servile but are required for daily use, sustenance, necessity, and arrangement of the body, clothing, or house, are licit, such as cooking food, making beds, sweeping the house, and other things which conveniently cannot be, or are not customarily, deferred or anticipated. Thus from common practice and the sense of the faithful.

Among liberal works the use of a machine suited for typewriting is to be numbered.

Questions

Question 1. Is it licit to sculpt or paint on a feast day?

Response. Affirmatively, to each, at least probably, because those arts are held and are liberal, or something intermediate between liberal and servile. Besides, they are something very similar to writing, which is certainly licit. Yet except that kind of sculpture or painting which requires great exercise of the body, and perhaps in this way St. Alphonsus is to be understood, who says that sculpture is illicit. - Cf. St. Alphonsus, nn. 280 and following; and *Hom. Ap.*, n. 10.

Question 2. Is it licit to have the commerce of taverns or inns on a feast day?

Response. Concerning this matter the Fathers of the Third Plenary Council of Baltimore speak thus, n. 113. - "Since not only that which is certainly evil, but also that which has the appearance of evil, and still more, that which is accustomed to lead to evil, ought to be diligently avoided by a Christian man, let our Catholics generously renounce all recreations and avocations which are less fitting to the holiness of the Lord's Day or even of their own accord lead to the transgression of laws, whether divine or human. Among things of this kind, certainly the commerce of taverns or inns on this day occupies the highest place, from which so many and such great harms spring forth against religion and society. Therefore let pastors work energetically and use admonitions, beseechings, threats, indeed even penalties where it shall have been necessary, for rooting out this evil; and thus for their part let them help, that the almost single stain which more and more among us obscures the splendor of the Lord's Day may be erased."

Question 3. Is it licit to grind on a feast day?

Response. Affirmatively, more probably, if the mill is turned by water or wind, because then no or almost no labor of men is required. But otherwise if greater cooperation of man is demanded. - Cf. St. Alphonsus, n. 277. - Lacroix, n. 578.

Question 4. Does he sin gravely who on a feast day commands six servants to labor for one hour?

Response. Negatively, more probably of itself, whether the servants labor simultaneously or successively, because the works of the servants are not united into one, and each one sins only venially; therefore the master who induces them to a work prohibited under venial fault sins only venially. A fortiori they do not sin, at least against this precept, who enjoin upon non-baptized men, for example, Chinese dwelling among us, that they exercise servile works on Sundays. - Cf. St. Alphonsus, n. 306. - Kenrick, tract. 3, nn. 75 and 76.

Question 5. What matter is grave in a work performed on feast days?

Response. Many distinguish thus: if the labor is very servile, about two hours are required, if little servile, at least three hours, for the matter to be judged grave. But St. Alphonsus, having brought forward several opinions, approaches more to the opinion of Father Lacroix generally concluding that the more common and more probable opinion now is that it is not mortal unless one labors at least much beyond two hours, say two and a half. - Cf. St. Alphonsus, n. 305; and *Hom. Ap.*, n. 25.

From these solutions, which have been given as examples, it is now clear what is to be held concerning many similar cases. But now it is useful to indicate something practically concerning the three principal causes by virtue of which the obligation of abstaining from servile works ceases. Therefore:

I. By reason of charity, on a feast day it is licit, 1st, to do what is necessary for relieving the sick; 2nd, to dig a grave for burying the dead; 3rd, to labor for some determinate poor person, for whom, by reason of grave necessity, it would be licit to labor; but not for the poor in general, unless a peculiar necessity also urges. Cf. St. Alphonsus, n. 294; and *Hom. Ap.*, n. 17.

II. By reason of piety it is licit, 1st, to do all works proximately serving the worship of God, such as adorning the church, altar, etc.; 2nd, to sweep the church and prepare other things which pertain to its cleanliness. But it is not licit to build a church, repair it, cut stones for this, make ornaments, etc.; because these serve divine service more remotely. Cf. St. Alphonsus, nn. 292 and 293; and *Hom. Ap.*, n. 17.

III. By reason of necessity, whether one's own or another's, of both soul and body, the following are excused: 1st, the poor who otherwise cannot feed themselves and their own, provided they labor privately and with scandal excluded; 2nd, all whose works begun cannot be interrupted without great damage, such as iron founders, etc.; 3rd, bakers who must have fresh bread, so that they may satisfy buyers; 4th, tailors who make funeral or nuptial garments, which neither by themselves nor by others are able to be completed before the feast; 5th, farmers who on account of past or imminent rain turn, bind, and carry hay or crops; 6th, servants compelled to labor, if they cannot easily and quickly find another master without great inconvenience; 7th, blacksmiths who shoe horses on the road or brought by countrymen, or repair plowshares necessary for farmers on the following day; and also those who repair wagons broken by accident, bridges, or public roads, if the work cannot be deferred without loss of the public good; 8th, those who labor for public utility when some necessity is urgent, for example, if it is a question of celebrating victory or for the sake of another public rejoicing; 9th, those who sustain themselves by daily labor if they would have to lose a notable and extraordinary gain; 10th, all those who plant tobacco, if after rains fallen the day before it is to be feared that another opportunity may be lacking; 11th, those who place vessels under trees from which a sugary liquid flows, and afterward transfer it into another vessel, when it happens that the

liquid flows for only a few days more. Cf. St. Alphonsus, nn. 296 and following. - Kenrick, nn. 90, 91 and 93.

On the Fourth Precept of the Decalogue

Honor thy father and thy mother. - Exod. xx, 12.

This precept primarily and directly imposes upon children certain obligations toward parents; but secondarily and indirectly it regards parents. It also regards, although implicitly, the mutual obligations of other superiors and inferiors.

Chapter I. On the Obligations of Children toward Parents

Since parents have a threefold relation toward children, namely by reason of cause, by reason of preeminence, and by reason of governance, there are three duties which children ought to render to parents by title of piety, namely love, reverence, and obedience. Wherefore they ought to love them as authors of their existence, reverence them as superiors, and obey them as rectors delegated by God. - Therefore:

I Say 1st. Children ought to love parents with love both internal, cherishing them with a pious and benevolent affection of heart, and external, repelling every evil and injury from them, as well as exhibiting to them signs of external benevolence, and assisting them according to ability when they are constituted in necessity. This is clear from the law of nature itself; for however grave the defects which our progenitors have may be, and whatever may be the manner in which they have conducted themselves toward us, nevertheless we always owe them life and preservation, which surely is the greatest of all benefits. Hence Ecclus. vii, 29 and 30: "Honor thy father, and forget not the groanings of thy mother: remember that unless through them, thou wouldst not have been born: and repay them, as they also thee."

I Say 2nd. Children ought to exhibit reverence to parents, both internal and external; they ought, namely, to acknowledge them and to treat them both in words and deeds as superiors, for they are such, designated by nature itself. - Hence Ecclus. iii, 9: "In work and speech and all patience honor thy father." - And ibid., 8: "He who fears the Lord honors parents, and as masters he will serve those who begot him." - Deut. xxvii, 16: "Cursed is he who does not honor his father and mother; and all the people shall say: Amen."

I Say 3rd. Children ought to render obedience to parents in all licit and honorable things pertaining to their education, while they are under their power. This is clear from natural law and from Scripture, for example, Ephes. vi, 1: "Children, obey your parents in the Lord; for this is just." - Coloss. iii, 20: "Children, obey parents in all things; for this is pleasing to the Lord." - I said 1st, in all licit and honorable things, because in things evidently depraved children neither ought to obey, nor can they. - I said 2nd, pertaining to their education, for in those things which pertain to the choice of their own state, children are independent, and parents would sin gravely if directly or indirectly they compelled them to choose the religious state rather than the conjugal state or vice versa. - I said 3rd, while they are under their power, for if children, for example, marry and establish a new family or wish to embrace the religious state, although they always owe love and reverence to parents, the duty of obedience properly ceases.

You Will Resolve. - 1st. Children sin gravely if they strike parents or attempt to strike them even lightly, but injuriously. This crime, even in ancient times, was seen as so atrocious that formerly among the Hebrews any who had committed it were punished by death; for it is said, Exod. xxi, 15: "He who shall strike his father or mother shall be put to death."

2nd. They sin gravely if they curse parents, as is clear from the words of Exod. xxi, 18: "He who shall curse his father or mother shall die the death"; or if they throw insults upon them, and affect them with injuries or contumelious words by which they know that they are to be gravely offended; if they gravely mock them by laughter, jeerings, gesticulations, reproaches, derisions, a stern look, etc., provided nevertheless that these things are done from contempt, but not from levity or simple rusticity.

3rd. They sin gravely if they despise parents who are poor, miserable, badly clothed, or are ashamed of them, or refuse to acknowledge them, or regard them as unknown and foreign. Yet except if, with contempt and pride excluded, they pretend for a just cause that they do not know them, for example, to avoid some inconvenience which the child would incur if his parents were known, etc.

It must be noted here that in practice the disobedience of children can not rarely be excused from grave sin on account of levity of mind, inadvertence, or some human negligence, and very often on account of smallness of matter. Indeed often they ought to be judged immune from every fault on account of defect of a rigorous precept. For that a sin, especially grave, be committed against obedience, it is required that the parents seem strictly to command, but not only to counsel, solicit, or signify their mind. But that a true precept is being enjoined is discerned from the serious or severe manner in which the thing is commanded, and from other circumstances, for example, from the necessity and magnitude of the thing commanded, and the penalty added, etc.

Chapter II. On the Obligations of Parents toward Children

Parents are held by a most grave obligation of taking care, according to their strength, of the education of their offspring, both religious and moral, and physical and civil, and also of providing for their temporal good (Can. 1113).

I Say 1st. Parents ought to cherish their children with true, efficacious, and ordered love. The reason of this obligation is founded in the very bowels of nature and in the title of generation. For just as, by the impulse of nature, each one ought to love himself, so parents are held to love children as something of themselves, or flesh from their flesh. - I said 1st, with true love, namely both with internal affection of heart and with external love, by procuring their good as much as is in them. - I said 2nd, efficacious, insofar as parents ought not, on account of sluggishness or cruel kindness, to act too remissly with children, neglecting to draw them back from vices by more severe precepts and other suitable remedies. - I said 3rd, ordered, namely insofar as the spiritual good of children ought to be preferred to their temporal good, and among the diverse kinds of temporal goods, that which is better and more necessary for them. - Hence:

1st. Parents can sin gravely if they are inflamed with a depraved affection against children, and look upon them disdainfully; 2nd, if they address them with gravely contumelious names; 3rd, if they grant or permit all things to them, lest they sadden them; 4th, if they favor one before the others very much without a just reason, and look upon the rest indifferently, or even hold them as if adulterine.

I Say 2nd. Parents ought to procure for children a suitable bodily education, namely not only to do nothing positively against their life from the moment of conception, but also to provide all those means which are necessary for sustaining life, and for preserving and perfecting strength, and to prepare a future state for them according to their proper condition. This is clear from the law of nature, according to which we see even brute animals, after they have begotten offspring, labor greatly for preserving life for them and for seeking food. Hence:

1st. Parents can sin gravely if they cast children out of the house without sufficient reason, while they cannot yet sufficiently provide for themselves; 2nd, if they do not apply at least moderate diligence to acquire goods from which they may suitably sustain children and provide for their future state; 3rd, if they do not teach children an art suitable to their state or some other manner of living decently, nor take care that they be taught.

I Say 3rd. Parents are principally held to procure spiritual education for children. The reason is that man, besides material or bodily being, which he has in common with the other animals, is endowed by God with a rational and most noble soul, created according to the image of the Divinity itself; and he was created that he might tend to God as his supernatural last end. Therefore he ought especially to be instructed and directed by parents to this end; for marriage was raised to the dignity of a sacrament so that the offspring born may be reborn in Christ, and prepared for eternal life. - Hence:

1st. Parents sin gravely or can sin gravely if, when opportunity is given, they do not take care that children be regenerated as soon as possible by the grace of Baptism; 2nd, if they do not teach them or strive that they be taught the principal heads of Christian doctrine, and do not form their morals from tenderest childhood according to the norm of the divine law; 3rd, if they do not correct them when delinquent, even with the rod being applied, yet prudently, moderately, and opportunely; 4th, if finally they furnish depraved examples to them or utter filthy words or blasphemies in their presence.

Questions

Question 1. Ought a mother nourish her little children with her own milk?

Response. Affirmatively, with the common opinion, because natural law seems to demand this. Yet this obligation does not urge under grave obligation, because in this matter grave disorder does not appear. But necessity, notable utility, or custom prevailing among noble families, etc., excuses from every fault; but then under grave obligation the mother ought to substitute for herself a nurse good as to morals and health. - Cf. St. Alphonsus, n. 336. - Benedict XIV, *de Synod. dioec.*, lib. 11, chap. 7, nn. 9, 10 and 11. - Kenrick, tract. 8, n. 85.

Question 2. Do parents sin gravely who, with no cause or only a futile cause, bring newly born offspring to foundling homes or expose them at the houses of private persons?

Response. Affirmatively, and indeed both against the piety which they owe to children and against justice, by imposing a grave burden upon foundling homes or private persons without reason. But if they redeem with competent money the cares expended for the good of the offspring, they sin only against piety, because only a maternal instinct can suitably satisfy the natural needs of offspring, especially in the tenderest age. But when a just cause is present, there is no sin; indeed then parents, even if they are rich, probably are not held to monetary compensation if they entrust the offspring to

public foundling homes. - Cf. St. Alphonsus, n. 336; and tract. 5, n. 656. - Kenrick, tract. 8, nn. 84 and following.

Question 3. What must be said concerning those parents who, compelled by want or to avoid infamy, place offspring at Protestant foundling homes?

Response. If they do this only because of danger of infamy to be avoided, certainly they are not excused from grave sin; because, by using money, they could by many other means provide both for their own reputation and at the same time for the eternal salvation of the offspring. But if they are oppressed by the greatest want, and a fortiori if to want there is added the danger of infamy, the distinguished Kenrick does not dare to condemn those who thus expose their own children, yet with this mind and hope: that, Baptism now having been conferred, in the future they strive to obtain their eternal salvation in the best way they can. - Cf. Kenrick, n. 84.

Question 4. Is it licit for parents to send children to positively evil schools, when a most grave cause is present?

Response. Not at all, negatively, because parents acting thus expose the offspring to evident and proximate danger to eternal salvation, which can never be licit, notwithstanding even a most grave temporal evil, and therefore absolution must be absolutely denied to these parents unless they repent. But I call positively evil schools those in which heresy, impiety, or corruption of morals is taught.

Question 5. What must be said concerning public schools as they generally exist among us, in which namely religious education is set aside?

Response. Speaking of themselves, and with the principles of both positive and natural law considered, schools of this kind are evil: namely the system itself according to whose norm they have been instituted is evil and full of dangers.

It is clear 1st from proposition 48 of the Syllabus, which sounds thus: "That method of instructing youth can be approved by Catholic men which is separated from Catholic faith and from the power of the Church, and which looks only, or at least primarily, to the knowledge of merely natural things and the ends of earthly social life."

It is clear 2nd from *Conc. Plen. Balt.* II, n. 426, where it is read thus: "Long experience has indeed proved sufficiently and more than sufficiently how grave are the evils and how intrinsic also the dangers which commonly come upon Catholic youth in these regions from attendance at public schools. For by virtue of the system obtaining among them, it can in no way happen that Catholic youths are not at the same time brought into great danger of faith and morals. Nor indeed do the advances which that fatal stain of Indifferentism, as they call it, has thus far had to the greatest degree in this region, and has day by day, seem to be traced back to any other cause; also that corruption of morals, by which not without tears we see even the tenderest age among us everywhere infected and ruined. For the daily intercourse of those who practice either a false religion or none, also the reading and meditation of authors who attack, gnaw at, and sprinkle with black salt our most holy religion and institutions, indeed the Saints themselves, gradually weaken in the souls of Catholic children the force and virtue of true religion. Then the fellow-students with whom they associate are commonly of such morals and examples, with such wicked license of speaking and acting, that by this

association and familiar intercourse, for our adolescents, although excellently instructed at home, every modesty and piety is quickly consumed and perishes, as wax when fire has been applied."

The things which are prescribed in the new Code concerning schools accord:

Let Catholic children not attend non-Catholic schools, neutral schools, mixed schools, which namely are open also to non-Catholics. But it belongs to the Ordinary of the place alone to decide, according to the norm of the instructions of the Apostolic See, in what circumstances and with what cautions applied, so that the danger of perversion may be avoided, it can be tolerated that those schools be frequented (Can. 1374).

§ 2. Not only parents according to the norm of can. 1113, but also all who hold their place, have the right and most grave duty of taking care of the Christian education of children (Can. 1372). - Cf. Can. 2319, § 1, nn. 2, 4, § 2, where penalties are established against parents educating offspring outside the Church.

Question 6. With these things notwithstanding, can Catholic parents ever send their offspring to our public schools?

Response. Affirmatively, provided the conditions under which the Baltimore Fathers permit this are verified. The reason is that, after all, the malice of those schools consists both in the system itself of the separation of religious education, and in the danger concerning morals and faith; but parents who, compelled by grave necessity, send their own offspring to them do not approve the system but rather undergo it, and by applying cautions they either altogether remove the dangers or in great part lessen them. Therefore. ... This same thing is clear from *Conc. Plen. Balt.* III, which, in n. 198, made its own the very words of the Instruction which the Congregation de Propaganda Fide sent to our Bishops on November 24, 1875, concerning this matter. Therefore the Baltimore Fathers speak thus: "It can sometimes happen - as also the Instruction just cited intimates - 'that Catholic parents can in conscience entrust their offspring to public schools. But they cannot do this unless they have a sufficient cause for acting thus, and whether such a sufficient cause is present or not in some particular case, that will have to be left to the conscience and judgment of the Ordinaries; and then it will generally be present when either no Catholic school is available or the one which is supplied is little suited for educating adolescents suitably and congruently to their condition. But then, that public schools can be attended in conscience, the danger of perversion, always more or less connected with their proper nature, ought to be made remote instead of proximate by opportune remedies and cautions.'"

Question 7. Can a confessor ever deny absolution to parents who send their offspring to public schools?

Response. A twofold case can be present; for Catholic parents either do this from a just cause approved by the Ordinary of the place, or otherwise. If the first, absolution would be denied unjustly. Wherefore in the cited place the Fathers of *Conc. Plen. Balt.* III add: "Therefore when, on account of a sufficient cause and one approved by the Ordinary, parents wish to send children to public schools, provided the proximate dangers are removed by necessary cautions, we strictly command that no one, whether Bishop or presbyter, as the Pontiff through the Sacred Congregation expressly forbids, dare to repel parents of this kind from the sacraments as if unworthy, either by intended threats or by the act itself. This must be understood much more concerning the children themselves. Wherefore

pastors of souls, while they warn the faithful committed to them concerning the dangers of these schools, should take the greatest care lest, led by immoderate zeal, they seem by words or deeds to violate the most wise counsels and precepts of the Holy See."

But if the other case is verified, then it will belong to a prudent confessor to judge from the circumstances whether the malice which Catholic parents contract is grave, by reason of disobedience, scandal, and the dangers to which they expose their own offspring, and thence to gather whether absolution must certainly be denied to them. - Cf. *Amer. Eccl. Review*, vol. 12, pp. 339 and following.

We give here one document from which the unshaken principles of Catholics can be derived. Thus Leo XIII in his Constitution *Nobilissima Gallorum Gens*:

"First indeed, as regards domestic Society, it is of the greatest importance that the offspring received from Christian marriage be instructed early in the precepts of religion, and that those arts by which the age of childhood is accustomed to be formed to humanity be joined with religious instruction. To separate the one from the other is the same in reality as to will that childish souls be moved to neither part in duties toward God: which discipline is deceitful, and, especially in the earliest years of children, most pernicious, because in truth it fortifies the way of atheism and blocks up the way of religion. Altogether good parents must take care that each of their children, as soon as they have begun to understand, perceive the precepts of religion, and that nothing occur in the schools which offends the integrity of faith or morals. And that this diligence be applied in instructing offspring has been established by divine and natural law, nor can parents by any cause be freed from that law."

Question 8. What does the Code prescribe concerning schools?

Response. § 1. All the faithful are to be instructed from childhood in such a way that not only is nothing handed on to them which is opposed to the Catholic religion and honesty of morals, but religious and moral instruction occupies the principal place (Can. 1372).

Hence in any elementary school religious instruction is to be handed on to children according to their age. Indeed, let youth frequenting middle or higher schools be cultivated by doctrine of religion, and let Ordinaries of places take care that this be done through priests outstanding in zeal and doctrine. - Cf. Can. 1373.

But the Church has the right of founding these schools, elementary, middle, and higher; to its authority and inspection the religious instruction of youth in all schools is subject. Therefore to Ordinaries of places there belongs the right and duty of watching lest anything against faith or good morals be handed on or done in any schools of their territory. Cf. Can. 1373, 1374, 1375, 1376.

But these domestic duties, namely care of the family, reverence owed to the husband, education of infants, are sacrosanct; and whatever calls wives away from these is forbidden to them. Besides, whatever introduces discord between them and their husbands, or effects that they desert the hearths and domestic walls, that they neglect infants, that they aspire to divorce, that they foster free loves, that they cast off the modesty and shamefastness adorning Christian women, is forbidden. Therefore every feminism which endeavors to emancipate a married woman from her matrimonial obligations, and to liberate the unmarried and the married from the natural and divine law, is to be avoided, since it is repugnant to the nature of civil society, of the family, and of religion. But with conjugal duties

saved, if they are married, and other duties if they are not, it is licit for women, according to the measure of their condition, to have a part in social action, and to devote themselves to those sodalities whose end is that, under the care of the Ordinaries, especially in their own order, the praise of Christian morals may revive entire, that the stain of divorces may be averted from Christian marriage, that the instruction of children may be duly provided for, that there may be restrained the pest of human intercourse, the shameful license of spectacles, the obscenity of books and newspapers, the futile softness of conversations and assemblies, the shameless luxury in adornment and cultivation of the body, that laws may be issued protecting working youth by limits placed as to age, hours and manner of labor, workshops, wage, and other aids, by which both body and soul, especially of girls and women workers, may be preserved from every harm. Therefore socialistic, atheistic, irreligious feminism is to be fought with all strength. But let that pest not be confused with the social action of Catholic women working under the Ordinaries of places. *Nouvelles Orientations de la morale*, pp. 27 and following. - Epist. Pius X, *Quae de istius*, November 22, 1904.

You Will Resolve. - 1st. But let parents principally take care that children are protected from all occasions, whether of companions, books, newspapers, or theaters, by which either faith or chastity is brought into danger. Around chastity, in our times, great caution must be applied. Therefore let parents take care, 1st, that from earliest childhood modesty of the offspring truly grows, for it is the bulwark of chastity: once it has been lost, virtue is easily lost; 2nd, that boys or girls never be permitted to attend schools in which sexual education is part of the program or schedule of studies; such public instruction in this slippery matter is an occasion of monstrous crimes; may nothing more dangerous happen to youth than this; the same should be said concerning books which set forth sexual life for boys and girls to know deliberately; such books do not fortify the hearts of children with a holy fortification, but open the way to the malignant enemy of souls; 3rd, since knowledge does not give security, let them take care that conscience be well instructed and the soul strengthened by frequenting the sacraments; 4th, when age and bodily development demand instruction, then let the mother alone, or father, or faithful instructor, or confessor hand it on to the child alone, holily, reverently, and only according to necessity; let him not give the whole doctrine, but a gradual doctrine accommodated to age and conditions of time; 5th, let the parent dedicate himself wholly to preserving modesty; let the offspring be accustomed to rational care of soul and body, to victory over self, to strengthening of the will; let religious instruction be handed on in order from the first years, and let the life of the child be illuminated and enlightened by the light of faith; 6th, let the offspring approach daily, if only it can be done, to holy communion, which is a special and necessary remedy against luxury. See the golden Encyclical Letters of the Bishops of Germany, August 20, 1913.

2nd. Parents are held to watch with peculiar care lest children associate themselves with certain sodalities dedicated to the instruction of children in a certain natural morality, unless ecclesiastical authority itself has approved them or at least, the dangers having been removed, has permitted association in them. For if such a society in its norms publicly inculcates that all religions are to be held by the members in the same rank, that equal respect is to be furnished to all, that truth is in all, that there are various ways leading to the one end of blessedness, and that there is one head of all, it is wicked and cruel to permit children to enroll themselves in these assemblies. Such a society opens the way to indifferentism, lessens the powers favoring faith, increases those hostile to it, separates things not to be separated, religious and moral education, claims for itself a magisterium in a certain

natural morality, which does not belong to it. Besides, that instruction is not normal, either as to method or as to matter. They are children, not soldiers; they are to be watched over, not watchers. Today the world campaigns for children. It belongs to Catholic parents to protect them from the world, to educate them in Catholic schools, to cherish them day and night and not to permit that they go alone through roads or woods, and that they guard others, being themselves guards needing guardianship. See the things just cited from Leo XIII and Pius X.

3rd. Parents are gravely obliged to guard offspring from the modern danger of cinematographic representations; indiscriminately to be present at these is certainly not licit for boys and girls of tenderer age; easily such attendance harms their eyes and nerves, lessens modesty day by day and thus can weaken chastity, indeed also here and there, on account of the matter treated, leads faith into danger. Therefore great caution is to be applied in permitting these entertainments to offspring.

4th. Not only parents or those holding the place of parents, but also masters and sponsors are obliged to take care that subjects and those commended to them are instructed in catechesis. - Cf. Can. 1335.

Chapter III. On Other Obligations

Article I. On the Obligations of Spouses

I. Spouses are held: 1st, To mutual love. For since they are one flesh, they ought also to be one heart. Thus Ephes. v, 25: "Husbands, love your wives, as Christ also loved the Church"; Tit. ii, 4: "(Wives) let them love their husbands." 2nd. To conjugal society and cohabitation. This is clear from the nature and ends of marriage and from the words of Christ, Matth. xix, 5: "A man shall leave father and mother and shall cleave to his wife and they shall be two in one flesh." 3rd. To furnishing mutually to each other food and whatever pertains to the decency of their condition: from the words of Christ, l. c. Matth.: "For now they are not two but one flesh." - Cf. Ephes. v, 29. 4th. To rendering to each other the conjugal debt when it is seriously asked and there is no legitimate cause for denying it, because they have obliged themselves to this. - Cf. I Cor. vii, 4.

II. The husband is held in particular: 1st. To conduct the family estate diligently, and either rightly to administer or to take care that both common goods and the wife's goods are not dissipated; 2nd. To take care that the wife fulfills the duties of Christian profession, and executes the precepts of both divine and ecclesiastical law. For the man is the head of the woman and the ruler of the whole family; and therefore the right governance of both wife and whole family duly pertains to him. 3rd. To correct a delinquent wife, where this work is necessary for her amendment and for preventing scandal. But correction ought to proceed from charity or love of justice or zeal for procuring the right governance of the family, and to be much lighter than the fault deserves, because the wife is the companion of the man, not a slave. Care must also be taken lest peace and love perish between them.

III. The wife, for her part, is held: 1st. To reverence the husband, because he is her superior, as is clear from what has been said. 2nd. To render obedience to him, because obedience is owed to a superior in those things which pertain to governance; the Apostle to the Colossians iii, 18, says: Women, be subject to husbands, as is fitting, in the Lord. 3rd. To bear the care of the house in the family affair, and therefore to go about the offices of the family.

Speaking of Christian marriage, Leo XIII in the Encyclical Letter *Arcanum* thus explains its dignity and the duties of spouses:

"By the nuptial society something higher and nobler has been proposed than had been before: for it was commanded to look not only to propagating the human race, but to generating offspring for the Church, citizens of the saints and domestics of God (Eph. ii, 19), namely, that a people might be procreated and educated for the worship and religion of the true God and of Christ our Savior (Catech. Rom. chap. VIII). In the second place, their own duties have been defined for each of the spouses, their own rights entirely described. Namely, it is necessary that they always be so affected in soul that they understand that the one owes the other the greatest love, constant faith, and attentive and assiduous protection. The man is the prince of the family, and the head of the woman, who nevertheless, because she is flesh from his flesh and bone from his bones, is to be subject and obedient to the man in the manner not of a handmaid, but of a companion; namely so that neither honorableness nor dignity may be absent from the obedience furnished. But in him who presides, and in her who obeys, since each represents an image, the one of Christ, the other of the Church, let divine charity be the perpetual moderator of duty. For the husband is the head of the woman, as Christ is the head of the Church. ... But as the Church is subject to Christ, so also let women be subject to their husbands in all things; Eph. v, 23, 24. But as regards children, they ought to be under and obey parents, and to show honor to them on account of conscience; and conversely, in protecting children and especially in forming them to virtue, all the cares and thoughts of parents must be vigilant: 'Fathers, educate them (children) in the discipline and correction of the Lord'; from which it is understood that the duties of spouses are neither few nor light; yet for good spouses, on account of the virtue which is received from the sacrament, these become not only tolerable, but also pleasant." § "Nor to them."

Article II. On the Obligations of Masters and Servants

I. Masters are held toward their servants:

1st. To treat them kindly, that is, by addressing and commanding them decently and humanely, by furnishing good and sufficient food, by not burdening them with excessive works, by suitably caring for the sick. This is clear from natural law and from Sacred Scripture, Ecclus. xxxiii, 31: "If thou hast a faithful servant, let him be to thee as thy soul; treat him as a brother." - Ephes. vi, 9: "And you, masters, do the same things to them (servants), forbearing threats: knowing that both their Lord and yours is in heaven, and there is no acceptance of persons with him."

2nd. To instruct and correct: the master is the head of the servant, as of the whole family; but it pertains to the head to direct where there is need. I Tim. v, 8: "But if anyone has no care of his own and especially of those of his household, he has denied the faith, and is worse than an infidel." But servants are reckoned among domestics.

3rd. To pay a just wage, for it is a question of an obligation of justice and natural equity, whence the defrauding of such a wage is counted among sins crying to heaven.

II. Servants are held to render to masters:

1st. Reverence. I Tim. vi, 1: "Let servants account their masters worthy of all honor." From this they can sin even gravely who deride masters, spurn them, or manifest their hidden defects.

2nd. Service and obedience in all those things to which they have obliged themselves by virtue of contract, and in those things which regard good morals; thus Ephes. vi, 5: "Servants, obey carnal masters with fear and trembling in simplicity of your heart, as Christ"; and I Pet. ii, 18.

Hence by reason of the matter those sin more or less who, when something is commanded to them, murmur, respond insolently, waste time uselessly, neglect to perform the commanded labor, or labor for themselves with damage to the master; and in one word all those who do not render the service which ordinarily is accustomed to be exacted and furnished from such persons.

3rd. Fidelity, according to the words of Paul to Titus ii, 9: "Let servants be subject to their masters, not defrauding, but in all things showing good faith." Hence those sin, and often gravely against justice, who do not have care of things entrusted to them, who by their fault permit them to become worse.

Article III. On the Duties of Employers and Workers

Pius X, in the Motu Proprio of December 18, 1903, hands down the fundamental norms of Christian popular action, among which some clearly place before the eyes the duties of workers and of the wealthy.

1st. "The duties of justice, as regards the proletarian and worker, are these: that what has been freely and equitably agreed upon as to work, he render entirely and faithfully; that he harm the property in no way, that he not violate the person of the masters; in protecting his own interests, that he abstain from force and never stir up sedition." 2nd. "As regards capitalists and employers, the duties of justice are these: to furnish a just wage to workers; that they harm their just savings in nothing, neither by force nor by fraud nor by usurious arts (manifest or disguised usury); to grant them liberty for fulfilling their religious duties; not to expose them to corrupting seduction and dangers of scandal nor draw them away from the spirit of family and pursuit of thrift; not to impose more work than their strength can bear nor that kind which is at variance with age and sex." 3rd. "The duty of charity of the rich and fortunate is that they assist the poor and needy according to the Gospel precept, which precept indeed obliges so gravely that on the day of judgment an account of its observance will have to be rendered most severely." 4th. "Therefore let the poor not have their poverty as a reproach, nor disdain to accept the charity of the rich. Let them always place before their eyes Jesus the Redeemer, who, although he could have been born amid riches, made himself poor so that he might ennoble their poverty and render it rich with incomparable merits for heaven." 5th. "For resolving the worker question, capitalists and workers themselves can do much by institutes ordered to extending opportune remedies to the needy and to effecting that one order approach nearer to and be united with the other. Such are mutual aid societies, manifold private insurances, patronages for protecting children, but above all corporations of workers."

But if these principles ought to be dear to all, much more to those who are the example of the flock, as is clear from the Code:

All, and especially clerics, religious, and administrators of ecclesiastical goods, in the hiring of labor must assign to workers an honorable and just wage; take care that these same have leisure for piety for a suitable space of time; in no pact lead them away from domestic care and the pursuit of thrift, nor impose more work upon them than their strength can bear, nor that kind which is at variance with age and sex (Can. 1524).

Article IV. On the Obedience and Reverence of Citizens toward Temporal Authority

From natural law and positive divine law we are held by the title of piety to render reverence and obedience to our civil superiors. For they bear the place of God himself in the temporal order toward us. Thus indeed the Apostle to the Romans xiii, 1 and following: "Let every soul be subject to higher powers. For there is no power except from God, and those which are, have been ordained by God. Therefore he who resists the power, resists the ordinance of God. But those who resist acquire damnation for themselves. For he (the Prince) is the minister of God, an avenger unto wrath to him who does evil. Therefore be subject of necessity, not only on account of wrath, but also on account of conscience."

For this reason the Catechism of the Council of Trent compares and joins this obligation with that by which we are bound toward paternal and ecclesiastical authority. For in part III, on the fourth commandment, § 15, after it has taught that parents and ecclesiastical superiors are to be honored, it adds: "Likewise concerning Kings, Princes, Magistrates, and the rest to whose power we are subject. For if we attribute any honor to them, it is referred to God; for an excellent degree of dignity has the veneration of men, because it is like divine power: in which also we venerate the providence of God, who attributed to them the administration of public office, and uses them as ministers of his power." - I Pet. ii, 15. - St. Justin, *Apol.* I, 17. - St. Augustine, on Ps. 124, n. 7; *de Civitate Dei*, lib. V, 10, 11, 14, 15.

"But now a society can neither exist nor be understood in which someone does not moderate the wills of individuals, so that one thing may be made, as it were, out of many, and impel them rightly and in order toward the common good; therefore God willed that in civil society there should be those who would command the multitude. And that also has great force, that those by whose authority the republic is administered ought to be able to compel citizens to obey in such a way that it is plainly a sin for them not to obey. But no man has in himself or from himself that by which he can constrain the free will of others with bonds of this kind of command. That power belongs only to God, creator and legislator of all things: those who exercise it must necessarily exercise it as communicated to them by God. ... From which it will be necessary for citizens to be subject and obedient to princes as to God, not so much from fear of punishments as from reverence for majesty, nor for the sake of flattery, but from conscience of duty." - Leo XIII, *Diuturnum illud*.

Hence the response is also clear to the question: Can there ever be for citizens a cause for not obeying? "That one cause exists for men not to obey, if something is demanded by them which openly conflicts with natural or divine right: for in all things in which the law of nature or the will of God is violated, it is equally wicked to command and to do. Therefore if it should happen to someone that he is compelled to choose one of the two, namely either to neglect the commands of God or those of princes, Jesus Christ must be obeyed, who commands rendering the things that are Caesar's to Caesar, and the things that are God's to God." - Nor are citizens therefore to be accused of having cast off authority: "for if the will of princes fights with the will of God and his laws, they exceed the measure of their power, and pervert justice, nor then can their authority have force, since, where justice is not present, it is null." *Diuturnum illud*.

Legislation is the work of men who are clothed with power and who in fact govern the state. Whence it follows in practice that the character of laws depends on the character of these men more than on

the virtue of that power. Laws, namely, will be either good or evil according as the legislators themselves are imbued with good or evil principles, and allow themselves to be led by prudence or passion. Therefore one must resist by any legal and honorable means the abuse of legislation: laws hostile to God and religion are in no way to be approved; indeed they are to be disapproved by all prudent men.

Generally citizens enjoying the right of suffrage are held to use that right duly. The reason is that each one according to his strength is held to impede evils and to promote good things. The Sacred Penitentiary, December 1, 1866, responded that nothing stands in the way of Bishops and Ordinaries, on the occasion of elections, whenever they shall have been required for this, recalling to the mind of the people that each one of the faithful according to his strength is held to impede evils and to promote good things. "Is it not the duty of each Catholic to use the political arms which are in his hand for defending [the Church], for containing political systems within their own dominion and compelling them, after they have rendered to the Church what is owed to her, for the rest to leave her quiet?" - Pius X, Encycl. Letter *Notre Charge Apostolique* - cf. Scavini. The precept of electing upright deputies, whether municipal or political, presses upon all electors in every legitimate government and, other circumstances being excluded, not only do those sin who give suffrage to bad men, but also those who by not taking part are the cause that bad men are elected by others: each one is held to avert evil from the republic, if there is hope.

But how great evils and how great good things come to the state when laws are made by enemies of the Church, or by her friends, history testifies. Besides, the present condition of things, to be lamented in many regions, is derived from the fact that Catholics remained idle in political action. Now this obligation of using one's right in many cases can be grave, namely if on one side the danger of grave harm is imminent and on the other side suffrage seems likely to be efficacious. It must be noted that political leaders greatly fear votes; and they desire that these be given for themselves. And although it is not of itself a grave sin not to vote, if the bad party undoubtedly has the greater number, certainly one must not therefore abstain from voting: for the action and voting of good men gradually takes away the security of bad men, and instills anxiety in them; and thus they will not always perpetrate the same graver evils by making iniquitous laws. Yet if it is certain that the evil to come from the influence of this candidate is grave, and it is doubtful whether even my action and voting can decide the matter, it seems that in such a case it must be said that I sin gravely by omitting suffrage. Namely individual good men in this hypothesis are held to bring help and procure the election of good men. "An obligation," says Palmieri, "is present: but unless it affects individuals, in reality there will be none." - *Op. Th. Mor.*, tract. IX, n. 640, v. 4, ed. III.

Therefore, whenever citizens give their votes in public assemblies: "favor is to be given to men of proved virtue, who will merit well of the Christian name." - Leo XIII, *Sapientiae Christianae*.

But if someone gives votes to an unworthy man about to act against the Church or good morals, precisely for this end, that an iniquitous law may be made, he sins gravely. In general, when my cooperation directly and certainly has influence upon such evils so that without it these things would not occur, my cooperation is formal. Yet this case will be rare, but must not be called impossible.

But if an election is to be made between a notable enemy of the Church and another who is at least less unworthy, suffrage must be given to this one, since he is going to do less evil, and so by your action you avoid the greater evil; indeed you can also act publicly to obtain his election.

It must especially be taken care that the leaders themselves of the district, of the city, as they are called, are ruled by true principles. For these exercise the greatest influence and not rarely by their work decide the election. Therefore just as these can much more easily sin gravely than ordinary electors, so also they can more easily promote the good.

The law concerning not buying or selling votes seems to be penal, for there is no proportion between penalty and fault. This notwithstanding, he who sells his vote not rarely incurs a sufficiently great danger of infamy, which renders him and his own people wretched. Voluntarily to undergo such a danger appears to us to be a grave fault. But if one political party simply and obstinately buys votes, certainly those introducing this abuse sin gravely; nor is it remarkable if the other party, as if compelled, does the same, otherwise one and the same worse party will always occupy the highest magistracies. It matters much that the electorate be pure, and all things are to be done for obtaining this end; nevertheless it is wicked to say that justice is gravely violated by the fact that here and there an elector holds his vote for sale. Therefore he would not be compelled to restore the price.

On the Fifth Precept of the Decalogue

Thou shalt not kill. - Exod. xx, 13.

This precept is expressly negative and virtually positive. Insofar as it is positive, it commands the preservation of life; and insofar as it is negative, it prohibits primarily the unjust killing of a man, and secondarily every unjust lesion, wounding, or mutilation of the body, whether one's own or another's. But those things which will be established concerning killing, whether licit or illicit, will have to be applied to mutilation or to any bodily lesion, with due proportion preserved.

Chapter I. On Killing Oneself, or on Suicide

I Say. It is never licit for anyone directly to kill himself; but sometimes it is licit to concur indirectly in the killing of oneself. The reason of the first is both because, from the natural law, man does not have direct dominion over his body, but only useful dominion and administration, since he received it from God and will be held to render it back to Him when He asks it back; and because man is essentially a servant in relation to God, but the condition of a servant necessarily requires that it not be in his own power to determine the time of serving. But the reason of the second is that to concur indirectly in the killing of oneself is the same as to place an action from which, beyond the intention, one's own death follows. But this must sometimes be licit, namely when the required conditions are verified, concerning which it was said in the tract on human acts, n. 8. Therefore. ... Cf. St. Thomas, 2-2, q. 64, art. 5. - Lugo, *de just. et jur.*, disp. 10, nn. 9 and 17.

You Will Resolve. - 1st. It is not licit to mutilate oneself unless it is necessary for the preservation of the whole body, because man is not the lord of his members, but only their guardian, and whatever man is, it is wholly God's. - Cf. St. Alphonsus, n. 373.

2nd. Likewise it is not licit to mutilate oneself for a spiritual good, or for avoiding any sin whatsoever. For as St. Thomas says: "Spiritual health can always be provided for otherwise than by the cutting off of a member, because sin is subject to the will. And therefore in no case is it licit to cut off a member on account of avoiding any sin whatsoever." Add that mutilation of this kind renders someone impotent for generating, yet does not exempt him from carnal temptations. But St. Alphonsus does

not reject as improbable the opinion of those who say that mutilation of this kind is licit for the preservation of the voice, provided the moral danger of life is absent and it is not done to unwilling boys. - Cf. St. Thomas, 2-2, q. 65, art. 1. - St. Alphonsus, n. 374. - Baller., notes (a) and (b), p. 373.

3rd. It is never licit to macerate the body for shortening life, nor, even with such an end excluded, gravely to ruin health by immoderate and altogether indiscreet penances. Nevertheless, from virtue, it is licit to use penances ordinarily grave with a certain shortening of life; because, from the common opinion of the Doctors, for the sake of merit or the mortification of depraved nature some loss of longer life can be despised. - Cf. St. Alphonsus, n. 371; and *Hom. Ap.*, n. 2.

Questions

Question 1. Is someone held to use extraordinary remedies for preserving life?

Response. Negatively, and the reason is that an affirmative precept is not necessarily to be fulfilled in every possible way, but only in that way which is obvious and common; whence there is no obligation of preserving life except by ordinary means, namely those which neither bring great inconveniences, nor demand expenses immense according to the varied condition of each one, nor cause very bitter pains, etc. Thus, for example, you are not held, for the sake of preserving life, to suffer amputation of a leg or arm, or incision of the belly for extracting a stone. Nor is a virgin held to suffer an operation by the hands of a physician, even if life is endangered, when on account of shame this happens to her as something most grave, and instills in her a greater horror than death itself. - Cf. St. Alphonsus, n. 372; and *Hom. Ap.*, n. 2.

Question 2. Can a girl expose herself to danger of death for preserving virginity?

Response. Affirmatively, at least if death is not certainly going to follow, and this both on account of love of virginity and on account of the danger of sin which is often present in such an occasion. Indeed still more probably it must be affirmed, although death is certainly going to follow, and there is no proximate danger of consent, because even integrity of the body alone is valued very highly, and is a sufficient reason that some girl can permit herself to be killed. - I said can and not ought, because a girl of this kind is not held to undergo death for such a good, and therefore she could also permit her own violation, provided she resists positively by the will, and proximate danger of consent is absent. The reason is that this permission is not formal cooperation in the sin of another, but only material, and a just cause of permission is present, namely danger of death. - Cf. St. Alphonsus, n. 368. - Baller., note (b), p. 371.

Question 3. Is it licit to set fire to a ship or tower, so that enemies may suffer grave damage, but with certain loss of one's own life?

Response. Affirmatively, at least more probably, because it is expedient that public harm be avoided or the common good procured even with the most certain harm of private persons. - Lugo, Lessius. - St. Alphonsus, n. 367.

Question 4. Can a guilty person, ordered by a judge, licitly inflict death upon himself?

Response. It is controverted. The common opinion denies. 1st. Because man would dispose of his life without the consent of the Lord, who gave the faculty of killing a man only in the cause of defense and in the cause of punishment; but the guilty person does not defend himself, nor can he exercise

punitive justice toward himself; therefore he cannot kill himself. 2nd. Nature abhors this, since it is inhuman and cruel. - Cf. Lugo, disp. 10, n. 13. - Lessius, lib. 2, 19, nn. 25 and 26.

The other opinion probably affirms: both because the judge can entrust execution to whomever he wishes, and because no convincing contrary reason is brought forward: in the case he does not kill an innocent person, nor himself by his own authority. What prevents someone from bearing a twofold person, of the one punishing and the one punished? Certainly it is opposed to natural inclination, but this has force rather against the judge than against the guilty person. Even if the thing is cruel, it can often happen that by this death becomes easier; and surely it is difficult to prove conclusively that the guilty person in the case cannot inflict death upon himself. - Cf. Victoria, *Relect. de homicidio*. - St. Alphonsus III, n. 367. - Lehmkuhl, 733. - Ball.-Palm., vol. 2, p. 608.

Question 5. Is it licit for a woman to undergo ovariotomy, or for a man to undergo vasectomy?

Response. 1st. Affirmatively, in either case, if those operations are necessary for the health of the whole subject; for the member is for the subject. Thus commonly.

2nd. Negatively, in either case, if it is done precisely so that offspring may not be born. For thus the Sacred Congregation of the Holy Office responded on May 22, 1895: "Whether the practice, whether active or passive, of a procedure is licit which intentionally proposes as its express end the sterilization of the woman. Response. Negatively"; therefore although the response concerns the woman, it certainly has force also for the man.

To induce sterility, or thus to deprive oneself of the power of generating and to impede the conception of offspring, or to effect that the semen is not prolific, is opposed to the principal intrinsic end of marriage, and to its good, namely offspring, to the natural end of the conjugal contract itself, to the intrinsic end of semen, and therefore is repugnant to the natural law, so that it cannot be made honorable by any good end. And hence Bossius: "Thirdly it is gathered that a husband or wife taking, or administering to them, a poison or potion of sterility, so that the man cannot generate or the woman conceive offspring, is a mortal sin against nature and the institution and law of marriage, so that it cannot be made honorable by any good end. ... The same is clear from the Bull of Sixtus V, *Effrenatam*; in which Bull Sixtus extended all penalties laid against those procuring abortion against all those who shall have given to women potions and poisons of sterility, and shall have furnished an impediment so that they not conceive offspring." Whence from the fact that a woman can no longer give birth, it is not thereby licit for her to take care that the tubes be cut or tied, and by equal reason it is not licit for a man unwilling to have offspring more numerous, or weak offspring, or any offspring at all, to undergo double vasectomy. - *Nouvelle Revue Theol.*, v. 9, p. 432; v. 29, 367. - Diana, t. 5, tr. 6, 36, 2, 37. - Sylvius on 2-2, q. 64, a. 7, quest. 4, c. 3. - Sanchez, *De Matrimonio*, lib. IX, disp. 20, n. 2. - Azor, *Ins. Mor.*, p. 3, lib. 11, chap. 4, q. 2. - St. Thomas, 2-2, q. 65, a. 1, ad 3. - Tabiena, *Summa*, v. *uxor*. - Turrianus, t. 2, disp. 26, nn. 46 and 47. - Eschbach, *Disput. Phys. Theol.*, p. 371. The question is very ancient and the negative opinion was altogether most common.

Chapter II. On Killing One's Neighbor

Article I. On the Killing of a Guilty Person or Malefactor

I say. Sometimes it is licit to kill malefactors by public authority, but never by private authority. The reason for the first is taken not only from the practice of any legislation and from the universal

consent of all, but also from the fact that God, the author of society, must be said to have conferred upon that same society the means absolutely necessary for conserving itself and for procuring the common good. But among these means the death of certain malefactors must often be numbered. Therefore. But the reason for the second is that, if it were licit to slay malefactors by private authority, all things would be filled with slaughters, and society itself would be wholly disturbed; therefore God cannot confer such authority, and accordingly the whole malice of homicide remains if ever any malefactor is killed by private authority.

You Will Resolve. - 1st. It is licit for no one to punish, by striking, someone not subject to his power, unless there is added at least the tacit consent of him who has the power, e.g., of a father over a son, of a teacher over a pupil; and the reason is that the act of punishing supposes the power of governing.

2nd. It is not licit for a father to mutilate or kill his own children for the sake of correction, nor for a master his own servants; the reason is that to punish by mutilation and killing, which inflict irreparable harm, certainly requires perfect power, which neither father nor master has.

3rd. It is not licit for guardians of public order to kill malefactors who are fleeing, even if they have already been condemned to death, because right order demands that for killing them there be had a special mandate from public authority. But if among us guardians of public order seem more easily excused if sometimes, yet not rashly, they discharge weapons against malefactors either resisting or fleeing, this must be ascribed either to the right of defending themselves or to the special mandate which they implicitly had.

Questions

Question 1. What is to be said of that manner of acting toward malefactors which among us is called "Lynch law"?

Response. It is altogether illicit; for the power of punishing malefactors belongs only to legitimate authority, and not to private citizens. That manner of acting is also contrary to the Constitution by which we are governed; for - Amendments, Art. 5 - it is said: "Nor (shall any person) be deprived of life, liberty or property without due process of law." Wherefore Kenrick says very well: "The power, which in some places has sometimes been assumed by citizens, of judging and punishing accused persons at will and immediately, even by capital punishment, is abhorrent from all justice and public order, and is an enormous crime." - And elsewhere: "They are to be judged to sin most gravely who, the authority of the laws having been despised, usurp to themselves the supreme right of life and death, with no form of judgment having preceded, or with an empty one." - Cf. Kenrick, tract. 3, n. 142; and tract. 8, n. 165.

Question 2. Is it licit for the state to render criminals sterile by performing vasectomy upon them, if they are men, or ovariotomy or oophorectomy, if they are women, precisely so that offspring may not be born?

Response. Vasectomy is an operation by which the vas deferens is cut; it is perfect when both vasa are cut. Of this we speak. This operation having been done, sexual desire remains and carnal copulation is completed as before, except that male semen cannot be ejaculated.

Those who enact this law desire solely to impede defective offspring, namely offspring which is not desirable to the state. When an examination of the matter itself has been made, and a judgment has

been delivered by a legal commission that there is no probability that this guilty person will reform himself, and that procreation on his part is desirable, it will be legal to perform that operation which impedes procreation. The other conditions having been posited, the operation is performed. We say that this law is unjust:

because 1st. it supposes that the offspring will most probably be defective. But this is not established. Rather let the state take care to exercise its own office and provide the aids of Christian education, and let it not claim for itself the right to render such criminals sterile, who in no few cases are defective because the state has neglected its own most sacred duties toward God, religion, and citizens.

2nd. In order that it be just for the state to defend itself, it ought to be immune from the guilt which is found in these persons, and the danger ought to be imminent. But today the state is often not immune; nor is the danger imminent, because the offspring does not even exist, and if it is educated Christianly the danger will very often be removed.

3rd. In this matter of avoiding inconveniences from defective offspring, that is licit to the state which is necessary for its conservation. But it is not necessary for the conservation of the state that this operation be done.

4th. If the guilty person is treated in a Christian manner, there seems always to be not only probability, but a great hope that he will reform himself. For how many exist who in this way have been brought back to better conduct.

5th. If vasectomy is considered as a punishment, it is in no way to be admitted. For the defensive reason of the death penalty and of every punishment is the same as that which the sanction of law essentially contains, namely a psychologically efficacious bond by which the free wills of subjects may restrain themselves voluntarily from transgression of the law; and this reason is altogether lacking in the case; indeed this operation gives occasion to these criminals for indulging in lust more licentiously, with every burden of offspring removed.

6th. It is altogether cruel and certainly unusual to leave to a man the organ itself, the same sexual desire, indeed the power of elaborating prolific semen and of exercising the same act, with only the end and completion of the act taken away, viz. ejaculation and the possibility of procreation on account of which the act was instituted by God. Now from the Constitution of the United States a cruel and unusual punishment is to be inflicted on no one. - *American Eccles. Rev.* vol. 42, 43, 44. - *Razon y Fe*, 27, 28, 31. - *Nouvelle Rev. Theol.* vol. 42, 43. - *Collationes Brugenses*, Vol. 17. Thus DeBecker, Ferreres, Lehmkuhl, Vermeersch, Wouters, Schmitt, and others commonly against some whose affirmative opinion, that it is licit for the state to prescribe that this operation be performed in men, whether guilty or innocent, we judge to enjoy no probability. Concerning the right of the state you should by all means see Lugo, *De just. et jur.*, disp. 10, nn. 78, 104 and passim. - Molina, *De just. et jur.*, v. 4, tr. 3, dis. 5, n. 3 and passim. The conclusion is the same concerning ovariotomy.

Article II. On the Killing of an Unjust Aggressor

I say. It is licit for each person to defend his own life even with the killing of an unjust aggressor, provided nevertheless that the moderation of inculpable defense is preserved. The reason is taken both from canon law, chap. *Si vero* 8, *de sent. excomm.*, where it is said: "All laws and all rights permit

force to be repelled by force"; and from natural law. For since each person has the right to preserve his own life, he must also have the right of employing the means which are necessary for this end and not otherwise illicit. But to kill an unjust aggressor is sometimes the sole means of saving one's own life, nor through this are any certain rights of anyone violated; since the aggressor, by freely and unjustly bringing into danger the life of another, cannot retain the right to his own life against the certain right of an innocent person. Therefore.

Yet I added that the moderation of inculpable defense is to be preserved, or that nothing ought to be done against the life of the aggressor unless it is absolutely necessary for protecting one's own life, because what necessity does not excuse is contrary to justice. - Cf. St. Thomas, 2-2, q. 64, art. 7. - St. Alphonsus, n. 380.

Questions

Question 1. Is it licit to kill a drunken or insane aggressor?

Response. Affirmatively, more probably, unless it is clear to you that he is in the state of mortal sin. The reason is that although a drunken or insane person is not formally your unjust aggressor, nevertheless he is materially unjust, nor is your right to life lost through his drunkenness or insanity. But if you know certainly - which surely will be very rare - that he is in the state of mortal sin, from which after frenzy or drunkenness he will be able to rise again, while on the contrary you morally believe that you are in the state of grace, charity requires that you prefer his eternal salvation to your temporal life. Yet nothing prevents, even in that hypothesis, you from striking or wounding him in such a way that, his life being safe, he becomes unable to do harm. Cf. Lugo, *de just. et jur.*, disp. 10, n. 143.

Question 2. Is it licit to defend goods of fortune of great moment with the killing of the thief, if otherwise they cannot be retained?

Response. Affirmatively, more probably, and the reason is that each person has the right of preserving goods of great moment, and by that very fact of employing the means absolutely necessary for this. Besides, the precept of charity does not oblige one to prefer the goods of a neighbor, though of a higher order, except when the neighbor is in extreme necessity, but not when he spontaneously exposes himself to the danger of death and injures the rights of another. By this same reason it is concluded that an unjust aggressor can be killed for the defense of members. - Cf. St. Alphonsus, n. 383 and following.

Question 3. Is it licit for a woman to kill an assailant of chastity?

Response. Affirmatively, because chastity is a good more excellent than riches; and accordingly if it is licit to kill an unjust aggressor of goods of fortune, this will be licit *a fortiori* for preserving chastity. But a girl cannot kill an aggressor against her honor after violation, because this would be to take vengeance; nevertheless she can strike him and treat him most harshly, especially because, unless in such a way she shows her constancy and displeasure, the wicked man will not easily depart, or will easily be able to return to soliciting. - Cf. St. Alphonsus, n. 386.

Question 4. Is it licit to kill an unjust aggressor against honor?

Response. Negatively, altogether, if the injury has already been inflicted, in whatever way it has been inflicted, whether by words or by deeds; because this would not be to defend oneself but to take vengeance, which is licit for no one. It is also clear from the second part of prop. 30 proscribed by Innocent XI, which has itself thus: "It is lawful for an honorable man to kill an assailant who attempts to inflict calumny, if otherwise this calumny cannot be avoided: the same also must be said if someone strikes with a slap or with a stick, and after the slap has been struck or the blow of the stick flees." - One must also respond negatively if it concerns preventing or repelling an injury of honor inflicted by words only, both because the injury can then and usually does get repelled by other means, and accordingly killing is not necessary, and because otherwise an entrance would lie open to innumerable slaughters. - Besides, prop. 17 condemned by Alexander VII bears on this point, which sounds thus: "It is licit for a Religious or Cleric to kill a calumniator threatening to spread grave crimes about him or about his Religion, when another mode of defending does not suffice, as it does not seem to suffice if the calumniator is prepared publicly and before most grave men to impute the aforesaid things either to the Religious himself or to his Religion, unless he is killed." - I said by words only, for if an aggressor against honor attempts to pull the beard, soil the clothes, or do something similar, it will certainly be licit, with the moderation of inculpable defense being preserved, to repel the injury, and if indeed the obstinate aggressor, having been repelled, employs force and seizes weapons, it will surely be licit to oppose weapons to weapons. - Cf. St. Alphonsus, nn. 381 and 391. - Viva, on the cited propositions. - Lacroix, lib. 3, p. 1, n. 803. - Baller., note (b) and (c), p. 378.

Question 5. Is it also licit to kill an unjust aggressor against one's neighbor?

Response. Affirmatively, in every case in which it is licit to defend one's own life or other goods of great moment: indeed it is not only licit, but it ought also to be done by reason of charity. Yet rarely does a private person seem to be bound to this, on account of the great inconveniences which such killing ordinarily brings with it, excluding the case in which the person attacked is very necessary to society, or joined very nearly to you by blood. Cf. St. Alphonsus, nn. 389 and 390. Baller., note (c), p. 377.

Article III. On the Killing of an Innocent Person

§ I. On the Killing of an Innocent Person in General

I say. It is never licit directly to kill an innocent person, whether by private or by public authority. The reason is both because the killing of an innocent person is an action injurious to the rights of God, who alone has supreme dominion over life, and accordingly intrinsically evil; and because it is injurious to the right which the innocent person has to life; and because it is positively prohibited by God himself; for it is said, Exod. xxiii, 7: "The innocent and just person you shall not kill." But this does not prevent that sometimes an action of itself good or indifferent can be posited, from which the death of an innocent person follows beyond the intention, according to those things which were said concerning the indirectly voluntary in the treatise on human acts, nn. 8 and 9.

You Will Ask. Is it licit for the state to render an innocent man or woman sterile, either by performing vasectomy on a man or ovariotomy on a woman, precisely so that offspring may not be born?

Response. Negatively, because it is not licit to mutilate innocent persons even for saving the state: just as it is not licit for an individual to render himself sterile precisely for this end, that offspring may not be born, so neither is it licit for the state. Because this would be to rule subjects despotically and thus to invert the natural end of the state. The commonwealth cannot convert the life of its members to its own utility and consume it for the sake of its own utility, because citizens are not ordered for the commonwealth, but the commonwealth is ordered for citizens and for their utility and good. Namely, the subject is not a slave: the former is governed politically for the utility of the subject; the latter despotically for the utility of the master. Thus Lugo, disp. 10, 77, 104. Again: "it is licit for no one to violate with impunity the dignity of man, of which God himself disposes with great reverence." Leo XIII, *Rerum Nov*. Now to the dignity of man certainly belongs the generative power. Indeed not only is it not licit for the state to act thus, but on the contrary, for the protection of bodily goods, the state itself is bound by its own force; and it is necessary to rescue the wretched from the savagery of men. "Rights indeed, in whomever they are, are to be preserved sacredly, and that each one may hold his own, public authority ought to provide, by warding off and avenging injuries. Except that in protecting the rights of private persons, regard must especially be had for the weak and the needy." Leo XIII, *Rerum Novarum*. No law of men can take away from man the natural and primordial right of marriage or circumscribe in any manner whatsoever the principal cause of nuptials established in the beginning by the authority of God. "Increase and multiply" (Gen. i, 28). Leo XIII, *Rerum Novarum*. But those who wish this law to be enacted surely circumscribe that cause. Thus St. Thomas, 2-2, q. 104, a. 5: "Now man is bound to obey man in those things which are to be done outwardly through the body; in which, however, according to those things which pertain to the nature of the body, man is not bound to obey man, but only God, because all men are equal by nature; for example, in those things which pertain to the sustenance of the body and the generation of offspring." All such laws are unjust.

You Will Resolve. - 1st. It is not licit to kill those lethally wounded, nor any other dying persons, lest they suffer longer; because, according to the known saying, evils are not to be done to obtain a good.

2nd. It is not licit to kill an innocent person in order to satisfy a tyrant demanding his death, even under penalty of the overthrow of a city, and even if he himself consented to his own death: because he cannot properly consent, since he does not have dominion over his own life. Yet more probably he could be compelled to hand himself over to the tyrant for the public good, and probably, if he refused, even be handed over. - Cf. St. Alphonsus, n. 393.

3rd. It is not licit to kill envoys or hostages, even if the enemies who sent them have not kept the pledge given, and have unjustly killed the hostages or envoys sent to them; because they are innocent. - Cf. St. Alphonsus, ibid.

§ II. On the Procuring of Abortion

Abortion is the expulsion of an immature fetus from the womb of the mother; but a fetus is called mature when, with no other danger supervening, it can live by itself, even if it comes forth into the light before the ninth month.

I say 1st. It is never licit directly to procure abortion, even if the fetus were supposed to be still inanimate. The reason is that if it is animated, it is homicide properly so called; but if it is not animated, it is anticipated homicide, because an inanimate fetus is ordered from its own nature to

forming a man. - Cf. St. Alphonsus, n. 394. - Lacroix, n. 823. - Kenrick, tract. 3, n. 127. And this which we say concerning the expulsion of an immature fetus from the womb is likewise to be said concerning the extraction of an immature ectopic fetus from the cavity of the mother.

The placenta, as must be noted, together with the umbilical cord, is the organ of nutrition of the fetus in the cavity of the mother. Any expulsion separating the fetus from the placenta and umbilical cord destroys the anatomical relations necessary for the very existence of the fetus; for the placenta can be considered as a certain intimate union between the vascular system of the mother and of the fetus. To destroy this union is to destroy the fetus itself.

To expel the fetus is not only to put it in another place, but is to destroy the marvelous mechanism which makes, between the fruit of the mother and the mother, an internal vital communication, and therefore to kill the infant itself. Nor should you say, in fact it will die; you say rightly, but this does not give the right to kill it. - Cf. Besson., *Nouvelle Rev. Theol.* v. 45, p. 154, where he sets forth the argument excellently.

I say 2nd. Sometimes it is licit indirectly to procure abortion, or better to permit it, namely by supplying to a mother laboring under a grave disease remedies harmful to the fetus, if the following conditions concur, namely: 1st. that it concern a lethal disease; 2nd. that the remedies, harmful to the fetus, be of themselves directly and immediately efficacious for curing the disease of the mother; 3rd. that the administration of the remedies not impede the conferral of baptism, because the spiritual life of the fetus prevails over the temporal life of the mother. - Cf. St. Alphonsus, ibid. Lacroix, n. 826. - Kenrick, tract. 3, n. 128.

Questions

Question 1. What is to be said of the craniotomic operation, which many physicians nowadays employ to save the mother?

Response. An operation of this kind is true homicide, and accordingly always and intrinsically evil. For if, according to St. Thomas, "a man ought not to kill the mother in order to baptize the child," *a fortiori* the child ought not to be killed so that the temporal life of the mother may be saved.

Nor should you say that an obliquely positioned fetus, or one presenting too large a head, can be compared to an aggressor, at least materially unjust; for the response is that it is so disposed by the sole course of nature and accordingly can in no way be called an aggressor. Otherwise both the mother herself, in relation to the fetus, and those who labor under a contagious disease, in relation to those who are well, would have to be called aggressors, and accordingly it would have to be lawful to kill them.

Nor should you appeal to authority, because if this was hitherto doubtful and slight, now it certainly will be none in Catholic schools, since the Sacred Congregation of the Holy Office, on May 31, 1884, declared that the liceity of craniotomy cannot be safely taught. But recently, namely Aug. 19, 1889, it was signified to the professors of the medical faculty of the Catholic University of Lille: "In Catholic schools it cannot safely be taught that the surgical operation which they call craniotomy is licit ... and any surgical operation directly killing the fetus or the pregnant mother." Cf. St. Thomas, p. 3, q. 68, art. 11, ad 3. Kenrick, tract. 3, n. 128. - *Analecta jur. Pont.*, fascicle 133, p. 547, May 1876. - Ciarmadori, *Opusculum de craniotomia*. - *Nouvelle Revue Theologique*, vol. 17, p. 13; vol. 16, pp. 95 and

following; pp. 62 and following; pp. 293 and following; vol. 22, p. 74. *Amer. Eccl. Review*, vol. 9, pp. 360 and following, and vol. 23, pp. 128 and following.

Question 2. Whether at least it is licit to accelerate birth when otherwise the life of the mother would be brought into danger?

Response 1st. If this acceleration takes place after the seventh month, it is entirely licit; indeed by many it is said also to be worthy of praise; for it profits not only the mother, but also the fetus, which can then be judged mature. - Cf. O'Kane, n. 213. - *Dublin Review*, No. 87, art. *Obstetric. Morality*, p. 118.

Response 2nd. But if birth is accelerated during that period of gestation in which the fetus can in some way be cast forth alive, yet necessarily must afterward die because it has not yet arrived at substantial maturity, it must be said that such acceleration scarcely, or not even scarcely, differs from craniotomy, and therefore is altogether to be condemned. For in that case to extract the fetus from the womb, or from the cavity of the mother if the conception is ectopic, is an action killing by its own nature, not otherwise than withdrawing air from an adult.

Nor should you say that the death of the fetus follows only indirectly, from the fact that it itself is not touched but only the membranes by which it is enveloped are torn, or the fibers are relaxed, or from the fact that such expulsion is not intended as an end: for the response is that someone is directly killed whenever his death is taken up as a means, whatever may be the kind of action by which it is procured.

Nor should you say that the weight of authority can be brought in favor of this acceleration; for although St. Alphonsus says: "it is licit, with cold water, if another cannot be had, to baptize a child soon about to die, even if it were feared that from this death would be accelerated," he permits this only because "such an action does not tend to killing but to ablution." But other Doctors speak either of a drug given directly for curing the disease of the mother, as Cardinal de Lugo, or of an inanimate fetus which, erroneously indeed, some thought to be as a part of the viscera of the mother. - Cf. St. Alphonsus, *de Sacram. Baptis.*, n. 106. Lugo, *de just. et jur.*, disp. 10, n. 133. - Salmant., tract. 13, cap. 2, n. 60. - Crolly, vol. 3, nn. 118 and following. - This solution, which has always been certain to us, receives special strength from the notable Response of the Holy Office, which has itself thus:

"Stephen Mary Alphonsus Sonnois, Archbishop of Cambrai, most devotedly prostrate at the feet of Your Holiness, most humbly sets forth what follows:

"Titius, a physician, when he was called to a pregnant woman lying gravely ill, commonly observed that no other cause of the lethal disease was present except the pregnancy itself, that is, the presence of the fetus in the womb. Therefore, in order to save the mother from certain and imminent death, one way was at hand for him, namely that of procuring abortion or the expulsion of the fetus. He was accustomed to follow this way, yet using means and operations which, of themselves and immediately, indeed did not tend to this, that they should kill the fetus in the maternal cavity, but only that, if it could be done, it should be brought forth alive into the light; although very soon to die, since it was still altogether immature.

"Now indeed, after reading what the Holy See wrote back to the Archbishop of Cambrai on August 19, 1889: 'it cannot safely be taught that any operation directly killing the fetus is licit, even if this

would be necessary for saving the mother,' Titius remains doubtful concerning the liceity of the surgical operations by which not rarely he had hitherto procured abortion, in order to save gravely sick pregnant women.

"Wherefore, that he may consult his conscience, Titius suppliantly asks whether he can safely undertake the stated operations in the aforementioned repeated circumstances.

Wednesday, July 24, 1895.

"In the General Congregation of the Holy Roman and Universal Inquisition, the above-written petition having been proposed, the Most Eminent and Reverend Lord Cardinals, General Inquisitors in matters of faith and morals, the vote of the Reverend Lord Consultors having first been had, decreed that the response should be: Negative, according to the other Decrees, namely of May 28, 1884 and August 19, 1888.

"But on the following Thursday, July 25, in the audience granted to the Reverend Father Lord Assessor, Our Most Holy Lord approved the resolution of the Most Eminent Fathers reported to Him.

L. + S. J. Mancini Can. Magnoni

Notary of the Holy Roman and Universal Inquisition."

And the subsequent decree solves various doubts concerning the liceity of acceleration of birth, of the Caesarean operation, and of laparotomy.

"The Bishop of Sinaloa, prostrate at the feet of Your Holiness, humbly asks the resolution of the following doubts:

"I. Will acceleration of birth be licit whenever from the narrowness of the woman the exit of the fetus at its natural time would become impossible?

"II. And if the narrowness of the woman be such that not even premature birth is judged possible, will it be licit to provoke abortion or to perform the Caesarean operation at its own time?

"III. Is laparotomy licit when it concerns extrauterine pregnancy, or ectopic conceptions?

Wednesday, May 4, 1898.

"In the General Congregation held by the Most Eminent and Most Reverend Lord Cardinals, General Inquisitors against heretical depravity, the above-written doubts having been proposed, and the vote of the Reverend Lord Consultors having first been had, the same Most Eminent and Most Reverend Fathers judged that it should be written back:

"To I. Acceleration of birth is not illicit of itself, provided it is performed for just causes and at that time and in those modes by which, according to ordinary contingencies, provision is made for the lives of the mother and the fetus.

"To II. As to the first part, negatively, according to the decree of Wednesday, July 24, 1895, concerning the illiceity of abortion: but as to the second, that nothing stands in the way that the woman in question be subjected to the Caesarean operation at its own time.

"To III. When necessity compels, laparotomy is licit for extracting ectopic conceptions from the cavity of the mother, provided that provision be made seriously and opportunely for the lives of both fetus

and mother, as far as can be done."

"But on the following Friday, the 6th day of the same month and year, in the usual audience granted to the Reverend Father Lord Assessor of the Holy Office, a report concerning all these things having been made to Our Most Holy Lord Leo XIII, Pope by Divine Providence, His Holiness approved the responses of the Most Eminent and Most Reverend Fathers.

J. C. Mancini, Notary of the Holy Roman and Universal Inquisition."

To the Question: "Whether it is sometimes licit to extract from the cavity of the mother ectopic fetuses still immature, before the sixth month after conception has been completed?" the Holy Office responded on March 5, 1902:

"Negatively, according to the Decree of May 4, 1898, by virtue of which provision must be made seriously and opportunely, as far as can be done, for the lives of the fetus and mother; but as to the time, according to the same Decree let the Orator remember that no acceleration of birth is licit unless it is performed at a time and in modes by which, according to ordinary contingencies, provision is made for the lives of the mother and the fetus."

Question 3. What is to be answered practically to those who question confessors about this matter?

Response. The whole truth must be manifested with a courageous spirit, if the question is made in good faith, and the person who questions is foreseen to wish to acquiesce; otherwise it is better to be silent and to permit only the material evil.

Question 4. Is it licit for a girl, immediately after fornication, to take a drug for expelling an inanimate fetus, lest she be killed by her father or lose her reputation?

Response. Negatively, altogether, both because this would be directly to procure abortion, and because it was condemned by Innocent XI in prop. 34, which has itself thus: "It is licit to procure abortion before the animation of the fetus, lest a girl, detected as pregnant, be killed or disgraced." - But those women who immediately after freely had copulation wash themselves to expel the semen lest they conceive, although they do not seem to be condemned for abortion, both because semen as soon as it is received cannot be called a fetus, and because that means does not seem efficacious, nevertheless would sin most gravely by another kind of sin, namely of onanism, or of frustrated nature.[1]

[1] Cf. Addenda, p. 1087, n. 4.

Question 5. Would women violated by force be condemned in the same way if they attempted immediately and altogether, without any interval at all, to reject the received semen by washing themselves?

Response. Negatively, at least probably, and the reason is that it is licit to repel force unjustly inflicted as long as the infliction itself morally perseveres. - Cf. Lehmkuhl, vol. 1, n. 849.

Question 6. What if the very uterus of the pregnant mother is infected with a lethal disease?

Response. It is licit, as it seems to us, to remove the uterus, and although by that very fact the fetus dies, nevertheless the extraction itself of the uterus has a double effect, a good one, the health of the mother, and an evil one, the death of the infant. It is like the case of procuring indirect abortion, which, as we have seen, is licit under given conditions.

Question 7. Is it licit in any case to place an action having death alone as its effect, e.g., to kill a fetus by an electric needle?

Response. Negatively: for such an action is intrinsically evil. And hence for this reason it is not licit to destroy an ectopic fetus.

Question 8. What is to be said in doubt whether that which a woman carries is a fetus or rather a tumor, e.g., in ectopic cases?

Response. It seems it must be said that if the physician, truly and sincerely, after investigation has been made, doubts, and the mother is placed in danger of life, it is licit to remove that thing. For the mother is in possession; her right is certain, nor would men, with the principles of natural law considered, force this mother to undergo this death; in other words, it is not known whether that thing is the subject of a right, and it seems cruel to prefer it to the pregnant woman. But if it is established that a fetus is present, its right must be held equally certain, nor is it licit to perform the operation until it is morally known that death has occurred. In judging all these operations, the principle often stated must be kept before the eyes, namely concerning an indifferent or good action with a double effect, good and evil. - Cf. above, n. 8. Evils are not to be done that good things may come about. Finally: nor are means to be employed which tend directly to the killing of the fetus, and by which, when they have been employed, the evil effect, in certain cases, has the good as its immediate effect. - Cf. Response of the Holy Inquisition, July 24, 1895, concerning Titius, the Physician, n. 273.

You Will Resolve. - A pregnant woman is at the point of becoming blind, insane, or paralytic; pregnancy is the cause of the insanity, etc.; the fetus is not viable. A surgeon cannot advise abortion, nor does he have the right of extracting the fetus from the cavity of the mother. In the same circumstances a non-viable fetus is at the point of dying, indeed has entered into agony. There is besides a danger lest the infirmity of the mother become incurable, or there is some other grave motive. It is not licit for the surgeon to perform an operation by which the death of the infant is more quickly induced for improving the condition of the mother: i.e. the quicker death of the fetus is not to be employed as a means for the safety of the mother: the infant will die, but this does not give the right to kill him.

A woman carries her fruit, but the fetus is extrauterine. While the physician performs a grave operation upon her, he notices the abnormal seat of the pregnancy. He also understands that the fetus is viable. It seems to us that it must be said that the surgeon can licitly, for grave causes in this case, extract that viable extrauterine fetus, even if it has not yet attained the normal term of fetal life, provided that, using the operation begun for another end, he does not perform upon the fetus any death-dealing act.

A woman is pregnant, but the fetus is extrauterine. While the physician performs a grave operation upon her, he notices the abnormal seat of the pregnancy; the fetus is alive, but not viable. The surgeon cannot bring forth the fetus from the cavity of the mother, because this action would kill the fetus. The mother is at the point of dying from hemorrhage or eclampsia and the fetus is viable. Certainly artificial birth can be induced, provided that by this operation provision is made for the life of the mother and of the infant. But this birth cannot be so induced that the death of the infant is the natural effect of the operation and the means for removing the urgent danger of the woman in labor;

i.e. it is not licit to kill the fetus in order to save the mother. The mother is at the point of dying; the fetus is viable. The mother is in agony and few moments of living remain to her, but the fetus probably will live beyond an hour. It is not licit for the surgeon, in order that the infant be brought forth into the light under better conditions, to perform an operation which by its own nature would kill the mother, so that her death would be the means of improving the condition of the infant.

The mother is at the point of dying. The proximate cause of death is hemorrhage, eclampsia, or another disease arising from pregnancy. The fetus is not viable. It is not licit to procure abortion nor to advise it. In the same circumstances, a fetus not yet viable is destined to imminent death. Besides, it has already entered into agony while several hours of probable life remain to the mother. It is not licit for the surgeon to perform an operation tending directly to the very death of the fetus, as a means for placing the mother in a better condition: in other words, it is not licit to procure abortion so that the mother may be saved.

A pregnant mother is at the point of becoming blind, or paralytic, or insane, or infirm in some other way. The cause of the blindness, paralysis, etc., is pregnancy. The fetus is viable. Certainly the surgeon can advise premature artificial birth, provided that provision is made for the lives of both mother and fetus. But in the same circumstances, on account of the imminent danger lest the infirmity of the mother become incurable, there does not belong to the surgeon the right of employing a means which by its own nature determines the death of the infant, so that premature birth may be induced.

That operation is called Caesarean by which the uterus of the mother is cut so that the infant may be extracted. Not rarely it happens that the fetus, on account of the narrowness of the mother, cannot be brought forth by the natural way; in this case either the mother is to be cut, or both she and he are to be left to the course of nature. Therefore the question is about section in these most grave circumstances. These things seem to be established. 1st. The operation is never licit if the incision would be killing of the mother, because it is not licit to kill the mother so that the infant may be baptized. 2nd. It is never licit if, while the mother is living, the infant outside the uterus probably at least could not live. For this would be to kill the offspring. 3rd. While the mother is living, it can licitly be done when these conditions have been verified: 1) that the mother cannot give birth naturally, or is about to die before birth with the greatest danger of the death of the infant before he can be baptized; and 2) that from the incision there does not arise for the mother a proximate danger of death. 4th. While the mother is living, the operation ought to be done if it is certainly established that the infant cannot be baptized unless the operation is done. But the greatest prudence is needed in imposing this obligation, lest the mother, abhorring such an incision, make shipwreck of both her own and her offspring's eternal salvation, dying in a state of mortal sin, good faith having been changed into bad faith. 5th. The mother is not bound to undergo the operation when baptism can be conferred upon the infant in the womb with solid probability, which can often be done; nor is she bound when she alone is about to perish; nor, if there is probable hope that the offspring will survive her once she has died, and therefore can be baptized; nor is the mother bound to permit the operation for preserving the temporal life of the infant; nor in uncertainty of a happy outcome. But if, 6th, the case is as it were desperate and it is certain that mother and offspring are about to die, in these most difficult circumstances the operation is licit, provided that from it there arise some

probability of saving both mother and offspring; for thus provision is made for the life of both this one and that one in the best way possible.

If a pregnant mother has died, let the fetus be extracted as soon as possible, cautiously, and, if it is alive, let it be baptized: Rit. Rom. tit. II, cap. 1, n. 17. Therefore as soon as the mother is dead, the operation can licitly be done. Indeed, the mother being dead, the operation also ought to be done, for there is a grave obligation by reason of the office of assisting a neighbor placed in extreme necessity: Holy Inq., Feb. 15, 1780. The section must be done with careful solicitude, lest the mother, being only apparently dead, be killed, or lest the offspring die. What must be said concerning the duty of the parish priest or missionary is clear from the response of the Holy Inquisition given on Dec. 13, 1899, first commemorating the decree of Feb. 15, 1780: "This extraction of the fetus from the womb of the pregnant and deceased mother, although it is to be made known and urged, nevertheless His Holiness expressly cautions and prohibits that missionaries involve themselves in particular cases in ordering the section, much less in performing it. Therefore it will have been enough for missionaries to have published knowledge of it and to have taken care that those laymen who apply themselves to surgery learn thoroughly the manner of performing it; and then, when the case occurs, to have left the practice of the same to their burden and duty."

Chapter III. On Dueling

Dueling, properly so called, is a dangerous fight of two persons according to a previous agreement concerning place, time, and weapons.

I say. Dueling undertaken by private authority can never be licit; because not only is it repugnant to natural right, since God has given to none of men dominion over his own life or that of another, nor over members, outside the case of defense against an actual aggressor; but also to canon law, as is clear from Trent, sess. 25, cap. 19, where dueling is called: "A detestable usage, introduced by the devising of the devil." - I said private, because if it is undertaken by public authority for the common good, e.g., so that war may be settled, it will certainly be licit no otherwise than war. - Cf. St. Alphonsus, nn. 399 and 400.

You Will Resolve. - 1st. Certainly, practically speaking, there can be dispute concerning the conditions of a duel, all of which are required for the whole malice of the act and the incurring of penalties; but never concerning a cause which could legitimate the provocation or acceptance of it, since it is something intrinsically evil. Wherefore, once the existence of a duel has been proved in some particular case, no reason, however grave, will ever excuse.

2nd. It is not licit to undertake a duel by this rule, that when one person has been wounded, or a certain number of blows has been completed, the fight should cease; both because Clement VIII prohibited even non-fatal duels, and because those acting thus implicitly admit any outcome whatsoever of the fight and consequently contract the whole malice of dueling.

3rd. But it is licit to fight for mere defense, even by accepting weapons from the adversary, if death is threatened by him unless the fight is accepted, and there is not another way of escaping this danger; but it is not licit to betake oneself to another place, or to appoint another determined time for defense; because then a duel properly so called would be had.

4th. Those who, on account of an injury, suddenly growing hot with anger, and provoking one another to a fight, immediately come together, do not enter into a duel properly so called; because it is more truly a brawl than a duel, which must be done from an agreement concerning place and time. - Sacred Congregation, Oct. 5, 1744. - Cf. St. Alphonsus, n. 401.

It is useful here to report the five propositions concerning dueling condemned by Benedict XIV in the year 1752, in the Const. *Detestabilem*. They are the following:

1st. "A military man who, unless he offers or accepts a duel, would be held as fearful, timid, abject, and unfit for military duties, and thence would be deprived of the office by which he sustains himself and his own, or would have to be perpetually without hope of promotion otherwise due and merited by him, would be free from guilt and penalty, whether he offers or accepts the duel."

2nd. "Those accepting a duel, or provoking to it, can be excused, even for the sake of protecting honor or avoiding human contempt, when they know certainly that the fight will not follow, since it is to be impeded by others."

3rd. "A leader or officer of the military accepting a duel from grave fear of loss of reputation or office does not incur the ecclesiastical penalties laid against duelists."

4th. "It is licit in the state of nature of man to accept and offer a duel for preserving fortunes with honor, when the loss of them cannot be repelled by another remedy."

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

Chapter IV. On War

War is a fight of a multitude against a foreign multitude, for the sake of defending or vindicating the commonwealth. Hence it differs: 1st. from a brawl, which is a fight of a few against a few, and without authority, nor undertaken for the good of the commonwealth; 2nd. from sedition, which is a tumult or conflict of a multitude against the political society to which it belongs.

I say 1st. War is licit of itself, whether for repelling injury or for vindicating one's own right. The reason is that any society independent from another society ought to have a means of protecting itself against injury and of vindicating its own right; but sometimes no other means is available for obtaining this end except war. For since higher tribunals are lacking to which nations or Princes may have recourse, it remains only that, in order to obtain satisfaction from another society, they use war. - Cf. St. Thomas, 2-2, q. 40, art. 1.

I say 2nd. For a just and licit war, the following are necessarily required: 1st. legitimate authority, that is, supreme authority, acknowledging no other superior in civil matters, and the reason is that where a greater authority is had, this authority ought to judge concerning the dispute; 2nd. a just and grave cause, which is preponderant over the inconveniences that will follow from the war, e.g., a kingdom or province to be recovered, or a grave injury to the commonwealth to be repelled, or a rebellion of subjects to be repressed, etc.; 3rd. the due mode of waging war, namely that before war condign satisfaction be required from the adverse party; and if this is offered, it ought to be accepted as a matter of justice; for where war ceases to be necessary, it also ceases to be just. - Cf. St. Thomas, ibid.

You Will Ask. Can soldiers wage war with doubt concerning the justice of the war?

Response. If it concerns a subject soldier, or even a soldier hired before the war was declared, he can, indeed he ought to obey where the war is not evidently unjust, because in doubt one must stand for the superior. But if it concerns a soldier not yet hired, he is bound to inquire concerning the justice of the war, nor can he hire himself out in doubt concerning its justice. The reason is that no one can cooperate toward despoiling someone of a thing which he possesses, unless he is certain that it is unjustly possessed by him. - Cf. St. Alphonsus, n. 408.[1]

[1] Cf. Addenda, p. 1112, n. 58.

On the Sixth and Ninth Precept of the Decalogue

You shall not commit adultery. - You shall not desire his wife (that is, your neighbor's). - Exod. xx, 14

The Sixth Precept of the Decalogue prohibits any external lust, that is, lust perpetrated by deed. - But the Ninth Precept prohibits even merely internal lust, namely impure thoughts and desires.

For the understanding of those things which follow, these things are to be noted beforehand:

I. Lust is the disordered appetite of a venereal thing, and consists in venereal pleasure voluntarily admitted outside marriage. But venereal pleasure is pleasure arising from the stirring of the spirits serving generation, and occurs around the genitals. Therefore it is not to be confused with merely sensible pleasure, which arises from the proportion of a sensible object to some sense, e.g., of a visible object to sight, of an audible object to hearing, etc. The first, many theologians call also carnal, and the other natural.

II. There are various species of lust, according as its objects are diverse. Thus impure touches and gazes differ in species; solitary acts and acts exercised with others; consummated and non-consummated acts; likewise acts consummated according to nature and acts consummated against nature. But these species contain under themselves other subordinated or inferior species also, as will be clear from what is to be said.

III. One lust is directly sought, another indirectly. The former is had when carnal pleasure is intended precisely in itself; but the latter when something else is intended, from which carnal pleasure arises beyond the intention, as happens in less chaste gazes or readings had from curiosity or some other end. These things having been noted beforehand:

I say 1st. Every venereal pleasure, if it is directly voluntary, does not admit smallness of matter, and accordingly, however slight it may be, it will always be a mortal sin. The reason is that venereal pleasure is a certain begun emission of semen, or a natural and necessary motion toward it: but emission of semen, if it is sought outside the legitimate use of marriage, is a grave disturbance of the essential order, since from its own nature it tends to the destruction of the human race. Therefore. I said if it is directly voluntary, for all concede that smallness of matter can be given in venereal pleasure only indirectly willed, and the reason is evident; for the whole malice of this kind of pleasure must be taken from the cause; but that there can be a cause slightly base, e.g., curious reading of some less chaste book, no one has ever denied. - Cf. St. Alphonsus, nn. 415 and 484. - Viva, on prop. 40 condemned by Alexander VII. Baller., note (a), p. 396.

I say 2nd. Pleasure which is called sensible or natural of itself lacks every fault. For that pleasure properly consists in this, that the touch or sight of one's own body or another's pleases on account of proportion and connaturality with the organ of touch or sight, without any stirring of the genital spirits; not otherwise than if sometimes a soft thing were touched, e.g., a cat, silk, etc., or a beautiful thing were looked at, e.g., a horse, a meadow, and other things which naturally delight: but in touching or looking upon these things there is or can be no fault of itself. Therefore. I said of itself, for practically speaking there will always be some slight fault present, not only if those touches or gazes are done from curiosity, levity, or for the sole pleasure, according to those things which have been said elsewhere, but also on account of the danger of passing over to venereal pleasure. - Cf. St. Alphonsus, n. 416. Viva, loc. cit. - Baller., note (a), p. 393.

Now one must treat of the sins of lust in particular, but only of external ones, because of internal ones enough has been said elsewhere.

Chapter I. On Non-Consummated Sins of Lust

Article I. On Impure Kisses

I say 1st. Kisses had for the sake of venereal pleasure, in whatever part of the body they are done, are always a mortal sin, and contract a malice diverse in species according to the various circumstances of the persons. The reason for the first is drawn from prop. 40 condemned by Alexander VII, which has itself thus: "The opinion is probable which says that a kiss had for the sake of carnal and sensible pleasure which arises from the kiss is only venial, with the danger of further consent and of pollution excluded." But the reason for the second is that kisses immediately and directly touch the person to whom they are given, and accordingly are judged to take on the morality of the consummated act to which by their own nature they tend. - Cf. St. Alphonsus, n. 417.

I say 2nd. Actual venereal pleasure being excluded, the sin of kisses will have to be measured from the danger of experiencing that pleasure, and accordingly if the danger is proximate, the sin must again be judged mortal; but if remote, the sin will be either only venial or none. But the danger is always and from its own nature reputed proximate if kisses are done on immodest or base parts, such as the genitals and places near them, and almost always if they are done on less modest but not base parts, as are the arms, breast, and legs. But if kisses are had on modest parts, such as the face and hands, the danger also is judged proximate, at least ordinarily, if they take place often, lingeringly, outside the custom of the country, and between persons of diverse sex. The reason for all these things is evident of itself, and is confirmed from the common consent of theologians, from consideration of human nature, and from experience itself. Cf. St. Alphonsus, nn. 417 and following.

You Will Resolve. - 1st. Ordinarily those kisses which are called columbine are to be reputed mortal, namely by introducing the tongue into the mouth, especially if they are not done from jest or wantonness, but in a more pressing manner and between persons of diverse sex.

2nd. The opinion of Sanchez, the Salmanticenses, and other theologians asserting that modest kisses had between betrothed persons, even if some pleasure is intended which is midway between venereal and natural, and a slight stirring of the genital spirits is present, are not mortal sins, with danger of pollution or consent to copulation excluded, is held as practically improbable by St. Alphonsus. Indeed the holy Doctor holds that the opinion teaching that such acts are prohibited to betrothed

persons in the same way in which they are forbidden to unmarried persons is much more probable, even speculatively, and altogether to be followed. The reason is that the betrothed do not yet have mutual right over bodies, nor do they have the right to copulation, to which alone such acts are ordered. But because the first opinion does not seem altogether destitute of reasons and authorities, perhaps it can sometimes be useful to confessors. Cf. St. Alphonsus, *de matrim.*, n. 854. - Baller., note (a), p. 402.

3rd. Kisses which mothers or nurses are accustomed to impress upon infants lack fault. And the same must be said at least ordinarily of others who kiss infants of tender age, even of diverse sex, any wicked affection being excluded.

4th. Young persons of either sex who in some games, decently and without wicked intention, kiss one another, are not at once to be accused of grave sin, although they are to be turned away from games of this kind on account of the danger annexed to them.

Article II. On Impure Touches

I say 1st. Any touches whatsoever, no otherwise than kisses, if they are done for the sake of venereal pleasure, are always gravely sinful, and of the same specific morality as the consummated act to which they tend. The reason for each is evident, and similar to that which was brought forward for kisses. But base touches are carefully to be distinguished from obscene ones.

I say 2nd. Besides the case of venereal pleasure directly intended, touches are also gravely illicit if they are joined with a proximate danger of pollution, and there is no just cause excusing. For such a cause having been supposed, e.g., the necessity of medical treatment, the pollution following from it will no longer be directly willed. - But the proximity of danger is to be judged from the nature of the parts which are touched, and from the other diverse circumstances of the persons.

You Will Resolve. - 1st. Touches upon the private parts of the same sex or neighboring parts, even over clothing, ordinarily are not excused from grave sin, unless perhaps they are done from wantonness, jest, levity, and in passing. Cf. St. Alphonsus, n. 420.

2nd. *A fortiori*, the case of necessity being excluded, touches upon the private parts of a diverse sex cannot be excused from mortal sin, even if had for a brief time. Yet probably maidservants who touch the genitals of infants, while they clothe them, are not to be accused of grave fault, unless they do this lingeringly. Cf. St. Alphonsus, ibid. Lacroix, n. 902.

3rd. It is venial of itself to touch the genitals of brute animals; nevertheless to touch them unto emission of semen is more probably reputed mortal by St. Alphonsus, not indeed by virtue of the destruction of semen, but because such an act excites most vehemently. But those who couple horses or oxen are altogether excused. - Cf. St. Alphonsus, nn. 419 and 420.

4th. It is also venial to touch from levity and curiosity the less modest parts of the other sex; but mortal if it is done lingeringly and with stirring of the genital spirits.

5th. In no way do they sin of themselves who touch themselves to wipe away bodily filth, or to soothe itching; if however the itching is tolerable, it is to be advised that they abstain from touches. - Cf. St. Alphonsus, *Hom. Ap.*, n. 3.

Article III. On Impure Gazes

I say 1st. Base gazes had without sufficient cause are gravely or lightly sinful according to the danger of venereal pleasure; because this is the whole reason why they are prohibited by the law of nature. But to know the proximity of the danger, one must attend to the diverse circumstances, namely to the parts which are looked at; to the sex, age, and other natural qualities of the person looked at; to the dispositions, whether natural or acquired, of the person looking; to the distance and the manner in which the gaze occurs, etc. - Cf. St. Alphonsus, nn. 421 and following.

I say 2nd. Gravely sinful gazes, with the case of desire excluded, do not induce the malice of the circumstances of the person who is looked at. The reason is that circumstances of this kind do not influence the act, since sight does not touch the object immediately as touch does, and no one says that we violate a sacred person by sight. - Cf. St. Alphonsus, ibid.

You Will Resolve. - 1st. Certainly it is mortal to look at the act of copulation among human beings, not likewise among brute animals, at least of itself and ordinarily speaking, although great danger can be present, and the greater as the animals themselves are larger. - Cf. St. Alphonsus, n. 419.

2nd. It is also mortal to look at the private parts of a person of diverse sex, or parts near them, unless perhaps the sight occurs from a distance and for a very brief time. Nor are you excused from grave fault if you look at base parts covered with a very thin and transparent veil, because such a gaze generally increases lust, far from diminishing it. Yet except 1st. if the one looking is a child, or very old, or very cold; 2nd. if the eyes are fixed on a little infant. Cf. St. Alphonsus, n. 421.

3rd. But it is venial of itself to look at the genitals of the same sex; but not if the one looking were very prone to sodomy, or were affected with great ardor toward the person whom he looks at in particular. - Cf. St. Alphonsus, n. 420.

4th. It is also venial of itself to look at the less modest parts of a woman, namely arms, legs, and breast, with the case excluded in which the gaze is repeated and lingering. Indeed perhaps he who looks at the naked breasts of a beautiful woman with notable lingering and without cause will never be excused from mortal sin. Cf. St. Alphonsus, n. 423.

5th. Gazes upon obscene pictures from mere curiosity are not held as mortal. Yet in practice a man looking at the genitals of a painted woman could scarcely be excused from mortal sin, because he will with difficulty be able to guard against base pleasure, unless perhaps it is done for a very brief time or at a great distance, or unless the age of the picture has diminished the force of the art. - Cf. St. Alphonsus, n. 424.

Article IV. On Impure Speech and Readings

I say. To speak, hear, or read base things for the sake of venereal pleasure or with proximate danger of consent to it is a grave sin, as is evident of itself. But if the danger is not proximate, or indeed is proximate but at the same time there is a just cause of speaking, hearing, or reading those base things, the sin will be either none or only venial. But what is said here about the base is not to be applied to speech simply obscene.

You Will Resolve. - 1st. Generally they sin gravely who mingle conversations, even from levity, concerning the conjugal act, concerning licit and illicit things between spouses, concerning modes of

impeding generation, of procuring pollution ... especially if this happens among young persons of diverse sex. Likewise those who from boasting narrate their own base sins.

2nd. It is not of itself mortal to utter things that are indeed base but not gravely such, if this is done briefly, through jest or vain solace, unless the hearers are so weak in spirit that they suffer grave scandal. - Cf. St. Alphonsus, n. 426.

3rd. Tender conversations with persons of diverse sex are not always to be held as mortal, although they are full of dangers, especially if they are long-lasting, often repeated, or happen in solitary places. - Cf. St. Alphonsus, nn. 422 and following.

4th. They do not sin gravely who from mere curiosity read entertaining books, because they do not excite gravely to lust, nor expose to great danger, as many comedies or poems are. But if they do this for a legitimate cause, e.g., to learn style, they do not sin at all.

Chapter II. On Consummated Sins of Lust

Consummated sins of lust are of a twofold kind; for some are according to nature, and others against nature. The first are reduced to fornication, adultery, incest, sacrilege, stuprum, and raptus; and the second to pollution, sodomy, and bestiality. Of each a brief word will be said.

Article I. On Sins Consummated According to Nature

§ I. On Fornication

Fornication is copulation of an unmarried man with an unmarried woman by mutual consent; wherefore concubinage, which is the habitual commerce of an unmarried man with an unmarried woman, and prostitution, which is the state of a woman prostituted to all, are referred to fornication.

I say 1st. Fornication is always a mortal sin, because it is gravely prohibited by natural right. For if fornication were not forbidden under grave matter, men would generally withdraw from contracting marriage, and offspring received from fornication would be abandoned without any education: but this would redound to the grave harm of the whole society. Therefore. Besides, it is clear from I Cor. vi, 9; and Eph. v, 5.

I say 2nd. The circumstance of concubinage or prostitution is not necessarily to be declared in confession, since of itself it does not change the species of the sin. But by accident it must more often be explained for manifesting the state and kind of occasions, and it must always be disclosed to the confessor when he asks. - Cf. St. Alphonsus, n. 432.

§ II. On Adultery

Adultery is copulation with the spouse of another, or is access to a bed not one's own.

I say 1st. Adultery, besides a sin against chastity, includes another against justice, which by its own nature is mortal, because it contains a violation of strict right gravely obliging. Indeed, if it is had between two married persons, a double adultery is committed, because the diverse rights of two persons are injured.

I say 2nd. Adultery is committed even if the other spouse consents; because in every case the rights of the sacrament and of the indissoluble contract are violated, which rights nature itself requires, and

are altogether inalienable.

§ III. On Incest

Incest is sexual intercourse with blood relatives or relatives by affinity within the degrees prohibited by the Church for marriage.

I say. Incest differs in species from other sins of lust, because it is gravely repugnant to the natural reverence owed to parents, and consequently to persons who are bound to them by a proximate conjunction of blood or affinity. Cf. St. Alphonsus, n. 448.

Whether incest with blood relatives differs in species from incest with relatives by affinity, and again whether incest differs in species according to the various degree of affinity and consanguinity, and therefore whether the degree must necessarily be expressed in confession, we shall say in the treatise on penance, where we treat of the circumstances aggravating sins.

§ IV. On Sacrilege

Sacrilege, insofar as it is a sin of lust, is the violation of a sacred person or place by a venereal act.

I say. Copulation, pollution, or any gravely base touch had by a sacred person always includes a grave sin of sacrilege; because besides the virtue of chastity it also injures religion, which gravely obliges sacred persons to be treated reverently. But if a touch of this kind is exercised between two persons dedicated to God, a double sacrilege would be had. Concerning local sacrilege, however, it is certain that it is committed by copulation or pollution; but whether it is also admitted by touch, the Doctors are not of one opinion, as was said in n. 215. - Cf. St. Alphonsus, nn. 455 and following; and *Hom. Ap.*, n. 22.

§ V. On Stuprum

Stuprum, taken strictly among theologians, is the deflowering of a virgin. - But a virgin is said to be deflowered who, by the natural congress of a man and by a consummated act, is corrupted for the first time, against her will. I said strictly among theologians, for according to the norm of civil law stuprum imports the violation of any unmarried and honorable woman, and in a broader sense of any unmarried woman.

I say 1st. Stuprum, in whatever sense accepted, always contains a grave malice diverse in species. The reason is that, violation being supposed, whatever finally is the woman who is violated, now besides chastity another virtue is injured, namely justice.

I say 2nd. Although the circumstance of virginity is not necessarily to be disclosed in confession, because it is only aggravating, nevertheless if the sin of stuprum is reserved, then it will have to be manifested, because the word stuprum is to be taken strictly whenever it concerns reservation and the penalties laid against those committing stuprum in canon law.

I say 3rd. For stuprum it is not required that force or physical violence be inflicted; for it is enough that the consent of a girl otherwise unwilling be extorted by threats, fraud, deceit, or repeated and importunate entreaties which overcome her constancy. - Cf. St. Alphonsus, n. 443. - Baller., note (b), p. 315.

§ VI. On Raptus

Raptus in the theological sense, and for the internal forum, is violence inflicted upon a person, or upon those under whose power the person is, for the sake of satisfying lust. - But in the sense used in the external forum, it is the abduction of a person from a safe place to an unsafe place, through force inflicted upon that person or upon those under whose power the person is, for the sake of satisfying lust or contracting marriage. - Cf. Sanchez, *de Matrim.*, lib. 7, disp. 12, n. 30.

Violence in each definition is understood as either physical or moral, or inflicted through grave fear; but the person, as to theological fault, is understood to be any person, male or female, unmarried, married, or widowed, honorable or a prostitute; as to the external forum and penalties to be undergone, also any person, provided the person is of honorable life. - Hence in every stuprum the malice of raptus is found, but not vice versa. These things having been noted:

I say 1st. Raptus is a special sin, although the wicked act of lust does not follow; and it consists chiefly in the injury which is inflicted through violence inflicted for the sake of lust. Wherefore the circumstance of raptus is necessarily to be disclosed in confession, whether fornication, adultery, etc., follows, or whether it does not follow.

I say 2nd. It is not to be judged raptus if the woman fully consents both to the abduction and to the violation, unless nevertheless she is a minor and at the same time her parents or guardians or curators suffer this unwillingly. But raptus will be present if she gives consent only to the abduction and not to the violation, or to the violation and not to the abduction. - Cf. St. Alphonsus, n. 444.

Article II. On Consummated Sins Against Nature

§ I. On Pollution

Pollution is the emission of semen without congress with another. Voluntary pollution, of which alone we are treating, is sought either directly or indirectly. It is also called softness, and differs from distillation, which is the slight emission of another, more subtle humor. In pollution, semen is ordinarily ejaculated with vehement pleasure and great stirring; but distillation is had ordinarily with no pleasure or with very slight pleasure and stirring.

I say 1st. Pollution directly and perfectly voluntary is always a mortal sin, so that it is never licit to procure it. The reason is 1st. because this is drawn from the words of the Apostle, I Cor. vi, 10: "Nor the effeminate ... shall possess the kingdom of God"; 2nd. because pollution has intrinsic repugnance with nature, which has ordered the emission of semen solely to generation; 3rd. because if it were ever permitted, or prohibited only under venial matter, most easily, on account of so great a proclivity of corrupt nature toward lust, the habit of pollution would be contracted, and therefore the order of nature would shortly be subverted; 4th. because prop. 49 was condemned by Innocent XI, which has itself thus: "Mollities is not prohibited by the law of nature; whence, if God had not forbidden it, it would often be good. ..." - Cf. St. Alphonsus, n. 476. - Viva, on this proposition.

I say 2nd. Pollution indirectly or only in the cause voluntary is a grave sin whenever the proximate cause, and one tending by its own nature to pollution, e.g., lingering thoughts about very lustful things, is posited without just reason; but it is venial whenever the cause which is posited is only remote, or such that danger is joined to it by accident or rarely. The reason for each is easily gathered

from those things which were said elsewhere concerning the indirectly voluntary. - Cf. St. Alphonsus, nn. 483 and 484.

You Will Resolve. - 1st. Every deliberate emission of semen, however small, is pollution and therefore a mortal sin. Likewise it is mortal to acquiesce in the pleasure of pollution, even for a very brief time, and although it happens beyond intention and spontaneously. *A fortiori* if pollution spontaneously begun is promoted by some effort. - Cf. St. Alphonsus, n. 477. - Lacroix, *de Paenit.*, n. 1034.

2nd. Pollution which follows from touch, gaze, or reading gravely base and posited without just cause, is a mortal sin even with actual consent excluded. The reason is that then the pollution is voluntary in the cause, since these things of themselves introduce grave danger of pollution. But the sin will be only venial if these things are lightly base, and the pollution follows beyond the intention of the agent. - Cf. St. Alphonsus, nn. 482 and following.

3rd. Nocturnal pollution lacks fault, because it does not arise from the free will, nor is any assent given to it, as is supposed; but neither does it indeed always denote a lustful mind, since it can come from many natural causes, e.g., from superfluity of nature, from weakness of the organs, or from disposition of the nerves. But it will be mortal or venial if before sleep it was caused and foreseen, according to the greater or lesser advertence and influence of the cause. Thus voluntary wicked thoughts, wicked conversations, and other things of this kind preceding sleep will easily render it mortal. But ordinarily intemperance in food or drink, etc., will make it only venial. Likewise nocturnal pollution which happens with imperfect will and liberty, as sometimes occurs in the half-asleep, ought not to be judged mortal; but it must be judged that no consent was present, or at most very imperfect consent, when ordinarily in the state of wakefulness it displeases; because judgment must be made according to ordinary contingencies. The same also must be held concerning nocturnal touches.

4th. Voluntary distillation, even only indirectly voluntary, if it is notable or occurs with notable stirring of the genital spirits, can be a mortal sin; because it is a grave disordering, and introduces proximate danger of pollution. But if it is small and without notable stirring, a distinction must be made: 1st. If it is directly voluntary, it cannot be excused from mortal sin; because any distillation whatsoever always, or for the most part, carries with itself stirring and some emission of semen. 2nd. But if it is only indirectly voluntary, it will easily be excused from every sin; because no more care is to be taken concerning such a flux than concerning the emission of any other excrement by which nature is accustomed to unload itself. - Thus expressly St. Alphonsus, n. 477.

5th. It is licit for someone suffering severe itching in the private parts to remove it by touch, even if pollution follows, provided that the itching arises from acrimony of the blood, as ordinarily happens, but not from ardor of lust. For if pollution then happens, with the danger of consent excluded, it happens by accident and therefore inculpably. For the rest, penitents are to be exhorted that, insofar as it can be done without grave trouble, they restrain themselves from touches of this kind. - Cf. St. Alphonsus, n. 483.

You Will Ask. Does the sin of pollution take place in women?

Response. Affirmatively; for although it is today undoubted among physicians that women do not emit true semen, but only some humor which neither contains the essential qualities of semen nor is necessary for conceiving, nevertheless when they use fingers or some instrument, they feel the very

same carnal pleasure which they would experience in congress with a man, and when this has been had, they rest satisfied, as if the work of marriage had been completed. But the essential malice of pollution does not consist properly in the material loss of semen, but precisely in this, that outside marriage that same pleasure is sought which has been bound by the author of nature only to the licit act of congress, as inducive to it. Therefore.

From this solution must be sought the true reason why by many theologians it is said that eunuchs, boys, and generally all who are unfit for copulation properly so called are immune from the malice of pollution, but commit only impure touches. For since they are impotent for the use of marriage, they cannot contract that malice which consists in seeking the pleasure proper to marriage outside the licit use of it. Cf. *Revue des sciences eccles.* vol. 27, p. 586; and vol. 29, p. 98, and p. 205. - Baller., note (a), p. 417.

It must be observed here that women generally, and *a fortiori* younger girls, are not to be asked by a prudent confessor whether there was some emission of humor ... or complete satisfaction ... or some exhaustion, etc., whenever they accuse themselves in confession of some solitary sin against the sixth precept. Wherefore if some girl says while confessing: I touched myself basely - or - I did some baseness with myself, or something similar, it must be understood that she perpetrated the sin of pollution, although perhaps she admitted only an impure touch. The reason why those questions ought not to be asked is that the decency to be preserved in the confessional stands in the way, and there is danger lest the girl suffer scandal.

§ II. On Sodomy

The horrendous crime of sodomy is sexual intercourse with a person of the same or different sex, but in an undue vessel. Hence a twofold kind is distinguished: 1st. perfect, which is sexual intercourse with a person of the same sex; 2nd. imperfect, which is sexual intercourse with a person of different sex outside the natural vessel.

I say 1st. Sodomy is a crime much graver than simple pollution. This is clear from the horror which it excites among all, and also from the unheard-of punishments inflicted by God upon Sodom and the other cities defiled by this sin.

I say 2nd. Perfect sodomy differs in species from imperfect, because to be carried toward the sex and toward the undue vessel contains a double special malice. But although imperfect sodomy is itself also a great sin, nevertheless when sodomy is named without qualification, only perfect sodomy is understood, especially where it concerns censures and reservation, unless the superior has declared the contrary. - Cf. St. Alphonsus, n. 471.

You Will Ask. Must it be declared in confession who was agent or patient in sodomy?

Response. Negatively, because the species of the sin is the same: but the circumstance of pollution, which can happen more easily in the agent, is altogether to be declared. - Cf. St. Alphonsus, n. 468.

§ III. On Bestiality

The unspeakable and execrable crime of bestiality is sexual intercourse with a beast.

I say 1st. Bestiality is the gravest among the sins of lust, both because to be mixed with a beast is most repugnant to rational nature, and because it was punished most gravely in the old law; for it is

said, Exod. xxii, 19: "Whoever has intercourse with a draught animal or herd-animal, let him die by death; kill the beast also." Indeed that sin is more horrible than sodomy itself, because to approach a different species departs still more from right order than to approach an undue sex or vessel. - Cf. St. Alphonsus, n. 474.

I say 2nd. Impure touches with beasts, although they are not sins of bestiality properly so called, nevertheless are to be declared when some venereal pleasure is sought from them. But the circumstance does not seem necessarily to be declared if someone, by means of the tongue of a herd-animal or another beast, excites venereal pleasure or pollution in himself. Nor is it necessary to explain in confession of what species the beast was, nor whether it was male or female. - Cf. St. Alphonsus, n. 474.

On the Seventh and Tenth Precept of the Decalogue

You shall not commit theft. You shall not covet the house of your neighbor, nor his servant, nor his maidservant, nor his ox, nor his ass, nor all things which are his. - Exod. xx, 15 and 17

The Seventh Precept of the Decalogue prohibits every external injustice in the goods of fortune of one's neighbor. - But the Tenth also forbids the internal sins of covetousness, that is, of desire for the goods of one's neighbor and of unjust action. Since we are going to speak of the various sins of injustice concerning goods of fortune in the particular treatise on justice and right, there is nothing that should be added here concerning these two precepts.

On the Eighth Precept of the Decalogue

You shall not speak false testimony against your neighbor. Exod. xx, 16. - *You shall not say false testimony.* Matth. xix, 18

This precept, insofar as it is negative, prohibits chiefly and primarily that false testimony be said, both in judgment and outside judgment; indirectly and secondarily, that the reputation and honor of one's neighbor be injured. But insofar as it is affirmative, it commands, according to the Roman Catechism on the 8th precept, n. 2, "that, simulation and deceits having been removed, we measure our words and deeds by simple truth." Wherefore by this precept there is prohibited: 1st. perjury against one's neighbor; 2nd. lying; 3rd. detraction; 4th. contumely; 5th. rash judgment and injurious suspicion. Of each, except perjury, concerning which enough was said in the second precept, one must speak.

Chapter I. On Lying and Mental Restriction

A lie is speech against the mind, or, as St. Augustine says, it is "to say something knowingly otherwise than we think." If it is done by nods or by some deed, it is called simulation, which again is called hypocrisy when someone simulates the person of another, e.g., when a sinner simulates the person of a just man. - For a true lie it is not required that there be expressly the intention of deceiving, for as the same holy Doctor says: "Everyone who lies speaks against that which he thinks in his soul, with the will of deceiving." - Cf. St. Thomas, 2-2, q. 110, art. 1. - St. Augustine, *Enchir.*, chap. 18 and 22.

A threefold kind of lie is distinguished: 1st. harmful, by which unjust harm is inflicted upon someone; 2nd. officious, which is put forth for the sake of one's own or another's utility; 3rd. jocose, which is said from jest and for the sole sake of trifling.

But mental restriction differs greatly from a lie; it is an act of the mind turning or restricting the words of some proposition to another sense than the natural and obvious one; whence it happens that they are not true unless they are taken according to the sense which they have in the mind of the speaker. - But a twofold restriction is distinguished, namely purely or strictly mental, if the sense of the speaker can in no way be perceived, and this is called properly mental; and broadly or improperly mental, if the sense of the proposition can be gathered from adjuncts.

I say 1st. A lie properly so called is certainly something intrinsically evil, but does not exceed venial sin if it is jocose, or even officious; but if it is harmful, it will be a light or grave sin according to the quantity of harm inflicted. The reason for the first is both because it is repugnant to right reason to use signs of speech against their natural end and institution, and to wish, as it were, to destroy the unity of man; and because, the liceity of lying having been admitted, the order of society, which rests upon mutual commerce and trust, would be altogether subverted. But the reason for the second is taken from the common consent of theologians, from the persuasion of the faithful, and from the very nature of that repugnance with right reason, which certainly does not appear grave. Finally, the reason for the third is that in a harmful lie, besides the virtue of truthfulness, justice is injured, which obliges under grave or light matter according to the harm that is inflicted. - Cf. St. Augustine, books *On Lying* and *Against Lying*. - St. Thomas, loc. cit., art. 3 and 4.

I say 2nd. It is never licit to use purely or properly mental restriction, because, as is clear from its definition, this would be simply to lie. But sometimes it is licit from a just cause to use restriction broadly, that is improperly mental, when the sense intended by the speaker can be understood. The reason is that this is not evil in itself, since the neighbor is not properly deceived, but his deception is only permitted from a just cause; besides, for the good of society it is required that there be a licit means of hiding a secret; but sometimes no other means is available besides broad or improperly mental restriction. I said, from a just cause; because if the use of such restrictions were permitted without a proportionate cause, no one could or would wish to believe another; and this would redound to the greatest harm of human society. - Cf. St. Alphonsus, *de secund. praec. Decal.*, nn. 151 and 152. - Lacroix, lib. 3, n. 287.

You Will Resolve. - 1st. They certainly err who place the malice of a lie either solely or primarily in this, that the right of the hearers is injured. For from this it would be deduced that God, against whom properly we have no right, could sometimes lie, which would plainly destroy our faith. Cf. Mazella, *de Virt. inf.*, n. 698.

2nd. Figurative, ironic, and hyperbolic expressions are not lies, which as such can easily be, and usually are, taken by hearers. Much less parables, which Christ himself so frequently used.

3rd. They do not lie who write fables, or from jest openly say false things, because then words are put forth and understood with another superadded signification, but one easily admitted by those conversing.

4th. He who uses broad mental restriction is not without fault: 1st. if he does this without reason, but from the sole intention of deceiving, because it is an abuse of signs; 2nd. if the one asking has the

right of inquiring or commanding confession of the truth, because regularly in a subject there corresponds to that right the obligation of confessing the truth without ambiguity. - Cf. St. Alphonsus, loc. cit., n. 154.

5th. Yet all public persons questioned concerning things committed to their trust can use restriction of this kind, such as secretaries, legates of princes, leaders of armies, magistrates, advocates, physicians, surgeons, midwives, and whoever has the office and reason of hiding some truth. For if secrets committed to these persons were violated, most grave inconveniences would follow from it in society.

6th. Likewise a servant, by order of the master, can deny that he is at home, although he is present; because such a locution is generally received by usage to signify that he is not at home insofar as he can be seen or visited. Attend nevertheless to the custom of places. Cf. St. Alphonsus, loc. cit., n. 165.

7th. It is licit to add an oath to a broad and not strictly mental restriction, because an oath follows the nature of the act to which it is added. - Cf. St. Alphonsus, loc. cit., n. 151.

Chapter II. On Detraction

Detraction is the unjust violation of reputation, or the blackening or diminution of the good estimation which others have concerning the life and morals of an absent neighbor. - It is said, of an absent neighbor, both because generally he who is detracted from is physically absent, and because if he is present, the words are not properly directed to him, and he is considered as if absent.

Detraction is called simply such if the reputation of a neighbor is violated by revelation of a true crime; but it is named calumny if the violation of reputation follows from the attributing of a false crime. Each can be done in a twofold way: 1st. directly, if a false crime is imputed, if a true one is amplified, if a hidden one is manifested, if a good work is taken in a sinister sense; 2nd. indirectly, namely by denying the good works of a neighbor, or by diminishing them, or even sometimes by being silent when others praise, or by praising coldly.

I say 1st. Every detraction is a mortal sin from its genus, because it is opposed to justice, which obliges under grave matter; and since the goods of reputation are better than goods of fortune, detraction of itself is a graver sin than theft. But the gravity or lightness of detraction is not to be measured precisely from the gravity of the defect or crime which is narrated concerning the neighbor, but chiefly from the gravity of the harm which the neighbor can suffer from it. Wherefore, to know in a particular case the gravity of the sin, one must attend to the quality both of the person detracting and of the person injured. The reason is that greater or lesser trust will be given according to the greater or lesser authority of the one speaking, and greater or lesser detriment to reputation will follow according to the measure of the greater or lesser estimation which the injured person enjoys. Cf. St. Alphonsus, n. 967.

I say 2nd. Although in no case whatsoever is it ever licit to attribute a false crime to another, since a lie is something intrinsically evil, nevertheless, from a just cause, it is licit to manifest the hidden crime of another even with loss of his reputation; because circumstances can be present in which the right of the neighbor to preserving reputation is overcome by a stronger right, and then neither

would charity urge, because it does not oblige with grave inconvenience, nor justice, because a right against a prevailing right is not given. - Cf. St. Alphonsus, nn. 968 and 972.

I say 3rd. The detractor is bound in justice, as far as can be done, both to repair the reputation unjustly taken away and to compensate all temporal harms arising from defamation and in some way foreseen. The reason for the first is that through the taking away of reputation a damaging injury has been inflicted by the violation of a strict right, which ought to be restored in full. But the reason for the second is that all harms arising from detraction are to be attributed to the detractor as to their efficacious cause. Notice nevertheless that the obligation of restoring reputation is personal, but the obligation of repairing harms which have arisen from defamation is real, and therefore passes to heirs. Cf. St. Alphonsus, nn. 991 and 996.

I say 4th. Restitution of reputation is to be made in one way by a calumniator, and in another by a simple detractor. For the calumniator is bound to retract what he said, and indeed in itself even with loss of his own reputation if reparation cannot otherwise be made; because the condition of the innocent is better than that of the guilty, and the latter ought to impute to his own malice whatever he is about to suffer on account of this. But the simple detractor cannot retract what he said, because thus he would lie; wherefore in another way, as far as is in him, he ought to restore the reputation, saying, e.g., that he spoke badly, that he erred, or something similar; for not only do those err who recede from truth, but also those who recede from rectitude, according to that saying, Prov. xiv, 22: "They err who work evil." But often that manner does not suffice among intelligent and astute persons, who rather from these formulas conjecture that the crime is true, since it is not asserted openly to be false. Therefore then the detractor, being silent about what was said, when occasion is given, with dexterity and truth ought to praise and honor him from whom he detracted. Cf. St. Alphonsus, n. 992.

Questions

Question 1. Is it grave detraction to reveal to one prudent man some mortal sin of someone, which indeed greatly dishonors him, but does not have a special malice?

Response. Negatively, probably, and the reason is that since reputation consists in the common estimation of men, he is not judged absolutely defamed who has lost a good name only before one or another person. Cf. St. Alphonsus, n. 973.

Question 2. Do detractions differ in species in matters diverse in species?

Response. Negatively, probably, because although such detractions are distinguished materially in species, nevertheless morally they injure one reputation of a man, no otherwise than contumelies are of the same species on account of the unity of honor against which they tend. Wherefore the confessor ought not to inquire concerning what matters the penitent detracted about, not only because the obligation is not established, but also because from knowledge of the different matter of detraction he could easily come to knowledge of the very person who was detracted from, and thus the confession itself would not be immune from the vice of detraction. Indeed, because it is also probable that detractions concerning different matters, if they are not otherwise interrupted, are one sin in number, the confessor ought to abstain from inquiring not only what the matters of detraction were, but also whether they were many. - Cf. Lugo, *de Paenit.*, disp. 16, n. 265. - Baller., note (a), p. 429.

Question 3. Can a public crime be revealed to those ignorant of it, but living in the same place where the crime is already public?

Response. Affirmatively, at least without grave sin, because reputation lost in relation to the community in which one lives, through publicity of the crime, whether this is of law or of fact, can no longer have grave harm inflicted upon it. But if it is asked whether a crime already public in one place can be revealed where the crime is still unknown, the response is that there is much dispute among theologians; but according to St. Alphonsus and not a few others, probably it is not mortal, whether the crime is manifested where it will easily and shortly be made public, or whether it concerns places to which the divulgation either will never come or will not come except after a long time. - Cf. St. Alphonsus, nn. 974 and 975; and *Hom. Ap.*, n. 12. Lugo, *de just. et jur.*, disp. 14, sect. 5.

Question 4. What must be thought concerning the custom prevailing among us of divulging the whole life of those who are to be elected to the highest Magistracies or as Legislators?

Response. It is certainly licit, whether justice is considered or charity, to manifest those crimes which, even if hidden, render the candidate less fit for the office into which he is to be elected, both because the common good ought to prevail over the private, and because according to the mind of the Constitution by which we are governed and of universal custom, those candidates are judged to yield concerning their own right as soon as they consent to popular election. But in this matter there ought to be a limit, and accordingly those are to be condemned who, either from an itch of divulging everything or carried away by party zeal, touch upon even those crimes whose knowledge contributes nothing to the public good. - Cf. Kenrick, tract. 10, n. 139.

Question 5. Does he sin gravely who reports grave and hidden sins of another only as heard from others, e.g., if he says: it is reported, they narrate, I have heard this or that about such a one?

Response. He certainly sins gravely against charity and justice if he reports these things in such a way that others will with reason believe them, e.g., if he asserts that he has heard the things which he narrates from a person worthy of trust, because then he furnishes a sufficient cause for believing the evil; but otherwise if probably belief is not given to the words, because then no infamy will arise from them. But if he reports things heard before those who probably will believe them from levity or malice of their own, he does indeed sin against charity, because each person is bound under grave matter from charity to remove an occasion of harm to another when he easily can, but not against justice, because he is not the efficacious cause of the harm. - Cf. St. Alphonsus, n. 977.

Question 6. How do those hearing detraction sin?

Response. Just as those who so listen that they add new stimuli to detractors contract the whole malice of detraction, and therefore injure justice, so those who, when they notice detraction, depart, cut off the conversation, or turn away the face and show themselves sad, are altogether excused, according to that saying, Prov. xxv, 23: "A sad face dissipates a detracting tongue." - But, outside this twofold case, a distinction must be made between private persons and superiors. A private person for the most part is excused either altogether or at least from grave sin if he does not impede detraction, from shame or fear or even from negligence, even if he conveniently can, provided that he does not rejoice in it, nor that besides infamy another harm is added. The reason is that in this matter it often cannot be established that correction will be of profit; indeed it is often dangerous, and it can rightly be feared lest the detraction rather be increased or prolonged. But a superior sins against charity if he

does not impede detraction insofar as he conveniently can, even if he does not rejoice in it; because there rests upon him a special obligation of correcting the detractor, or of obviating the harm of the defamed subject. But more probably he does not sin against justice, neither the superior of the detractor, because he is not held to watch over the good of another who is not a subject; nor the superior of the defamed person, because it is not incumbent upon him in justice to attend to the temporal good of a subject. - Cf. St. Alphonsus, nn. 979, 980 and 981.

Question 7. What are the causes excusing from restitution of reputation?

Response. The following are commonly admitted: 1st. if the offense which you revealed to one or more persons has become public by another way, or if the reputation has been repaired in another way, e.g., by the sentence of a judge, etc.; 2nd. if it is prudently judged that the memory of the crime has been effaced by the passage of time or by oblivion; 3rd. if restitution of reputation cannot be made without danger to life, because life is a good of a higher order; likewise if the restitution of reputation is of much less value than the loss which the defamer would have to suffer, e.g., if he were an honorable man and especially very useful to the public good or to religion; 4th. if the reparation is morally impossible on account of excessive distance of places or other special difficulties, which are especially found in the reparation of simple detraction, e.g., if those who heard the detractor cannot be recalled from a preconceived opinion; 5th. if it is judged that belief was not given to the detraction by the hearers, as happens rather often when detraction is done in the heat of anger; 6th. if the defamed person has remitted the obligation expressly or tacitly, provided he can remit it; indeed sometimes presumed condonation suffices. But he cannot remit it when from his infamy there follows scandal or harm either common or to his own, etc., e.g., if it concerns the infamy of a priest, magistrate, etc. - Cf. St. Alphonsus, nn. 997 and 998.

Question 8. Is he who is only materially a calumniator, namely because he manifested a false crime which he had thought to be true, bound to restore reputation with danger of losing his own?

Response. A material calumniator, when the error has been discovered, is held to restitution, but not so strictly as he who made the calumny through formal injury: for the latter is held even with detriment to his own reputation, even equal detriment; the former not likewise, but only insofar as he can without his own notable inconvenience. - Cf. St. Alphonsus, n. 993.

Question 9. Is there an obligation of restoring reputation from simple detraction only materially unjust, e.g., if someone detracts from inadvertence?

Response. Affirmatively, as soon as he adverts to the injustice, in the same way as one who sets fire to another's house without formal fault is held to extinguish the fire as soon as he adverts, if he conveniently can; otherwise the harm which follows from it will be imputed to him. - Cf. St. Alphonsus, ibid.

Question 10. Is one who defames bound to restore reputation even before those who received mediately the crime revealed by him?

Response. Negatively, if he did not foresee, not even confusedly, the propagation of his detraction, and *a fortiori* if before or after the violation of reputation he demanded secrecy; for then he is not the true and unjust cause of the extension of the harm. - But otherwise it must be said if he detracted for this reason, that he might lead the hearers to repeat the infamy, because then they are to be judged as

an instrumental cause which the detractor uses. - But if there was indeed foresight of the propagation, but not an express and positive intention of harming by the help of the hearers, according to St. Alphonsus, more truly he is held, because foresight alone suffices that the detractor be called the true cause of the whole harm. Nevertheless, he seems able to be excused from such a burden not only by reason of moral impossibility, which is often present, but also because after all the true cause of so great a harm is the action freely placed by the hearers. Besides, according to the testimony of Cardinal de Lugo, the practice of confessors is that such a burden is not imposed. - Cf. St. Alphonsus, n. 991. - Lugo, *de just. et jur.*, disp. 15, nn. 15 and 16.

Question 11. Are you excused from restitution of reputation if the injured person also violated your reputation, and does not wish to restore it?

Response. Many theologians deny, but more probably one must affirm with St. Alphonsus; because you are not held to render to another his right if he refuses to render yours to you. - Cf. St. Alphonsus, n. 999.

Chapter III. On Contumely

Contumely is an unjust injury of honor inflicted upon one present and aware. But honor is the external testimony of estimation which is had internally concerning someone's excellence. But someone can be present either personally or physically, or morally through an image and through something else in which he is represented in some way. Contumely can be done either negatively, through omission of honor due here and now; or positively, namely by words, deeds, or signs of contempt. When it is done by words, it receives various names, which often are used indiscriminately, yet differ somewhat among themselves. For it is called reviling if it casts up natural defects; contumely simply so called, if moral defects; reproach, if it objects neediness, baseness of lineage or condition. - Cf. St. Thomas, 2-2, q. 72, art. 1, ad 3.

To contumely are referred: 1st. mockery, by which someone is contemned by words and laughter; 2nd. derision, by which someone is ridiculed by ridiculous gestures; they differ from it because contumely intends to depress honor, but these intend to cause shame and embarrassment. Cf. St. Thomas, 2-2, q. 75, art. 1.

I say. Contumely is a mortal sin from its genus, and induces a strict obligation of reparation. The reason for the first is both because in the estimation of men honor is often reputed more than reputation, and accordingly contumely is a graver sin than detraction, and because it is said, Matth. v, 22: "Whoever shall say to his brother ... Fool, shall be guilty of Gehenna of fire." But the reason for the second is that an injured and reparable right ought to be repaired. - Cf. St. Alphonsus, n. 966.

You Will Resolve. - 1st. Honor publicly taken away by contumely must be restored publicly before those who were witnesses of the dishonoring, or at least in such a way that satisfaction can come to their knowledge. But it suffices that satisfaction be made through another person, who asks pardon in the name of the dishonorer. Cf. St. Alphonsus, n. 984.

2nd. That restitution of honor is required which is judged sufficient for manifesting estimation according to the condition of the offended person, and accordingly if the one who dishonored was a superior, it will suffice if he greets the dishonored person or shows benevolence to him. - Cf. St. Alphonsus, n. 986.

3rd. If the dishonored person has taken vengeance, e.g., by striking, wounding the other, etc., for the most part no further satisfaction is required for honor; because the former seems to accept vengeance as satisfaction, while the latter, by not resisting, seems to confess his own fault and his estimation concerning the other. - Cf. St. Alphonsus, n. 989.

4th. In practice it is many times expedient that the confessor omit warning a penitent existing in good faith concerning the obligation of satisfaction, especially if he foresees that the warning will not be profitable; or if he thinks that the one who was dishonored will easily condone it, or will refuse reparation, especially public reparation, lest the memory of the injury return among others, or lest he himself be affected with greater shame, etc. - Cf. St. Alphonsus, n. 988.

Chapter IV. On Rash Judgment, Suspicion, and Rash Doubt

Rash judgment is a firm assent formed from slight indications concerning some sin or defect of a neighbor; but rash suspicion is a certain inclination to assent concerning the evil of a neighbor from an insufficient reason, or is a begun assent by which someone judges from an insufficient reason that probably some foundation for thinking badly of a neighbor lies hidden. Finally, doubt is a suspension of the mind determining itself to neither side concerning the honesty of a neighbor.

I say 1st. Rash judgment is a mortal sin from its genus. The reason is that each person has the right to good estimation of himself before individuals, nor ought he to be presumed evil until it is proved. - But for the gravity of rash judgment there is required: 1st. that it be firm, or without doubt; 2nd. that it be fully deliberate and voluntary; 3rd. that it be in a grave matter concerning a determined and known person; 4th. that it rest upon indications which are known as slight and unfit for judging. The reason for these things is that otherwise it would not be a true judgment, nor truly rash, nor gravely injurious to the neighbor. - Cf. St. Alphonsus, n. 962.

I say 2nd. Rash suspicion and doubt are venial only from their genus. The reason is that on account of a weak and easily movable adherence they ordinarily bring only slight harm to a neighbor, since they do not take away reputation, but only diminish it and render it doubtful. - Cf. St. Alphonsus, n. 963.

You Will Resolve. - 1st. He does not sin gravely who judges sinisterly concerning a neighbor if the judgment rests upon indications sufficient for prudent probability, because moral certitude and true probability are not so distant that it should be judged a grave injury to hold as almost certain what is very probable. - Cf. St. Alphonsus, n. 962.

2nd. He does not sin gravely who, in judging, does not advert fully to the insufficiency of the motives, although he adverts that he judges less prudently, or if he admits only slight negligence in repelling the judgment. - Cf. St. Alphonsus, ibid.; and *Hom. Ap.*, n. 1.

3rd. He does not sin gravely who judges rashly concerning someone indeterminate among many, e.g., of some gathering or community, or even concerning someone indeed determined but unknown to himself. - Cf. St. Alphonsus, ibid.

4th. Suspicion, or even plainly rash doubt, namely resting upon no reason, can be a mortal sin if it is concerned with very extraordinary sins and sins grave by reason of the condition of the persons

whom it regards; because suspicion or doubt of this kind is a greater injury than even a firm judgment concerning less grave sins. - Cf. St. Alphonsus, n. 964.

5th. It is licit to guard against harms from fear that is not altogether imprudent; and thus, e.g., you can keep your things under guard lest they be stolen by a traveler staying in your house; because, even if you cannot positively judge that this or that one is a thief, nevertheless you can very well provide for yourself, since you know certainly that there are sometimes thieves among men, although they are thought to be alien from theft. - Cf. St. Thomas, 2-2, q. 60, art. 4, ad 3.

Chapter V. On Violation of a Secret

Here a secret is called whatever, either from its own nature or from a special contract, ought to be kept hidden. - A threefold secret is distinguished and is 1st. natural, if it is imposed by the very nature of the thing to be hidden, e.g., if you know something which you cannot manifest without grave injury to another either in estimation or in goods, etc.; 2nd. promised, if someone, hearing a secret from another or learning it by chance, promises that he will not reveal it; 3rd. committed, if someone manifests something to another and at the same time tacitly or expressly requires silence from him concerning it.

I say 1st. A natural secret in a grave matter obliges under grave matter, and indeed in justice, unless a just cause excuses. The reason is that from revelation of the secret harm follows to the neighbor, who has the right not to be injured without reasonable cause.

I say 2nd. A promised secret, besides the obligation of a natural secret, which by reason of the matter it can sometimes bring with it, by force of the promise alone obliges gravely or lightly according to the intention of the one promising; lightly, if the one promising binds himself only from fidelity, as often happens; gravely in grave matter, if he wished to oblige himself in justice.

I say 3rd. A committed or communicated secret, which is also called rigorous, obliges under grave matter in justice, and indeed more strictly than a merely natural secret and also than a promised one; because besides the natural obligation there also presses an obligation from an onerous contract expressly or tacitly undertaken. - Cf. St. Alphonsus, n. 970. - Baller., note (a) and (b), p. 440.

Questions

Question 1. What are the just causes of manifesting any secret whatsoever, even if it is committed?

Response. They are 1st. the rightly presumed consent of him whose interest it is that the secret be hidden; 2nd. divulgation of the matter arising from elsewhere; 3rd. harm that will follow from the secret to the commonwealth, or to innocent private persons, or to the one entrusting it, or even to him to whom the secret is committed. I said, that will follow, because if it concerns harm already inflicted, a committed secret cannot licitly be revealed as long as the one causing harm is not himself bound to betray himself, although a natural or promised secret can, indeed ought, to be manifested to a judge legitimately interrogating, so that the harm already inflicted may be redressed. The reason for the difference is that the obligation which affects a natural or promised secret is essentially conditioned, and as it were supervenes upon the pre-existing obligation of responding to a judge legitimately interrogating. But if the matter concerns a committed secret, a judge or superior cannot

abrogate the right of nature, which requires that it ought to be kept, unless the matter is already known by another way. - Cf. St. Alphonsus, nn. 970 and 971. - Baller., note (a), p. 441.

Question 2. Can you reveal a secret if you promised to keep it even with loss of life?

Response. Affirmatively, if the common good requires it, because then a promise of this kind is invalid by its own nature. But otherwise one must answer if it concerns your own simply grave harm, because you expressly renounced your right, and it is not illicit to permit yourself to incur grave harm for keeping a promise. - Cf. St. Alphonsus, n. 971.

Question 3. Does he sin gravely who reveals a secret to one or another upright man under the same secret?

Response. Negatively, probably of itself; because in this case grave injury against another does not seem to be committed, unless nevertheless it is revealed to a person from whom the one entrusting the secret to you is rightly presumed to have especially wished it to be concealed. - I said, of itself; because in practice, on account of the circumstances of the secret, the revelation will easily become grave, namely when you suppose too lightly that the persons to whom you commit the received secret are so discreet that they will certainly keep it. - Cf. St. Alphonsus, n. 971.

Question 4. Does he sin gravely who opens or reads another's letters?

Response. Affirmatively, because by natural right and the right of nations there is present a grave obligation of preserving the secrets of letters inviolate; otherwise human commerce would be overthrown. Except, however, the following cases: 1st. if there is tacit or presumed consent of him who writes, or of him to whom the letters are sent; 2nd. if the letters are known or presumed to contain matters of slight moment; 3rd. if it is done from a just cause, e.g., for averting public or private harm, provided no more is read than is necessary for this end; 4th. if the letters are opened from levity or from some inadvertence. Cf. St. Alphonsus, *de Peccatis*, n. 70; and *Hom. Ap.*, nn. 5 and 6.

Question 5. Can you ever use knowledge unjustly acquired for freeing yourself, for example?

Response. Affirmatively, in the case in which, if you had not had that information, you could, by your own right, in order to provide for yourself, have searched it out and inquired into the secret even by deceit; otherwise you cannot. Therefore this can be done 1st. when that possessor of the secret vexes you unjustly, since it is licit to repel force by force; 2nd. when he is held to reveal the secret, because then he does not have the right of retaining it; 3rd. when it is of interest to the commonwealth that it be manifested for the common safety. Yet you cannot use it on account of some good of yours resulting from the revelation, or some evil of your own to be avoided, nor on account of that evil for the sake of which you can reveal a justly acquired secret. But if that were permitted, a door and license would be opened of searching out, by right and wrong, the secrets of one's neighbor for our utility; letters would be intercepted and other frauds employed to the ruin of human commerce and public quiet. Such a person unjustly acquiring another's secret steals his good: nothing is more intimate to a man or more his own than the secret of the heart; it is a right belonging to him from intrinsic principles, which God protects by concealing it in such a way that not even angels penetrate the secrets of man. Against this right acts he who obtains a secret by fraud or deceit and communicates it to others. Hence there would be a violation of a most strict right if someone employed the new instrument which is commonly called a dictograph, against the peace of human

society: e.g., while an advocate hears his clients, or such privileged persons receive most secret things, or officials communicate hidden things of government to one another. Thus Lugo, disp. 14, nn. 100 and following.

Treatise VII. On the Precepts of the Church

Many particular precepts of the Church exist; here we shall speak only of those which regard all the faithful, of whatever state or condition they may be. In proposing them, Doctors and Catechisms differ not a little, although this difference consists rather in the manner of speaking than in the very substance of the matter. Yet to obtain uniformity, which in this matter is wholly necessary, we shall follow that order which the Catechism recently published by order of the Third Plenary Council of Baltimore employs. Therefore there they are stated thus.

The Precepts of the Church

I. - To hear Mass on Sundays and other feast days.

II. - To observe fasting and abstinence on certain days.

III. - To confess sacramentally at least once in the year.

IV. - To receive the Sacred Eucharist within Easter time.

V. - To contribute some support for the suitable sustenance of Pastors.

VI. - To abstain from the celebration of marriage in those circumstances in which the Church prohibits it.

On the First Precept of the Church: To Hear Mass on Sundays and Other Feast Days

Since enough was said concerning the obligation and mode of hearing Mass on Sundays and feast days, and likewise concerning abstinence from servile works, where the third precept of the Decalogue was treated, here only something will be set forth concerning the author and the number of these feasts, both by common law and by particular law in force among us.

I. It belongs to the supreme ecclesiastical authority alone to establish, transfer, or abolish feast days common to the universal Church. ... Ordinaries of places can prescribe peculiar feast days for their dioceses or places only by way of an act. - Cf. Can. 1244. The reason for the first is that the Pope alone has jurisdiction over the universal Church. The reason for the second is that they have jurisdiction in their own dioceses; the use, however, is limited lest feast days be multiplied with too great facility.

II. Many feasts were once instituted which, in the course of time, the fervor of the faithful growing cold, went into disuse or were abolished by the ecclesiastical authority itself. For Urban VIII, Const. *Universa*, Sept. 13, 1642, suppressed many feasts and established a new list of feast days as follows:

"By Apostolic authority we decree and declare that only the days written below are to be observed as feasts of precept ... namely the Sundays of the whole year; of the Nativity of Our Lord Jesus Christ; of the Circumcision; Epiphany; Resurrection with the two following weekdays; Ascension; Pentecost

with likewise the two following weekdays; the Most Holy Trinity; the Solemnity of the Body of Christ, and the Finding of the Holy Cross, and also the festivities of the Purification, Annunciation, Assumption, and Nativity of the Virgin Mother of God; the Dedication of St. Michael the Archangel; the Nativity of St. John the Baptist; of Saints Peter and Paul, St. Andrew, St. James, St. John, St. Thomas, Saints Philip and James, St. Bartholomew, St. Matthew, Saints Simon and Jude, and St. Matthias; likewise St. Stephen, protomartyr; the Holy Innocents; St. Lawrence, martyr; St. Sylvester, Pope and Confessor; St. Joseph, also Confessor; and St. Anne, Mother of the Mother of God; the Solemnity of All Saints; and one of the more principal Patrons in any kingdom or province, and another likewise more principal in any city, town, or village, where it happens that these Patrons are had and venerated."

To this catalog must be added the feast of the Immaculate Conception of the Blessed Virgin Mary, which Clement XI wished to be had as of precept through the Constitution *Commissi Nobis*, Dec. 6, 1708.

The Sacred Congregation of the Council, assenting to the wishes of many Ordinaries, "according to the norm of the Constitution *Universa per orbem* of Urban VIII, dated September 13, 1642, determined that the following index of suppressed feasts, on which, according to the prescriptions of canons 339, § 1, and 466, § 1, of the Code, there is in the universal Church the burden of offering the Holy Sacrifice for the people, should be published, that is:

The Monday and Tuesday after the Sunday of the Resurrection of Our Lord Jesus Christ and Pentecost; the Day of the Finding of the Holy Cross; the Day of the Purification of the Blessed Virgin Mary; the Day of the Annunciation of the Blessed Virgin Mary; the Day of the Nativity of the Blessed Virgin Mary; the Day of the Dedication of St. Michael the Archangel; the Day of the Nativity of St. John the Baptist; the Day of the Holy Apostles: Andrew, James, John, Thomas, Philip and James, Bartholomew, Matthew, Simon and Jude, Matthias; the Day of St. Stephen, Protomartyr; the Day of the Holy Innocents; the Day of St. Lawrence, Martyr; the Day of St. Sylvester, Pope; the Day of St. Anne, mother of the Blessed Virgin Mary; the Day of the Patron Saint of the Kingdom; the Day of the Patron Saint of the place. Given at Rome, from the Secretariat of the Sacred Congregation of the Council, on December 28, 1919."

III. In these United States up to these latest times nine feast days were observed among many dioceses, but among others great variety was in force. Wherefore the Fathers of the Third Plenary Council of Baltimore had the following statute under n. 111: "To promote the salvation of souls through greater uniformity in feasts, it seemed good to the Fathers to offer suppliant prayers to the Apostolic See, that from all the feasts now in force among us, only those be retained whose observance, considering the devotion of the faithful and public morals, can more happily be hoped for. But such seem to be the six which follow:

The Immaculate Conception of the Blessed Virgin Mary; the Nativity of Our Lord Jesus Christ; the Circumcision of Our Lord Jesus Christ; the Ascension of Our Lord Jesus Christ; the Assumption of the Blessed Virgin Mary; the Feast of All Saints." The Holy See consented to the petition of the Fathers.

§ 1. Feast days under precept in the universal Church are only: all and each Sunday, the feasts of the Nativity, Circumcision, Epiphany, Ascension, and Most Holy Body of Christ, the Immaculate

Conception and Assumption of Mary, the gracious Mother of God, St. Joseph her spouse, the Blessed Apostles Peter and Paul, and finally All Saints.

§ 2. Feast days of Patrons are not subject to ecclesiastical precept; but Ordinaries of places can transfer the exterior solemnity to the next following Sunday.

§ 3. If anywhere some feast from those enumerated has legitimately been abolished or transferred, let nothing be innovated without consulting the Apostolic See (Can. 1247).

Therefore among us the same feasts of precept remain as before.

Feasts which are not enumerated in this canon 1247, § 1, by that very fact and by the law itself, are nowhere any longer of precept, even if in some nation, diocese, or place they were previously of precept by particular law or custom, even centenary custom of the place, or by special concession of the Holy See. ... Thus the Pontifical Commission for authentically interpreting the canons of the Code, Feb. 17, 1918.

On the Second Precept of the Church: To Observe Fasting and Abstinence on Certain Days

I say 1st. It belongs to the supreme ecclesiastical authority alone to establish, transfer, or abolish days of abstinence and fasting common to the universal Church. Ordinaries of places can prescribe peculiar days of abstinence and fasting for their dioceses or places only by way of an act. - Cf. Can. 1244. - Let what was said in n. 327 be compared.

I say 2nd. The law of abstinence forbids eating meat and broth from meat, but not eggs, dairy foods, and any condiments whatsoever, even from the fat of animals (Can. 1250).

I say 3rd. § 1. The law of fasting prescribes that only one meal be taken per day; but it does not forbid taking some food morning and evening, while nevertheless the approved custom of places concerning the quantity and quality of foods is observed.

§ 2. Nor is it forbidden to mix meat and fish in the same refection, nor to exchange the evening refection with dinner (Can. 1251).

I say 4th. § 1. The law of abstinence alone is to be observed on each Friday.

§ 2. The law of abstinence and fasting together is to be observed on Ash Wednesday, the Fridays and Saturdays of Lent and the Ember days, and on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord.

§ 3. The law of fasting alone is to be observed on all the remaining days of Lent.

§ 4. On Sundays or feasts of precept the law of abstinence, or of abstinence and fasting, or of fasting only, ceases, except for a feast in the time of Lent; nor are vigils anticipated. Likewise it ceases on Holy Saturday after noon (Can. 1252).

I say 5th. By these canons nothing is changed concerning particular indults, concerning vows of any physical or moral person, or concerning the constitutions and rules of any approved religion or institute, whether of men or of women living in common, even without vows (Can. 1253).

I say 6th. § 1. All who have completed the seventh year of age are held by the law of abstinence.

§ 2. All from the completed twenty-first year of age to the begun sixtieth are bound by the law of fasting (Can. 1254).

The aforesaid canons clearly set forth what it is licit to eat, how much to eat, what kind of thing to eat, and when to eat, according to the law of abstinence and fasting.

The precept of abstinence, of fasting and abstinence together, and of fasting alone, although according to the common opinion it admits smallness of matter, obliges under grave matter all those for whom it is enacted. For the matter of the law of each is grave; the law is held as grave by all theologians, and therefore it simply obliges gravely, whether you regard the law of abstinence alone, or of fasting alone, or of both conjointly.

But since the feasts among us which are of precept remain the same as before, "for these, not for the rest ... the faithful can enjoy the relaxation or dispensation from observance of the law of fasting and abstinence granted by the very recent Motu Proprio." Cf. Sacred Congregation of the Council, Aug. 28, 1911.

"In Apostolic indults, by which mitigations or dispensations are conceded from abstinence and fasting in regions within and outside Europe, especially in Latin America," there are comprehended "Religious families, as regards abstinence and fasting prescribed by the general law of the Church, unless religious are excluded from the indult"; but as regards the aforesaid, there are not comprehended those things "established by their own Rules and Constitutions, unless in the indult mention is expressly made of this dispensation"; "therefore those not observing abstinence and fasting do indeed transgress the Rule and Constitution, but not the law of the Church, and therefore incur only the fault and penalty established by the Constitutions and Rules." Thus the Sacred Congregation for Religious, Sept. 1, 1912.

Chapter I. On the Law of Abstinence and Fasting

Article I. On Abstinence from Meat and Broth from Meat

I say 1st. The law of abstinence forbids eating meat and broth from meat, but not eggs, dairy foods, and any condiments whatsoever, even from the fat of animals (Can. 1250).

Therefore on days of abstinence two things are forbidden, meat and broth from meat; all other things are permitted: fish, eggs, dairy foods, and any condiments from the fat of animals.

Questions

Question 1. What comes under the name of meat, eggs, and dairy foods?

Response. Under the name of meat come all animals living and breathing upon the earth, as theologians commonly admit from the rule handed down by St. Thomas; or, as St. Alphonsus suggests, n. 1011, animals which have warm blood; or that which the custom of the region has as meat; or, if neither custom is at hand, the doubt can be solved by considering the mind of the Church in sanctioning the choice of foods, that it might provide for restraining and diminishing the concupiscence of the flesh through salutary abstinence. Let it be examined whether an animal of this kind is similar or dissimilar to those whose eating is forbidden, and whether its flesh is discerned as

fit for nourishing and strengthening the human body more powerfully; and if it appears thus, that flesh is to be placed among forbidden things. Benedict XIV, *De syn. dioec.*, lib. 11, c. 5, n. 12. These four things will serve much for solving every doubt.

But under the name of eggs and dairy foods are understood all those things which derive their origin from flesh and have the nature of food.

Eggs and dairy foods and condiments even from the fat of any animals whatsoever are permitted; the use is no longer restricted to the fat of swine's flesh. Moreover butter is permitted, and margarine.

Pepsin is not prohibited on days of abstinence, nor, as it seems to us, gelatin. On the contrary, bovine flesh prepared with peptone (*peptonized beef*), meat extracts, as they are called, are prohibited. You may see *The Encyclopedia Britannica*, v. 10, p. 613; v. 21, p. 131. By equal reason, stock, i.e., the essence of meat cooked with bones, etc., is prohibited.

Question 2. What must be said concerning the use of lard?

Response. It is certain that it is not licit to eat it in pieces and after the manner of a side-dish, because thus it is reputed as meat. Yet it is licit to use it, even in the evening collation, either as a condiment or for cooking foods, provided that it has previously been liquefied. But this condition, which seems to be required by the Sacred Penitentiary, is sufficiently observed if the lard is liquefied in the very cooking of the foods and the fleshy and thicker particles are separated.

Question 3. What is meant by broth from meat?

Response. Broth properly is the liquid of those things which are cooked (*broth*); broth from meat is the liquid of cooked meat: *chicken-broth*, *mutton-broth*, *beef-broth*, etc. Fat is distinguished from gravy; "the former," says Alberti in the book *On Ecclesiastical Fasting*, "is a light substance which floats above in a vessel, but the latter remains dissolved in water."

Question 4. Whether for those who are not held to fasting, and to whom it is licit by virtue of an indult to eat meat, it is licit to eat these several times in the day?

Response. Affirmatively, provided that the Bishop in the concession of the indult has not placed an express limitation; but the Sacred Penitentiary declared in a response to the Bishop of Buffalo that to place this limitation "is not expedient." Wherefore, except in the case of this limitation, it will be licit for those who are not held to fasting, whatever may finally be the cause why they are not held to it, to eat meat several times in the day, whether the Ordinaries of places have declared this lawfulness, or whether they have said nothing. - I said, whatever may finally be the cause why they are not held to it; for considering the practice which today is in force at Rome and the doctrine which is handed down there, and with the declarations of the Sacred Penitentiary weighed more carefully, it does not seem that a distinction is to be made, as far as this question is concerned, between those who are exempt from fasting by virtue of labor or age, and those who are simply dispensed by legitimate authority. - Cf. *Acta S. Sedis*, vol. 1, p. 426, nn. 7 and 8 with notes; and vol. 14, p. 568. - *Nouvelle Revue Theologique*, vol. 14, pp. 251 and following.

Article II. On the Law of Fasting

I say 1st. § 1. The law of fasting prescribes that only one meal be taken per day; but it does not forbid taking some food morning and evening, while nevertheless the approved custom of places concerning

the quantity and quality of foods is observed.

§ 2. Nor is it forbidden to mix meat and fish in the same refection, nor to exchange the evening refection with dinner (Can. 1251).[1]

From these things, therefore, it is clear: 1st. that the law of fasting consists primarily and essentially in one full refection;

2nd. that to take something morning and evening is not forbidden;

3rd. but that how much and what kind is taken depends upon approved custom;

4th. that the law concerning not mixing foods has been abolished;

5th. that it is also licit to exchange the little supper with dinner;

6th. that fasting, as such, does not import abstinence; that the latter and the former are entirely distinct; and that one can consist without the other;

7th. that it is also licit on a day of fasting alone to eat meat.

[1] Cf. Addenda, p. 1093, n. 26.

Questions

Question 1. What can be taken in the morning among us, with the fast intact?

Response. A little piece of bread can be taken with a draught of coffee or tea, provided nevertheless that the quantity of food does not much exceed about two ounces, and that it is bread which is taken. This custom is in force among us. The law says: "it does not forbid taking something morning and evening." Something is indeterminate, to be determined by approved custom. The end of the law at this point seems to be to concede something lest the law itself be rendered too difficult to observe. Certainly so great a variety of peoples cannot be ruled by one rule. How much is permitted here or there, provided that only one full refection is employed, custom indicates and weighs. Again, among us the quality of food is determined, that it be bread, and the quantity, that it be only more or less two ounces.

Question 2. Is it licit several times per day to take a very little piece of bread or of another food besides the morning little piece?

Response. Negatively, because it is not permitted by custom, except, as theologians have it, once or twice before drinking, lest the drink harm. Wherefore small eatings are not only venial sins taken separately, but also a grave sin if, repeated rather often on the same day, they coalesce into grave matter. For prop. 29 was condemned by Alexander VII, which reads thus: "On a fast day, he who rather often eats some little thing, even if in the end he has eaten a notable quantity, does not break the fast." - Notice besides that those small eatings repeated through the whole day are illicit not only if they are taken besides the little piece, but even if they are taken in place of it; and the reason is that it is certainly licit to take the little piece, but only at that time, quantity, and quality which are permitted by custom. - Cf. St. Thomas, 2-2, q. 147, art. 6. - St. Alphonsus, nn. 1018 and following.

Question 3. Is it licit, fasting being uninjured, to drink several times per day?

Response. Affirmatively, if it concerns those liquids which of themselves are ordered and commonly employed for quenching thirst, according to the axiom of theologians: Liquid does not break the fast. Indeed it is also licit to take one of these liquids, e.g., wine, with the express intention of allaying hunger. The reason is that the law of fasting commands only abstinence from food, but not from drink; and according to St. Thomas, "the statute of positive law does not attend to the intention of the one observing, but to the act itself, because the mode of virtue does not fall under precept, but is the end of the precept." - But what is said here of wine is to be applied, for our customs, to beer, coffee, and tea, because these do not have the nature of food but of drink. The same seems to have to be said even if a little sugar and some drops of milk are mixed with coffee or tea, because then also they retain the nature of drink. - Cf. St. Thomas, 4, dist. 15, q. 3, art. 4, q. 1. - St. Alphonsus, n. 1022. - Kenrick, tract. 4, part. 2, n. 45.

Question 4. Does a drink of water mixed with sugar and juices of orange or citron fruits break the fast?

Response. Negatively, unless you mix so great an amount of their substance into the water that that drink is judged to have the nature of food. The reason is that from common estimation, he who would take such a mixture (*lemonade*) would not be said to eat but to drink. Indeed St. Alphonsus concedes that it can be taken even if it is congealed by ice (*ices*, etc.). - The same, as is clear, is not to be said if it concerned milk congealed by ice (*ice cream*), because milk, especially if it is thick, has the nature not of drink but of food. - Cf. St. Alphonsus, n. 1022.

Question 5. What must be said concerning a drink of chocolate?

Response. The solution depends on the quantity of chocolate which is mixed with the water. Those who have one ounce and a half put into ordinary cups, or, with such quantity diminished, substitute bread in proportion, and use such an aid once in the day, certainly are not to be disturbed. But if someone should wish to use this drink several times per day, it is necessary that a much smaller quantity of chocolate be employed. "In the way," says Kenrick, "in which it is prepared among us, it plainly has the nature of drink and can be taken after the manner of tea or coffee." - Cf. St. Alphonsus, n. 1023. - Kenrick, loc. cit., n. 45.

Question 6. Is one who inculpably took a double refection in the day, when the error has been detected or the excusing cause removed, held under grave matter to abstain from a third?

Response. Negatively, probably, and the reason is that since the essence of fasting is situated in one eating, after a twofold refection fasting has been made impossible. But *a fortiori* he who has culpably already taken two can add a third refection, because here he has already violated the precept not only materially but also formally. But it must be said otherwise in each case if it concerned not the quantity but the quality of foods, because this is a divisible precept. Cf. St. Alphonsus, n. 1030; and *Hom. Ap.*, n. 20. - Baller., note (a), p. 456.

Question 7. What if on a day of fasting you have inadvertently breakfasted?

Response. If you have taken a little something, e.g., one or another ounce of food, you ought to fast according to custom, yet without abandoning the refection and collation at the accustomed hours; for the fast was not substantially injured. But if you have taken a quantity equivalent to an entire collation, you ought to transfer dinner to the evening time; or if you do not wish or cannot act thus,

once dinner has been taken at the accustomed hour, you ought so to diminish the evening collation that you reduce it to the little piece of bread with a draught of coffee or tea which is usually taken in the morning by those fasting. - If finally the quantity which you took was equal to the accustomed refection, then probably you are held to nothing. The reason is that from those things to be said below, the hour of refection so pertains to the essence of fasting that it cannot be anticipated much, and accordingly, breakfast having been taken, which is equivalent to a refection, toward the eighth or ninth hour, the substance of the fast probably has been made impossible.

Question 8. What quantity of food can be taken in the little refection or collation?

Response. According to St. Alphonsus and many other theologians, who rest upon common custom, about eight ounces of food, at least ordinarily speaking, can be taken. Others recur to another rule and permit a fourth part of supper, namely of the principal refection which each person usually takes on fast days. This last rule is too vague or liable to scruples. The quantity of eight ounces seems to be denied to no one, but a greater quantity is to be conceded to those for whom this would not suffice for restoring strength and would be with grave inconvenience. Certainly an altogether fixed rule cannot be established, since attention ought also to be paid to constitution, duties to be performed, the duration of the fast, etc. In general it is licit to take as much as one judges necessary for avoiding an indisposition which would impede him from suitably performing his duties. Account must also be had of one's own region, if in some place a greater quantity of food is necessary. - Cf. St. Alphonsus, n. 1024. - Baller., note (b), p. 457.

In various places, from introduced custom, on the vigil of the Nativity or on the Lord's Supper it is licit to take a quantity twice as great, but this custom is not in force everywhere.

Question 9. What quality of foods can be employed in the collation?

Response. That quality of foods can be observed which approved custom permits, as canon 1251 suggests. Thus among us fish, eggs, dairy foods, cheese, legumes, fruits, vegetables, bread, etc.

Question 10. Is it licit in the collation to take porridge, or bread cooked with water and some other food conceded by custom?

Response. Affirmatively, but then it is not licit to use eight ounces of bread, the liquid not counted, but only four or five. The reason is that bread through cooking and fermentation with water acquires another nature, so that from these there is made something one, and it becomes one larger substance. The same likewise must be said of other cooked foods (*mush*) which are usually made from spelt or rice. - But it can be conceded, says St. Alphonsus, that during the refection itself someone dip bread in water or wine, and thus also take eight ounces of bread moistened with wine; since no fermentation intervenes here, and the liquid, since it serves only as a vehicle, is not counted. - Cf. St. Alphonsus, n. 1029. - Salmant., cap. 2, n. 77.

Question 11. Do electuaries break the fast?

Response. Negatively, if they are taken by way of medicine and in small quantity; e.g., for the digestion of foods, for strengthening the stomach.

Question 12. What quantity of food is judged grave matter if it is taken outside the morning little piece, refection, and collation?

Response. It is controverted. Matter which, added to the evening collation, would make another refection must without doubt be judged grave. But certainly the quantity of two ounces is to be held as light matter. Not a few judge the quantity equivalent to half of the collation, or four ounces, to be grave matter.

Article III. On the Days of Abstinence Alone, of Abstinence Together with Fasting, and of Fasting Alone

I say. § 1. The law of abstinence alone is to be observed on every Friday.

§ 2. The law of abstinence together with fasting is to be observed on Ash Wednesday, on Fridays and Saturdays of Lent and on Ember days, on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord.

§ 3. The law of fasting alone is to be observed on all the remaining days of Lent.

§ 4. On Sundays or feasts of precept the law of abstinence, or of abstinence and fasting, or of fasting only, ceases, except for a feast in the time of Lent; nor are vigils anticipated. Likewise it ceases on Holy Saturday after noon (Can. 1252).

By this canon the days are assigned on which abstinence alone is commanded; abstinence and fasting; fasting alone; and on which the command of one, the other, or both ceases. Finally, the anticipation of vigils is removed.

Wherefore outside Lent no day is of fasting alone; within Lent no day of abstinence alone is enumerated; outside Lent the days of fasting together with abstinence are thirteen, namely the nine weekdays of the Ember Days and four vigils; within Lent the days of fasting and abstinence are fifteen and a half, namely the first and second Wednesday, and all the Fridays and Saturdays except the afternoon of Holy Saturday. The remaining days of Lent, except Sundays, are days of fasting alone; the remaining Fridays of the year are days of abstinence alone. But if the law of which we are treating falls on some feast of precept, the law of abstinence, fasting, or both together ceases, except for a feast in the time of Lent.

The Advent fasts which formerly existed among us in some places are abolished. - Cf. Can. 6, 1244.

Abstinence and fasting are commanded on Ash Wednesday, on Fridays and Saturdays of Lent, and on Ember days, on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord. On these days meat and broth from meat, and more than one eating, are forbidden; in this meal, with meat and broth from meat excluded, any other foods are permitted; the morning and evening little refections are also conceded, in which the quantity and quality are to be determined according to approved custom.

Finally, the days on which the law of abstinence, the law of abstinence and fasting, or the law of fasting only ceases are determined; these are Sundays or feast days of precept, except for a feast in the time of Lent. In the future vigils are not anticipated, and thus the very obligation of fasting and abstinence falls. Moreover, from noon of Holy Saturday the faithful are bound by neither the law of fasting nor of abstinence.[1]

[1] Cf. Addenda, p. 1125, n. 81; p. 1107, n. 50.

Article IV. On the Permanence of Particular Indults

I say. By these canons nothing is changed concerning particular indults, concerning vows of any physical or moral person, concerning the constitutions and rules of any approved religion or institute, whether of men or of women living in common, even without vows (Can. 1253).

Therefore those various indults which have been conceded to our region remain in their full force. If some person is bound by vow to abstain on certain days, notwithstanding the present canons the vow continues to oblige; the rules and constitutions also remain of any religion or approved institute living in common, whether with or without vows. In Apostolic Indults by which mitigations or dispensations are conceded from abstinence and fasting in regions within and outside Europe, religious families are comprehended as regards the general law of the Church, unless religious are excluded from the Indult; but they are not comprehended as regards abstinence and fasting established by their own Rules, unless express mention is made in the indult concerning this dispensation. If they do not observe this law of abstinence and fasting of the Order, they violate the rule and contract the guilt of the violated rule, but not the guilt of the violated universal law of the Church.

You Will Ask. Is the abrogation of Indults concerning fasting and abstinence under the title of the Bull of the Crusade and of the Summaries, declared by the Apostolic letters of January 1, 1910, to be extended to those regions which once belonged to New Spain and afterward were annexed to the Federated States of America?

Response. Negatively. P. Card. Gaspari - Jan. 1918.

Article V. On the Subjects of This Law

I say. § 1. All who have completed the seventh year of age are held by the law of abstinence.

§ 2. All from the completed twenty-first year of age to the begun sixtieth are bound by the law of fasting (Can. 1254).

The terminus from which of the law of abstinence is the seventh year completed; of the law of fasting, the twenty-first completed. The terminus to which of the law of abstinence is the term of life; of the law of fasting, the sixtieth year begun.

Article VI. On the Hour of Refection

Although originally on fast days the single refection was not taken except toward sunset, nevertheless in our times it can licitly be taken nearly at midday, as is clear from universal custom and the consent of theologians. - Cf. St. Alphonsus, n. 1016; and *Hom. Ap.*, n. 9.

Questions

Question 1. Does the hour of refection pertain to the essence of fasting, so that he sins gravely who notably anticipates it?

Response. It is controverted; yet certainly it is licit to exchange the evening collation with dinner.

Question 2. How long can dinner be prolonged?

Response. Nothing can be absolutely determined concerning this; but it does not seem that it can be prolonged beyond two hours without some fault. - Cf. St. Alphonsus, n. 1020; and *Hom. Ap.*, n. 10.

Question 3. Does he break the fast who interrupts the refection and, after some interval has elapsed, returns to it again?

Response. If the interruption is slight, e.g., of one quarter of an hour, it is free from every fault, even if it is done without reason. But if the interruption is very notable, e.g., of two hours, and prolonged without reason, it cannot be excused from grave sin, because it cannot be called one refection. But if the interruption is had for a grave cause, there is no sin in returning to the table, even with a notable interval interposed, when the preceding refection was not sufficient; because the Church never intends to oblige one to pass the day without sufficient refection. - Cf. St. Alphonsus, n. 1020.

Question 4. Can he who has risen from the table with the intention of eating no more sit down at the table again?

Response. Affirmatively, probably, if the fellow-diners are still eating, or if a new dish is placed on the table which he did not know was to be placed there. The reason is that it is still morally considered the same dinner. Cf. St. Alphonsus, n. 1020.

Question 5. If someone in the morning, because of a journey, has taken breakfast, is he held to fast if afterward he does not set out?

Response. Affirmatively, if the breakfast is equivalent to the collation, because then, an inversion having been made, the fast is still substantially possible. But otherwise the response must be made, on account of the opposite reason, if the breakfast is equivalent to the ordinary refection.

Chapter II. On Causes Excusing from Fasting

The causes excusing from fasting are usually reduced chiefly to three:

1st. to impossibility, whether physical or moral;

2nd. to piety or charity;

3rd. to dispensation, as was said concerning the other precepts.

Questions

Question 1. Who are those who certainly are excused from the law of fasting?

Response. Certainly excused are: 1st. the poor begging from door to door; 2nd. the sick, the infirm, the convalescent, and the weak, and all those who, unless they take something often during the day, suffer notable headache or dizziness; 3rd. all those who exercise works that are very laborious, e.g., stonecutters, farmers, potters, weavers, wool-workers, fullers, porters, wagon-drivers, sailors who row, blacksmiths, carpenters and masons, runners who carry letters, bakers, shoemakers, etc. - 4th. Pregnant or nursing women, etc. etc.

To these and many others having been enumerated, Kenrick, n. 60, adds these things: "If we add the special circumstances of these regions, it will easily appear that few are held obligated to this law, which formerly was observed so strictly. Most of the faithful indeed in these provinces are occupied either in cultivating fields or in other heavy labor; besides which, fasting-foods by which someone

eating once per day may be sufficiently restored are not easily procured, and the things which grow from American soil are said not to contain very much juice and nourishment. Therefore missionaries must take care lest, by clinging too closely to the old discipline, they provide some persons an occasion of sinning out of error." Cf. Kenrick, tract. 4, part. 2, nn. 49 and seq. - Cf. St. Alphonsus, nn. 1033 and seq.

Question 2. Are all those excused from fasting who, although they are occupied with laborious work, are nevertheless so robust that they can easily fast?

Response. Affirmatively, probably; and the reason is that in all these matters attention must be paid to that which happens commonly and of itself, not to exceptions. Besides, if it were otherwise, the door would now be opened to many scruples and anxieties. - Cf. St. Alphonsus, n. 1043.

It is useless to enumerate many other cases, about which theologians treat. Yet it must always be kept before the eyes that the Church, as a pious mother, certainly wills the exercise of penance, but not the diminution of labor, or some grave extrinsic harm. But if there is doubt concerning the sufficiency of the excusing cause, recourse should be had to dispensation. - Finally it is helpful here to report the concession made to American soldiers and sailors, concerning which Kenrick speaks thus: "Pius IX conceded, at the prayers of the Bishop of Buffalo, that American soldiers and sailors should universally be exempted from the law of abstinence, six days excepted, namely Ash Wednesday, the last three days of Holy Week, and on the Vigil of the Assumption of the B. V. M. and of the Nativity of the Lord. This is to be understood of those who actually serve in camps, ships, and garrisons, but not those who are absent by permission. Families using a common table with them enjoy that privilege, but not those which dwell far away." - Cf. Kenrick, tract. 4, part. 2, n. 37. Among the faculties conceded by Apostolic authority and to be valid during the war in the Army and Navy of the Federated States of North America, the sixteenth is described thus: - "By virtue of the Pontifical indult all who belong to the Army and Navy are dispensed from fasting and may eat meat, except on Ash Wednesday, the Vigil of the Nativity of the Lord, Friday of Holy Week, and before noon of Holy Saturday."

Here finally must be commemorated the concession recently made "in favor of laborers in the Federated States of America," by virtue of which there is granted "the faculty to individual Ordinaries for ten years of permitting the use of meat in those circumstances of places and persons in which they shall judge that a true difficulty of observing the common law of abstinence exists. But from this permission, besides all the Fridays of the whole year, there must also be excluded Ash Wednesday, the whole time of Holy Week, and the vigil of the Nativity of the Lord. But on those days on which the use of meat is permitted by the Ordinary, this permission for those obligated to fasting must be extended only to the single meal. A concession of this kind must be considered made not only to individual laborers, but also to their families, so that all members of the same participate in the indult."

But if you ask what here is signified by the name "laborers," it seems that the response must be that by this word are to be understood, not all who apply themselves to any labor whatever, but only those whom in English we are accustomed to designate by the word "workingmen." - This is gathered both from the purpose of the concession and from the mind of those who petitioned for it. Cf. *Amer. Eccl. Review*, vol. 12, p. 425.

§ 1. Not only local Ordinaries, but also pastors, in individual cases and for a just cause, can dispense individual faithful subject to them and individual families subject to them, even outside the territory, and in their own territory also travelers, from the common law concerning the observance of feasts and likewise concerning the observance of abstinence and fasting, or even of both.

§ 2. Ordinaries, on account of a peculiar cause of a great concourse of people or of public health, can also dispense the whole diocese or place from fasting and from abstinence, or even from both laws at once.

§ 3. In an exempt clerical religion the Superiors have the same power of dispensing in the manner of a pastor, as regards the persons mentioned in can. 514, § 1 (Can. 1245).

On the Third Precept of the Church: To Confess Sacramentally at Least Once in the Year

I say. There exists a precept of annual confession, and it is proved from can. 906 of the new code: Every faithful person of either sex, after he has arrived at the years of discretion, that is, at the use of reason, is held faithfully to confess all his sins at least once in the year. Cf. Can. 906.

He who makes a sacrilegious confession does not satisfy the precept of confessing sins (Can. 907).

Questions

Question 1. How is the year to be computed in this matter?

Response. The Doctors do not agree; for some compute it from one confession to another, others from the beginning of January to the end of the month of December, and still others, whom the custom received almost everywhere favors, compute it from Easter to Easter. - Cf. St. Alphonsus, *de Sacram. paenit.*, n. 662. - Lugo, *de paenit.*, disp. 15, n. 154.

Question 2. To what confessor is confession to be made?

Response. It can be made to any confessor legitimately approved, even of another rite. - Cf. Can. 905.

Question 3. What is the age of discretion?

Response. Pius X, by the Decree *Quam singulari*, 8 Aug. 1910, established the following norm concerning the first Communion of children to be observed everywhere. "I. The age of discretion, both for Confession and for Holy Communion, is that in which the child begins to reason, that is, about the seventh year, whether above it or even below it. From this time begins the obligation of satisfying both precepts, of Confession and of Communion. II. For first Confession and for first Communion a full and perfect knowledge of Christian doctrine is not necessary. Yet the child afterward must gradually learn the whole catechism according to the measure of his intelligence. III. The knowledge of religion which is required in the child, that he may suitably prepare himself for first Communion, is that by which he perceives according to his capacity the mysteries of faith necessary by necessity of means, and distinguishes the eucharistic bread from common and bodily bread, so that he may approach the Most Holy Eucharist with that devotion which his age allows. IV. The obligation of the precept of Confession and Communion, which burdens the child, chiefly falls upon those who must have care of him, that is, upon parents, upon the confessor, upon teachers, and

upon the pastor. But to the father, or to those who take his place, and to the confessor, according to the Roman Catechism, it belongs to admit the child to first Communion. VII. The custom of not admitting children to confession, or of never absolving them, when they have arrived at the use of reason, is altogether to be disapproved." "In this," says the same Supreme Pontiff in the Letter to Cardinal Priest of the Holy Roman Church Fischer, 31 Dec. 1910, "we wish the Christian faithful to understand well that the matter is not so much that obedience be given to the precept of the Roman Pontiff, as that satisfaction be made to an office of this kind, which arises spontaneously from the very doctrine of the Gospel." - Cf. John vi. 54, where concerning the Eucharist.

To the proposed doubts ... namely:

I. Whether children who, although they have not yet completed the seventh year of age, nevertheless, on account of the age of discretion or use of reason, have already been admitted to first communion, are held by the twofold precept of confession at least once in the year, and of Communion once in the year, at least at Easter?

II. Whether canon 1252 has now begun to have the force of obliging everywhere, notwithstanding particular laws, etc.?

His Eminence Cardinal Petrus Gasparri, President of the Commission, responds:

"to I: affirmatively.

to II: affirmatively.

And the reason as regards the first doubt is evident: For although can. 12 states, 'By merely Ecclesiastical laws there are not bound ... those who, although they have attained the use of reason, have not yet completed the seventh year of age,' nevertheless it adds, 'unless something else is expressly provided in law.' But indeed in can. 859, § 1, and 906, it is expressly provided: 'Every faithful person of either sex, after he has arrived at the years of discretion, that is, at the use of reason, etc.'" 3 Jan. 1918.

Question 4. Is he who is not burdened by mortal sins held to confess venial sins, by reason of the precept of annual confession?

Response. Negatively, because the Church established that confession must be made which is prescribed by the institution of Christ. But Christ prescribed no other confession except that of mortal sins, as the Council of Trent explains, sess. 14. - Cf. St. Alphonsus, *de Sacram. Paenit.*, n. 667.

Question 5. Is he who, within the year of obligation, however it may be computed, has confessed only venial sins, either once or more often, still held by the precept of annual confession, if before the end of the year he shall have fallen into mortal sin?

Response. Affirmatively, as it seems; and the reason is that the precept of confessing once in the year regards the confession of mortal sins, as was said above. Hence, just as one who has only venial sins is not held to confess, so also he who afterward in the same year commits a mortal sin is not considered to have satisfied the precept through a confession of venial sins. - Cf. St. Alphonsus, *de Sacram. Paenit.*, n. 669. - Suarez, *de Paenit.*, disp. 35, nn. 9 and 12. - Lugo, *de Paenit.*, disp. 15, n. 162.

On the Fourth Precept of the Church: To Receive the Sacrament of the Eucharist within Paschal Time

I say 1st. § 1. Every faithful person of either sex, after he has arrived at the years of discretion, that is, at the use of reason, must once in the year, at least at Easter, receive the sacrament of the Eucharist, unless perchance, by the counsel of his own priest, for some reasonable cause, he has judged that he must abstain for a time from receiving it (Can. 859).

Moreover, for this region the Holy See has already benignly consented that, unless it is restricted by each Bishop, the time of Paschal communion be computed from the first Sunday of Lent inclusively to the Sunday of the Most Holy Trinity likewise inclusively. - Cf. *Conc. Plen. Balt. II*, n. 257.

I say 2nd. § 2. Paschal communion is to be made from Palm Sunday to Low Sunday; but it is lawful for local Ordinaries, if the circumstances of persons and places so require, also to anticipate this time for all their faithful, but not before the fourth Sunday of Lent, or to prorogue it, but not beyond the feast of the Most Holy Trinity.

§ 3. The faithful are to be urged that each satisfy this precept in his own parish; and those who shall have satisfied it in another parish should take care to inform their own pastor concerning the fulfilled precept.

§ 4. The precept of Paschal communion still presses, if anyone has not fulfilled it in the prescribed time, for whatever cause (Can. 859).[1]

[1] Cf. Addenda, p. 1141, n. 105.

Questions

Question 1. Is he who omitted to communicate during Paschal time still held, when he can, to communicate?

Response. Affirmatively; for thus says canon 859 § 4.

Question 2. Is he bound to communion who, when Paschal time has not yet begun, foresees that he will be impeded?

Response. It is greatly controverted; but it seems that it must be denied. Nevertheless, with that time now begun, you are held to satisfy this obligation as soon as possible if you foresee an impediment; indeed you are held to remove even grave impediments, because that precept is also divine and of grave moment. Cf. St. Alphonsus, *de Sacram. Euchar.*, n. 298.

Question 3. Does he sin gravely who defers communion to the first or second day after Paschal time has elapsed?

Response. Affirmatively, of itself; and the reason is that, although a delay of this kind can seem small in itself, it is nevertheless sufficiently notable in comparison with the duration of Paschal time according to the common law. But since among us this time, from Apostolic indult, has been extended to almost one hundred days, a delay of one or two days certainly must not be considered notable.

On the Fifth Precept of the Church: To Contribute Some Subsidy for the Suitable Support of Pastors

This precept is of natural and positive law, both divine and ecclesiastical. It is natural, indeed, insofar as it involves the necessary support of the ministers of the Church; for, as St. Thomas excellently proves, natural reason dictates that, just as to those who watch over the common utility, namely princes and soldiers and others of this kind, stipends for livelihood are owed by the people, so also to those who minister to divine worship unto the salvation of the whole people, the people themselves should supply the necessities of livelihood. In this same sense that precept is also of positive divine law, as is clear from Matt. x, 10, and I Cor. ix, 7 and seq. But St. Thomas adds: "the determination of a certain part is reserved to the ordering of the Church." Moreover, in the beginnings of the Church there was no determination of this kind, and priests were supported by the gifts of the faithful spontaneously contributed, especially those which were offered on the occasion of celebrating the sacrifice. To this ancient custom succeeded the payment of tithes, which several Councils enjoined, especially in the ninth century. But today in most places tithes have been removed, and the Clergy is supported either by the revenues of benefices, or by a pension received from the Government, or by the uncertain generosity of the offerings of the faithful, as obtains among us. This is indeed uncertain and diverse according to the statutes and customs of diverse dioceses, but perhaps up to now it has been lacking to no one. - Cf. St. Thomas, 2-2, q. 87, art. 1. - Kenrick, tract. 4, part. 2, nn. 62 and seq.

The Church also has the right, independent from the civil power, of requiring from the faithful those things which are necessary for divine worship, for the honorable support of clerics and of other ministers, and for the other ends proper to itself (Can. 1496).

Questions

Question 1. Are the faithful among us who never contribute anything toward the support of pastors to be considered guilty of mortal sin?

Response. Concerning this matter Kenrick writes thus: "All must be persuaded of this, that individual persons ought for their part to contribute something, lest priests lack necessary support; but as long as no certain law imposes and defines the burden, we do not dare to condemn as guilty of mortal sin him who omits to contribute an equitable portion, whenever there is no danger lest priests lack on that account, or other faithful be too heavily burdened. But those who from avarice refuse to give anything, in the circumstances which we have indicated, seem gravely guilty and unworthy of sacramental absolution; for they violate the law of Christ the Lord concerning the support of ministers of the Gospel, and they expose themselves and others to danger to salvation." - Cf. Kenrick, loc. cit. n. 64.

Here the following statute of the Third Plenary Council of Baltimore, under n. 292, is to be attended to: "Report says (may it be vain and false) that in some places priests are found who, where grave fault does not appear, deny the benefit of sacramental absolution to the faithful who are unwilling to give alms to collections, to which it is not established that they are held under grave sin; indeed also (which is far more detestable) they refuse to assist the sick and those near to death and to provide the sacraments. We can scarcely bring our mind to suspect anything so atrocious and unworthy concerning the ministers of our churches. But if anyone exists who has attempted any such thing, let

Bishops remember that they are gravely failing in their office unless they take action against the guilty one according to his desert."

Question 2. Can priests who do not have equitable support from their own faithful collect alms outside the limits of their parish?

Response. Negatively, unless they have permission of their own Bishop granted in writing. For thus the Baltimore Fathers established: "Since from the wandering about of vagabond and unknown priests for collecting alms from the faithful grave inconveniences arise, it has seemed good strictly to prohibit that any priest, without the permission of his own Bishop, granted in writing, should ask alms outside the congregation committed to him, or in another diocese without the license of the Ordinary." - Cf. *Conc. Plen. Balt. II*, n. 119; and *Conc. Plen. Balt. III*, nn. 294 and 295.

Question 3. What must be said concerning those priests who, during the solemnities of Masses, withdraw from the altar, for collecting offerings?

Response. They are altogether to be condemned, as is clear from the following words of *Conc. Plen. Balt. III*, n. 293: "Most grave are the words of the former Council, by which it condemned the perverse manner of acting of those priests who, during the solemnities themselves of Masses, withdraw from the altar and walk around the sacred building, asking alms from individual faithful. But so great appears the obstinacy of certain persons and their negligence even in observing the strictest laws, that we who have been constituted guardians of ecclesiastical laws are constrained with a loud voice to promulgate and inculcate anew the decree of our Predecessors. Therefore, the 'most shameful abuse, injurious to the Church and its sacred rites, and which provokes the shame and indignation of Catholics and the mockery and contempt of non-Catholics, we reprobate and decree must be utterly extirpated. In this matter the conscience of individual Bishops is burdened.'"

Entrance into the church for sacred rites is to be altogether free of charge, any contrary custom being reprobated (Can. 1181).

§ 1. There can be a distinct place in the church for magistrates, according to their dignity and rank, according to the norm of liturgical laws.

§ 2. Without the express consent of the local Ordinary, let no faithful person have a place in the church reserved for himself and his own; but the Ordinary is not to provide consent unless sufficient care has been taken for the convenience of the rest of the faithful.

§ 3. In concessions once made there is always present the tacit condition that the Ordinary can, for a just cause, revoke the concession, notwithstanding any lapse of time (Can. 1263).

Note. - Concerning the sixth precept of the Church, it will be treated where Matrimony is treated.

On the Censure and Prohibition of Books

I say 1st. § 1. It is the right of the Church to require that the faithful not publish books which it has not previously reviewed by its own judgment, and to prohibit, for a just cause, books published by whomever.

§ 2. The things prescribed under this title concerning books are applied to daily and periodical publications and to any other published writings whatever, unless something else is clear (Can.

1384).

By natural law itself any use of bad books from which a proximate danger of sinning arises is prohibited. But the Church, by its providence toward the faithful, has always applied diligent care "that, just as good seed is separated from darnel, so also sound and excellent books might be separated from spurious and apocryphal and pernicious books, lest Christian persons, by an incautious or rash use of these, should suffer detriment to the integrity of faith and morals." Apostolic Letters *Romani Pontifices* (17 Sept. 1900).[1]

Moreover, the Index or syllabus of prohibited books, most diligently reviewed and printed again, which he willed to be held as expressly inserted in the Letters *Romani Pontifices*, the same Pontiff, Leo XIII, approved by apostolic authority and commanded to be observed whole and inviolably by all in every place.

Wherefore, in order that the reading of some book be permitted, it is required that it neither be enumerated in the Index nor belong to any of those classes which the canons proscribe; but by no means is it sufficient that it not be found in the Index. For it would be neither possible nor necessary to register in the Syllabus all and every bad book. It must also be noted that the prohibition extends not only to the reading of books, but also to the retention, publication, defense, and donation of the same.

[1] Cf. Addenda, p. 1144, n. 117.

Questions

Question 1. Which books are to be subjected to prior censure?

Response. § 1. Unless ecclesiastical censure has preceded, let there not be published, even by laypersons:

1st. Books of the sacred Scriptures, or annotations and commentaries on the same;

2nd. Books which regard the divine Scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics, or other religious and moral disciplines of this kind; books and booklets of prayers, of devotion, or of doctrine and religious, moral, ascetical, mystical instruction, and other such things, although they seem to conduce to fostering piety; and generally writings in which there is something which particularly concerns religion and uprightness of morals;

3rd. Sacred images to be printed in any manner whatever, whether they have prayers adjoined, or are published without them.

§ 2. The license of publishing the books and images about which in § 1 can be given either by the local Ordinary proper to the author, or by the Ordinary of the place in which the books or images are made public, or by the Ordinary of the place in which they are printed, yet in such a way that, if any one of those Ordinaries has denied license, the author cannot seek it from another Ordinary unless he has informed the same concerning the license denied by another.

§ 3. Religious, however, must also first obtain the license of their own major Superior (Can. 1385).

Question 2. What especially is forbidden to secular clerics and religious concerning publishing books and concerning writing in newspapers? What also is forbidden to laypersons concerning

writing in certain newspapers?

Response. § 1. Secular clerics are forbidden, without the consent of their Ordinaries, and religious, without the license of their major Superior and of the local Ordinary, to publish books also which treat of profane matters, and to write in daily papers, sheets, or periodical booklets, or to direct the same.

§ 2. But in daily papers, sheets, or periodical booklets which are accustomed to attack the Catholic religion or good morals, let not even Catholic laypersons write anything, unless a just and reasonable cause, approved by the local Ordinary, recommends it (Can. 1386).

Secular clerics need the consent of their Ordinaries; Religious need the license both of the Major Superior and of the local Ordinary; both are subject to this respective ordinance both as regards books, even if they treat of profane matters, and as regards writing in daily papers, sheets, and booklets, and as regards the direction of these. As regards daily papers accustomed to attack the Catholic religion or good morals, let not even laypersons write anything in them without a cause approved by the local Ordinary.

Question 3. Of what Sacred Congregation is license required for publishing those things which pertain to the causes of beatification and canonization of Servants of God?

Response. The license of the Congregation of Sacred Rites is required. - Cf. can. 1387.

Question 4. Whose license is required for publishing books of indulgences, etc.? What is established particularly concerning Apostolic indulgences?

Response. § 1. All books of indulgences, summaries, booklets, sheets, etc., in which concessions of them are contained, are not to be published without the license of the local Ordinary.

§ 2. But the express license of the Apostolic See is required that it may be lawful to publish in type, in whatever language, both an authentic collection of prayers and pious works to which the Apostolic See has annexed indulgences, and a list of apostolic indulgences, and a summary of indulgences either previously collected but never approved, or now for the first time to be gathered from diverse concessions (Can. 1388).

It is of the highest moment that those booklets, sheets, etc., not spread among the people false notions and apocryphal Indulgences. Hence there is need of the license of the local Ordinary.

Question 5. Is a special permission required for publishing collections of decrees of the Roman Congregations?

Response. Collections of decrees of the Roman Congregations cannot be published again, unless license has first been obtained and the conditions prescribed by the Moderators of each Congregation have been observed (Can. 1389).

In this one way provision can be made against the danger that decrees and responses be adulterated.

Question 6. About what must there be certainty in publishing liturgical books and their parts?

Response. In publishing liturgical books and their parts, and likewise litanies approved by the Holy See, there must be certainty concerning their agreement with approved editions by the attestation of the Ordinary of the place in which they are printed or are made public (Can. 1390).

An error in these books can bring great harm to the people of God.

Question 7. Does the approbation of some original text suffice for a new edition, or for a translation of the same into another language? Are chapters excerpted from periodicals and published separately to be held as new editions?

Response. § 1. The approbation of the original text of some work does not suffice either for translations of the same into another language or for other editions; wherefore both translations and new editions of an approved work must be furnished with a new approbation.

§ 2. Chapters excerpted from periodicals and published separately are not considered new editions and therefore do not need a new approbation (Can. 1392).

Question 8. What conditions are required so that versions of the Sacred Scriptures into the vernacular language may be printed in type?

Response. Versions of the sacred Scriptures into the vernacular language cannot be printed in type unless they have been approved by the Apostolic See, or unless they are published under the vigilance of the Bishops and with annotations chiefly excerpted from the holy Fathers of the Church and from learned and Catholic writers (Can. 1391).[1]

The reason of the law is lest any man presume to twist the Sacred Letters to his own senses, contrary to that sense which Holy Mother Church, to whom alone has been entrusted the custody of the deposit of Faith and the judgment concerning the sense and interpretation of the divine utterances, has held and holds. Cf. Pius IX, Encycl. Ep., *Nostis et Nobiscum*.

[1] Cf. Addenda, p. 1109, n. 52.

Question 9. What is the office of censors?

Response. § 1. In all episcopal Curias let there be official censors, who examine things to be published.

§ 2. Examiners in carrying out their office, laying aside all acceptance of persons, are to have before their eyes only the dogmas of the Church and the common doctrine of Catholics which is contained in decrees of general Councils or in constitutions or prescriptions of the Apostolic See and in the consent of approved doctors.

§ 3. Censors are to be chosen from both clergies, commended by age, erudition, and prudence, who in approving and disapproving doctrines go by a middle and safe path.

§ 4. The censor must give his judgment in writing. If this is favorable, the Ordinary may grant the power of publishing; nevertheless, the judgment of the censor is to be prefixed to it, with his name inscribed. Only in extraordinary circumstances and very rarely, by the prudent judgment of the Ordinary, can mention of the censor be omitted.

§ 5. Let the name of the censor never be made known to authors before he has issued a favorable judgment (Can. 1393).

Question 10. How is this license of publishing to be granted? Whether and how must it be clear that it has been granted?

Response. § 1. The license by which the Ordinary grants the power of publishing is to be granted in writing, to be printed at the beginning or at the end of the book, sheet, or image, with the name of the one granting it expressed, and likewise the place and time of the concession.

§ 2. But if the license seems that it should be denied, unless a grave cause requires otherwise, the reasons are to be indicated to the author asking (Can. 1394).

On the Prohibition of Books

I say. § 1. The right and office of prohibiting books for a just cause belongs not only to the supreme ecclesiastical authority for the universal Church, but also, for their subjects, to particular Councils and to local Ordinaries.

§ 2. From this prohibition recourse is given to the Holy See, but not with suspensive effect.

§ 3. Also the Abbot of a monastery of his own right and the supreme Moderator of an exempt clerical religion, with his Chapter or Council, can prohibit books to their subjects for a just cause; and the same, if there is danger in delay, other major Superiors with their own Council can do, yet under this condition, that they refer the matter as quickly as possible to the supreme Moderator (Can. 1395).

Indeed, the right and office of prohibiting books belongs to those upon whom it is incumbent to watch assiduously and to strive with every means that the integrity of faith and of Christian morals suffer no detriment. Nothing can be thought more pernicious than bad books for staining souls through contempt of religion and enticements to sin. Hence to the Holy See for the universal Church, to particular councils for their subjects, to Bishops for the diocese, to the Abbot of a monastery of his own right, and to the Supreme Moderator of an exempt clerical religion for his own, and to other major superiors if there is danger in delay, this right has been entrusted.

Questions

Question 1. Are books condemned by the Apostolic See prohibited everywhere?

Response. Books condemned by the Apostolic See are to be considered prohibited in every place and into whatever language they are translated (Can. 1396). - Cf. Leo XIII, *Officiorum ac Munerum*, n. 45; S. C. of the Index, 24 Aug. 1864.[1]

[1] Cf. Addenda, p. 1145, n. 117 bis.

Question 2. To whom chiefly does it belong to denounce pernicious books? To whom? In what manner are they to be denounced?

Response. § 1. It belongs to all the faithful, especially to clerics and those constituted in ecclesiastical dignity and those who excel in doctrine, to denounce books which they have judged pernicious to local Ordinaries or to the Apostolic See; but by a peculiar title this pertains to Legates of the Holy See, local Ordinaries, and Rectors of Catholic Universities.

§ 2. It is expedient that in the denunciation of bad books not only the title of the book be indicated, but also, as far as can be done, the reasons be set forth why the book is thought to have to be prohibited.

§ 3. For those to whom the denunciation is brought, let it be sacred to keep secret the names of those denouncing.

§ 4. Local Ordinaries, by themselves or, where there is need, through suitable priests, are to watch over books which are published in their own territory or are set out for sale.

§ 5. Books which require a more subtle examination, or concerning which the judgment of the supreme authority seems to be required for attaining a salutary effect, Ordinaries are to refer to the judgment of the Apostolic See (Can. 1397).

Question 3. What does the prohibition of books effect?

Response. § 1. The prohibition of books effects this, that without due license the book can neither be published, nor read, nor retained, nor sold, nor translated into another language, nor in any way communicated to others.

§ 2. A book prohibited in any manner whatever cannot again be brought to light unless, corrections having been made, he who had prohibited the book, or his Superior or successor, has given license (Can. 1398).

Publication, reading, retention, sale, translation, and communication of the book with others are prohibited without license.

Question 4. What books are prohibited by the law itself?

Response. By the law itself are prohibited:

1st. Editions of the original text and of the ancient Catholic versions of sacred Scripture, even of the Oriental Church, published by any non-Catholics whatever; likewise versions of the same into whatever language, prepared or published by the same;

2nd. Books of any writers whatever, defending heresy or schism, or striving in any way whatever to overthrow the foundations themselves of religion;

3rd. Books which deliberately attack religion or good morals;

4th. Books of any non-Catholics whatever which treat expressly of religion, unless it is established that nothing against the Catholic faith is contained in them;

5th. The books about which in can. 1385, § 1, n. 1 and can. 1391; likewise from those about which in the cited can. 1385, § 1, n. 2, books and booklets which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private, if they have been published without the prescriptions of the canons being observed;

6th. Books which attack or deride any of the Catholic dogmas, which defend errors proscribed by the Apostolic See, which detract from divine worship, which contend to overthrow ecclesiastical discipline, and which deliberately assail with reproaches the ecclesiastical hierarchy, or the clerical or religious state;

7th. Books which teach or commend superstition of any kind, sorceries, divination, magic, evocation of spirits, and other things of that kind;

8th. Books which establish dueling or suicide or divorce as lawful; which, treating of Masonic sects or other societies of the same kind, contend that these are useful and not pernicious to the Church and civil society;

9th. Books which expressly treat, narrate, or teach lascivious or obscene things;

10th. Editions of liturgical books approved by the Apostolic See, in which anything has been changed, so that they do not agree with authentic editions approved by the Holy See;

11th. Books by which apocryphal indulgences, or indulgences proscribed or revoked by the Holy See, are disseminated;

12th. Images printed in any manner whatever of Our Lord Jesus Christ, of the Blessed Virgin Mary, of Angels and Saints, or of other Servants of God, alien from the sense and decrees of the Church (Can. 1399).[1]

Propugnantes, that is, those defending by reasons brought forward, those trying to persuade, not merely those asserting or narrating. Foundations of religion are such as the immortality of the human soul, the existence of God, miracles, and truths of this kind; in whatever manner, seriously or with ridicule. *Acatholici* are all those who do not belong to the Catholic Church. *Ex professo*, that is, not incidentally, but by design. If it is established that no error concerning this faith is contained in these books, they are not prohibited. *Impugnant*, those who by reasons brought forward deny a dogma. *Detrahunt*, they speak badly about someone by taking away his reputation. Lascivious and obscene things: books which inculcate, treat, defend, and teach the nature of lascivious matters, which declare the manner of doing lascivious things; pornographic books, by which in practice harm is brought to morals; wherefore many books in which love affairs are narrated are not understood, although these also are very often prohibited by natural law.

The use of books about which in can. 1399, n. 1, and of books published contrary to the prescription of can. 1391, is permitted only to those who devote themselves in any way to theological or biblical studies, provided that the same books have been published faithfully and integrally, and that in their prolegomena or annotations the dogmas of the Catholic faith are not attacked (Can. 1400). Wherefore editions of the original text and of the ancient Catholic versions of sacred Scripture, even of the Oriental Church, published by any non-Catholics whatever; likewise versions of the same into whatever language, prepared or published by the same; and books published contrary to the prescription of canon 1391, namely versions of the sacred Scriptures in a vernacular language published without due approbation, or without the vigilance of Bishops, and without annotations, are permitted only to those who apply themselves to theological and biblical studies, that is, who are learned men devoted to these sciences, all beginners of sacred theology, and those who are occupied with theology and the Hebrew and Greek language in the schools of Seminaries.

[1] Cf. Addenda, p. 1146, n. 118.

Question 5. Who are not bound by the ecclesiastical prohibition of books?

Response. Cardinals of the Holy Roman Church, Bishops, even titular Bishops, and other Ordinaries, the necessary cautions having been applied, are not bound by the ecclesiastical prohibition of books (Can. 1401).

Question 6. What can Ordinaries grant in this matter?

Response. § 1. Ordinaries, as concerns books prohibited by the law itself or by decree of the Apostolic See, are able to grant license to their subjects only for individual books and in urgent cases only.

§ 2. But if they have obtained from the Apostolic See a general faculty of permitting their subjects to retain and read proscribed books, let them grant it only with discernment and for a just and reasonable cause (Can. 1402).

Question 7. Does the Apostolic faculty of reading prohibited books carry with it the faculty of reading books proscribed by Ordinaries?

Response. § 1. Those who have obtained the apostolic faculty of reading and retaining prohibited books cannot for that reason read and retain any books whatever proscribed by their Ordinaries, unless in the apostolic indult express power has been given to the same persons of reading and retaining books condemned by anyone whatever.

§ 2. Moreover, they are bound by a grave precept to guard prohibited books in such a way that these do not come into the hands of others (Can. 1403).

Question 8. Is it licit to sell books treating of obscene things?

Response. Let booksellers not sell, lend, or retain books expressly treating of obscene things; let them not have other prohibited books for sale unless they have obtained due license from the Apostolic See, and let them not sell them to anyone unless they can prudently judge that they are legitimately sought by the buyer (Can. 1404).

Question 9. Does a license obtained with regard to forbidden books exempt someone from the prohibition of natural law?

Response. § 1. By a license obtained from anyone, no one is in any way exempted from the prohibition of natural law against reading books which present proximate spiritual danger to himself (Can. 1405).

Treatise VIII. On Justice and Right

Part I. On the Nature and Principles of Justice and Right

Chapter I. On the General Notions of Justice and Right

Article I. On the Nature of Justice

The name of justice seems to be derived from the just. But that is called just which is adequate and commensurate with its rule; whence justice in general is called whatever effects this adequation. - Hence sanctifying grace, and the complex of all virtues, and any good habit whatever, are accustomed and are able to be called justice; for in all these a certain adequation is had either with the ultimate end or with the total or partial rule of uprightness.

But in the stricter sense justice is defined by St. Thomas, after Ulpian: "The constant and perpetual will of rendering to each one his right." - It is called 1st. constant, because it is a habitual, deliberate, and firm purpose. - It is called 2nd. perpetual, not indeed on the part of the act, but on the part of the object, insofar as the just man wills that each one's right always be rendered to each one. - It is called 3rd. to each one, because justice is always toward another, and therefore requires diversity of persons; for no one can be called just toward himself or do injury to himself, because this is the violation of right, against another's will.

The definition of St. Thomas, a little changed by more recent authors, is presented thus: "A moral virtue inclining the will to rendering to each one his right constantly and perpetually according to equality." - Cf. St. Thomas, 2-2, q. 58, art. 1. - Lugo, disp. 1, nn. 1 and seq. - Lessius, lib. 2, sect. 1, n. 1. - Crolly, vol. 1, nn. 17 and 22. - Scavini, lib. 2, tract. 6, n. 287.

Justice is distinguished fourfold, namely legal, distributive, vindicative, and commutative, not insofar as they are so many species of the same genus, but because the first three participate in some way in commutative justice, which alone is such strictly.

1st. Legal justice inclines each one to render to the society of which he is a part all the duties which are required by the common good. Hence it pertains both to the subject and to the Prince himself, insofar as it orders both to the community as a part to the whole. It is called legal, because its principal office is to promote the observance of laws by which the common good is procured. It is also called general, because there is no act of virtue which it cannot, and sometimes must, command on account of the common good. - But this virtue falls short of the nature of rigorous justice, both because it is not wholly toward another, since the part is not something altogether diverse from the whole, and because it does not regard right strictly so called, or the right of property. Hence those who do not observe the laws are called rebels or wicked, but not unjust. Cf. St. Thomas, 2-2, q. 58, art. 5. - Lugo, disp. 1, n. 68. - Crolly, vol. 1, nn. 36 and seq. - Baller., note (e), p. 473.

2nd. Distributive justice is that by which honors, offices, and common burdens are distributed among the members of society according to the due proportion of merits or faculties. It resides properly in

the superior; nevertheless subjects also participate in it, not formally, but affectively, insofar as they acquiesce in the just distribution made by the superior; not otherwise than the guilty person who acquiesces in a just penalty exercises vindicative justice in his own way. - Yet observe that, if the discussion is about the distribution of honors and of other common goods, the debt is in the superior himself, as such, toward society, which alone has the right that honors be given to the more worthy, but not toward the more worthy themselves; and therefore no one has ever thought that the Prince is held to restitution toward someone, however much more worthy, because he has not conferred some common good or honor upon him. But if the discussion is about the distribution of burdens, often other justices concur: for on the part of the superior there exists the right of imposing necessary burdens, and on the part of subjects the debt of obeying the laws by which these burdens are imposed; and this is legal justice. Besides, the superior has the debt of imposing a proportionately greater burden on him who has greater faculties; and this is distributive justice, which he certainly would violate if, after a burden of ten, which otherwise is reputed just, has been imposed upon a rich citizen as one hundred, afterward he imposes the same burden upon another who is twice as rich.

Finally, commutative justice can concur, both if the superior exacts burdens not necessary from citizens, and if he oppresses some persons with unequal burdens. - Cf. St. Thomas, 2-2, q. 61, art. 1 and 2. - Lugo, disp. 1, n. 59. - Crolly, vol. 1, disp. 4, § 1, nn. 48 and seq.

3rd. Vindicative justice inclines the Prince to punish the guilty with congruous penalties for the good of society. Therefore it consists in the congruous punishment of the guilty for the public good, and it can easily be reduced to other justices: to legal justice, indeed, insofar as it promotes the common good; to distributive justice, insofar as it observes due proportion in inflicting penalties upon the guilty; and to commutative justice, insofar as the judge exercises it by office. For from all these things it comes about that punishment is called congruous; whence many do not hold vindicative justice as a peculiar species of justice distinct from the others. - Cf. Baller., note (b), p. 475.

4th. Commutative justice inclines the will to rendering to each private person his own strict right, by preserving equality of thing to thing, that is, of the thing rendered to the thing owed. This regards only private persons, as distinct from one another; and if sometimes it intervenes between the community and citizens, this happens where the community conducts itself or is taken not as a whole, but as a part or particular person which by contract or quasi-contract is obligated to another particular person. But it is called commutative because it is chiefly concerned with exchanges and contracts. Of this alone we shall treat, because it alone claims for itself the name of justice in the strict sense.

Article II. On the Nature of Right

Right, in the broader sense, is taken 1st. for skill in law, or jurisprudence; 2nd. for law or the rule of the just, and thus there is said to be natural right, positive, human, civil, canonical right, the right of nations, etc.; 3rd. for the sentence of a judge, and hence the word judge, as if one saying right. - But in the stricter sense, and taken actively, right is the legitimate power which someone has concerning his own thing or to a thing owed to him; but passively it is the same as what is just and equitable, or is that which is owed to one having such a power on account of that very power. - Therefore passive right is the debt itself; active right is the title or reason of the debt.

Right is chiefly divided into right in a thing and right to a thing. Right in a thing is that by which someone has the thing itself obligated to himself. This right confers a real action, which namely immediately touches the thing itself; wherefore whoever enjoys this right can reclaim his thing wherever it has passed. But right to a thing is that which someone has, that the thing become his, or that the thing be obligated to him. It gives a personal action against one impeding the acquisition of the thing; whence it is called personal right, because it immediately touches the person.

Article III. On the General Principles of Right and Justice

I. God alone is truly and absolutely Lord of all things. The reason is that, since he alone is the supreme creator and conserver of all things, all things have absolute dependence upon him alone. - Hence it follows 1st. that no created being can possess with respect to God, that is, use some thing as absolutely his own; and 2nd. that the right of property cannot be in a created being unless God wills it.

II. A man can be proprietor with respect to another man. The reason is that this is repugnant under no aspect: not on the part of men, because, since these are equal by nature, they do not depend in this matter one upon another; not on the part of the things themselves, because these rather have an aptitude to be possessed and brought into use, although not by diverse persons at the same time on account of their finitude; nor finally on the part of God, because God wills that we use created goods as means for conserving life, as is clear from the nature of those goods and from the exigency of man.

III. If any man has legitimately made certain goods his own, he has acquired in them a right inviolable of itself. The reason is that, this condition having been posited, God, who gave both aptitude and exigencies to man for the use of things, immediately communicates a right in them; but that right cannot be violated by another man without disorder. - Hence it follows 1st. that there is a natural precept promulgated and sanctioned by God himself, forbidding that the right of another be injured, and prescribing that if at any time it has been injured, it be restored whole; 2nd. that he who unjustly usurps another's thing becomes guilty both toward neighbor and toward God: toward neighbor indeed, because he injures his natural independence; toward God, by violating the divine right communicated to the neighbor, and at the same time the natural precept commanding that the aforesaid right be observed.

IV. Commutative justice obliges under grave sin and with the burden of restitution. The reason of the first is taken both from the fact that in the Scriptures eternal punishment is decreed not only once against those who violate commutative justice, and because the violation of another's right, since it is essentially harmful, by its own nature introduces great disorder into the mutual fellowship of men, and is repugnant to charity, which moves one to will another's good. But the reason of the second is that commutative justice regards equality of thing to thing, which can be brought about only through full restitution, once it has been violated.

V. The other species of justice of themselves also oblige under grave sin, but not with the burden of restitution. The first is clear from this, that, their definitions being inspected, grave harm to the whole society would follow if they could be violated either with impunity or under light sin only. But the other is gathered from this, that there cannot be the burden of restitution where either equality or relation to another is lacking, namely where restitution itself is not possible. - Nevertheless, commutative justice is often joined to the others, and thus the burden of restitution is introduced.

Wherefore a magistrate or judge is held to restore if, on account of grave negligence in punishing, he is the cause why private persons or the community suffer grave damage, not by virtue of legal justice having been neglected, but of a violated contract by which, in assuming the office, he implicitly obligated himself to prevent the damages of subjects.

Chapter II. On the Principal Species of Right

Article I. On the Species of Right which is Called Dominion

Dominion, taken in general and in a broad sense, signifies any power whatever: sometimes it is used to express especially the power of jurisdiction, and sometimes even the possessed thing itself. But here it is taken in the strict sense for the right of property, and it is usually defined as "the faculty of disposing of some thing as one's own for every use not prohibited by law or agreement." - Cf. Molina, disp. 3, tract. 2. - Lugo, disp. 2, nn. 2 and 3. - Carrière, n. 16.

Dominion is chiefly divided into perfect and imperfect, according as it is the right of disposing both of the thing itself and of its utility, or only of one or the other. - This latter, namely imperfect dominion, is again divided into direct and indirect, which is also called useful, according as it regards only the property of the thing or only its utility.

Here also mention must be made of dominion which they call eminent. This dominion consists in the right which the supreme authority in society has of disposing, sometimes for a most grave cause, of the goods of private persons for the good of the community, e.g., of the field of some citizen for constructing a road. But then just compensation must be given; and concerning this, among us, special provision is made in the Constitution itself; for, Amend. art. 5, at the end, it is said: "Nor shall private property be taken for public use without just compensation." - Hence, since eminent dominion does not confer the right of disposing, but rather the right of buying some thing for the common good, it must be reduced to the power of jurisdiction rather than to the right of property.

§ I. On the Object of Dominion

I say. Although man can have both useful and direct dominion in goods of fortune legitimately acquired, nevertheless in relation to goods of soul and body he has only useful dominion. The reason of the first is that, on the one hand, material things have a natural aptitude for sustaining our life, and on the other, man not only can but also is held to conserve his life through their use; besides, there are many material things whose use involves their destruction, and this necessarily supposes direct dominion. But the reason of the second is that God alone is the supreme lord of the whole man; for it is said in Deut. xxxii, 39: "I will kill and I will cause to live." Yet man has useful dominion of soul and body, because he must use them that he may tend toward attaining his end.

Questions

Question 1. Does man have dominion of his own reputation?

Response. Affirmatively, according to the common opinion; for even concerning reputation there belong to man the primary acts of dominion, such as to acquire it by labor, to condone its restitution, etc. Therefore ... Nevertheless prudence requires that he not squander it without a just reason, and

sometimes he is held under grave sin to preserve it diligently by reason of scandal, of removing damage to the family, etc. - Cf. St. Alphonsus, *de octavo praec. Decal.*, n. 983.

Question 2. Can man have useful dominion over another man?

Response. Affirmatively; and the reason is that any man is lord of his own labor; and therefore he can alienate it for his own utility and hand it over into the dominion of another. For a lord can dispose of the object of his dominion according to his judgment. Hence by natural right man can even sell himself to another in perpetuity as regards useful dominion, because he is lord of his own labor not only for some time but in perpetuity. Wherefore servitude, or the perpetual state of subjection by which someone is held to furnish all his services to another in exchange for food, is not of itself repugnant to the right of nature. - But from how many titles servitude can arise is a matter full of difficulties, and as regards practice, today among us it has no utility. - Cf. Lugo, disp. 6, nn. 11 and seq. - Kenrick, tract. 8, n. 97.

§ II. On the Subject of Dominion

I say. Every man, and only man, is capable of dominion. The reason is that, according to St. Thomas, the foundation of dominion is rational nature. And indeed, every man, and only man, can know the utility of things, will to apply them to himself if they belong to no one, and dispose of them thus applied to himself for his own end and his own advantage. Besides, he alone is capable of right or dominion who is capable of injury; but he alone suffers injury who suffers it against his will: however, he must be unwilling not indeed through the will by which he wills his own thing, but through the will by which he wills to retain the right to the thing itself, or to oblige others not to take it away. But brute animals cannot have such a will, since they can know neither moral obligation nor turpitude. Therefore.

Hence neither little children nor the insane themselves are incapable of dominion, as is clear from the practice of all peoples and from the reason just given; for, as was said, dominion is founded in the rational nature of men and its powers, but not in the actual exercise of those powers. Cf. St. Thomas, 2-2, q. 66, art. 1. - Lugo, disp. 3, n. 1.

Point I. On the Dominion of Children of the Family

Children of the family here are properly called those who, born from legitimate marriage or legitimated, of whatever sex they may be, are still subject to paternal power. - I said 1st. born from legitimate marriage or legitimated, because concerning the dominion of those who are spurious, judgment must be made only according to the equity of the right of nature, but not according to the special dispositions of the law. - I said 2nd. still subject to paternal power, because since only children not yet emancipated are reputed by law as infants, limitations are given only concerning their dominion, and therefore the question can be raised concerning them alone.

But emancipation can take place either by general law or by privilege and special declaration, and at a diverse age of children of the family, according to the diversity of regions. - Among us, with two or three States excepted, emancipation takes place in the twenty-first year both for males and for females. Cf. Wells, *Every Man His Own Lawyer*, p. 240.

You Will Ask. What can be the diverse goods of children of the family, and what dominion can they exercise?

Response 1st. From Roman Law the goods of children are: 1st. *castrensia*, that is, acquired on occasion of military service; 2nd. *quasi-castrensia*, or acquired from some public office, e.g., of judge, physician, etc.; 3rd. *adventitia*, which come from inheritance or donation, yet not made by the father or with a view to the father; 4th. *profectitia*, which the son gains from paternal goods, e.g., by carrying on business with the father's money, or which are given to him with a view to the father. - Moreover, of *castrensia* or *quasi-castrensia* goods the son has both dominion of property and usufruct; he also has administration if he has attained puberty. But the property of *adventitia* belongs to the son, but usufruct and administration to the father; finally *profectitia* in all respects belong to the father. Cf. St. Alphonsus, n. 488.

Response 2nd. Since, as Kenrick says, "these distinctions are not in force in the law which we use," the proposed question must be answered by distinguishing between the case in which the child of the family receives goods by title of donation or inheritance, and the case in which he acquires them by virtue of labor or industry. - In the first case, administration belongs to the father, but dominion of property and usufruct to the son. In the other, there is need of a new distinction; for either 1st. the son labors outside the paternal house and is not fed by the father, and then he will be able to make the goods which he gains his own, because he has been dismissed or is reputed dismissed; or 2nd. the son labors in the paternal house or outside it and is fed by the father, and then all things which he gains belong to the father.

But in that last case a threefold exception must be made in favor of the son, namely: 1st. if the father remits from his right, and he is considered to remit if he permits the son to contract marriage; 2nd. if the son by reason of his condition is not held to labor; 3rd. if he has evidently and undoubtedly labored more than the others of the family. - Although this last opinion can sometimes be held in practice, at least after the fact, nevertheless it is not to be taught publicly everywhere on account of the inconveniences which would follow through abuse. - Cf. St. Alphonsus, nn. 488 and 544. - Lessius, lib. 2, cap. 12, n. 81. - Kenrick, tract. 10, part. 1, n. 41. - Kent, *Comment.*, vol. 2, nn. 191 and seq.

See Bouvier, *Law Dictionary*, 8th Edit., *Parent and Child*. Cf. *Right to earnings of the child*.

Point II. On the Dominion of Wives

From Roman Law the goods of a wife are of three kinds, namely:

1st. Dotal goods, or goods which the wife already possessed, or which her father conceded to her for contracting marriage: the administration and usufruct of these are in the possession of the husband, but direct dominion is in the possession of the wife.

2nd. Paraphernal goods, or goods which the wife reserved to herself besides the dowry: these belong to her by full right.

3rd. Common goods, or goods which, by agreement had between the spouses or by determination of law, are brought into a certain partnership: of these, both direct and useful dominion belong to both spouses. - Cf. St. Alphonsus, n. 489. - Elbel, n. 69.

But in this region the three aforesaid names are taken otherwise, and the dominion of wives is different in it. For:

1st. "The dotal goods of a wife, according to our customs," says Kenrick, "are the third part of the immovable goods which the husband has possessed during marriage, which therefore he cannot alienate to the prejudice of the wife, unless she herself, questioned separately by a magistrate, has freely consented, and by her signature has renounced her right. If the husband by testament has left certain goods to the wife, that her dowry be excluded, it is in her power to reject them so that she may enjoy her right. Moreover, only during her life does her right remain, and when she has died, it passes to the heirs of the husband." Cf. Kenrick, n. 45. - Bouvier, *Law Dictionary*, under the word *Dower*.

2nd. Paraphernal goods among us mean all goods which pertain to the clothing or ornament of a woman, according to her condition, and which she used during marriage: these after the death of the husband belong altogether to the wife. - Cf. Kenrick, n. 42. - Bouvier, *Law Dictionary*, under the word *Paraphernalia*. - Wells, *Every Man*, etc., p. 82.

3rd. Common goods are those which are acquired by husband and wife together by title of purchase or of donation had during marriage. Each spouse possesses these goods as if the two spouses were one person, so that neither can sell them without the consent of the other. Cf. Kenrick, n. 44. - Kent, *Comment.*, vol. 4, part 6, lect. 55. - Bouvier, *Law Dictionary*, §§ *Dower*, *Husband and Wife*.

Questions

Question 1. Can a wife give alms from common goods?

Response. Affirmatively, even if otherwise she has her own goods, provided that it is done according to the custom of other women of the same condition. The reason is that a wife is not a servant but a partner; therefore she must have a certain administration in the house of the husband. Besides, the husband is deservedly presumed to consent to those things which are done by the wife according to the respectable custom of condition and region; and if he shows himself unwilling, such dissent is considered irrational, because the husband cannot deprive the wife of a right conceded to her by legitimate custom. - Cf. St. Alphonsus, n. 540. - Kenrick, n. 46.

Question 2. Does a wife sin by giving something from common goods for relieving the necessity of parents or children whom she has had from a prior marriage?

Response. Negatively, if she does not have her own goods, and through this necessary things are not lacking to the husband and his family. The reason is that by the right of nature the wife is held to relieve the aforesaid blood relatives, and therefore the husband is reasonably presumed to consent to this. Cf. St. Alphonsus, n. 542. - Kenrick, n. 46.

Question 3. Is the wife held to restore goods given in this manner when, the husband having died, she comes into the inheritance of dotal goods, or before his death she has acquired paraphernal goods?

Response. Negatively, if the goods given are of small moment, because then they are held as common alms, which, if they are made moderately, do not carry with themselves the burden of restitution. Indeed, the response must also be negative, at least probably, if the goods withdrawn are of greater moment; because all burdens which, while marriage stands, naturally befall one of the spouses are considered common to the other, and therefore the husband cannot be reasonably unwilling.

Point III. On the Dominion of Clerics

The goods of clerics are distinguished into four kinds, namely: 1st. Patrimonial goods, which come from paternal inheritance or from any other profane cause, for instance from donation, succession, etc.; 2nd. Quasi-patrimonial goods, which are also called quasi-ecclesiastical or casual, and these are those which are acquired on occasion and in view of functions, e.g., by celebrating Mass, preaching, etc.; 3rd. Ecclesiastical goods, which are received from benefices of the Church, e.g., from revenues of benefices, etc.; 4th. Parcimonial goods, which a cleric sets aside by living sparingly from the fruits of a benefice, and which he could consume by living honorably.

I say. Clerics have perfect dominion in patrimonial, quasi-patrimonial, and parcimonial goods, so that they can dispose of them at will. The reason is both that that dominion is nowhere found restricted, and that in this all theologians, even the stricter ones, agree.

Although a benefice-holder may have other non-beneficial goods, he can freely use and enjoy benefice fruits which are necessary for his honorable support; but he is held by the obligation of expending superfluous fruits for the poor or for pious causes, with the prescription of can. 239, § 1, n. 19 being saved (Can. 1473).

§ 1. Unless the contrary is proved, those things which are donated to rectors of churches, even of religious, are to be presumed to have been donated to the church.

§ 2. A donation made to the church cannot be repudiated by its rector or Superior without the license of the Ordinary.

§ 3. If a donation has been illegitimately repudiated, on account of the damages which have arisen thence an action is given for restitution in full or for indemnity.

§ 4. A donation made to a church and legitimately accepted by the same cannot be revoked on account of the ungrateful disposition of the Prelate or rector (Can. 1536).

Questions

Question 1. Are clerics badly expending the surplus of ecclesiastical goods held to restitution?

Response. Certain strict theologians, such as Collet and Antoine, respond affirmatively, because they say: clerics are only administrators and stewards of ecclesiastical goods. But the opinion denying is probable, because although it is established concerning the precept of giving these superfluous goods, nevertheless it is not established concerning the origin of this obligation, namely whether it proceeds from justice. This opinion is also called probable by St. Alphonsus in his reformed propositions, especially on account of the authority of St. Thomas. Observe moreover that for the gravity of fault in the violation of this ecclesiastical precept there is required a quantity much greater than in theft, namely, according to the truer opinion, about a twentieth part of the superfluous goods. - Cf. St. Thomas, 2-2, q. 185, art. 7. - St. Alphonsus, n. 491; and *QQ. Reform.*, n. 10.

Question 2. Whether the annual pension which is given to our Missionaries from the renting of pews is to be assimilated to ecclesiastical goods?

Response. According to the Constitution *Romanos Pontifices*, this annual pension is to be held as ecclesiastical goods.

§ 1. Temporal goods, whether corporeal, both immovable and movable, or incorporeal, which belong either to the universal Church and to the Apostolic See or to another moral person in the Church, are ecclesiastical goods (Can. 1497).

Point IV. On the Dominion of Authors

I say. Any man from natural right has a right in the fruit of his own ingenuity or industry. For if a thing bears fruit for its owner, *a fortiori* this must be true concerning internal faculties, since nothing can be more proper to a man. Wherefore the inventor of some art has a strict right that his secret not be stolen and, against his will, divulged to the public; but if this is done, the one causing damage will be held to restitution according to the measure of the injury inflicted. - Cf. Wells, *Every Man*, etc.; qq. 243 and seq.

Questions

Question 1. Does he violate another's right who publishes in type a manuscript work without the consent of the author?

Response. Affirmatively; and the reason is that it is established among all that a manuscript work is not in the public domain, but lies under the dominion of the author. The same must be said of one who would publish in type the public lectures of some professor or the sermon of an orator; for to teach publicly or to preach is not to hand over one's work to another for publishing and selling. - Yet except the case if someone delivers again from the pulpit a sermon already heard as if composed by himself, both because through this he does not properly claim the thing of another for himself, and because he does not necessarily and of itself harm the prior orator. - Cf. Carrière, n. 61.

Question 2. Does he who has published a book in type have the right of preventing anyone from committing it to the press and selling it with damage to the author or to the bookseller to whom the author has transmitted his right?

Response. Affirmatively, by positive right prevailing in most places, just as in these States, provided nevertheless that the conditions or formalities required by law have been fulfilled. But if there is question of natural right, it is controverted, and to some the denying opinion seems probable, because the author has a right in his work as long as it remains his own, namely is not handed over to the community, and thus as it were becomes of common right. Wherefore according to these, if someone in this region committed to type a book published in Europe without the permission of the author, strictly speaking and looking only to the right of nature, he does not seem to be accused of the temporal pecuniary damage which the author would suffer thence. I said 1st. strictly speaking, because by such a manner of acting, if not a right properly so called, public uprightness and natural decency seem to be injured. - I said 2nd. looking only to the right of nature, because if the contrary has been provided through international stipulation, the violator certainly would be held to paying the fine and congruous compensation. I said 3rd. concerning temporal pecuniary damage, for if the same or almost the same book were published under another name, then the true author would be damaged in the goods of reputation, which can never be lawful, and a sin of this kind is designated by a special name among all nations. - Cf. Carrière, ibid. - Kenrick, tract. 10, part. 1, nn. 13 and 14. - Bouvier, *Law Dictionary*, Ed. 8th. Cf. *Copyright*, *De lege lata* among us (March 4, 1909).

§ III. On the Acquisition of Dominion

Dominion can chiefly be acquired: 1st. by occupation; 2nd. by prescription; 3rd. by accession; 4th. by contracts. Concerning contracts we shall treat in the particular tractate; but now only concerning the first three modes of acquiring dominion.

Point I. On the Acquisition of Dominion by Occupation

Occupation is the real apprehension of a thing capable of dominion with the intention of acquiring it for oneself. Wherefore five conditions are required; for on the part of the subject it is required 1st. that some external act be posited, because a simple desire or intention is not sufficient; and 2nd. that there be the intention of acquiring dominion. But on the part of the object it is required 1st. that that which is apprehended be some corporeal thing, as, e.g., some part of land; 2nd. that that thing be capable of dominion, of which sort certainly the ocean or air is not; 3rd. that besides it belong to no one, because a right cannot arise against a pre-existing and remaining right. - Many theologians also require that the occupation not be prohibited by some positive law which reserves the thing to another owner, e.g., the State; but this condition is contained in the others.

I say. All the aforesaid conditions having been verified, occupation is a legitimate mode of acquiring dominion. The reason is taken both from the right of nature and from the practice and positive right of all nations.

Since the more frequent cases of acquiring dominion by occupation occur concerning animals and found things, we shall speak only of these.

I. On Animals

Animals are distinguished into three kinds, namely wild, tame, and tamed. - Wild or undomesticated animals are those which by nature live freely outside the society of man, such as hares, stags, fish, birds, etc. Tame or domestic animals are those which have a natural accustomed association with man, and return to him of their own accord, such as sheep, horses, hens, etc. Tamed animals are those which indeed are born to natural liberty, yet by man's industry are deprived of it, and become accustomed to his society, such as birds which are tamed by art and industry, doves, bees, etc. Many add a fourth class, namely those gone wild, which either have now put off a connatural tame disposition, or after they were tamed have resumed their former wild one. - Cf. Baller., note (a) and (b), p. 500.

I say 1st. Wild or undomesticated animals become the property of the first occupier, because they belong to no one, and otherwise their occupation is licit by natural right. But if they have been reduced into someone's dominion, they belong to him as long as they are kept in custody and have not recovered natural liberty. But they are considered to have recovered liberty when they have escaped custody in such a way that pursuit of them is difficult; and then they so cease to be under dominion that they can become the property of another occupier, just as if they had never had an owner.

I say 2nd. Animals wild by their own nature, but tamed, remain with the prior owner as long as they have not escaped his custody or have not lost the custom of returning; for animals of this kind belong to the possessor both by reason of occupation and also by reason of training and detention. But if

they have escaped the custody of the owner or have lost the custom of returning, they become the property of another first occupier, because they have recovered their first nature.

I say 3rd. Tame or domestic animals always belong to the first owner, however much they wander; whence they cannot be occupied by another. The reason is that domestic animals can never be said to have recovered their liberty, since from their own nature they are judged to have no liberty.

You Will Resolve. - 1st. A swarm of bees which has flown out from your hive is yours up to that point as long as it remains in your sight and pursuit has not become difficult for you; otherwise it becomes the property of the first occupier. Yet he who finds in another's field a tree in which a swarm of bees is contained does not by this already acquire dominion, but it is necessary that he enclose them in a hive. - Cf. Kenrick, loc. cit. n. 56. - Kent, *Comment.*, vol. 2, part 5, lect. 35, n. 350.

2nd. Doves going off by their own movement, without having been attracted by fraud, become the property of him in whose dovecote they settle. Otherwise if they have been attracted by fraud, e.g., by wholly extraordinary or very choice food. Cf. Lugo, disp. 6, nn. 42 and seq.

3rd. Fish which are in the sea or in navigable rivers and into which the tide of the sea ascends, belong to those taking them; but in lesser rivers the right of fishing is generally reserved to neighboring owners of the banks. - Cf. Kenrick, loc. cit. n. 57. - Kent, *Comment.*, vol. 3, part 6, lect. 52, nn. 411 and seq.

4th. He violates justice who takes oysters in that part of rivers where they have been reserved by another, or in which someone has an exclusive right of fishing; for through this they are reputed enclosed.

5th. He does not sin against commutative justice who hunts or fishes on another's land without his license, provided nevertheless that the land is accessible, or, if it is enclosed, is of such extent that individual animals can easily escape the hunter or fisherman; because animals of this kind are neither part of the land nor can they in these circumstances be considered as already apprehended by the owner of the land. - Cf. Lugo, disp. 6, n. 72.

6th. A wild animal wounded or caught by a snare belongs to the one wounding or to him who set the snare, if it is so wounded or caught that it is not going to escape, because then, and not otherwise, it will be said to have been apprehended. - Thus the theologians, with whom our Kent agrees, who says: "The possession must be so far established by the aid of nets, snares, or other means, that the animal cannot escape." - Cf. St. Alphonsus, n. 604; and *Hom. Ap.*, n. 71. - Kent, *Comment.*, vol. 2, part 5, lect. 35, n. 348.

II. On Found Things

Goods which can be found are distinguished into four kinds, namely: treasures, things recently lost, abandoned goods, and vacant goods. It will be said in particular concerning each what they are and to whom they belong.

I. Treasure from Roman Law is a hidden sum of money, of which no memory exists. But according to the laws of many nations, just as among us, by the name of treasure today is understood not only money, but also any other hidden movable thing estimable in price. - Wherefore Kent says: "Goods

found hidden in the earth go under the denomination of treasure-trove." - Cf. Kent, *Comment.*, vol. 2, part 5, lect. 35, n. 358. - Kenrick, loc. cit. n. 61. - Crolly, vol. 1, n. 641.

I say 1st. Treasure by natural right certainly belongs to the finder, if the finder is also the owner of the land. But if treasure is found on another's land, indeed much is disputed, but a probable opinion holds that then also the treasure belongs to the finder. The reason is that treasure cannot be held as a part of the land, and therefore the same must be established concerning it as concerning wild animals captured on unenclosed land.

I say 2nd. From Roman Law treasure also belongs to the finder if the finder is at the same time the possessor of the land where the treasure lay; otherwise it must be seen whether he found the treasure by chance or by industry. If by chance, he has a right to the half part; if by industry, the whole treasure yields to the owner of the land. Yet observe 1st. that there is required a sentence of a judge which declares industry to have been present, in order that the finder be held to hand over to the owner of the land that half part of the treasure which, if industry had been lacking, he could have retained for himself; 2nd. that owner of the land here means the one who has direct dominion; 3rd. that the finder is considered not the one who first touched the treasure, but the one who saw it or rendered it visible.

I say 3rd. From English law all treasures belong to the king, not only when they are found in some part of the national dominion, but also when they are found in some private field. Indeed, formerly those who hid found treasure were punished with capital punishment. Yet that law seems to be only penal; for, as Crolly notes, scarcely today is there a man of timorous conscience who would not retain found treasure. - Cf. Crolly, n. 642.

I say 4th. As regards this region, excepting Louisiana, where the dispositions of Roman and French law are in force, in the other States the laws establish nothing concerning treasure, and therefore the question is to be solved according to the norm of natural right, which always favors the finder. - The State of New York had imitated English law in this matter; wherefore every treasure found there belonged to the treasury, but this disposition was omitted in the revision of the laws of that State. - Cf. Kenrick, loc. cit. n. 61. - Kent, *Comment.*, loc. cit. n. 358.

From the things said you will gather 1st. that little stones, gems, amber, coral, found on the shore of the sea or elsewhere, belong to the finder, because these are not part of the land; 2nd. that mines of iron, lead, coal, silver, gold, etc., belong to the owner of the land, both because these are considered part of the land and because our laws and customs so establish. - Cf. Kenrick, n. 59.

II. Things recently lost are those movable goods which are involuntarily left by the owner. They differ from treasure both because they are not hidden or buried, and because ordinarily they have been recently lost.

I say. It is certain that things recently lost are to be returned when the owner appears, because the fact of loss is not a title for stripping an owner of his thing. Moreover, from the saying received by all, "for retaining, intention alone suffices; but for occupying, real apprehension with a legitimate intention of having is required," it follows both that the owner has not lost the right, because he retained the intention, and that the finder has not acquired it, because the occupation was not legitimate.

Questions

Question 1. To what is the finder held immediately after the finding of the thing?

Response. Often he is held by charity to take up the thing lest it perish, and thus to avert the harm of the owner. But, the thing having been taken up, he is held by justice to care for it; for then between him and the owner there arises a quasi-contract which is called management of affairs. He is also held by justice not only not to conceal the thing, but also to apply suitable means by which the owner can be found; but those means are called suitable which are proportionate to the value of the thing and the circumstances of time, place, and persons. - Cf. Baller., note (a), p. 504.

Question 2. Whether, suitable means having been applied for discovering the owner, and he not appearing, you can retain the found thing?

Response. It is controverted; for many judge that the found thing must then be expended for the poor or for other pious uses, because the owner, since he still retains right in his thing, is to be presumed to have this will. - But other theologians say more probably that the owner has then wholly lost the faculty of using his own thing, and therefore no longer has dominion of it. Therefore the will of the prior owner is not to be sought, as of one who, having morally lost dominion, can dispose of nothing concerning it. Therefore that thing is morally to be held as abandoned and capable of becoming the property of the first occupier; and therefore if afterward the owner appears, since the thing has already been consumed, the price is not to be restored. - Cf. St. Alphonsus, n. 603. - Lugo, disp. 6, n. 140. - Lacroix, lib. 3, part. 2, n. 86. - Kenrick, loc. cit. n. 62. - Crolly, n. 415. - Kent, *Comment.*, vol. 2, part 5, lect. 36, n. 356.

III. Abandoned goods are called those which the owner has cast away with the intention of no longer possessing them. This casting away can happen in two ways: either positively, when someone sends away among useless things clothing already worn out, perforated shoes, or something similar; or negatively, when someone gathers those things which he desires to retain, caring nothing about the rest, as, e.g., happens concerning ears of grain and grapes after harvest or vintage.

I say. Abandoned goods, whatever the manner of abandoning may be, licitly become the property of the first occupier. The reason is that as soon as they have been abandoned, they have become goods of no one, and therefore capable of occupation. Yet the custom of the region is to be regarded when the discussion is about goods abandoned negatively, because from custom it is known whether the owner had the intention of casting away dominion.

You Will Ask. Whether those things which are found in the sea, or near the bank after shipwreck, or cast away from fear of it, are to be reputed abandoned goods?

Response. Negatively; and the reason is that the owner did not have the intention of casting away those goods, and he always retains the hope of recovering them at least partially. Positive laws also stand in the way. Hence the supreme assembly of the United States in the year 1825, sect. 9, established: "If any person shall plunder, steal, or destroy any money, goods, merchandise, or other effects, from or belonging to, any ship or vessel, or boat, or raft, which shall be in distress, or which shall be wrecked ... every person so offending shall be guilty of felony, etc." It is said in the question after shipwreck or cast away from fear of it, because goods which were voluntarily left for saving life or the ship (*derelict at sea*) are to be distinguished from those (*wrecks*) which come from the breaking

of the ship without any act of the will. - But the response applies to both cases. - Cf. Kenrick, nn. 65 and 66.

IV. Vacant goods are all those which are left by a deceased person who neither has heirs nor made a testament.

I say. By natural right vacant goods become the property of the first occupier, for they no longer have any owner. But by positive right, also prevailing among us, these goods are adjudicated to the treasury; but this seems to be restricted to immovables only, at least before the sentence of a judge. - Cf. Carriere, nn. 285 and 359. - Kenrick, n. 63.

You Will Ask. What must be said concerning the goods of foreigners who have died in this region without a testament, but nevertheless have natural heirs?

Response. Those goods certainly cannot be called vacant, because although in some States they are adjudicated to the treasury, nevertheless by natural right they pass to the heirs. - I said in some, because in Maryland, Pennsylvania, Illinois, and Ohio those goods are distributed to the heirs after the manner of goods which belong to citizens. Where this liberality of laws is not in force, Kenrick thinks that those natural heirs are obligated only in the external forum not to receive those goods. - Cf. Kenrick, n. 64. - Kent, *Comment.*, vol. 2, part 4, lect. 25, nn. 61 and 70.

Point II. On the Acquisition of Dominion by Prescription

Prescription is a means instituted for acquiring some right or for freeing oneself from some obligation, under conditions established by law. Hence it is clear that there is a twofold prescription by reason of matter: one acquisitive, by which some right is acquired; the other liberative, by which someone is freed from some burden or servitude. Although indiscriminately each is called prescription, nevertheless in law the first is called *usucapio*, and the second simply prescription. - Cf. Scavini, lib. 2, n. 386.

I say. Prescription clothed with the due conditions is a legitimate means of acquiring dominion, even in conscience; for not only civil and canon law in very many places hold it as legitimate, but natural right also, although not immediately, seems to require it, both for establishing certainty of the dominion of certain things, and thus for putting an end to lawsuits, and for preventing the negligence of owners. Wherefore, according to St. Thomas, if someone has truly prescribed, he is not held to restitution if afterward the former owner appears. The Church receives prescription, as a mode of acquiring and of freeing oneself, according as it is in the civil legislation of the respective nation, for ecclesiastical goods, with the prescription of the canons which follow being saved (Can. 1508). - But the conditions for prescribing legitimately are five, namely, aptitude of the thing, good faith, title, fact of possession, and the time required. These conditions are altogether necessary, and indeed understood according to the laws of the place in which prescription takes place. The reason is that the immediate force for transferring dominion through prescription is taken from human law. Cf. St. Thomas, *Quodlib.* 12, q. 16, art. 24. - St. Alphonsus, nn. 504, 507, and 517.

The conditions for prescribing are usually expressed by these little verses:

> You will not take by use, unless these five things be yours: Let there be an apt thing, faith, title, possession, time.

A few things must be said concerning each.

I. A Prescriptible Thing

All and only those things generally are subject to prescription which come under dominion and private commerce, and for the acquisition of which there can be a title that is legitimate both by the right of nature and by positive right. - For since the end of prescription is to transfer dominion by the authority of law, such a transfer cannot be made concerning a thing which from its own nature or from the disposition of laws cannot come into the dominion of private persons.

The following are not subject to prescription:

1st. Those things which are of divine right, whether natural or positive;

2nd. Those things which can be obtained from apostolic privilege alone;

3rd. Spiritual rights, of which laypersons are not capable, if there is question of prescription for the advantage of laypersons;

4th. The certain and undoubted boundaries of ecclesiastical provinces, dioceses, parishes, apostolic vicariates, apostolic prefectures, abbeys, or prelatures *nullius*;

5th. Alms and burdens of Masses;

6th. An ecclesiastical benefice without title;

7th. The right of visitation and obedience, so that subjects can be visited by no Prelate and are no longer subject to any Prelate;

8th. The payment of the cathedraticum (Can. 1509).

§ 1. Sacred things which are in the dominion of private persons can be acquired by prescription by private persons, who nevertheless cannot employ them for profane uses; but if they have lost consecration or blessing, they can freely be acquired even for profane uses, yet not sordid ones.

§ 2. Sacred things which are not in the dominion of private persons can be acquired by prescription not by a private person, but by an ecclesiastical moral person against another ecclesiastical moral person (Can. 1510).

II. Good Faith

Good faith in this matter is conscience or sincere estimation by which someone judges that the thing possessed by him is his own.

I say. Good faith is altogether required not only for acquisitive prescription, but also for liberative prescription. The reason is that formal injury cannot pass over into right; wherefore St. Thomas says: "those things which cannot be without sin are strengthened by no prescription." - This is confirmed from the 2nd rule of law in 6, which reads thus: "A possessor of bad faith prescribes at no time."

No prescription is valid unless it rests upon good faith, not only at the beginning of possession, but through the whole time of possession required for prescription (Can. 1512).

Nevertheless, if the discussion is about prescription for freeing you from some passive servitude of rural estates, good faith consists in this, that no obstacle be placed by which another is impeded from

the use of his right. The reason is that the one prescribing is bound by no debt toward him against whom he prescribes; nor is he held, while the time of prescription is running, to warn the other to use the right of servitude against him. I said of rural estates, because in urban servitudes, since one cannot prescribe against them without some positive act of the one prescribing, it is required that this be placed with good faith.

Hence it follows that the dispositions of civil law, insofar as they do not require good faith, or require it only at the beginning of possession, have no force for the internal forum, and are to be held as a mere denial of recourse, that is, of action against another.

You Will Ask. Can an heir who is ignorant of the bad faith of his predecessor ever legitimately prescribe?

Response. Negatively, as it seems, if he succeeds by universal title, because an heir of this kind so represents the person of the deceased that he succeeds to all his obligations and burdens; and therefore, since the predecessor on account of bad faith could never have prescribed, neither will the heir be able, because that radical defect is transmitted to him. And the same must more probably be said concerning one who succeeds mediately, provided nevertheless that the succession is by universal title. - Cf. St. Alphonsus, nn. 512 and 516. - Lugo, disp. 7, nn. 59, 60, and 61. - Baller., note (b), p. 516.

III. Title

Title is that upon which the transfer of dominion rests, and it answers the question: why do you possess? Omitting here both true title, about which there can be no controversy, since no one prescribes against himself, and defective title, which, since it lacks some condition required by law, can be of no utility, three other titles are enumerated, namely colored, putative, and presumed. The first is the appearance of a cause sufficient of itself for transferring dominion, but laboring under a hidden nullity, e.g., if I buy a thing from Titius, thinking it to belong to Titius, when it belongs to Martin. The second is present when it is prudently believed that a true title intervened, although it did not intervene, e.g., if a son from inheritance possesses a thing which is thought to have been bought by the father, when it had not been bought. The third finally is reduced to length of time. - Cf. Scavini, lib. 2, n. 388.

I say. Colored or putative title is required for prescription and suffices: at least one is indeed required, for if both are lacking, good faith also will be lacking, without which prescription is not had; but one of the two suffices both because thus good faith is preserved, and because otherwise true title would be required, which is absurd. Wherefore presumed title is either reduced to putative title, if the discussion is about prescription of the longest time, or it will be valid only for the external forum; for prescription in the forum of conscience without good faith, as has already been said, is repugnant; on the other hand, good faith is not possible when only presumed title is present, especially after a brief time from the beginning of possession. - Cf. Baller., note (b), p. 509; and (c), p. 511.

IV. Possession

Possession is the holding of a thing, or the enjoyment of a right, which someone exercises by himself or through another, yet in his own name. Holding of a thing is called possession simply, and

enjoyment of a right quasi-possession. Each is divided into natural, civil, and mixed. Cf. Schmalzgr., lib. 2, tit. 12, n. 4. - Baller., note (a) and (b), p. 508.

I say. Possession is altogether required for prescription, which is clear both from the 3rd rule of law in 6: "Without possession prescription does not proceed"; and from the very nature of the thing. But in order that it be apt for prescribing, it must enjoy various conditions; namely, it must be 1st. dominative, or the thing must be had with the mind of a proprietor, but not of a depositary, lessee, etc.; 2nd. tranquil, so that no joinder of issue concerning the thing has intervened; 3rd. certain, that is, not equivocal; 4th. continued or not interrupted, until the required time is completed. - Many also require that it be public, namely that the thing not be hidden from him against whom prescription is made; but this condition is necessary only for the external forum, because for the internal forum it is already contained in good faith.

V. The Required Time

It is certain 1st. that some time is required for prescription, as is clear both from the word *usucapio* itself and from all positive laws; 2nd. that in fact this time is longer or shorter according to the diversity of laws and the nature of the thing subject to prescription; for movables, generally speaking, are prescribed more quickly than immovables.

In this region, given the multiplicity of States which make their own laws for themselves, there is great variety in the duration of the time required for prescribing. Wherefore for immovable goods in the State of Maine 40 years are required; in Alabama and Louisiana, 30; in Kansas, Nebraska, Ohio, Pennsylvania, 21; in Connecticut, Vermont, and Virginia, 15; in Indiana, Michigan, Mississippi, and Nevada, 10; in Florida, Georgia, N. Carolina, S. Carolina, and Tennessee, 7; in California, 5; in the other States, 20. But for movable goods still less is required. Cf. Wells, *Every Man*, etc., p. 321. - Bouvier, *Law Dictionary*, under the word *Limitation*.

In the new Code a distinction is made:

§ 1. Immovable things, precious movables, rights and actions, whether personal or real, which belong to the Apostolic See, are subject to prescription by the space of one hundred years.

§ 2. Those things which belong to another ecclesiastical moral person, by the space of thirty years (Can. 1511).

You Will Ask. When is prescription called interrupted, and when suspended?

Response. It is called interrupted when, on account of an impediment interposed, it so ceases that it must be begun again. But this can happen in a twofold way: 1st. naturally, if the one prescribing loses possession for the time determined by law, or if bad faith supervenes; 2nd. civilly, if a lawsuit is juridically moved concerning possession, and the interpellation has not been rejected by the judge. - But it is called suspended when an impediment is set against it so that it does not proceed further, and this can happen in two ways: 1st. by reason of persons, as, e.g., minors, the insane, captives, and generally all who, whether from the right of nature or from the disposition of positive law, cannot act against one willing to prescribe; 2nd. by reason of some extrinsic cause, e.g., plague, war, etc., which makes it so that a person otherwise capable cannot act. - Cf. Wells and Bouvier, loc. cit.

Point III. On the Acquisition of Dominion by Accession

Accession is a mode of acquiring dominion in some thing, because that thing is added to our thing; this can happen either with nature alone operating, or by art, or by both at once. Hence a threefold accession is distinguished: natural, artificial, and mixed.

I. Natural accession happens in two ways: 1st. by birth, or when another animal is born to our animal from intermixture with another's: in this matter the axiom is, the offspring follows the womb; 2nd. by alluvion, which, if it is slow and extends my land either by the bringing of new earth or by the recession of a river, that addition will belong to me; but if it is sudden, ownership is no longer computed to the middle line of the water, but to the former limits.

II. Artificial accession can also happen in two ways: 1st. when my art or work is joined with the thing of another, which is called accession by specification, and then if this has been done in good faith, generally speaking among us, that which results through such specification will be given to him who performed the work, with the burden of paying the price of the thing to the other; 2nd. when my work and my thing at the same time are joined with the thing of another, and then either accession by adjunction is had, if that which results can in no way be separated, as would be a painting with my colors and made by me on your wall, in which case the thing belongs to him who placed the more precious element; or accession is had by confusion or commixture, as, e.g., if from my grapes together with yours I made wine, or from my ears of grain and yours I gathered wheat, and then, good faith standing, the thing must be divided according to the principles of equity; otherwise the laws favor him who has suffered injury.

III. Mixed accession is had when, with nature and art operating at the same time, some thing accedes to my thing; e.g., if you should plant your trees in my land: moreover, in this case the thing will belong to the owner of the soil, due compensation having been furnished. Hence the two following verses:

> Whatever is planted, sown, or built, Everything yields to the soil, if nevertheless it has put forth roots.

Yet observe that if the discussion is about those who among us are commonly called squatters, Kenrick says that the laws favor them, lest fields lie uncultivated. Cf. Kenrick, nn. 67 and seq. - Bouvier, *Law Dictionary*, under the word *Accession*.

Article II. On the Species of Right which is Called Use or Usufruct

Use is the right of using the thing of another, its substance being preserved. - It is called 1st. right, because this use is true dominion, and does not belong to those who have only use of fact, e.g., religious strictly so called. - It is called 2nd. its substance being preserved, because the right of destroying the thing or of abusing it belongs to him who has direct dominion or dominion of property. Usufruct is the right at once of using and of taking fruit from the things of another, their substance likewise being preserved. Wherefore usufruct imports more than use.

Questions

Question 1. What are the rights and burdens of a usufructuary?

Response. The usufructuary has the full use and enjoyment of the thing of another, so that at his own pleasure he can dispose of the fruits of the thing, whether by himself or through another. Yet he has the burden of using the thing of another as a good father of a family, and of returning it such as it ought to be found after good administration. Besides, upon him rests the burden both of providing custody, and of undertaking expenses if they are modest, and also of making expenditures that he may take natural fruits from it. The reason for all these things is that the usufructuary is considered to act as the person of the proprietor as regards useful dominion. But often from diverse agreements these rights and burdens are modified.

Question 2. How does usufruct cease?

Response. It ceases 1st. by the death of the usufructuary; 2nd. by the established time; 3rd. by the destruction of the whole thing; 4th. by consolidation, e.g., if the usufructuary becomes owner of the thing; 5th. by total change, e.g., if a meadow becomes a pool; 6th. by abuse, by which through the fault of the usufructuary the thing becomes worse; 7th. by renunciation of the usufructuary, provided it is not done in fraud of creditors. - Cf. Kenrick, nn. 94 and seq. - Bouvier, *Law Dictionary*, under the word *Tenant*.

Article III. On the Species of Right which is Called Servitude

Servitude is a right belonging to someone in the thing of another, by virtue of which the owner of the thing is held to suffer something in it, or not to do something, for the utility of that person. - It is called a right in a thing, not in a person; for if a person only were obligated to suffer or not do something, it would be called an obligation, not a servitude. Whence servitude is properly something of dominion which is taken away from him who owes the servitude, and accedes to him to whom it is owed. The taking away of this dominion is customarily called passive servitude, and the accession active servitude. Cf. Scavini, lib. 2, n. 517.

Servitude is divided in many ways. 1st. By reason of origin it is natural, legal, and conventional, according as it arises from the disposition of places, or from law, or from the mere agreement of the parties; 2nd. by reason of mode it is continuous and not continuous, according as it can last without an act of man, as is the servitude of aqueduct, or cannot be exercised without it, e.g., the servitude of passage. Again, it is apparent or not apparent, according as it is openly declared by an exterior sign, e.g., a door, window, etc., or lacks such a sign, as, e.g., the prohibition of building in some place, etc.; 3rd. by reason of object it is urban or rural, according as it is attached to an urban or rural estate. An urban estate is called any building erected for the sake of dwelling, whether in a city or in a village, and the garden annexed to it. - Rural estates are called a field, vineyard, meadow, stable for livestock separated from a house. Urban servitudes are four: 1st. that a beam be admitted into your wall; 2nd. that dripping water be received into your house; 3rd. that a wall not be raised higher; 4th. that a window not be opened in a wall. These two last do not seem to be in force among us. Some rural servitudes are called named, and are path, driving, road, aqueduct; and others unnamed, from the fact that they lack a special name in law. - Cf. Kenrick, nn. 97 and seq.

Part II. On the Violation of Right through Theft

Chapter I. On the Nature and Malice of Theft

Theft in general is the taking away of another's thing, the owner being reasonably unwilling. But it is called simply theft if it is done secretly; robbery, if it is done openly with force inflicted upon the owner; sacrilege, if it is done concerning a sacred thing.

I say. Every simple theft is a grave sin from its genus, because it is opposed to justice, which obliges under grave sin, and because in the Scriptures, e.g., I Cor. vi, 10, thieves are excluded from the kingdom of God. But sacrilegious theft and robbery constitute a diverse species of malice: the former because, besides justice, it violates religion; the latter because it adds an injury inflicted upon the person to the unjust taking away of another's thing. But other modes or other objects of theft do not change the species, because through these the nature of the damaging is not changed.

Questions

Question 1. What matter is to be considered grave in theft, considering the circumstances of this our region?

Before response is made, certain things must be premised:

I. It is very difficult to determine this matter rigorously, as is clear both from the acknowledgment itself of the Doctors and from the lack of some measure. But it is altogether necessary that what appears more equitable be determined, lest the salvation of souls and the existence of property be brought into danger. Cf. Lugo, disp. 16, nn. 21 and seq. - Baller., note (a), p. 527.

II. According to the common opinion, which seems altogether to have to be held, this matter is to be regarded both absolutely and relatively. Matter absolutely grave is that which it is never licit to touch without grave fault, since its taking away is always considered gravely injurious with respect to all. The reason is that if complete proportion had always to be preserved among all conditions, certainly a very great quantity would be required for grave theft where someone stole something from a very rich man: but this would surely turn to the damage of society. Yet it is necessary that the matter of theft be considered also relatively, and the reason is that the gravity of theft, like the gravity of any injury, depends especially upon the greater or lesser privation, pain, and reluctance of will which he suffers against whom the theft is committed. Yet attention must be paid to reluctance of will as it is commonly and reasonably had among men, but not with respect to men drawn by a greater or lesser love of money. - Cf. St. Alphonsus, n. 526. - Lugo, disp. 16, nn. 28 and 29. - Baller., note (b), p. 527. - Slater, *Questions on Moral Theology*, pp. 144 and seq.

These things having been noted beforehand, now to the question:

Response. With respect to this matter absolutely grave, authors vary much, so that it is most difficult to determine the matter definitively. But these things seem certain to us: first, that the same or almost the same sum is not to be assigned as had been assigned by ancient authors; second, that the value of money is in no way immutable; that in various regions that value varies: that the matter is to be determined from the quantity of money existing in some region; from its commutative force; from the price of labor; from the moral estimation of men. These things are clear to us from the rather usual manner of acting of some persons, e.g., many European workers come to us, here support

themselves by their own labor and send no small sums of money to their own, or carry them with themselves to Europe; but others, otherwise not poor, who now receive a half pension for an office now resigned on account of age or illness, betake themselves to foreign nations, where they can live comfortably, because they receive food, etc., at a cheaper price. The distinguished author Palmieri says: "I have heard other learned men who, on account of the price of money very much diminished day by day, would now wish absolutely grave matter to be that which equals more or less one hundred francs, to whom we assent without difficulty." - Gury-Ballerini, Edit. a. 1898. - "They do not seem to depart from the true who at least below 100 lire do not acknowledge matter of theft absolutely grave." Thus Ojetti, *Synopsis*, under the word *Furtum*. This opinion pleases us; indeed, since the value of money among us is different from that among foreign nations, it seems that one does not err who assigns the sum of about 35 dollars for our region.

But relatively grave matter seems to be established thus: a fourth part of a dollar or thirty cents for the needy who beg; one dollar for ordinary laborers; two for mechanics; and three for ordinary rich persons. The reason is that the taking away of such matter seems respectively to involve grave damage.

Question 2. What matter is required so that the thefts of wives, children, and servants become grave?

Response 1st. As regards wives, a case of grave matter in theft is held with difficulty, both because, as was said elsewhere, among us they make one person with husbands as regards common goods, and because these are not ordinarily considered reasonably unwilling regarding donations and other expenses, even secret ones, which are not altogether prodigal. But if a wife uses common riches prodigally, that quantity is required for the gravity of theft which suffices for inflicting grave damage upon the husband, which must be judged from the circumstances. But then it is more commonly taught that she is held to restitution either from paraphernal goods or by working more diligently or by taking care of the family estate. Cf. Kenrick, tract. 3, n. 169.

Response 2nd. It is certain among all that in thefts of children more is required for constituting grave matter than in thefts of strangers; because the father of the family is less unwilling, or at least less reasonably unwilling in the former case than in the latter, and often he is unwilling more as regards the manner, namely that it be taken secretly, than as regards the substance. Wherefore many theologians say that for them a sum twice greater than for strangers is required; but no general rule can be assigned, for the matter will generally have to be defined from the various circumstances of persons or conditions. - Cf. St. Alphonsus, *Hom. Ap.*, n. 32.

Response 3rd. For servants it also depends upon the greater liberality or stinginess of masters, upon the quality or situation of the thing stolen, e.g., whether it is edible or not, guarded or exposed, etc. According to many, by small thefts committed by servants in foods and eatables which are not usually carefully kept, generally one does not arrive at mortal sin, provided these are not sold or taken out of the house or are of extraordinary value. But if servants steal money or things carefully guarded, no greater quantity is required for grave sin, because the masters then are not less unwilling toward them than toward others. - Cf. St. Alphonsus, *Hom. Ap.*, n. 34. - Kenrick, tract. 3, n. 168.

Question 3. Do small thefts coalesce for constituting grave matter?

Response. Affirmatively, whether they have been committed against the same person or against several, provided nevertheless that a great interval is not placed between them. For in the former case those little thefts, easily united by reason of time, certainly inflict grave damage: besides, proposition 38, which reads thus, was condemned by Innocent XI: "One is not held under pain of mortal sin to restore what has been taken away through a few thefts, however great the total sum may be." - But in the other case there would be grave damage inflicted upon society, whose order would be disturbed if those little thefts committed against different persons, and repeated with a brief interval, were not prohibited under grave sin. Cardinal de Lugo adds another reason, namely that each owner in particular is then gravely damaged, not indeed formally, but radically. - I said provided that a great interval is not placed between them; for little thefts which would be committed rarely bring no grave harm either to society or to private persons. But according to the truer opinion a great interval is computed as the space of two months. Yet except the case in which from the beginning there is the intention of arriving at a notable sum, because then the little thefts always coalesce, however long the interval may be by which they are separated from one another. Cf. St. Alphonsus, nn. 530 and seq. - Lugo, disp. 16, nn. 37 and seq. - Vogler, n. 133.

Question 4. How is the gravity of matter in small thefts to be computed?

Response. It seems that it must be said more equitably and more commonly that if the little thefts are committed against the same person, whether physically or morally one, for instance some railway company, and at the same time discontinuously, namely more often than every two months, but not on one day or on the same occasion; or if they are committed against diverse persons indeed, but at the same time, namely on one day, on one and the same occasion or under the same circumstances, then the matter is considered grave when it exceeds by one half the sum required for grave theft. - But if both concur, that is, if the little thefts are committed against persons altogether diverse, and at the same time not on one and the same day or occasion, then the matter will be judged grave when it is twice greater. Yet observe that since these little thefts are committed against persons altogether diverse, the common measure of grave theft in each aforesaid case must not be taken from relative but from absolute gravity; for the damage then is brought not upon one, but upon several individuals or particular societies without grave injury to each one, as is supposed. - Cf. St. Alphonsus, n. 530. - Baller., note (c), p. 531.

You Will Resolve. - 1st. If, after an efficacious retraction of preceding little thefts, whether that efficacy was effective or only affective, but nevertheless true and serious, another little theft is committed from some new motive or from some different occasion, this does not seem to coalesce with the preceding ones.

2nd. He who after grave matter has been completed still steals some slight thing either sins only venially, or if gravely, only in that sense insofar as the same mortal sin already committed terminates in this later little theft. Cf. St. Alphonsus, n. 538. - Lessius, lib. 2, cap. 12, n. 44. - Lugo, disp. 16, n. 43.

3rd. He who by a slight theft completes grave matter begun by others against the same person, excluding the case of conspiracy, sins only lightly. Nor should you say that he sins gravely who by a light blow kills someone already wounded by others; for life is something indivisible, and the whole is destroyed by this light blow. Cf. Lugo, disp. 16, nn. 53 and seq. - Lessius, lib. 2, cap. 12, n. 52.

4th. Merchants using false weights sin gravely, although on individual occasions they defraud in small matter; because they intend to arrive at grave matter, or certainly know that they are going to arrive at it.

5th. Among thieves are to be reckoned those who wander about, draining citizens of money by feigned reasons. But if they are truly poor, yet exaggerate or lie about their hardships, they will indeed sin against truthfulness, but not against justice. - Cf. Kenrick, tract. 3, n. 176.

6th. "Concerning youths educated gratuitously in seminaries, or at the expense of private persons, with the hope that they may serve in the ecclesiastical ministry, it must be held that they commit fraud if they enter seminaries without the intention of dedicating themselves to sacred offices, and with this plan only, that they be instructed in letters or indulge leisure; and therefore they are held to repairing the damage. But there is no need that they be altogether certain of their own vocation; for holy leisure is granted to them for this reason, that they may deliberate more maturely concerning so great an undertaking; but they must neither enter rashly nor remain in sacred buildings after they have cast away hope and purpose. But if by their own fault they bring it about that they are held unworthy, for that reason they do not seem obligated to restore, whenever the intention of defrauding was lacking: for donors are not to be considered to have placed a condition of restoring on account of idleness or other customary faults." - Thus Kenrick, n. 178.

Chapter II. On the Lawful Taking Away of Another's Thing

Article I. On Necessity which Permits Taking Away Another's Thing

I say. Although common necessity, namely that which ordinary beggars suffer, certainly does not excuse from theft, because otherwise access would lie open to many plunderings and thus society would be overthrown; nevertheless in extreme necessity it is lawful to take from another's goods only so much as is sufficient for freeing oneself from such necessity. The reason is that the goods of life are of a higher order than the goods of fortune, and therefore by the division and appropriation of things it is not prevented that assistance be given to man's necessity. Therefore dominion is not to be so understood that even he who is placed in extreme necessity is excluded from the use and enjoyment of the thing; and consequently he, taking away secretly or openly a thing common under this aspect, makes it his own, as happened before the division of goods. Indeed not only with his own hands, but also through another, as through a procurator, he can take that thing, without any malice of theft being contracted. - Cf. St. Thomas, 2-2, q. 66, art. 7. - St. Alphonsus, n. 420. - Lessius, lib. 2, cap. 12, dub. 12.

Questions

Question 1. Whether in grave necessity it is lawful to take from another's goods as in extreme necessity?

Resp. It is much controverted, both concerning the solution itself and concerning the force of the argument which those who deny derive from proposition 36 condemned by Innocent XI, which reads thus: "It is permitted to steal not only in extreme necessity but also in grave necessity." For it is not clear whether this proposition was condemned on account of the word grave, or rather on account of the verb to steal. - But as regards the solution of the question, it seems that one must say that the

whole matter depends on the force which is attributed to the word grave; wherefore if that necessity is so grave that it is to be called quasi-extreme or most grave, as several Doctors speak, then the same thing is to be held concerning it as concerning extreme necessity; otherwise, if it is less grave, so that it reaches common necessity. But this quasi-extreme necessity is judged to be present when one is in probable danger of incurring death, of losing some principal member, of falling into perpetual captivity, or of undergoing a most grave or perpetual disease. Cf. St. Alphonsus, n. 520; and Hom. Ap., n. 15. - Lugo, disp. 16, n. 154. - Lessius, loc. cit. - Ballerini, note (a), p. 534; and note (a), p. 536.

Question 2. Whether he who is about to be killed by robbers, or to whom perpetual or most grave captivity or another similar misfortune threatens, unless he hands over a great sum of money, can secretly take it, if otherwise he cannot free himself from so great a necessity?

Resp. Affirmatively, according to the more common and more probable opinion, provided that the rich man is not constituted in equal necessity through such taking away, and that the poor man takes only that of which he stands in absolute need. The reason is that, as all admit, extreme necessity is the cause why in this case goods become common to the needy man with the rich man; therefore the community of goods extends as widely as the necessity itself, and the needy man can assume for himself as much as is necessary for relieving this necessity. - Nor should you say, 1st, that the poor man cannot provide for himself through an unusual and extraordinary means; for a means of this sort perhaps is unusual and extraordinary relative to common necessity, but not to the present necessity, as we suppose. - Nor should you say, 2nd, that the rich man in this case is not bound to give with so great a loss to himself, therefore neither can the poor man take; for the answer is that the rich man indeed is not bound to give, because he is obliged from charity alone, which does not urge with so great an inconvenience, but he is bound from justice not to prevent the poor man from using his own right and occupying goods absolutely necessary for himself in such straits. - Nor, finally, should you say, 3rd, that the privilege of secretly taking another's things in extreme or quasi-extreme necessity is not to be extended to cases arising from the mere malice of men; both because that limitation rests on no solid foundation, and because it lacks the weight of authority. Cf. St. Alphonsus, n. 520. - Lugo, disp. 16, nn. 146 and seq.

You Will Resolve. - 1st. It is not lawful for a poor man placed in extreme necessity to take away more than is necessary for himself. Hence if the mere use of a thing suffices, for example, of a horse, when the necessity ceases, the obligation of restoring remains. - Cf. St. Alphonsus, Hom. Ap., n. 15.

2nd. If an extremely needy man has elsewhere, in reality or in probable hope, whence he can pay, he cannot remove another's thing except with the burden of restitution; because necessity does not require that ownership of the thing accrue, when he can be sufficiently relieved by a thing accepted by loan or for use. - Cf. St. Alphonsus, Hom. Ap., n. 19.

3rd. But he who, in extreme want, has consumed another's thing, is held to nothing after the use of the thing, if he had no probable hope that he would at some time be able to restore, even if afterward he should come to a better condition. - Cf. St. Alphonsus, Hom. Ap., ibid.

4th. A rich man hiding his own things, or using some other device so that he may not aid the poor man, when the poor man's necessity ceases, is not held to restitution, because he sinned only against charity. But if by force he prevents the poor man from taking some thing, then indeed he sins against

justice; but when the necessity ceases, and thus the right of the poor man, the burden of restitution also would cease. - Cf. St. Alphonsus, Hom. Ap., n. 20. - Lugo, disp. 16, n. 142.

Article II. On Occult Compensation

Occult compensation, which is also called extra-legal, is the recovery of one's own thing by the occupation of another's thing. Concerning this alone we must deal here, and not concerning the compensation which is called legal, and which has place when two persons mutually debtors to each other take in payment the thing owed to the other.

I say 1st. Occult compensation can sometimes be just and lawful, if it enjoys the requisite conditions immediately to be set forth. The reason is that, these being posited, no injury is done to the debtor, nor does any disturbance of the order of law follow, nor any disturbance of the State. And 1st, no injury is done to the debtor; for by hypothesis in such compensation you take only that which is certainly yours, or which is owed to you from strict justice. 2nd. There is no disturbance of the order of law, since it is supposed either that the judge cannot be approached, at least not without notable inconvenience, or that he cannot restore the injured party's right to him. For that is not said to be omitted which would be sought in vain. 3rd. There is no disturbance or damage of the State; for sufficient provision is made for it through the cautions to be placed among the conditions. - Cf. St. Alphonsus, n. 521. - Lacroix, lib. 3, part. 1, n. 959.

I say 2nd. The conditions commonly required for the lawfulness of occult compensation are the following:

1st. That the debt be certain, at least morally. The reason is, both because in doubt the condition of the possessor is better, and because, according to those who say that this axiom has force only for a negative doubt, it is certainly prohibited probably to damage another. - If, however, the doubt is not concerned with the existence of the debt itself, but rather with the mode by which it is lawful to compensate oneself, for example, whether someone can compensate reputation otherwise certainly injured with money, or infamy with infamy given, etc., neither unjust nor illicit will be the compensation which is made with a credit probable only in this respect. - Cf. St. Alphonsus, n. 521. - Lugo, disp. 16, nn. 87 and seq. - Salmant., tract. 13, cap. 1, nn. 318 and seq. - Ballerini, notes (a) and (b), p. 538.

2nd. That the debt cannot be recovered otherwise, at least without grave inconvenience; for if the creditor can obtain what is owed to him by mere petition or by recourse to a judge, then by compensating himself he does injury to the public power, and therefore offends against the order of law.

3rd. That the thing be taken in the same species, if this can be done, because otherwise the debtor's thing is exchanged without his consent, and therefore unjustly.

4th. That damage to the debtor be guarded against, namely by seeing to it that the debtor is not exposed to the danger of paying twice, if perhaps he will restore. - Hence if that case is foreseen in some measure, he must somehow be warned, for example, by a feigned renunciation or condonation, etc. But if, after compensation has been made, he restores, it will have to be restored to him again. Moreover that case will be rare, since compensation is not lawful except where no probable hope of recovering the debt is present. - Cf. St. Alphonsus, n. 521.

Questions

Question 1. Whether servants judging that the salary is below the work performed by them can use occult compensation?

Resp. Negatively, at least speaking generally, with the common opinion. It is clear 1st, from proposition 37, condemned by Innocent XI, which reads thus: "Servants and domestic maidservants can secretly take from their masters, in order to compensate their work, which they judge greater than the salary which they receive." - It is clear 2nd, from reason; for they would act against the pact, since they consented to the lower price and otherwise nothing is owed to them except the price concerning which agreement was made. Besides, if this were lawful, the way would be opened to innumerable thefts: for servants would easily persuade themselves that stipends are less than just, and thus no security would remain for masters. - The same thing must also be said, by parity of reason, concerning all laborers, craftsmen, and merchants who would wish to have recourse to compensation under the pretext of the lower price at which they had hired out their services or sold their merchandise. - I said at least speaking generally, because not a few make exceptions: 1st, if a servant is compelled by force or fear to consent to an unequal price; 2nd, if compelled by necessity he consented to it, provided however that the master would not have found other servants at the same cheap price, or did not except this one asking, out of mercy; 3rd, if unwillingly he is burdened with undue works. - Cf. St. Alphonsus, n. 522. - Ballerini, note (c), p. 539.

A servant increasing the works owed cannot compensate himself if he so acts by his own choice, because then he is judged to grant his work gratuitously in order to win for himself the favor of the master; but he can compensate himself if he increases the works from the will of the master, whether expressed or tacit, because then the worker is judged worthy of his wage by right. But what compensation is just can sometimes be left even to the judgment of the servant, if he is God-fearing and prudent, and the danger of self-love is absent, which nevertheless will happen very rarely. - Cf. St. Alphonsus, n. 523 and seq.

Question 2. What must be said specifically, in this matter, concerning those who are in charge of cars drawn along railways, as is usual among us?

Resp. If by the judgment of God-fearing men the price which they receive is in truth unjust, namely below the minimum, theologically speaking it is lawful for them to compensate themselves occultly, provided however that all the conditions required for this and enumerated above have been verified. The reason is that the masters then would be irrationally unwilling; indeed some say that they are not properly unwilling nor ignorant of this compensation, and that for this reason they grant them so small a salary, because they suppose something to be taken secretly; but that those various and day by day new means which they use for preventing frauds are ordered to restrain dishonest men who would wish to overstep the limits of just compensation. - But, speaking practically, a prudent confessor must be altogether cautious in this question; wherefore let him never speak of it publicly, but only privately, while he hears confessions or exercises the office of theological counselor. Besides, let him more readily concede such compensation after the fact, and almost evasively, on account of the danger which ordinarily exists if one acted otherwise.

Question 3. Whether he who is condemned by a judge to pay a debt which he certainly did not contract, or which he certainly has already satisfied, can use occult compensation?

Resp. Affirmatively, because the sentence of the judge is unjust, as being based upon a false presumption of fact, and therefore cannot bind in conscience. For although one must always stand by the sentence of a judge in a matter of law, unless it is a question of a law or sentence evidently unjust; nevertheless it is otherwise, scandal being excluded, if the judge certainly errs concerning a fact, which through error he thinks true. Moreover, the judge does not have the faculty of transferring dominion; nor can he who obtained a favorable sentence, when the error has been detected, keep the thing adjudged to him.

Question 4. Whether he who compensates himself before first having recourse to the judge sins gravely and against justice?

Resp. 1st. He does not sin per se against justice, provided that he takes only so much as is owed to him; nor therefore is he held to restitution. The reason is clear, because when this compensation has been made, equality is restored between himself and the debtor. I said per se, because sometimes a detriment can follow for the debtor from the privation of some determinate thing, for example, of a horse, of a precious thing, etc. - Lugo, disp. 16, n. 19.

2nd. Nor does he sin gravely, speaking generally; because ordinarily from this inversion of order there follows neither grave scandal nor grave disturbance of the State. - Lugo, ibid.

3rd. He sins in no way if recourse to the judge is difficult, if there is danger of scandal, or extraordinary expenses, etc., because then recourse is morally impossible.

Part III. On Restitution

Section I. On Restitution in General

The things which must here be said concerning restitution, some regard it in general and others pertain to particular cases, namely, in what manner restitution is to be made, when certain determinate goods have been injured. Hence for greater clarity a twofold section is placed here.

Chapter I. On the Obligation of Restitution

I say. Restitution, namely the reparation of another's right injured in the goods of fortune, if it concerns grave matter, is absolutely necessary for salvation, either in reality, or at least in desire, when here and now it cannot be done. The reason is that restitution of this sort is the one means of repairing injured justice, and consequently of preserving it; but to preserve justice is to preserve the law of God. Therefore.... Wherefore St. Augustine says, epistle 153 to Macedonius: "The sin will not be remitted unless what was taken away is restored, when it can be restored." - But the precept of restoring, according to St. Thomas, is verbally indeed affirmative, but formally negative, and consequently binds at every moment. Cf. St. Thomas, 2-2, q. 62, art. 1, 2, and 8.

You Will Resolve. - 1st. If someone cannot restore from goods of the same order, he is not held to restore from goods of a different order, because since no comparison can be made between goods of a different order, neither can compensation be made. Nevertheless by vindicative justice it can be imposed by a judge or by a superior, that someone, for an injury concerning one kind of goods, furnish something in goods of another order; but only by reason of penalty, not indeed by reason of justice. Moreover the injured person has the right of denouncing before a judge him from whom he

received injury, and therefore of accepting money from him, in order that he may omit the denunciation; thus, for example, a woman forcibly violated by someone can compel the violator before a judge, or exact money from the scoundrel, in order that she may renounce her right. - Cf. St. Alphonsus, n. 627.

2nd. From an injury to another's right that is affective only there cannot be given an obligation of external and real restitution, because reparation and injury must correspond to each other. Hence an ill-willed judge pronouncing a sentence which he thinks unjust owes nothing to restore, if in reality it is just; or he who snatches a thing which he thinks belongs to another, while it is his very own. - Cf. St. Alphonsus, n. 556.

3rd. He who has inflicted light damage upon his neighbor is held to restitution toward the injured owner under light obligation and with inconvenience proportionate to the thing; for light injustice must be repaired under light obligation, just as grave injustice under grave obligation. Nevertheless there can be a case in which someone is held under grave obligation to restore light matter, namely when a thief has secretly taken what indeed reaches grave matter, but does not exceed it. For then there is not required under grave obligation except restitution of that sum which completes the gravity of the matter, but in itself cannot be grave. Cf. St. Alphonsus, n. 553.

4th. He is deservedly held unworthy of absolution who refuses at least to promise restitution; who leaves to his heirs the care of restoring, while he can do it by himself; who, burdened with debt, in food, clothing, service ..., undergoes expenses of this sort, on account of which he foresees that afterward he will be unequal to the payment of his debts. The same must be said of him who, enjoying good fortune, does not wish gradually to reduce his state, in order to satisfy his creditors. But concerning him who, having promised twice or thrice that he would restore, in no way stood by his promises, it will belong to a prudent confessor to judge whether restitution is to be demanded before absolution or not.

5th. Nor are they to be absolved who bring forward futile pretexts for deferring restitution, for example, those who are accustomed to say: I shall not bring my goods into the tomb ..., the heirs will restore ..., I shall set down in my testament that restitution is to be made ..., or: I have already instructed my sons that they themselves restore as soon as possible. For they are to be reckoned ill-disposed who do not wish to do here and now whatever they morally can to satisfy their neighbor: 1st, because the precept of restitution urges without ceasing, and the creditor suffers injury, and often also damage, from the delay; 2nd, because poor provision is made for restitution to be made by committing it to heirs, for these likewise can prolong the same to the end of their life; 3rd, because perhaps time for making a testament will be lacking, or, if it is made, perhaps for various causes or pretexts it will also happen that it is not put into execution.

6th. The confessor must act cautiously with the dying who are liable to restitution. But he will be able to proceed thus: 1st. If the penitent seems to be in good faith, and there remains no time for prudently warning him of his obligation, or it is foreseen that the warning will not be profitable, this warning being omitted, he is to be absolved. 2nd. But if fruit from the warning is hoped for, or if the penitent is not in good faith, he will have to be admonished firmly and at the same time sweetly concerning the obligation of restitution, and helped to perform it at once. 3rd. If the obligation is occult and cannot be fulfilled immediately, the sick man will have to be induced to entrust a sum of money to the confessor himself, or rather, if this can be done, to a faithful man, so that afterward it

may be secretly committed to the creditor, or to leave that sum to him in his testament, with mention of restitution omitted. 4th. If the obligation is not occult and cannot immediately be fulfilled, let the confessor bring it about that it is certainly cared for by the heirs, whether through a note to be handed to the creditor or in some other manner.

Chapter II. On the Roots of Restitution

The roots of restitution are called the causes from which the obligation of restoring arises. They are taken from a threefold head, namely: 1st, from the acceptance of another's thing; 2nd, from unjust damaging; 3rd, from unjust cooperation: which indeed, as to the matter, could easily be reduced to one or the other of the preceding, but for the greater distinction of the things to be said will more opportunely be treated separately.

Article I. On the Acceptance of Another's Thing

Principle

Only the owner of a thing has dominion over it, wherever it may be found here and now. All laws establish this and reason confirms it; for to be the owner of some thing essentially involves the idea of disposing of it, and consequently the right of excluding others from possession of it. But it is said wherever, etc., because for retaining dominion the mere intention suffices, without a continuation of real occupation being required.

From this general principle there flow of themselves four very well-known axioms which will recur very often in the course of this treatment, namely: 1st. The thing cries out to its owner; 2nd. The thing bears fruit for its owner; 3rd. The thing naturally perishes for its owner; 4th. No one ought unjustly to be enriched from another's thing.

But these principles, besides the fact that sometimes according to different laws of places they receive different application, are further modified according to the different condition of the possessor. For someone can possess another's thing either in good faith, or in bad faith, or in doubtful faith. Therefore it must be said: 1st, concerning the possessor of good faith; 2nd, concerning the possessor of bad faith; 3rd, concerning the possessor of doubtful faith.

§ I. On the Possessor of Good Faith

A possessor of good faith is he who is invincibly ignorant that the thing possessed by him is another's and prudently judges it to be his own, for example, because he acquired it by a title of dominion translative of itself, say, of inheritance, legacy, donation, or purchase. But it is supposed that he has not yet acquired by prescription the thing possessed; otherwise he would no longer be the holder of another's thing, but of his own.

I say. A possessor of good faith, although as soon as he knows the thing possessed by him to be another's, he is certainly held to restore it to the owner, while it still exists in whole or in part; nevertheless he is held to nothing, if, while good faith lasted, he lost it, consumed it, or in whatever way destroyed it, provided that without any title, or unjustly, he did not thereby become richer. The reason for the first is that the thing cries out to its owner, and the reason for the second, that the thing naturally perishes for its owner.

I said: provided that without any title, or unjustly, he did not thereby become richer: because that in which he would have been made richer would succeed to the thing itself. But it is contrary to natural right that someone become rich with the injury of another, according to rule 48 of law in 6: Someone cannot be enriched with the injury or loss of another.

Questions

Question 1. Whether a possessor of good faith is held to restore the diverse fruits which, while good faith lasted, he received?

Resp. Negatively, if the discussion is about industrial fruits, namely those which are chiefly attributed to the possessor's industry, or also about mixed fruits, in that part in which they are industrial. But otherwise it must be said concerning natural fruits, namely those which come forth from the very substance of the thing, without any or with only slight work of man; and concerning civil fruits, which are not fruits properly so called, but are held as such in law, as are annual revenues, the price of leasing a house, etc. The reason for both is that, just as the person of the possessor naturally bears fruit for himself by industry and labor, so the thing, say some piece of land, must bear fruit for the owner through the natural production of grasses. - Cf. St. Alphonsus, n. 610. - Kenrick, tract. 10, part. 2, n. 172. - Ballerini, note (b), p. 547.

Question 2. To what is a possessor of good faith held, if he has sold to another a thing bought from a thief?

Resp. 1st. In the case of eviction, that is, if the owner has vindicated his own thing from the buyer, the seller is held to return the price to the buyer. The reason is that the sale of another's thing either is wholly void, as some think, and then the price is not the seller's but the buyer's; or, as they commonly teach and as is established by Roman Law, it at least lacks firmness and is liable to rescission. Therefore, when eviction intervenes, the contract must be dissolved, and the buyer by the fact itself acquires recourse against the seller: since by accepting the price from the buyer, he implicitly obligated himself to repair the damage, if perhaps eviction would occur. The same thing must be said, for the same reason, in the case of spontaneous restitution made by the buyer. This last point, however, Lugo denies with Lessius, when spontaneous restitution made without the seller being warned inflicts unjust damage on him, by preventing him from being able to recover his own price. - Cf. St. Alphonsus, n. 601. - Salmant., tract. 13, cap. 1, nn. 89 and seq. - Lugo, disp. 17, n. 109. - Lessius, lib. 2, cap. 14, n. 28.

Resp. 2nd. Outside the case of eviction or spontaneous restitution on the part of the buyer, the matter is not without difficulty and is keenly controverted. But, natural right alone being considered, the opinion of those seems probable who hold that the possessor of good faith can then retain the price of the thing sold; for the obligation of restoring to the owner does not urge by reason of unjust damaging, because he acted in good faith, nor by reason of a thing accepted, because this is no longer found with the seller but with the buyer. - Nor should you say that the thing is found with the seller in an equivalent, for recourse is had to an equivalent when the thing has perished, and someone has thereby become richer, but not when the whole thing still exists in its natural state. Besides, that contract was probably valid, insofar as the buyer, having dominion over the price and wishing to transfer it, in fact transferred it to the seller, although the seller did not transfer dominion over the

thing; and therefore by many it is called a lame contract. - Cf. St. Alphonsus, nn. 601 and 800. - Lugo, disp. 17, nn. 106 and seq. - Lessius, lib. 2, cap. 14, n. 29. - Salmant., tract. 13, cap. 1, n. 88.

The same solution, as to the twofold response and hypothesis, seems to be given if a possessor of good faith has sold to another an alien thing received gratuitously. - Nor should you say that the possessor in this case becomes richer by another's thing; for if the buyer truly transferred dominion over the money, so that a lame contract took place, the possessor did not become richer unjustly. - Cf. Cardinal Gousset, n. 930.

Question 3. To what is a possessor of good faith held, if he has sold an alien thing, and it has perished in the hands of the buyer?

Resp. It is much controverted among theologians, who nevertheless much more easily concede that the seller can retain the price, if he had the alien thing by an onerous title, than if he acquired it by a gratuitous title. For they say that the seller is held neither to giving anything by reason of the thing, because he no longer has it, nor by reason of damage, since he was not the cause of its destruction. But this same reason ought to have force for the case in which the thing was held by gratuitous title; and if the seller then became richer, nevertheless he did not act unjustly.

Question 4. Whether a possessor of good faith can deduct necessary expenses which he incurred in preserving or increasing the thing?

Resp. Affirmatively; indeed he can also deduct useful expenses, for otherwise the owner would receive more than is his own. But he can claim nothing for expenses merely voluptuary; because it is not equitable that the owner pay expenses which bring him no utility, although he can retain them for himself, if they can be separated while the substance of the thing remains intact. Moreover, among expenses there are not to be reckoned fortuitous cases, nor damages caused per accidens. Thus, for example, if in cultivating another's field your horses perished, the value of the horses cannot be deducted, but only the estimation of the labor done by the horses for the cultivation of the field.

Question 5. Whether he who in good faith bought a stolen thing can return it to the thief in order to recover his own price?

Resp. Negatively, if the owner appears demanding his own thing from him; for then he must return it to him, even with the loss of his own price, because by natural right the owner can occupy his own thing wherever he finds it. Nevertheless an action is given to the buyer against the thief. But if the owner is indeed known, but unaware of the thing, more probably the buyer can send the thing back to the thief, in order that he may recover the money; because the buyer is not held to preserve the thing for the owner with his own damage, indeed he can permit the damage of the owner in order to guard against his own. But if the thief or another seller does not appear or does not wish to return the money, the buyer, once the owner is known, cannot sell the thing to others, nor convert it to his own uses in order to preserve himself unharmed, because he is not the owner of the thing; but he must return it to the owner, notwithstanding the loss of the price. But he preserves recourse against the seller; and if he cannot find him, he himself must undergo the damage. - Cf. St. Alphonsus, n. 569. - Carrière, n. 1042.

§ II. On the Possessor of Bad Faith

A possessor of bad faith is he who certainly knows that the thing which he takes or possesses is not his own.

I say. The possessor of bad faith must restore not only the thing itself in individual form or in equivalent, if it no longer exists, and besides all that in which he has been made richer unjustly, but also he is held to compensate every damage inflicted upon the neighbor from the unjust taking. The reason is that the formally unjust damager violates justice no less and is held to restitution no less than the simple holder of another's thing. Nevertheless he can retain all industrial fruits and deduct expenses both necessary and useful; indeed also merely voluptuary expenses, where they can be separated while the substance of the thing remains intact, unless in penalty for the offense he has been condemned to lose the expenses. - Cf. St. Alphonsus, Hom. Ap., nn. 74 and 77.

Questions

Question 1. Whether a thief who secretly took a thing otherwise certainly about to perish is held to restitution?

Resp. Affirmatively, with the expenses made together with the price of the labor applied to freeing the thing from danger nevertheless deducted. The reason is that that thing did not cease to belong to the owner, although it had been exposed to the greatest danger. - Several probably except the case if the thief consumes a thing remaining in certain danger, for example, edible or drinkable things already about to perish by fire; because a thing not freed from danger is of no value to the owner. Several extend this to the case in which another's thing is withdrawn from proximate danger and immediately consumed: for example, if you take another's wine now certainly about to be seized by hostile incursion, and drink it with family or friends, because also in such a case the thing is judged to have no or almost no value. - Cf. St. Alphonsus, n. 620. - Lugo, disp. 18, nn. 77, 144 and seq. - Elbel, n. 80.

Question 2. Whether a thief is held to restitution if the stolen thing has perished while with him?

Resp. Affirmatively, whether it has perished by the fault of the thief or of anyone else, or without any fault. The reason is that in that case, since the destruction of the thing must be ascribed to the theft, the thief is held to answer for it. Except the case of natural death from an intrinsic defect, or also of violent death, for example, from fire, but which would have taken place at the same time in the owner's possession, because then the damage could not be ascribed to the theft. - I said at the same time, because if it would have perished before and it is to be ascribed to the theft that it did not perish, it was already crying out to the owner while it remained in the hands of the thief, nor would it have perished if it had already been restored. But if it would afterward have perished in the owner's possession, the same obligation of restitution presses for the thief, who at the instant at which the thing perished in his hands contracted the obligation of restoring. Some require also that the thing perish in the thief's possession by the same danger; but, at least considering natural right alone, the necessity of this condition is not clear. - Cf. St. Alphonsus, n. 620. - Lugo, disp. 18, n. 141. - Vogler, n. 501. - Carrière, n. 1072.

Question 3. To what is a possessor of bad faith held, when the thing has had varying value during the time of detention?

Resp. In such a case one must attend both to the cause of such diversity, namely whether the thing had a different value by intrinsic and natural increase or rather by the variable estimation of men, and to the intention of the owner, namely whether he would have consumed that thing or rather sold it, and indeed at what time he would have sold it; and according to the measure of damage known from these circumstances, the thief must be obligated to restitution. But because almost all the aforesaid circumstances do not become known, for the most part compensation only of the value which the thing had at the time of the theft is to be urged. - Cf. St. Alphonsus, n. 621. - Lugo, disp. 18, n. 132. - Lacroix, lib. 3, part. 2, n. 233. - Carrière, n. 1073.

Question 4. What if another's thing has passed through the hands of several possessors of bad faith from donation or sale?

Resp. As to the thing, it is to be restored by him who still holds it, or changed it into another value, or consumed it, or lost it in any way. But, this one failing, the robber is held. But if neither has satisfied his debt, the rest must pay the price of the thing by equal portions. Finally, in defect of the rest, each one is held for the whole. But as to the fruits and damages of the thing, individuals are held to compensation for the part of the time during which each one held the thing. But if the others do not compensate for their part of the damaging and enjoyment, the reparation of the whole damage is incumbent upon each, yet pro rata for the time elapsed from the day on which successively they were made unjust possessors of another's thing.

Question 5. Whether he who knowingly bought another's thing from a thief can return it to him in order to recover the price?

Resp. It is controverted, almost as in the similar case of the possessor of good faith; but according to St. Alphonsus the affirmative opinion is probable, because although this man sinned by buying the thing in bad faith, nevertheless after the purchase he has the right, no otherwise than a possessor of good faith, to rescind the contract. Besides, by returning the thing to the thief, he places it in a condition not worse than that in which he himself found it. - Cf. St. Alphonsus, n. 570.

§ III. On the Possessor of Doubtful Faith

A possessor of doubtful faith is he who, moved by some probable reason, doubts concerning the certainty of his right to possess, whether that doubt began with the possession itself or in its course.

I say. A possessor of doubtful faith, whether he doubted from the beginning or only in the course of possession, is held seriously to inquire, so that he may lay aside the doubt; for otherwise he exposes himself to the danger of retaining another's thing from culpable negligence. But if, after diligent inquiry has been made, the doubt perseveres, he can retain the whole thing, provided that before the doubt arose he possessed in good faith. The reason is that possession begun with good faith creates of itself a very great presumption concerning the justice of the possession and attributes a certain right to the possessor, which, unless it is overcome by other stronger reasons or presumptions, must prevail both in the internal and in the external forum. - But if the doubt preceded the possession, one must inspect by what title he began to possess. For if in doubt he began to possess by despoiling another of his possession, and the doubt afterward perseveres, he is held to restore the whole thing to the former possessor, when it is not clear that this former possessor began to possess the thing in bad faith; because the reason which recently favored him is now turned back against him. But if he received the thing by another title, for example, of purchase, and after diligent examination the doubt

still perseveres whether the one from whom he received it is its owner, he must restore, according to the proportion of the doubt, to the probable owner, or to the poor if the owner is unknown. The reason is that possession begun with doubtful faith does not favor him, and therefore he cannot retain the whole; nor otherwise does he seem held to restoring the whole, since he doubts whether the thing is another's and not his own. - Cf. St. Alphonsus, n. 625. - Lugo, disp. 17, nn. 80 and 86. - Lacroix, n. 568. - Carrière, nn. 1094 and seq.

This "doctrine as to the obligation of returning a thing begun to be possessed in doubtful faith, when by diligence the doubt is not overcome and laid aside, some probably limit so that it does not have place when someone in doubtful faith accepted the thing by title of purchase or another similar title from a possessor of good faith; for then he neither sins nor is held to restore, if, after diligence has been applied, the doubt still perseveres, because then he succeeds to the right which that possessor of good faith enjoyed, who transferred to him the whole right which he had. But he himself had the right of retaining the entire thing because of possession in good faith; therefore the second also will be able to retain as successor of the first, however much he himself doubts." Lugo, ibid., n. 83.

Indeed, even if someone accepted by title of purchase, etc., from another concerning whom it is doubted whether he is the owner of that thing, Bucceroni judges that he seems to be held to nothing: "for then this man can form his conscience from reflex principles: no one is bad unless he is proved, etc., nor otherwise can a certain obligation be imposed which certainly is not clear." - Bucceroni, n. 1327.

Questions

Question 1. To what is he held who accepted some thing in bad faith, thinking the thing to be another's, and afterward doubts whether the thing is his or not?

Resp. He is to be equated with him who began possession with doubtful faith; for the prior estimation is found to be false, and therefore is not to be attended to in the solution of the case. Therefore weigh whether by his possession he has despoiled another or not, and resolve according to the things which were just said.

Question 2. To what is a possessor of doubtful faith held if he has neglected to inquire and the owner appears?

Resp. Generally, after the beginning of the doubt, he is to be treated as a possessor of bad faith; therefore he must be obligated not only to returning the thing to the owner, but also to making good all damages to him. Nevertheless he seems to be excepted who began possession in good faith and then, after doubt had arisen, neglected to inquire, thinking that the owner could be found only with greater difficulty; for this man would be equated with a possessor of good faith. Cf. Lessius, lib. 2, cap. 14, n. 24. - Carrière, n. 1088.

Question 3. Whether a possessor of doubtful faith, who began to possess in good faith, is held to restitution if, after inquiry has been made, he finds that the thing is more probably another's?

Resp. Negatively, because from certain possession there arises a morally certain right. Besides, until another has proved his certain right, the axiom has force: The condition of the possessor is better. - Cf. St. Alphonsus, de conscientia dubia, n. 35.

Question 4. What must be said if the doubt is not concerning the title, but whether someone began possession in good or bad faith?

Resp. Favor must be shown to the possessor, because offenses are not presumed but must be proved. Nevertheless, if someone is found actually in bad faith, and it is doubted whether he began to possess with this bad faith, it must be presumed that he was of bad faith from the beginning, because once bad, he is always presumed to be bad, according to the 8th rule of law in 6. - Cf. Lacroix, n. 567. - Lugo, disp. 18, n. 16.

Article II. On Unjust Damaging

An unjust damager is called one who harms his neighbor in the goods of fortune, and yet does not thereby become richer. One is formally unjust and another juridically only unjust, according as the fault was theological or juridical. - But theological fault is called that which includes an offense against God, that is, formal sin, whether mortal or venial. But juridical fault is the omission of diligence, whence damage comes to another, whether it is a formal sin or not. This again is distinguished, and from the common interpretation of Roman law, is gross, slight, very slight. Gross fault is the omission of diligence which men are commonly accustomed to apply in similar affairs. Slight fault is the omission of diligence which the more prudent and more diligent men are accustomed to apply. Very slight fault is the omission of diligence which is customarily applied only by the most prudent and most diligent. - Cf. St. Alphonsus, n. 549. - Kenrick, tract. 10, part. 2, n. 177.

I say. An unjust damager is held to restore the whole of that which is equivalent both to the thing damaged and to the foreseen damages arriving beyond the thing damaged itself. The reason is that otherwise the injured owner would not be made altogether indemnified, which is required for repairing justice. - But in order that he be held to this from natural right, and consequently in the forum of conscience, before any sentence of the judge, it is necessary that he have damaged truly, efficaciously, and formally. Truly indeed, insofar as he violated a strict right through the injury of commutative justice; efficaciously, insofar as he was not only the occasion, but the proper cause of the damage, so that the effect can and must be imputed to him; formally at last, insofar as he adverted to the unjust action and properly sinned before God. - I said before any sentence of the judge, because after the sentence of the judge an obligation of restoring can arise in conscience even from merely juridical fault. For one must obey the just sentence of a judge; otherwise the laws would not provide for public security and would be empty. But the sentence of which we are speaking is just, because that law is enacted for the common good and tends to making men more cautious, lest they inflict damage on others. - Cf. St. Alphonsus, nn. 550 and seq.; and Hom. Ap., nn. 29 and 41. - Billuart, dissert. 7, art. 4.

Questions

Question 1. Whether theological fault is required for inducing the obligation of restitution for damage inflicted upon another's thing, which was held from some contract, for example, of lease, deposit, or loan for use, etc.?

Resp. It is controverted; but the affirmative opinion is, according to St. Alphonsus, very probable unless a special pact intervened. The reason is that the obligation of repairing an injury ought to

pertain to the same forum to which the injury itself pertains. - I said unless a special pact intervened, because then a special obligation is knowingly and freely assumed. But theologians who hold the negative opinion affirm that this special pact is always present, not indeed expressly but implicitly; but they prove this by no solid argument. Cf. St. Alphonsus, n. 554. - Lugo, disp. 8, n. 106. - Lacroix, n. 177. - Antoine, part. 2, cap. 3, qq. 2 and 5.

Question 2. Whether he is held to restitution who indeed inculpably placed the cause of damage, but afterward did not prevent it, although he could have prevented it?

Resp. Affirmatively, and the reason is that each one is held from justice to prevent his action from harming his neighbor; therefore he is held also to prevent the evil following from his action from persevering; and consequently, once the error is known, he must correct it, and if he does not do so, then he sins gravely and assumes the obligation of repairing all the damages which come from this. Cf. St. Alphonsus, n. 564.

Question 3. Whether damage following from a cause culpably indeed placed, but already retracted when the damage is inflicted, must be repaired?

Resp. Affirmatively, at least if that damage was determinate and foreknown in species. The reason is that the damager then properly contracted the whole malice and assumed the obligation of restitution; but then he harmed not only affectively, but also by acting effectively and really. Therefore in this way too he must repair the injury, and simple retraction of the will does not suffice.

Question 4. Whether damage inflicted per accidens indeed, but while being occupied with an illicit work, must be repaired?

Resp. Negatively, because that damage is not voluntary, since it was not foreseen even confusedly. Nor does it matter that the action was illicit; for this pertains nothing to the notion of justice. Thus a cleric who, by being occupied with hunting contrary to the prohibition of the Church, killed a man as though he were a wild beast, is no more guilty of injustice than a layman who had done this. - Cf. Vogler, n. 170. - Lugo, disp. 8, nn. 72 and 82. - St. Alphonsus, Hom. Ap., n. 39.

Question 5. Whether you are held to repair damage which you inflicted upon someone by error, while you intended to harm another, for example, if you burn the house of Caius, which you think to be the house of Titius, your enemy?

Resp. It is much controverted among theologians, but with St. Alphonsus and others the negative opinion seems probable. The reason is that in this case the damaging action is materially only unjust toward Caius and affectively only unjust toward Titius. It is indeed true that then all the conditions required for urging restitution from unjust damaging are verified, but not in relation to the same person, which is altogether necessary. - Cf. St. Alphonsus, n. 620. - Lugo, disp. 17, n. 75. - Lacroix, n. 200.

Question 6. To what is he held who indeed inflicted grave damage but with light fault, for example, from defect of advertence, etc.?

Resp. More probably he is held to nothing. For he cannot be obligated either under grave obligation or under light obligation: not under grave, because grave obligation does not have proportion with light fault; not under light, because light obligation does not have proportion with a grave thing. - Cf. St. Alphonsus, n. 552. - Lugo, disp. 8, n. 56. - Vogler, n. 109.

Indeed the opinion of those who deny that there is a grave obligation of compensating grave damage inflicted by deliberate theological fault, but only venial fault on account of ignorance or inadvertence to formal gravity, even if the material and objective gravity is known, is probable. For this obligation is not certain; if it were given, it would be either from the thing accepted, or from unjust taking. But not from the first, because the thing is supposed no longer to exist either formally or equivalently; not from the second, because the obligation of restoring ought to be proportioned to the act itself insofar as culpable, and indeed against commutative justice, for the violation of which it is, as it were, a penalty, which cannot be above the demerit. But here the fault is light, and since, where no fault intervenes, there can be no natural obligation, so neither can there be a grave obligation where grave fault has not intervened. Finally, a grave natural obligation does not arise from a light sin, if there is no advertence to the objective gravity, or the material gravity of the damage, or the formal gravity. Cf. Wirceburg, vol. 6, n. 585.

Question 7. Whether he who inflicted grave damage through several venial faults deliberately committed is held under grave obligation to repair that whole damage?

Resp. 1st. Affirmatively, if the damage inflicted is upon the same person, although the damager did not sin gravely. The reason is that here he is held to repair the whole damage voluntarily and freely committed; but the whole damage was freely inflicted and besides is grave by hypothesis; therefore that whole damage must be repaired, and if the damager does not do this, then indeed he will sin gravely. But otherwise one must answer, at least probably, if minute damages were inflicted on diverse persons; because no one has suffered grave damage, not even radically, as when small little thefts are committed. Cf. Vogler, nn. 124 and 126. - Lugo, disp. 8, n. 69.

2nd. But others deny: for it makes little difference whether the objective gravity of the damage is known all together in one taking, or successively in several, if in neither is the formal gravity known. Those individual damagings were light; the formal gravity also was not known. In this case several light obligations can coalesce into one grave obligation just as little as several light sins into one mortal sin. Cf. Wirceburg, vol. 6, n. 587.

Nor should you say that this opinion is identified with proposition 38 condemned by Innocent XI: One is not held under pain of mortal sin to restore what was taken away by a few thefts, however great the total sum may be. But this is not to the point, for even if you prescind from the present question, that proposition was most justly transfixed, because it says universally that there is no grave obligation of restoring what is taken away by several smaller thefts. For certainly this obligation exists if, before he committed the last small theft, the thief adverted that he was completing a grave sum; if he had from the beginning the intention of inflicting grave damage by several little thefts; finally, if those little thefts still exist in the thief's possession either formally or in equivalent. In these cases a grave obligation is certainly given; but from the condemned proposition it does not follow that it is present when the formal gravity of the damage is not known.

Question 8. Whether you are held to repair damage coming to someone on the occasion of your unjust action, for example, if you have stolen and the theft is imputed to him?

Resp. Negatively, whether you did not foresee or did foresee that damage, indeed even if you acted deliberately so that your action would be imputed to him. The reason is that the intention, however unjust, does not make that work externally and materially also unjust with respect to a third party,

when of itself it is not such. Except, however, if at some time the circumstances were such that between them and a grave suspicion concerning another there would be a true connection, or if someone expressly used those means which of themselves provide a most grave suspicion for accusing another. Cf. St. Alphonsus, nn. 635 and 636. - Lacroix, n. 157.

Question 9. Whether an owner is held to repair damage inflicted upon a neighbor by his animals?

Resp. Affirmatively, if from theological fault he neglected to watch over the animals. For each one by natural right is held diligently to guard his animals, lest they inflict damage on others, just as he must guard against detriment coming to his neighbor from his own actions. But, theological fault being excluded, he is indeed not held before the sentence of a judge, but he is certainly held after the sentence, as is clear from what has been said.

But as regards us, Kenrick has these things: "By most American laws, as also by English laws, animals inflicting damage are detained until satisfaction is made to the injured person, and they are sold by public authority if the owner neglects to redeem them. But if the owner of the estate omitted to enclose it with a lawful fence, he can recover nothing, but he himself will be held to repairing the damage, if he has wounded or killed the animal." - Cf. Kenrick, tract. 10, part. 2, n. 185.

Question 10. Whether he is held to restitution who prevented another from obtaining some good?

Resp. 1st. Affirmatively, if the one impeded has a strict right to that good. 2nd. If he does not have a strict right to obtaining the good, one must distinguish: Affirmatively, if by unjust means he is impeded from obtaining the good; for anyone has a strict right not to be impeded unjustly from the obtaining of a good of which he is not unworthy. In this case restitution must be made according to the certainty or probability by which he is judged otherwise to have been going to obtain such a good. Negatively, if he is impeded by means just in themselves, because then no right of another is violated. - Cf. St. Alphonsus, Hom. Ap., n. 61. - Lacroix, n. 69. - Laymann, l. III, tract. II, cap. VII.

Hence he exists as obligated to restitution toward a son who induces the father to exclude him from an inheritance to which by civil law he has a strict right. Likewise he is held to restitution who, by lies scattered against a poor man, prevents alms from being given to him. Those sellers also are held to restitution who unjustly detract from other sellers and from the merchandise for sale among them, in order that they may turn buyers away from them and entice them to themselves.

Article III. On Unjust Cooperation

Cooperation toward the damage of the neighbor can happen in nine ways. What those are was said above, n. 194; but here note that the first six ways are positive and the last three negative. Something will be said briefly concerning each.

§ I. On the One Commanding

One commanding or mandating is called he who, on account of his own advantage or in favor of himself, moves another by command, prayers, or other means to inflicting damage on someone. It is said on account of his own advantage, because in this the one mandating differs from the one counseling; for where there is a mandate, the executor acts in the name and in favor of the one mandating, but where there is counsel, he acts in his own name and in favor of himself or of some

other third party. Hence it is not necessary that the one mandating be the superior of the mandatary. - Cf. Carrière, vol. 3, n. 1168. - Ballerini, note (b), p. 573.

I say. The one mandating is held to repairing every damage which is inflicted by force of the mandate, because he himself is the principal cause, morally indeed but efficaciously, moving another to harm; and since otherwise he is supposed formally unjust, it follows that all the conditions of unjust damaging are verified in him.

You Will Resolve. - 1st. The one mandating is not held to restitution if he revoked the mandate before the damage was inflicted and the revocation became known to the mandatary before execution of the mandate; because then he does not flow into the damage.

2nd. But if the one mandating did not revoke the mandate, even if he retracted the depraved will, or indeed revoked it, but not in time, or finally if it is clear that the revocation made in time was not heard or understood by the mandatary on account of deafness or distraction, he will be held to restitution, because the damage follows by force of the prior mandate.

§ II. On the One Counseling

I say. Whoever has given unjust counsel to another is held to retract it, whether knowingly and willingly he offered it or in good faith; otherwise he will be held to repairing all damages which will follow by force of his counsel. The reason for the first is that, when unjust counsel has been given, its retraction is the only way of repairing injured justice. But the reason for the second is that damages which follow by force of the counsel must be imputed to the one counseling as to the true and efficacious cause.

You Will Resolve. - 1st. The one counseling is not held to restitution if the executor would equally well and in the same way have inflicted the damage without the counsel given, because then the damage is not the effect of the counsel. Cf. St. Alphonsus, n. 561.

2nd. Nor is he held to restitution if he fully revoked the counsel before execution, whether the counsel was bare or clothed, or supported by motives. Nevertheless in this last case it is necessary that in the retraction he apply other motives at least equally efficacious. Cf. St. Alphonsus, n. 559.

3rd. If two at the same time counsel theft to someone who, induced by their counsel, steals, each is held to restitution; for although, even with only one counseling, the theft would have been perpetrated, nevertheless in fact each by his own counsel exerted influence, and by that very fact each was the cause of the theft. - Cf. St. Alphonsus, n. 561. - Lugo, disp. 19, n. 2.

4th. Although the one counseling is held to restitution only secondarily, because the executor is held primarily, since he acts in his own name, nevertheless he is not exempted from the obligation of repairing the damage which he counseled, if the executor, whom he warned to restore, does not restore. The reason is that he efficaciously cooperated in the damage; but efficacious cooperation necessarily requires efficacious reparation.

Question. Whether, or in what manner, one giving harmful doctrinal counsel from gravely culpable ignorance is held to restitution?

Resp. If the one giving counsel does this from his state or office, for example, an advocate, physician, confessor, etc., he is held to restitution for the unjust damage which follows from his counsel,

whether toward the one seeking counsel or toward him against whom it is given. The reason is that society has the right that he have knowledge suited to his office. But if the one counseling is not such a person, who by reason of his office or state professes skill, 1st, he is not held toward the one seeking counsel, unless he acts from deceitful counsel, or unless he affects great skill which he lacks; 2nd, nevertheless he is obligated toward a third person, who suffers damage from it, if he himself knew his own lack of skill and foresaw at least confusedly that damage would follow. - Cf. St. Alphonsus, n. 564.

§ III. On the One Consenting

I say. The one consenting is held to restitution as often as knowingly and freely he issues a vote or sentence, upon which the violation of another's strict right directly depends, that is, as often as he gives efficacious consent to the damage or injury of the neighbor. The reason is that then he himself is the true, efficacious, and unjust cause of another's damage.

You Will Resolve. - 1st. He is not held to restitution who by his vote impedes another from obtaining a good to which he had no right, yet with fraud or special pact excluded; because in this case, but not in the other, a strict right would be violated.

2nd. He is not held for damage who authentically revokes a vote previously given, before the wickedness is consummated; nor the one voting in good faith, although this latter, when the error has been detected, is held from justice to revoke his vote. The reason is that the former does not exert influence efficaciously and the latter does not exert influence unjustly.

3rd. He is held for damage who abstains from casting a vote which from office would have to be given, and whose omission would be the efficacious cause of unjust damage; but not he who abstains from giving a vote from mere benevolence and concerning a thing not owed to another.

Question. Whether the one consenting, who gives an unjust vote, is held to restitution if there are not lacking other votes already sufficient for the damage?

Resp. It is certain, 1st, that all those consenting are equally held to restitution if by agreement they gave votes; since, when a conspiracy has been entered upon, there is one moral action of all. - It is certain, 2nd, that all those consenting contract the obligation of restoring when they have cast the vote at the same time; because, since no one then was prior or posterior, the sentence resulting from the sum of the votes is deservedly attributed to each of those voting. It is certain, 3rd, that those are not to be excused from restitution who first give a vote before the number is completed, even if they foresee that others who consent will not be lacking, because they truly exert influence on the damage; for although without them it would have been inflicted, nevertheless through them it is partially inflicted in fact.

But whether, conspiracy and simultaneous casting of votes being excluded, the last voters can be excused from the obligation of restoring when the number of votes required for the determination of the matter has already been completed, is controverted. Several grave theologians affirm, because voters of this sort are in no way the cause of the damage, since it was already sufficiently prepared and determined by others. Others deny, because since a sentence is never judged perfect unless it is concluded through the casting of all votes, the last no less than the first exert influence on the unjust sentence. - Cf. St. Alphonsus, n. 566. - Lugo, disp. 19, n. 17. - Vogler, n. 302.

§ IV. On the Flatterer

A flatterer is called one who by praising, flattering, or blaming moves another to damaging. Concerning the flatterer these things are to be held:

1st. He who induced another to inflicting damage by proposing praise, or otherwise disgrace, that would follow, is held for the damages. For such cooperation has itself in the manner of counsel, since motives for acting commonly efficacious of themselves are proposed.

2nd. Those who so represent to a man affected by injury the magnitude of this injury that, moved by it, he takes vengeance, are held to restoring, provided they adverted at least probably that damage would follow.

3rd. But he is not held to restitution who approves or ratifies a crime already perpetrated, unless he is the cause why restitution is not made or new damages are inflicted. - Cf. St. Alphonsus, n. 567.

§ V. On Refuge

A receiver, or one providing refuge, is he who knowingly and freely provides security to a robber or another damager. Concerning him these things must be established:

1st. One receiving is held for damages coming from his manner of acting. For one providing security efficaciously and unjustly determines the will of the thief, or makes it firmer, in the purpose either of stealing or of not restoring or of stealing again.

2nd. Likewise merchants and especially innkeepers are held to restitution who accept stolen goods of sons of families, servants, etc., or hide them, or even claim them for themselves as the price of merchandise, drinking-bouts, etc.

3rd. Among those receiving are not to be reckoned those who receive at home friends or blood-relatives who are evildoers; nor those who hide them under hope of amendment, or show them the way by which they can flee, when they are sought for prison or for death. Cf. St. Alphonsus, n. 568.

§ VI. On the Participant

A participant is twofold: one in the booty, another in the damaging action.

I say. A participant in the booty is held to restoring only that part which he accepted and retains in his possession, because only as to that is he compared to the thief. But a participant in the damaging action is held for the whole as often as his cooperation truly exerted influence on the substance of the damage and cannot be excused from formal sin; because then his action will be truly, efficaciously, and unjustly damaging. Cf. St. Alphonsus, n. 571. - Billuart, dissert. 8, art. 13. - Carrière, n. 1197.

You Will Resolve. - 1st. He is not held to restitution who from so grave a fear cooperates with respect to damage in the goods of fortune, whether the cooperation is mediate or immediate, so that the damage inflicted upon the neighbor is much less than that which threatens you and of such a nature that the neighbor must then be judged not to be reasonably unwilling. - I said with respect to damage in the goods of fortune, because as to the goods of life, the owner must always necessarily be unwilling. Cf. St. Alphonsus, n. 571.

2nd. Merchants who sell weapons indiscriminately are not held to restitution, even if they know that some in general will abuse them; because since the necessity of carrying on trade excuses them from

sin, necessarily it also excuses them from the obligation of restoring. But if they foresee specifically that some are proximately about to abuse the aforesaid weapons, they cannot sell them on account of ordinary gain, but a grave cause is required, according as the hope of preventing the abuse is greater or less. Cf. Vogler, n. 315.

§ VII. On Negative Cooperators

Negative cooperators are those who do not prevent the damage of the neighbor when from office they are held to prevent it. They are commonly called the mute one, the one not opposing, the one not revealing. 1st. The mute one is he who does not speak, does not cry out, does not warn beforehand the one to be damaged, while by office or contract he is held to this. 2nd. The one not opposing is called he who, while damage is being inflicted, does not oppose, does not guard the thing, although he ought to perform this from justice. 3rd. The one not revealing is called he who, after damage has been inflicted, does not denounce the damager to the injured owner or superior, although from office and thus from justice he ought to denounce. Moreover the same principles and the same moral applications suit all these.

I say. By reason of damage not prevented, all and only those are obligated to restitution who from office were held to prevent it. All indeed, because, the office being supposed, there already exists a contract or quasi-contract which obligates from justice; but only those, because, the office failing, the whole force of obligation is from charity. But it is further necessary, for imposing the burden of restitution, that those who from office are held to prevent damage be able to prevent it without grave burden, because neither a contract nor positive law is accustomed, at least for the most part, to obligate with grave inconvenience. - Cf. St. Alphonsus, n. 573.

Questions

Question 1. Whether guards, for example, of woods, etc., are held to repair damage inflicted upon the owners?

Resp. Affirmatively; if by reason of their negligence and dissimulation the profit of the owner ceases, they are held to compensating the profit ceasing and the damage emerging. - Lugo, disp. 37, sect. 8.

Question 2. Whether the same are held to restore the price which perchance they accepted for dissimulating?

Resp. They are not held after the fact, neither to those from whom they accepted, nor to the owner: not to those, as we saw before when speaking of acceptance for an evil thing; not to the owner, because that is not taken away from the owner. They must make good to him the detriment which he has suffered, not the price which is handed over for the detriment. - Lugo, ibid.

You Will Resolve. - 1st. Servants are not held to restitution, at least probably, when through fault they do not prevent damages inflicted upon the master, because they are not hired except for labor and for general assistance. Nevertheless, except those who are placed over the keeping of a special thing and conduct themselves negatively while they see damage being inflicted on it. Cf. St. Alphonsus, on the fourth precept of the Decalogue, n. 344. - Ballerini, note (a), p. 582, note (b), p. 582, and note (a), p. 583.

2nd. A superior is not held, at least as to the internal forum, to repairing damage inflicted by his subjects, even if by not preventing the damage he sinned gravely. The reason is that the quality of superior by itself does not suffice for someone to be constituted as quasi-sponsor for the damages of subjects. Nevertheless, except if his silence is equivalent to a positive impulse. I said as to the internal forum, for as regards the external forum and precisely concerning servants according to our law, the superior is held if either expressly or implicitly he wills or approves the damage inflicted by the servant. But he is judged to will this damage when the servant causes it under his immediate supervision or from natural and culpable negligence known to the master himself. Cf. St. Alphonsus, n. 578. - Kent, Comment., vol. 2, part 4, lect. 32, n. 259.

3rd. For the same reason neither a husband nor a father is held for damages inflicted by a wife or by minor children. But in the external forum they are sometimes held; but in what cases and by what reason, you may see in Kent, Comment., vol. 2, lect. 28 and 29.

Chapter III. On the Circumstances of Restitution

The chief circumstances of restitution are contained in this verse:

How much you will restore, to whom, in what order, how, when?

Article I. How Much is to be Restored

The quantity of restitution must be measured from the quantity of the thing accepted, or from the quantity of the damage inflicted, or of the influence upon the injury of the neighbor. Since special difficulties occur concerning solidarity alone, we shall treat specially of that alone.

Solidarity, or the obligation of restoring in solidum, is the burden incumbent on individual cooperators of repairing the whole damage inflicted. A twofold kind is distinguished: namely absolute, which has place when someone is held to repairing the whole damage; and conditioned, when individual cooperators are held to restore for other cooperators who fail.

I say 1st. Anyone from the cooperators efficaciously concurring to damage, so that this whole damage can morally be ascribed to him, is held to restitution in solidum, that is, in its entirety, whether absolutely or at least conditionally. The reason is that anyone is the efficacious and unjust cause of the whole damage, and therefore must repair the whole. - And we say that the whole damage certainly can be ascribed to some cooperator in a twofold case, namely: 1st, as often as his cooperation is necessary, although not sufficient for inflicting the whole damage; 2nd, as often as cooperation is made from an efficacious conspiracy, by which the damagers so efficaciously excite themselves to the damage that, if individuals did not concur, the damage would not occur. Cf. St. Alphonsus, n. 579. - Vogler, n. 342.

I say 2nd. Whoever is the principal cause of the damage is held to restore in solidum absolutely; but the rest of the equal cooperators or secondary causes are held only conditionally. The reason is that the principal agent, as the one mandating, the leader, etc., by that fact absolutely takes upon himself the whole burden of repairing the damage, since he primarily inflicts it and does not use others except as instruments for damaging the neighbor.

Questions

Question 1. Whether there is an obligation of restoring in solidum, where cooperation indeed exerted influence on the whole damage of an indivisible thing, but of itself is not sufficient nor necessary, nor proceeds from strict conspiracy; for example, if four carry away a beam which three also would have carried away?

Resp. Negatively, because, since the whole reason of the obligation is influence on the damage, that obligation ought not to be greater than the influence itself. Moreover, one who concurred to a part of divisible damage, although with others he concurred to the whole damage insofar as the part contributes to completing the whole, certainly would not be held to restoring the whole; therefore, by parity, he who concurs partially to indivisible damage is held only partially to the reparation of the damage, because he placed a partial cause. Cf. St. Alphonsus, n. 579. - Lugo, disp. 19, n. 83. - Vogler, n. 343.

Question 2. Whether you are held in solidum if your action was indeed sufficient for inflicting the whole damage, but in no way necessary, nor did it proceed from conspiracy; for example, if you applied fire to another's house together with several others?

Resp. Negatively, at least probably, and the reason is that, although the damaging action was sufficient for the whole damage, nevertheless it had only a partial influence upon it, since it was neither necessary nor common with others from conspiracy. Therefore it is not the moral cause of the whole damage. Nor does it matter that it is a question of an indivisible thing, because the cooperation is not extended to the whole damage. Nevertheless understand this as often as without your concurrence the damage nevertheless would have occurred; otherwise even your action would have to be called necessary to it. - Cf. St. Alphonsus, n. 679; and Hom. Ap., n. 55.

Here one must altogether advert to the warning of St. Alphonsus, namely: in practice it is rarely expedient that the obligation of repairing the whole damage be manifested to the unlearned, although they are certainly held in solidum, provided however that they have damaged only as secondary causes. The reason is that an obligation of this sort cannot easily be persuaded to the unlearned. - Cf. St. Alphonsus, Hom. Ap., n. 54.

Article II. To Whom Restitution is to be Made

I say. If the owner is certain and known, restitution must be made to him, as is clear, except the case in which the thing taken away had been deposited, leased, or loaned for use; for then it must be restored not to the owner but to him with whom it was found by title of deposit, lease, or loan for use. The reason is that the actual possessor cannot without injury be deprived of the right of keeping, use, or possession, unless he himself consents. But if the owner is doubtful or unknown, or if, although known, he cannot be reached, it must be established as follows:

1st. If after diligent inquiry the owner is still doubtful, either the doubt turns between few or between many. If the former, restitution must be made to them pro rata, or the presumed owners are to be induced to composition. If the latter, for example, because someone selling in some city defrauded many in weight or price, restitution is to be made by increasing in the same manner the weight or measure, or by diminishing the price toward ordinary buyers, who are presumed to have been damaged, if this can easily be done; otherwise restitution is to be made to the poor.

2nd. If the owner is plainly unknown, or if, although known, nevertheless he can be reached neither immediately nor mediately in a moral manner, one must distinguish: for either another's thing acquired in good faith is possessed, or in bad faith. If in good faith, then one must act as in things recently lost, whose owner cannot be found, and therefore either it is to be disbursed to pious causes or even can be retained by the possessor. But if in bad faith, the possessor must altogether despoil himself of such a thing and expend it upon pious works or works useful to the common good. And the same must be said of him who must restore by force of unjust damaging. The reason is both because, from common sense, the unknown owner is judged to be represented by the poor or by pious causes, and because custom so provides, which is the best interpreter of laws. And although some say that the debtor can expend those things upon any public utility, even a profane one, nevertheless ordinarily one must stand by the general custom in practice. But never can the possessor of bad faith or the unjust damager retain the debt under any pretext whatever, even of poverty, because no one ought to derive advantage from his own malice. - Cf. St. Thomas, 2-2, q. 62, art. 5. - St. Alphonsus, Hom. Ap., nn. 64, 67, and 69.

Question. Whether, when your creditor was forced to make cession of goods, you must restore to him or to his creditors?

Resp. Since in the case of cession of goods, according to civil laws, some administrator is ordinarily assigned, restitution must certainly be made to him, at least for avoiding the danger of restoring again. But if for whatever cause there is no one present who manages the administration of the goods, restitution can be made to the creditor, if the debt is small, if he is upright, and if you believe that he is going to restore to the creditors; likewise if he is in grave necessity and greatly needs that debt for sustaining life, because, as theologians commonly teach, one ceding goods can withdraw those things which are altogether necessary for living. Indeed, even in any case whatever, it can and must be made to the creditor by reason of justice, and only by reason of charity can the obligation of warning his creditors press. Cf. St. Alphonsus, n. 699. - Gousset, n. 772. - Ballerini, note (a), p. 588.

Article III. In What Order Restitution is to be Made

The order of restitution can be considered both on the part of those who must restore, when several have cooperated in the same damage, and on the part of those to whom restitution must be made.

§ I. On the Order of Restitution Among Cooperators

For assigning the order of restitution in solidum among cooperators in damage to another, one must consider whether any one of them is the principal or primary cause of the damage; whether secondary or subordinate; whether, finally, collateral or equal. For cooperators can concur in damage either in the same mode or degree, or in a diverse mode. These things having been noted:

I say. If all have concurred in the same mode, each must equally restore in solidum conditionally, without any determined order, because none of them assumed greater danger. I said conditionally, that is, when the rest of the cooperators would not restore, or no one would pay in solidum. But if they concur in a diverse mode, you will again distinguish: for restitution must be made either from theft or from mere damage. If from theft, in the first place the possessor is held, who has the thing in individual form or in equivalent, or who unjustly consumed it; then the one mandating, or the robber if the one mandating is lacking; in the third place the rest of the positive cooperators are held; finally

the negative cooperators. But if from damage, the one mandating is held first, when there was one; for he is the principal cause; secondly the executor, even when he acted in the name of some one mandating, because relatively to the others, according to the common opinion, he is the principal cause; then the rest of the positive cooperators; finally the negative cooperators. - Cf. St. Alphonsus, n. 580; and Hom. Ap., n. 60. - Vogler, n. 361.

You Will Resolve. - 1st. Secondary causes are held to nothing if the principal cause has restored or obtained remission of the debt; for secondary causes are held only in defect of the principal cause. - Cf. St. Alphonsus, n. 581.

2nd. If one of the less principal causes restores, the principal cause is held to make him indemnified, because the less principal cause acquires the right of the creditor against the principal. - Cf. St. Alphonsus, ibid.

3rd. If the creditor releases a secondary cause from the obligation, for that reason the principal cause is not freed, because the obligation of the principal cause is independent of the obligation of the secondary cause. Indeed, although the creditor remits to one of the secondary causes, for that reason the other secondary causes are not free from the obligation of restoring their part, unless the condonation was altogether full, or can deservedly be presumed such. - Cf. St. Alphonsus, ibid.

§ II. On the Order of Restitution as Regards Creditors

Here it is necessary to deal only with the case in which the debtor is unequal to satisfying all his creditors; for otherwise no order necessarily must be observed in paying debts.

I say. In the first place satisfaction must be made to the privileged, then to mortgage creditors, and finally to common creditors. The reason is clear of itself, and is taken, as regards privileged creditors, from positive laws, and as regards mortgage creditors, from a special contract and from the very nature of the thing. - Note, however, that privileged credits are diverse according to the diversity of regions. In the case of cession of goods, among privileged debts with us by force of the law of the year 1898 and of the amendment made in the year 1903 are the salaries of workers and servants, on account of work performed within three months before the legal process was begun, provided the sum owed to each does not exceed three hundred dollars. - Cf. Kenrick, tract. 10, n. 91. - Kent, Comment., vol. 2, lect. 37, n. 419. - Wells, Every Man, etc., p. 594.

You Will Resolve. - 1st. Debts from delict are not necessarily to be paid before debts from onerous contract, because from no law is their preference clear. But both must be preferred to debts from gratuitous title, for he who promises gratuitously always places a tacit condition: if I am able to furnish it conveniently. - Cf. St. Alphonsus, nn. 688 and 689.

2nd. Neither poor creditors over rich, nor earlier creditors in time over later, are necessarily to be preferred, both because from no source is this preference of law clear, and because the person of the debtor, which alone is obligated, bears itself in an equal manner to all the said creditors. - Cf. St. Alphonsus, nn. 690 and 691. - Lugo, disp. 20, n. 161. - Vogler, n. 439.

Question. Whether a debtor knowing his own state to be unstable can satisfy some creditor not petitioning in full?

Resp. Negatively, because, since all creditors are equal in right, and none among them prosecutes his own right, and therefore by diligence no one becomes preferred in petitioning, natural equity demands that full restitution not be made to someone with prejudice to the others. - If, however, some creditor has accepted payment in this way, without having petitioned it, probably he is not held to restitution. The reason is that he could have urged payment, even outside judgment, without doing injury to the other creditors; therefore he can also accept it without their injury. - But the case in which such payment is declared invalid by law must be excepted. Moreover, among us, payment made to a creditor petitioning extrajudicially is held invalid if this creditor could have known the unstable state of the debtor and it was made within the four months preceding cession of goods; and also payment made within six months by a debtor knowing his own state to be unstable. - Cf. St. Alphonsus, n. 692. - Wells, Every Man, etc., p. 599.

Article IV. In What Manner Restitution is to be Made

I say. Generally it is required and it suffices that restitution be made in that manner by which violated justice is repaired fully or to equality. The reason is that the full reparation of justice is the principal end to be obtained in restitution.

You Will Resolve. - 1st. It is not necessary per se that restitution be made openly; indeed often it cannot be done in that manner, when provision must also be made for the reputation and honor of the one restoring.

2nd. It is not necessary that restitution be made by the debtor himself, but it can be done through another, provided that the thing is returned to the owner. Sometimes it can be done through the confessor; nevertheless great caution is then needed, both that the seal of confession remain uninjured and that the penitent learn that the creditor was in reality satisfied, lest any suspicion against the probity of the confessor be able to arise.

3rd. It is not necessary that restitution be made with the owner being aware; because this is not required in order that he be indemnified. Hence the debtor can restore, for example, by increasing weight or measure in selling, or the owed work in laboring, and in six hundred other ways.

4th. Restitution can be made through a simulated donation, because that which is owed is the thing, and it is not required that the debtor externally confess that he is paying. But if the creditor, moved by gratitude, should recompense him with another gift, this would have to be restored, because that donation does not seem fully voluntary and spontaneous. - Cf. Carrière, n. 1265.

Questions

Question 1. In what place and at whose expense must restitution be made?

Resp. If the obligation of restoring is from a thing accepted and retained in good faith, restitution is not necessarily to be made in another place than that in which the thing now exists; nor is a debtor of this sort held to send the thing into another place where perhaps the owner now lives. The reason is that he is not held to restore the owner into his former state, from which he did not cast him down by formal injury. But if the obligation of restoring arose from delict, restitution must be made in the place in which the owner would have possessed the thing if it had not been taken away, and this at the debtor's expense. The reason is that the creditor must be kept indemnified and suffer no damage from the iniquity of the debtor, but be restored into his former state. Cf. St. Alphonsus, n. 677.

Question 2. Whether a debtor from delict must also pay expenses for the thing to be sent to the owner, if those expenses exceed the value of the thing itself?

Resp. Affirmatively, if the excess is not very notable, because both the debtor, by committing injustice, took such a burden upon himself, and the owner is not held to suffer the loss of his own thing. But otherwise it must be said if those expenses were very great with respect to the value of the thing to be sent back. Then, however, from the presumed will of the creditor, restitution would have to be made to the poor. For right reason and charity dictate that the creditor cannot demand that restitution be made to him with any expenses whatsoever. But theologians do not agree how great the loss of the debtor must be, so that he can be excused from making restitution to the owner himself. They hand down this rule rather commonly: When, all things having been weighed, the damage which the debtor will suffer exceeds the damage of the creditor by only double, it is not sufficient that the owner be deprived of his own thing. But if it exceeds this proportion, it suffices that restitution at least be deferred. But according to various circumstances this rule must be modified. - Cf. St. Alphonsus, n. 598. - Lugo, disp. 20, nn. 185 and seq. - Vogler, n. 415.

Question 3. Whether the debtor must restore again, if he sent the debt through a faithful person and it perishes by chance or by the fault of a third party?

Resp. A debtor from possession in good faith is held to nothing; because, fault and pact being excluded, the thing perishes for the owner, who is the creditor himself. Nor is a debtor from contract held to anything, if it is a question of the thing of another existing in nature, accepted as a loan for use or deposit, etc., because the thing perishes for the owner, unless it has been agreed otherwise. It is otherwise if it is a question of a price to be paid, because the debtor preserves dominion over it until it reaches the creditor, and he must answer for the risks of the price transmitted until it is handed into the hands of the same creditor. Finally, a debtor from delict is not freed from restitution and remains bound to it so long as he has not made the owner truly indemnified, because he always remains the culpable cause of the damage which this man suffers. Nevertheless St. Alphonsus does not dare to condemn those excusing a debtor of this sort who sent the thing owed through a confessor.

Except the threefold case in which the debtor is freed from every burden, namely: 1st, if the owner designated the person through whom he wished the thing owed to be sent to himself; 2nd, if the creditor did not indeed choose the person, but left to the debtor the freedom of choosing whomever he wished, provided one prudent and faithful be chosen; 3rd, if this person was designated by the decision of the judge. Cf. St. Alphonsus, n. 705.

Question 4. In what manner must restitution be made for damages inflicted upon the Republic?

Resp. Restitution must be made through the means constituted by the Government itself, if such are had. Therefore attend to the various laws and customs of places. Among us two modes especially seem more apt. The first is that so great a quantity of paper money or of stamps be destroyed as is equivalent to the money or damaging. The other is that restitution be made to the public treasurer of the general Government or of the particular Government of each State, as the case requires, with the obligation that this be inscribed in some newspaper designated by the debtor himself.

Others also admit that satisfaction is made to the obligation, from the presumed will of the republic, by paying the sum owed to the poor, or to pious causes, or to those damaged by the state itself. - Cf.

Bucceroni, n. 1454.

Article V. When Restitution is to be Made

Concerning the circumstance of time, these few things are to be noted:

I. As regards any debts whatever, generally restitution must be made as soon as it can be done without grave inconvenience. For natural right demands that you not retain another's thing when the owner is reasonably unwilling. Hence: 1st, he who culpably defers restitution remains always in sin and cannot be absolved. Besides, if damages come to the owner from the delay of restitution, he is held to compensate them. 2nd. If someone, having the purpose of restoring, defers for some time without grave inconvenience to the owner, he is not easily to be condemned for mortal sin, indeed not even for venial sin if there is some cause of deferring, for example, hope of a more convenient occasion, etc. 3rd. He who would wish to restore by parts, when he can easily restore the whole, would not be absolved, because the owner even in this is reasonably unwilling. The same must be said of him who, when through the course of life he can restore, nevertheless defers until death; or who, placed in danger of death, would cast the obligation of restoring upon his heirs without sufficient reason, unless perhaps it is a question of restitution of uncertain goods. - Cf. St. Alphonsus, Hom. Ap., nn. 104 and 105.

II. As regards debts from injury, all damages, at least ordinary, which have followed from delay, must be compensated, even when the delay was inculpable. - I said ordinary, because extraordinary things cannot be foreseen. - Cf. St. Alphonsus, Hom. Ap., ibid. - Vogler, n. 426.

Nevertheless it must be noted that there are those who hold as probable the opinion denying that a burden exists of compensating damages following from inculpable delay. They namely hold that a just delay purges the delay, and hence that the delaying debtor is not the unjust cause of these damages, nor can the creditor be judged reasonably unwilling. - Ballerini-Palmieri, vol. 3, n. 359.

III. As regards debts from contract, generally one must stand by the conditions placed upon the contract concerning time or concerning other circumstances, unless another will of the other contracting party is prudently presumed. Hence: 1st, restitution, or rather payment, must be made at the time concerning which it was expressly or tacitly agreed. 2nd. The debtor can anticipate, if the term assigned for payment is in his favor, as it is ordinarily accustomed to happen; but otherwise if the same term turns to the utility of the creditor, as, for example, in the furnishing of money with profit to be received.

Chapter IV. On Causes Excusing from Restitution

Of these causes, some excuse in perpetuity and others for a time. The first are remission or condonation of the debt freely made by the creditor himself, compensation performed by the same by private authority, and prescription legitimately acquired by the debtor. But the others are reduced to impotence, whether physical or moral.

I say. Impotence, whether physical or moral, excuses here and now from making restitution, or rather suspends the obligation. The reason for the first is that no one is held to the impossible; and the reason for the second, that in morals that is called impossible which is very difficult and which cannot be done decently and honorably. Moreover, the creditor is not judged reasonably unwilling toward this temporary excuse. - Cf. St. Alphonsus, Hom. Ap., n. 117.

You Will Resolve. - 1st. A nobleman who cannot restore unless he deprives himself of servants, horses, arms, and thus withdraws from his state; or a principal citizen unless he undertake a mechanical art unaccustomed to him; or a craftsman unless he sell the instruments of his art or undergo great damage, can defer restitution and pay debts gradually. Nor does the exception which some posit, namely, unless a debtor of this sort culpably, for example, by games and drinking-bouts, cast himself into such necessity, seem necessary to St. Alphonsus. Nevertheless it is necessary that the state from which the debtor is not held to withdraw was justly acquired. - Cf. St. Alphonsus, Hom. Ap., n. 118.

2nd. Probably he is excused from restitution who, forgetful of the debt, gratuitously gave something to his creditor which is equivalent to the debt; because each one is judged to wish to satisfy an obligation of justice before mere liberality. - Cf. St. Alphonsus, n. 700; and Hom. Ap., n. 120.

3rd. If both the creditor and the debtor are now in grave necessity, but the debtor by restoring would fall into extreme necessity, probably he is excused from restitution, whatever the origin of the debt may be. Nevertheless, except if the thing itself still exists in species. But if the creditor alone is found in grave necessity, and the debtor by restoring would fall into that necessity, he must restore according to all.

Questions

Question 1. Whether cession of goods excuses in perpetuity from making restitution?

Resp. 1st. Negatively, whether that cession is voluntary or judicial; and the reason is that debts legitimately and certainly contracted must certainly be paid. - Nor should you say, 1st, that creditors do not wish any longer to exact the whole by this very fact, that they receive a part; for it is answered that they therefore settle with debtors concerning only a certain part to be paid, because they cannot have more, nor on that account do they renounce the right which they have to full payment. - Nor should you say, 2nd, that the law, in the case of judicial cession, exempts the debtor in perpetuity; for it is answered that that cession is a mere benefit which the law grants to a good-faith and unfortunate debtor, so that one ceding goods may preserve liberty and become immune from coercion in the external forum. For on the one hand that future immunity which is granted in perpetuity by law ("forever discharged from all debts and claims") cannot reach the internal forum; and on the other hand, restricted to the external forum, it favors also creditors, insofar as the unfortunate debtor will thus be able more easily to gather new wealth. - Wherefore Kent says: "It was stated by the Chief Justice, in giving the opinion of the Supreme Court of the United States, in Sturgess v. Crowninshield, 4, Wheaton, 122, that the insolvent laws of most of the States only discharge the person of the debtor, and leave his obligation to pay out of his future acquisitions in full force." - Nevertheless, if sometimes from the adjuncts of things it appears that creditors wish to condone all things, or if somewhere commerce is so carried on that among merchants account is had of a probable future cession of goods, then it does not seem why an obligation should be imposed in perpetuity. - Cf. St. Alphonsus, n. 669. - Billuart, dissert. 8, art. 20. - Kenrick, n. 211. - Kent, Comment., vol. 2, nn. 394 and 395. - Wells, Every Man, etc., p. 598. - Konings, n. 861.

Resp. 2nd. The affirmative opinion is probable. For the law now in force and passed July 1, 1898, for all our States and Territories plainly admits this interpretation: "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as are due to a tax levied by the United

States, etc." Nothing is found in the law which proves the contrary opinion. Where the law does not distinguish, neither ought we to distinguish. Certainly the mind of the legislator was to add an incentive to these unfortunate men, that they might begin life anew without impediment, with all their powers directed to this, that they might provide for their own and for themselves; and this perhaps would be difficult if they were still held to pay debts in conscience. - Cf. Slater, Moral Theology, v. 1, n. 438; note of the American commentator, the distinguished Fr. Martin, where this opinion is splendidly defended. - Bouvier, Law Dictionary, § Bankrupt, § Insolvency. - Cf. "United States Bankruptcy Law," July 1, 1898, June 5, 1910, Senate Document No. 10.

Question 2. Whether one burdened with debts can enter religion, and whether he is freed from debts if he has entered?

Resp. to the 1st: Negatively, if within a short time he can have that from which he may pay; otherwise, more probably in itself, if he must wait through a notable time. - St. Alphonsus, n. 74. - Nevertheless, if the debts are of great moment, such an entry, although valid, is prohibited by canon law as illicit.

Resp. to the 2nd: 1st. The religious order is not held to pay these debts from its own goods, as is clear. 2nd. The religious is held to pay from the goods which he had before profession, or which come to him by legacy, if he has emitted simple vows only; otherwise, however, if he has been solemnly professed. Thus commonly. Nevertheless, according to others, certain goods come to the religious by inheritance, legacy, or donation, and are acquired by the monastery, so that they pass to it with all the burdens which they would have if the religious himself were capable. Therefore from these goods the religious order itself must pay those debts. - Cf. Lugo, disp. 21, n. 79.

Question 3. Whether he is freed from restitution who pays a debt to the creditor of his creditor; for example, I owe you $100, but you owe $100 to Titius; shall I satisfy by paying $100 to Titius?

Resp. Affirmatively, in itself, to the apex of the law. The reason is that I, by paying to your creditor that which you owe him, acquire the right which he had of demanding his debt from you; whence the right which I have against you is equivalent to the right which you have against me, and compensation occurs. For your creditor can transfer to me his right, or I can buy it, just like anyone else who owes you nothing. St. Alphonsus, n. 700. - Billuart, diss. 8, art. 14, par. 1. - Vogler, n. 541, and others commonly.

I said, 1st, in itself, because I am not freed if perhaps you are still compelled to pay, or if you have privileged or mortgage creditors.

I said, 2nd, to the apex of the law, because such payment, if it is made without cause, will be illicit because of various inconveniences to which it is liable. But there is a sufficient reason if your creditor cannot recover his debt. - Billuart, ibid.

Question 4. Whether a debtor is freed in doubt or probability of payment?

Resp. 1st. No, in mere doubt, as is clear. For an obligation once contracted must be fulfilled, unless a solid reason persuades that payment has been made. The same is to be held where presumption is adverse to the debtor, which more often is accustomed to happen, especially when his doubt must be attributed to negligence.

Resp. 2nd. In true probability, there is controversy. The first opinion, the more common, denies. The reason is: 1st, because he does not satisfy a certain obligation by a doubtful fulfillment; 2nd, because the burden belongs to the debtor of attending and keeping watch, so that he restore certainly; whence the doubt that has arisen must be imputed to his negligence, from which the creditor ought not suffer damage. - St. Alphonsus, n. 700, and lib. 1, n. 27 and following. - Lugo, disp. 18, n. 12. - Lacroix, n. 571, although he holds the opposite, as Lugo himself also, when treating of another obligation and of justice; and many others.

The second opinion says that restitution must be made according to the proportion of the doubt, at least if both parties doubt; because, since the creditor has no right unless probable, it is not equitable that as much be paid to him as would be paid if he had a certain right. - Tamburini; Laymann; Diana; Reuter says this is probable, n. 449, although he holds the opposite as more probable.

The third opinion frees the debtor from every obligation, because an obligation is not to be imposed unless it is certain concerning it. And indeed why the debtor ought to be held to the safer side rather than the creditor is difficult to discern. - Cf. Bossius, Tanner, Viva, etc., apud Lacroix, and Reuter.

Question 5. Whether reasonably presumed condonation excuses from restitution?

Resp. Affirmatively, at least more probably, because retention of another's thing, or omission of restitution, is not unjust unless it is done against the unwilling owner. But it is not done against an unwilling owner or creditor if it is done from his presumed will. Therefore. - Lacroix, n. 462. - Lugo, disp. 21, n. 54. - St. Alphonsus, n. 700. - And hence domestics who steal foodstuffs and similar things from their masters while unwilling as to the manner of secretly stealing, but not as to the substance of the thing, can indeed sometimes be excused from mortal sin; and besides, the master can be unwilling as to the end for which the thing is taken without being unwilling because of the thing in itself, as, for instance, a father with respect to a son who steals a thing for gaming or illicit pleasures; therefore regularly no obligation of restoring arises. Whence Lugo deduces a general rule from these words: "for excusing many penitents from restitution, namely when they think that, if by themselves or by others they were to manifest their debt to the master, he himself would liberally condone it, or would be unwilling to oblige to restitution, for there is already given a sufficiently presumed will of the master, so that retention is not against the unwilling master as to the substance of the thing." - Lugo, ib. 55. But in these cases the confessor has need of great prudence.

For theft it is required that the owner be unwilling positively, that is, that he have a will of retaining his right against me; and thus it is not theft when I receive that which I know the owner would give me if I were to ask; for the owner is not unwilling, although he does not have the will of giving.

Section II. On Restitution in Species

Besides damage viewed generally in goods of fortune, damage in goods of the soul and in goods of the body must be considered. Therefore we must speak of this special damage, and of the obligation of restitution which arises from it.

Chapter I. On Restitution Because of Damage in Goods of the Soul

I say. Each one is held from justice to repair damage which he efficaciously and unjustly brought upon his neighbor in the goods, both natural and supernatural, of the soul, provided that that

damage can be repaired in the same order. The reason for the obligation is that each one has a right no less strict not to be injured in goods of this sort than in goods of fortune. But the reason for the condition added is that otherwise reparation is not possible.

You Will Resolve. - 1st. He who by force, lying, fraud, unjust fear, induced someone into lethal sin, is held under mortal sin from justice to reparation of the damage, by removing the force or seduction, by manifesting the error, etc. But he who without force or fraud but only by counsel induced someone to sin lethally, is indeed held from charity to revoke that counsel, but not from justice, because to one knowing and willing no injury is done. - Cf. St. Alphonsus, nn. 660 and 661.

2nd. He who by deceit induced another into error, especially practical error, from which grave damage can arise to him in the matter of morals, is held from justice to repair the damages which proceed therefrom, and therefore with all care to remove him from error. Say the same of speculative error concerning articles of faith.

3rd. He who by force, grave fear, or fraud has impeded someone from entrance into religion, or has induced one already entered to desert religion, is held from justice to remove the fraud and deceit; for each one has a right not to be impeded unjustly from the pursuit or possession of so great a good, or to be drawn away from it. - Cf. St. Alphonsus, n. 662.

4th. He who has deprived another, for example, of the use of memory, etc., by poison, a love-potion, etc., is held from justice to repair all that which is repairable from the damage unjustly inflicted.

5th. He who by fraud has impeded another from learning a science, an art . . . or from teaching others, is held to remove the fraud and to repair the temporal damages which have arisen therefrom.

6th. He who from office ought to teach art or science is held to correct errors, if he has admitted any of some moment. - I said from office, because if gratuitously and without the obligation of some agreement he teaches and procures no or only very little progress in his hearers through negligence or culpable ignorance, excluding the case of fraud or deceit or special damage proceeding from the error which he taught, he is not held to reparation.

Chapter II. On Restitution Because of Damage in Goods of the Body

Article I. On Restitution Because of Homicide

I say. Although a voluntary and unjust homicide or mutilator is held to nothing precisely for life or member, at least according to the rigor of law, because these goods are not estimable by money, nevertheless he is held to compensate all temporal damages, if any have directly followed from homicide or mutilation. But that it may be known what properly ought to be restored and to which persons, three kinds of damages are to be distinguished. For 1st, some are done to the one killed or mutilated himself, as, for example, expenses for the cure of the wound; and reparation of these must be made also to the heirs after death, unless the person killed has condoned it; 2nd, others are inflicted upon wife, children, father, and mother, who all not only were in fact sustained by the person killed or mutilated, but also by nature itself had a right to this support; and payment of these must be made unless they are condoned by those same persons who suffered the damage; 3rd, still others are done to any creditors whatever of the person killed or mutilated, and these are contracted when there is an intention of harming them directly. - Cf. St. Alphonsus, nn. 631, 634, and 639; and Hom. Ap. nn. 82 and 83. - Lugo, disp. 11, sect. 4. - Ballerini, note (a) (b) and (c), p. 606.

You Will Resolve. - 1st. A homicide probably is not held to restitution toward the wife and children of the one killed for future damages, if they can easily provide for themselves. The reason is that near relatives do not have a strict right except to those things which the one killed ought to have expended upon them from strict piety; but in the aforesaid case the obligation from piety would not have been strict. Therefore . . . - Cf. St. Alphonsus, Hom. Ap. n. 87. - Reuter, n. 384. - Lacroix, lib. 3, part 2, n. 309. - Elbel, n. 315.

2nd. If the killer indeed foresaw the damages of the creditors of the one killed, but intended them only indirectly, he is not held to repairing them, because then he is only their cause by accident. - Cf. St. Alphonsus, n. 634.

3rd. If a homicide is punished with death before he has repaired the damages, his heirs are still held to repairing them, because by the penalty he indeed satisfies vindictive justice, but not commutative justice. - Cf. St. Alphonsus, Hom. Ap. n. 90.

4th. He who killed another in a duel, whether he was the challenger or the accepter, probably is not held to repairing those damages which touch only the person killed himself and can be remitted by him. The reason is that the one killed, accepting or challenging to a duel, is judged to have wished to condone the obligation which he could have condoned, as is that which arises from damages of the first kind.

Article II. On Restitution Because of Defloration and Fornication

I say. A deflowerer or fornicator is held to nothing for merely natural damage or for the loss of virginity, because that damage cannot be compensated by money. - The same must be said of temporal damage which has followed from base intercourse, except the education of offspring, when the woman consented to the solicitation, because no injury is done to one knowing and willing. But if the deflowerer by force, fraud, deceit, or grave threats has violated the woman, he is held to repair all damages coming to her or her parents, because he is the efficacious and unjust cause of these damages. - Cf. St. Alphonsus, nn. 640 and 641. - Elbel, n. 220. - Lugo, disp. 12, n. 11.

Question. To what is a fornicator held toward spurious offspring?

Resp. If he has violated the mother by force, he is held to all expenses of nourishment and education, as is clear from what has been said. Nevertheless, in his default, the mother ought to undertake the care of the child, although she admitted no fault, because she is the mother; but then she retains recourse against the corrupter, who is held to compensate her for all the expenses which she has incurred on occasion of that offspring. - But if the woman consented to sin, both are held equally to the expenses if natural right is considered; but if attention is given only to civil laws, then:

1st. By Roman law the mother is held to nourish the infant for three years, and afterwards the father ought to provide for him.

2nd. By our law, Kenrick has these things: "The laws of the United States for the most part permit it to be defined by the decision of magistrates or judges what is to be paid; holding him as father whom the mother, under oath, affirms to have begotten the offspring." - Kent accords with these when he says: "The mother or reputed father is generally in this country chargeable by law with the maintenance of the bastard child; and in New York it is in such way as any two justices of the peace of the county shall think meet; and the goods, chattels and real estate of the parents are seizable for

the support of such children if the parents have absconded. The reputed father is liable to arrest and imprisonment until he gives security to indemnify the town chargeable with the maintenance of the child. These provisions are intended for the public indemnity and were borrowed from the English statutes on the subject; and similar regulations to coerce the putative father to maintain the child, and indemnify the town or parish, have been adopted in the several States." - Cf. Kenrick, tract. 8, n. 85. - Kent, Comment. vol. 2, part. 4, lect. 29, n. 215.

Article III. On Restitution Because of Adultery

I say. If an adulterer extorted the consent of a woman by force or grave fear, he alone is held to repairing the whole damage, as is clear in itself. But if indeed the woman consented freely to adultery, both adulterers are held in solidum to repairing all damages of the family, because all things are to be imputed to both as to an efficacious and unjust cause. - Wherefore both ought to restore all expenses which the husband has borne in nourishing and educating the offspring; and if an illegitimate son has already accepted the inheritance with the legitimate children, compensation must be made to them according to proportion. - Cf. St. Alphonsus, n. 659.

You Will Resolve. - 1st. An adulterous woman, if she has paraphernal goods, must from them restore to the husband and to the injured children through manual gifts, by contract, testament, legacies, etc. If she does not have them, let her administer the family more diligently, be more sparing in private expenses, and work more diligently, insofar as her state permits.

2nd. If nevertheless she cannot repair the damage in another way than by confession of her crime, she is not held to this, both because generally this revelation cannot be made without great infamy and often not without danger of death or perpetual hatred and other grave evils, and because it is difficult to repair damage even by this, especially since the son is not held to give faith to the mother. Many except the case if the mother is of ruined reputation; but not even then is the son held to believe her testimony. - Cf. St. Alphonsus, nn. 654 and 655. - Ballerini, note (a), p. 610.

3rd. In doubt whether the offspring is of the husband or of the adulterer, or from this adulterer rather than from another, no strict obligation can be imposed, because there is no certainty concerning it; for in neither case can the true father of the offspring be designated with certainty, and therefore neither can the true cause of the damage. Nevertheless, except with St. Alphonsus: 1st, if the second adulterer adverted at least implicitly that he would be the cause of that uncertainty; 2nd, if the adulterers perpetrated adultery by common counsel. - Cf. St. Alphonsus, n. 658.

4th. Probably wealthy adulterers or fornicators are not held to reimbursing the expenses, if they have sent the offspring to the foundling asylum. The reason is that foundling asylums have been erected for all infants indiscriminately who are cast off by their parents. Nevertheless, all agree that in practice parents are earnestly to be exhorted to contribute something to the foundling asylum, at least under the title of penance. - Cf. St. Alphonsus, n. 656. - Lugo, disp. 13, n. 3. - Kenrick, tract. 8, n. 84.

Appendix: On the Obligation of Paying Taxes

By the name of tax is understood a payment which subjects pay from their own goods to the Government for the common expenses of the Republic. Some taxes are direct, which affect actual and

determinate goods of private persons; others indirect, which immediately regard certain goods and only mediately the persons who transport, sell, buy them, etc.

I say, 1st. Imposition of tax is an act of supreme and legitimate authority, and therefore to this authority alone it pertains to decree whether and how much is to be paid by each one. The reason is that to that authority it pertains to lead society to the common good, to which taxes stand as means to an end. - Cf. St. Alphonsus, n. 615.

I say, 2nd. Besides legitimate authority, three other conditions are required so that the imposition of taxes may become licit, namely: 1st, justice of the cause, which is the necessity of the common good; 2nd, proportion of the tax with the occurring necessity, namely that the people not be burdened more than their good demands; 3rd, equality in persons, namely that those who have greater riches pay more. Cf. St. Alphonsus, n. 615.

Questions

Question 1. Whether laws which regard the payment of taxes, viewed generally, oblige in conscience, or are to be judged penal?

Resp. According to the opinion which St. Alphonsus calls most common and more probable, these laws oblige in conscience. It is clear, 1st, from Sacred Scripture; for Christ, Matt. xxii, 21, says: "Render the things that are Caesar's to Caesar," and the Apostle, Rom. xiii, 5: "Be subject not only because of wrath, but also because of conscience; for therefore also you pay taxes. . . . Render therefore to all their dues: tax to whom tax, tribute to whom tribute." It is clear, 2nd, from reason; for the supreme authority is held in conscience to procure the good of society and justly to distribute its burdens; therefore in like manner subjects are held in conscience to supply the means by which that good can and ought to be procured, and to undergo the distribution of burdens. - Cf. St. Alphonsus, nn. 615 and 616.

Nevertheless there are not lacking theologians who, perhaps not improbably, especially today, hold that these laws are only penal; and they say this is gathered both from the sense and manner of acting of peoples, and also from the way in which the supreme authority enacts and applies those laws. - Cf. Kenrick, tract. 6, n. 20. - Acta S. Sedis, vol. 7, pp. 219 and 220.

Question 2. Whether restitution must absolutely be exacted from those who, not observing tax laws, have defrauded the Government?

Resp. Negatively, probably, both because perhaps it could be doubted whether those laws oblige in conscience, and because even if they did so oblige, whoever did not observe them would indeed injure legal justice, but not commutative justice. Nor is weight of authority lacking to this opinion. For:

Bonacina, disp. 2, de Restitut. quest. 9, punct. 1, prop. 2, as regards indirect taxes, says: "Let it suffice for us to say that what we have asserted can probably be defended, lest we impose an excessively grave burden upon penitents after the fact, although before the fact this more benign opinion is not to be counseled, since the edicts of the Prince are not easily to be reprehended."

Vogler, n. 332: "Even though the faithful are especially to be exhorted to pay taxes diligently, nevertheless if at times they defraud somewhat, they do not seem to be obliged to restitution,

because most common practice holds this, Princes connive, and in so great a multitude of taxes all the wisest persons doubt whether all are just."

Lugo, disp. 36, n. 43: "The counsel of Fr. Molina has always greatly pleased me . . . that before the fact it must be counseled that taxes not be defrauded; after the fact, if the penitent certainly or probably persuades himself that in so great a multitude of taxes there is something unjust . . . he is not to be compelled by the confessor to restitution; nevertheless, this doctrine must be used prudently . . . lest they render the sacrament of Penance too grave and lest they block the way of salvation for many, who, if they are obliged by the confessor, will not restore and will incur eternal damnation."

Scavini, de Restit. cap. 1, art. 1, after setting forth both opinions, says concerning the more benign one that it "does not lack its authority and probability. . . . Whatever may be the case concerning the probability both of the first and also of the second opinion, which we leave to be defined by wiser men, we admonish one thing for practice with the most learned Cardinal de Lugo: Generally speaking, the people are to be admonished and stirred up to paying taxes, but after the fact they are not to be compelled to restitution of the tax defrauded, if they probably persuade themselves that in so great a multitude of imposts they have paid something unjustly or have contributed sufficiently to public necessities."

Rousselot, in the notes to the Moral Theology of Saettler, de Leg. part. 2, cap. 2, art. 3, as regards taxes imposed upon goods, the trade of which is permitted to all under the condition of paying the tax, has these things: "There is not given an obligation of paying certain taxes before they are demanded, for example, taxes at the gate of a city, at a bridge, etc. For thus custom provides, and laws do not oblige beyond custom. Moreover, with the author, Saettler, and very many other foreign authors, it can more probably be asserted that those taxes for the exacting of which guards and collectors have been appointed are neither to be paid in conscience, nor are those defrauding them held to restitution."

"These things having been duly weighed, it must not immediately nor easily be pronounced that the defrauding of indirect taxes is sinful and obliges to restitution. Nevertheless, let these things not be preached upon the roofs; but with St. Alphonsus and Saettler, let pastors and confessors urge observance of the laws also in this matter, let them deter from transgressions with all their strength; but let them not immediately condemn transgressors of grave sin nor force them to restore, especially if greater evils, for example, desertion of the sacraments, are to be feared. From another side, good faith often intervenes, to which they are deservedly left."

Cf. also Revue des sciences ecclés. vol. 17, p. 86. - Ballerini, note (a), p. 615.

You will gather from what has been said, 1st, that the confessor, speaking absolutely and under penalty of denying absolution, cannot indiscriminately urge the obligation of paying these taxes in the future, although he ought diligently to exhort the faithful to pay them diligently and to abstain from every defrauding of them.

You will gather, 2nd, that the following are certainly to be condemned: 1st, those who corrupt by unjust means those placed over the exacting of imposts, lest they perform their office; for they sin at least by cooperating in the sin of these men; 2nd, those who do not pay taxes already imposed for a long time, which have been paid by all and no complaint concerning their injustice has ever been heard; 3rd, those who violently resist the ministers exacting imposts; for these certainly sin at least

against legal justice; 4th, those who by right and wrong means exercise defrauding as if it were a certain trade, and with the intention of resisting, even armed, wander by day and by night; for men of this sort become rebellious citizens and most harmful to society; 5th, those who, although they never resist nor have the intention of resisting, nevertheless with every zeal and work devote themselves to the art of defrauding, and have it as if the profession of their life; for these at least are not rarely exposed to dangers of soul; 6th, authors probably excuse from violated commutative justice citizens who do not assign the full value of houses, etc.; or, when an estate has been bought, put down a lesser price, namely lest they be compelled to pay the whole tax. For in reality in certain places these taxes are excessive; many enough other men do the same; and officials plainly know that these methods are employed. Therefore practically the proportion among citizens is preserved; nor are notaries, who by office have not been appointed to procure these taxes for the state, immediately to be condemned because they do not turn men away from these arts. And therefore where there exists a custom of lowering the price, it does not seem to be unjust to assert that the declaration was duly made, provided namely that the price not be excessively diminished beyond the custom of others. Cf. Bulot, n. 673, 2. - Lehmkuhl, n. 1173, ed. 11th.

Question 3. Whether officials sin against justice whenever they do not exact the tax?

Resp. Affirmatively, in itself generally, and indeed gravely in grave matter. The reason is clear, since they have obliged themselves to watch duly and to exact taxes diligently. Wherefore, if they are lacking in their office, they are held to restitution toward the Republic. - I said generally because according to several, those placed over the exacting of imposts are not always to be condemned when sometimes they act more benignly in a light matter, especially with the poor or even with those who otherwise pay diligently.

Treatise IX. On Contracts

Part I. On Contracts in General

Chapter I. On the Definition and Divisions of Contracts

A contract is an agreement by which one or more persons oblige themselves toward one or more persons to give, do, or omit something. Moreover, it is distinguished in many ways; for it is:

1st. Unilateral, which is also called gratuitous, or bilateral, which is also called onerous. The former occurs when one or more persons oblige themselves toward one or more persons not obliged, as in the contract of a gratuitous promise. The latter is had when one or more persons oblige themselves toward one or more persons likewise obliged, as in exchanges. Besides, this latter is again subdivided into commutative and aleatory. It is commutative if one contracting party gives a thing in one species and the other gives an equivalent thing of the same or of a different species. It is aleatory if one gives a thing, but the other contracting party gives not a thing but the probable hope of obtaining some thing; and since this hope can fail, it causes a contract of this sort to bear the likeness of chance.

2nd. Solemn or simple, according as it requires special formalities of law, or is subject only to common dispositions.

3rd. Named and unnamed, according as it has a proper name, as, for example, sale, or lacks a proper name, for example, I give that you may give, I do that you may do, etc.

4th. Naked or vested: a contract is called naked when it lacks every support of law and therefore obliges only in conscience; but it is called vested if it has some support of law by which it gives rise to a civil action. Supports of law are writing, stipulation, witnesses, oath, etc.

5th. Formal or express, or virtual or tacit. The former is that which is made by words, writings, or other signs explicitly manifesting consent; but the latter is that whose consent to the agreed thing indeed exists really, but is manifested only implicitly by some saying or deed. Thus a physician exercising his art is judged to promise that he will do that which his profession requires. This contract is also commonly called a quasi-contract.

6th. Absolute or conditioned, according as no condition or some condition is placed upon it. It is also called pure or not pure.

Whatever civil law in the territory establishes concerning contracts, both in general and in species, whether named or unnamed, and concerning payments, the same things are to be observed by canon law in ecclesiastical matter with the same effects, unless they are contrary to divine law or something else is provided by canon law (Can. 1529).

Chapter II. On the Requisites for Contracting

Article I. On the Matter of Contract

I say. The matter of a contract generally is all those things which can fall under the dominion of man and concerning which the contracting parties have free administration. Wherefore it must enjoy certain conditions, namely, it must be: 1st, possible both physically and morally, because no one can be obliged to the impossible; 2nd, existing either in reality or at least in a founded hope, otherwise it would be estimable at no price; 3rd, honorable, or prohibited by no law at least as to its substance, because a right of violating some law cannot be given or received; 4th, proper to the contracting party, because no one can transfer to another a right which he himself does not have; 5th, certain and determined, whether in the individual or in quantity and quality, otherwise the contract would be vain and illusory.

You Will Resolve. - 1st. Someone can receive a price from Titius for an action which from justice he already owes to Peter, if, without injury to Peter's right, that action can also be useful to Titius. The reason is that such an action, although it is already owed to another, is nevertheless proper to him who places it and truly estimable by price.

2nd. If the matter is possible only in part, the contract is valid, provided that the thing is not only divisible in itself, but also has been contracted concerning divisibly.

3rd. A merely spiritual thing can certainly be the matter of a gratuitous contract, because nothing from any law stands in the way, and it is confirmed by the practice of pious faithful; but not of an onerous contract, unless the thing is spiritual on both sides, as is clear from those things which have been said concerning simony. Indeed, even if the thing is spiritual on both sides, the case of a special prohibition made by the Church must always be excepted, as happens, for example, in exchanges of benefices carried out by private authority.

Questions

Question 1. What is to be said concerning the validity of a contract under a base condition, for example, I give you one hundred dollars if you kill Titius, if you defame Caius, if you give access to your body, etc.?

Resp. Before the fulfillment of a condition of this sort, the contract is certainly null according to the opinion of all; and the reason is that dominion cannot be transferred or received in that which is base. But if the base condition has already been fulfilled on one side, there is no little controversy. Many theologians indeed hold that that contract is then valid, because although a base action, insofar as it is illicit, is worthy of no price, nevertheless insofar as it is laborious, ignominious, or dangerous to the agent, or useful to another, it is estimable by price. But this reason would already prove that that contract is valid even before fulfillment of the condition, which no one admits. Wherefore there are not lacking other theologians and jurists who, even when the condition has been fulfilled, deny the validity of that contract, relying upon rule 18 of law in 6: "That which by law does not subsist from the beginning is not made firm by the passage of time." - Our Kent is in harmony with these, when he says: "The consideration must not only be valuable, but it must be a lawful consideration, and not repugnant to law or sound policy or good morals. Ex turpi contractu actio non oritur: and no person, even so far back as the feudal ages, was permitted by law to stipulate for iniquity. The reports

in every period of the English jurisprudence, and our American reports equally abound with cases of contracts held illegal on account of the illegality of the consideration; and they contain striking illustrations of the general rule, that contracts are illegal when founded on a consideration, contra bonos mores or against the principles of sound policy or founded in fraud or in contravention of the positive provisions of some statute law. If the contract grows immediately out of, or is connected with an illegal or immoral act, a court of justice will not enforce it." - Cf. Kent, Comment. vol. 2, part 5, lect. 39, n. 466.

But if it is asked no longer about the validity of that contract, but whether he who promised one hundred dollars under the aforesaid conditions is held to spend them, still many theologians, according to the more common opinion, respond affirmatively; because, they say, in that base pact another unnamed contract is implicitly contained - I give that you may do, or I do that you may give - whose nature requires that always, as often as one contracting party has furnished his part, the other is held to fulfill his own, if he can do so licitly. - But indeed there are not lacking other theologians who, not improbably, deny the existence of this unnamed contract in each particular case, although they admit its force if its existence were established. Wherefore, practically speaking, the confessor, if someone has not yet paid the agreed price to a prostitute or hired killer and refuses to pay, cannot oblige him to pay under penalty of denying absolution.

From this same solution it is gathered that, strictly speaking, the confessor cannot oblige the violator of some girl to marry her from the fact that marriage was promised to her under the condition of committing fornication. Indeed St. Alphonsus, who adheres to the more common opinion concerning the validity of a contract after fulfillment of a base condition, nevertheless when it is a question of the obligation of marrying a violated girl, admits many exceptions, and exempts from such a burden if discords and quarrels are foreseen between the future spouses. - Cf. St. Alphonsus, nn. 642 and following. - Carrière, vol. I, nn. 331 and following.

Question 2. Whether an obligation of restoring arises from acceptance on account of a base cause?

Resp. Although the acceptance is not unjust toward him who gives, it can be base and illicit from other causes. Thus prostitutes are not held, after the sin has been committed, to restore money previously received, and they can receive it anew if it had not already been given. Namely, that action, in that part by which it is useful and delightful, is worthy to obtain a price. "For the justice and value of a contract it suffices," says Lugo, "that there be a counter-suffering, or that the seller deprive himself of some good for that price, which good he could retain without injustice to the buyer; therefore whether licitly or illicitly he deprives himself, nevertheless he always suffers, for the favor of the buyer, some damage worthy of a price, which he ought not suffer." - Disp. 18, n. 48. - And thus a wife can retain money received for adultery, although she can neither licitly nor justly sell her body. Nevertheless, in itself it is clear that money given before the use of the body and accepted from an explicit or implicit pact for the use of the body cannot be retained if the use was not granted; for there is no title for retaining it. But it must be said otherwise if it was given for capturing benevolence. - Cf. above.

Thus also theologians commonly teach that, with attention given to the law of nature, and unless the laws themselves render such persons incapable of giving or receiving, that which has been received for an evil work, once the evil work has now been done, ought not be restored.

Nevertheless I cannot retain the price which I receive from Peter for a thing already owed to Peter from justice. For this would be the same as if I were selling Peter his own thing.

With the law of nature considered, he who receives something on account of a good work, or an omission owed from some virtue other than justice, is not held from a debt of justice to restoring. Because there is no root of obligation: not from the thing received, because one able to transfer dominion transferred it; not from unjust acceptance, since no injury intervened. Nevertheless, it can be that from the debt of another virtue it would sometimes have to be rendered, and sometimes not. Let the matter be illustrated by an example. Titius vowed to hand over to the Church a chasuble of the value of 50 dollars. But Titius does not wish to fulfill the vow; wherefore Linus gives him 25 dollars that he may satisfy the vow. In this case religion obliges Titius to give a chasuble of so great a value; nevertheless, in fact, after accepting the 25 dollars, he does not give the chasuble completely, but partly gives and partly sells; and therefore, with the price retained, he has not yet satisfied the vow completely; and hence, just as he was held from religion before to give the chasuble completely so that he might satisfy the vow, so from the same religion he is held to restore the price, because he has not yet fully satisfied the vow. But on the contrary, if you ought to hear Mass, acceptance of a price does not cause you not truly to hear Mass, as you are held by precept. Therefore the general rule is thus posited by Lugo, disp. 18, n. 70: "when acceptance of a price causes that a work owed from some other virtue is not placed according to its substance or according to the due qualities, there will be an obligation by force of the same virtue of restoring the price, so that the work may be done such as it was owed from that virtue. But when acceptance of the price does not impede this, there will not be such an obligation of restoring the price."

Article II. On the Subject of Contract

I say. By natural law all and only those can contract who have free use of reason, because these alone can transfer dominion of goods and undertake obligations. But by positive law, besides the use of reason and free will of contracting, it is also required that the contracting party have free disposition of goods, and not be declared by law incapable of making a contract. Moreover, by positive law the following are incapable of contracting, at least in many things or validly: 1st, minors; 2nd, wives; 3rd, the civilly dead; 4th, the interdicted and prodigals; 5th, aliens. A few things concerning each.

§ I. On Minors

Those are called minors who have not yet reached that age at which, apart from the authority of the father, or tutor, or curator, they can act civilly. A person who has not completed the twenty-first year of age is a minor.

A minor, if male, is judged pubescent from the completed fourteenth year; if female, from the completed twelfth year.

One not pubescent before the full seventh year is called an infant or boy or little child, and is judged not master of himself; but after the seventh year has been completed, he is presumed to have the use of reason. All who are habitually lacking the use of reason are assimilated to an infant. - Cf. Can. 88. A minor in the exercise of his rights remains subject to the power of parents or tutors, except in those things in which the law regards minors as exempt from paternal power.

I say, 1st. By Roman law, minors not pubescent, even if they have the consent of the father, are not obliged if they contract concerning camp goods or quasi-camp goods; but those who are pubescent are obliged, provided it is not a question of alienating immovable goods or precious movable goods. But concerning profectitious and adventitious goods they can by no means dispose, because regularly they do not have their administration. But wards, by the authority of a tutor, and pubescent minors bereft of a father, with the consent of a curator, validly contract in all things, except immovable goods or precious movable goods, for which the decree of a judge is required.

I say, 2nd. By our law, minors can contract for things necessary for life and education, when the father or tutor does not supply them. But in other things they can indeed contract, but not irrevocably, so that if the contract certainly and evidently favors them, they can stand by it; otherwise they are able to rescind it. Cf. Wells, Every Man, etc., p. 240. - Kent, Comment. vol. 2, part 4, lect. 31, n. 235. - Kenrick, tract. 11, n. 5.

You Will Resolve. - 1st. A minor can use the benefit of the law with a safe conscience, excluding the case of bad faith, since the law was enacted in his favor. Nevertheless he cannot ask for rescission so that he may be exempted from restitution of money which he accepted as a loan and squandered, although he has derived no profit therefrom; for he is held to fulfill the obligation which he certainly knew while he was asking for and receiving the money. Nevertheless others deny this, because civil law, by establishing this incapacity of minors, intends to prevent minors from squandering their goods and wicked men from abusing their inexperience; but it would not attain this end unless it took away in both forums the obligation arising from these contracts. Therefore let others impute to themselves the damage which they suffer. - Cf. Genicot, n. 580. - Marres, n. 127. - Noldin, n. 474.

2nd. He who has contracted with a minor can stand by the contract until nullity is invoked by the minor or by his father or tutor. Nevertheless, private request is sufficient for him to be held to rescission, when the injury is entirely open.

3rd. The minor alone, both by himself and through others by whom he is represented, can ask for rescission of the contract; whence those who have contracted with him cannot oppose his incapacity.

4th. A minor can no longer impugn an act carried out in minority when, having now become of age, he has ratified it; because he was fully capable of contracting when he ratified the act.

§ II. On Wives

I say, 1st. By Roman law a wife cannot contract or dispose concerning the dowry and its fruits, nor concerning the goods of the family, when the husband is present and able to administer these goods, when he is reasonably unwilling. It is otherwise if the husband is absent, insane, or foolish, or if he expressly or tacitly consents, or if he is not reasonably unwilling. But she can, at her pleasure, contract or dispose, even when the husband is unwilling, concerning paraphernal goods.

I say, 2nd. By our law she can contract concerning all those things which are required for her nourishment and decent sustenance, even if the husband contradicts, provided nevertheless that she does not live with an adulterer or has not departed of her own accord from the house of her husband. But in those States where wives are permitted to be engaged in separate commerce, they can contract in all those things which are directed to this commerce. - Cf. Kenrick, tract. 11, n. 4. - Kent, Comment. vol. 2, part 4, lect. 28, n. 154.

You Will Resolve. - 1st. If a wife contracts without the consent of the husband with injury to his rights or goods, the contract is altogether void. But a wife of bad faith, although in that case she cannot oblige the husband, is nevertheless held to repair the damage inflicted upon another.

2nd. The nullity of a wife's contract can be invoked by the husband in conscience, even if he has not suffered injury properly so called, because the nullity was sanctioned chiefly in his favor.

§ III. On the Civilly Dead

Those are called civilly dead who have been condemned to death, to perpetual galleys, or to deportation. - By Roman law the principal effects of civil death are the following: 1st, to lose the ownership of goods, which pass to the heirs, without a testament being valid if they have made one; 2nd, not to be able to receive an inheritance or donations, except that which is destined for their sustenance; 3rd, not to be able to donate goods which they have acquired, whether among the living or by testament. But among us all these things do not have place; for civil death has place only in the crime of plotting the destruction of the United States, which crime is certainly rare. - Cf. Const. U. S. Art. 3, sect. 3, n. 1. - Bouvier, Law Dictionary, under the word Death, n. 22. - Kenrick, tract. 11, n. 36; and tract. 10, n. 87.

§ IV. On the Interdicted and Prodigals

The interdicted are those who by sentence of a judge are declared incapable of exercising civil acts because of a state of weakness, dementia, or madness. Moreover, someone is given to them as tutor, and all their acts are void by law; nevertheless, they are not to be esteemed absolutely null before the sentence of the judge. Interdiction ceases when the cause ceases; but its cessation must be declared by the judge, so that the interdicted person can again act civilly.

Prodigals, under whose name sometimes legally denounced drunkards come, are incapable of entering into certain contracts determined by law without the assistance of an adviser appointed by the judge. Moreover, the nullity of contracts entered into by the interdicted and prodigals can indeed be opposed by themselves or by those acting their cause, but not by those who have contracted with them, as was said concerning minors. - Cf. Kenrick, tract. 11, n. 6; and tract. 10, n. 87. - Kent, Comment. vol. 2, part 5, lect. 39, n. 450.

§ V. On Aliens

Aliens are called all who lack the right of citizenship, which among us one can have in a twofold way, namely: 1st, naturally, or by title of birth; 2nd, legally, if he has fulfilled the formalities required by law. And these formalities are: 1st, that after one has dwelt for three years in the United States he declare that his mind is to acquire the right of citizenship; 2nd, that he has dwelt for at least one year in the State where there is the Court to which he has recourse; 3rd, that he have testimony concerning honesty of life; 4th, that he make a declaration, confirmed by oath, that he will adhere to the American Constitution. But the children of those who thus acquire the right of citizenship, if they are minors and dwell in these States at the time when the parents acquire that right, become citizens by the fact itself. - Moreover, aliens are not able to contract concerning immovable goods validly and without restriction, and their heirs are always in danger lest they be deprived of those goods. - Nevertheless they can freely contract: 1st, for carrying on commerce; 2nd, concerning movable goods; 3rd, also concerning immovable goods within the five-year period before their

admission among citizens, and in those things which are necessary for the use of these goods. Cf. Kent, Comment. vol. 2, part 4, lect. 25, nn. 49 and 62. - Wells, Every Man, etc., p. 116.

Article III. On the Required Consent

§ I. On the Qualities of Legitimate Consent

I say. Consent in completing a contract must be: 1st, external, that is, manifested by some sensible sign, because it must become known to the other party; 2nd, internal, because obligation arises from the will alone of the contracting party; 3rd, mutual, because a contract is an agreement of two or more persons, and therefore agreement of will is required on each side; 4th, perfectly deliberated, because it is a question of an obligation to be undertaken.

You Will Resolve. - 1st. Probably a contract entered into with the intention of not obliging oneself is not valid, because the condition placed destroys its very substance. Nevertheless something else must be said of a contract entered into with the intention of not fulfilling the obligation. - Cf. St. Alphonsus, n. 710. - Ballerini, note (b), p. 648.

2nd. It is not required that the consent of each party be elicited at the same time, because once given it perseveres, unless it is revoked.

3rd. He who fictitiously consents to a contract is held in the forum of conscience to make the deceived party indemnified; and if no other means of repairing the injury is at hand, to furnish internal consent and stand by the contract. But if the contract fictitiously entered into has been put into execution, no dominion has in fact been transferred. Whence, by reason of the thing received, the deceived person is to be held as a possessor in good faith, but the deceiver as a possessor in bad faith. - Cf. St. Alphonsus, Hom. Ap. n. 93.

4th. Silence regularly is equivalent to consent, if the matter is favorable to the one silent, according to the Rule of Law: He who is silent seems to consent.

§ II. On Those Things which Can Vitiate Consent

Three things can vitiate the consent of some contracting party, namely error, deceit, and fear. Concerning fear, what it is and of how many kinds it is has been said in n. 16. But error and deceit differ in this, that the former is deception proceeding from ignorance, and the latter from artful frauds; for deceit, viewed in itself, is a contrivance employed for deceiving another.

I say, 1st. Every deception, whether it proceeds from ignorance or from deceit, renders a contract null if it affects either the substance of the thing, for example, if you buy copper for gold, or the nature of the contract, for example, if you take leasing for sale; but not if it affects only an accidental quality of the thing, at least if without the deception the contract nevertheless would have been entered into. The reason for the first is that then the consent would be only external but not internal; and the reason for the second, that deception concerning accidents does not destroy the efficacy and substantial force of consent. Nevertheless, except if the quality is expressly intended as a condition without which not, because then it passes into the substance of the thing.

Error renders an act void if it turns upon that which constitutes the substance of the act or falls into a condition without which not; otherwise the act is valid, unless something else is provided by law; but in contracts error can give place to a rescissory action according to the norm of law (Can. 104).

I say, 2nd. No contract from fear from within, or from a necessary or natural cause, is invalid or rescindable, unless perhaps he who contracts from fear was not master of himself. The reason is that no injury is inflicted on the contracting party, and moreover he preserves sufficient liberty. The same must be said if fear from a free cause has been inflicted for a just cause. The reason is that not only is such a contract voluntary simply, but also the danger in which the contracting party is placed is voluntary to him in its cause, nor can he complain of it as of an injury. Indeed even grave fear inflicted unjustly by a free cause does not impede of itself that the contract be voluntary simply, and therefore valid. Therefore by reason only of the injury which fear contains, it can sometimes harm the value, or at least the firmness, of the contract.

You Will Resolve. - 1st. If a priest at night buys cloth for himself, thinking it is of black color, while it is green or violet, the contract is not valid if he expressly declared that he wished cloth of black color; for although color in itself is a mere quality, in this case it passes into the substance, and therefore the error becomes substantial.

2nd. If, when you wish to buy Bordeaux wine, California wine is offered, the contract is valid in itself, notwithstanding error or deceit, because the error is not substantial. But justice is injured accidentally if the Bordeaux is more expensive; and therefore the seller will be liable to restitution. But if the price of each wine is equal, or if the price is diminished according to the proportion of the excess, the seller will be immune from injustice, although not from the sin of lying. - I said in itself, because the error could easily be substantial, as, for example, if the buyer had bound his intention by express words to Bordeaux wine on account of a certain end to which any other would not conduce.

3rd. He who buys from a bookseller a book which he judges good and afterwards discovers to be bad, nevertheless has contracted validly, because he wished to buy this present book absolutely and without restriction, although certainly he would not have bought it if he had known it to be bad. But otherwise, if a false title of the book had been inscribed, because then the title would have furnished the cause of substantial error.

4th. Unjust but light fear is not considered, unless it gives cause to the contract; but then, if it is a question of a gratuitous contract, it more probably invalidates it; but if of an onerous contract, more probably it neither invalidates it nor makes it rescindable.

5th. § 1. If someone, moved by grave fear unjustly inflicted, or circumvented by deceit, has placed an act or entered into a contract which is not null by the law itself, he will be able, once fear or deceit has been proved, to obtain rescission of the act or contract by an action which is called rescissory (Can. 1684). Cf. St. Alphonsus, nn. 716 and 717; and Hom. Ap. n. 125. - Lugo, disp. 22, nn. 115 and following. - Reuter, nn. 126 and 127.

6th. Error falling upon the final motive invalidates. If, for example, a book to be bought by me is proposed to me because it rightly explains the truths of faith, vindicates her rights to the Church, and does not spread prejudices against her, and I, wishing to have such a book precisely because of those reasons authoritatively proposed to me, buy it; but afterwards I find that the book contains great prejudices against the Church, certain things also scandalous, false, blasphemous; certainly I am not held by such a contract, for it is null - for we contracting parties did not consent to the same thing.

Question. Does error or deceit concerning a quality indeed, but which nevertheless gives cause to the contract, invalidate this contract?

Resp. Affirmatively, more probably, if it is a question of a gratuitous contract, because such a contract from its nature requires a full voluntary and every kind of spontaneity. But negatively if it is a question of onerous contracts; thus Can. 103, §2: Acts placed . . . by deceit are valid unless something else is provided by law, but they can be rescinded by sentence of the judge. - Cf. St. Alphonsus, nn. 714 and 715; and Hom. Ap. nn. 124 and 125. - Lugo, disp. 12, n. 84.

Chapter III. On the Obligation of Contract

I say. Any contract duly entered into gives rise to an obligation in the forum of conscience, at least on the part of one of the contracting parties; because in a contract some right is granted to one or to each party, and to every right its own obligation corresponds. But this obligation is to be extended not only to that which is expressed by the pact, but to all the consequences which equity, law, or usage demands according to the nature of the agreement. The reason is that contracting parties are judged to act with good faith, and therefore to wish not only that which is expressly included in the stipulation, but also that which is accustomed to arise from it. Hence the intention of the contracting parties must be carefully investigated, if it can be clearly and expressly established. But if it remains obscure and ambiguous, it can be explained both from the matter of the agreement, and from the usage of places, and from the character of the persons.

You Will Resolve. - 1st. A contract rescindable by positive law contains a true obligation, although this is not absolute but conditioned, namely if nullity is not invoked. Moreover, all admit that a human legislator can place a condition of this sort upon certain contracts for the good of peace and for avoiding the danger of fraud.

2nd. Nevertheless, the opinion is probable of those who hold that contracts entered into without the formalities prescribed by law for their validity are valid in conscience; because by natural law the consent alone of the parties suffices for inducing obligation, and human law does not take away a natural obligation between persons otherwise capable, although it denies a civil action. - Cf. Molina, disp. 82. - St. Alphonsus, n. 711.

3rd. The obligation of him who is going to make a judicial cession of goods must be understood according to the custom and positive laws which permit him to retain some goods. But among us these are more or fewer according to the diversity of States and of the condition of domestic life. Cf. Vogler, n. 542. - Gousset, n. 772. - Wells, Every Man, etc., p. 288 and following.

4th. "They sin who rashly contract when no probable hope shines upon them that they will be equal to paying; for it is not licit to make trial of things or to seek gain with the damage of others."

5th. "They sin who, having used various arts, induce creditors to remit part of the debt, lest they lose the whole or lest payment be deferred longer or lest they be entangled in lawsuits; but those who, because of anticipated payment, obtain remission of a part from creditors driven by no necessity but freely consenting, can be excused, since custom thus provides and convenience is worth very much in the common estimation."

6th. "A wife is a participant in another's sin who, by the indulgence of her husband, makes excessive expenses in buying clothes or in another way. Children also sin against justice who, fully conscious that their father is not equal to paying, squander money given to them."

7th. "Whenever someone knows himself unequal to paying, and does not hope that by doing business he can increase his estate, he is held to abandon business, after handing over his goods for payment of debt; for it is licit for no one to conduct business with another's damage. But merchants are often excused, upon whom for the most part some hope shines." - Thus Kenrick, tract. 10, nn. 205 and 206.

8th. They also sin who undertake a journey by railway cars without procuring tickets for the journey for themselves, or without handing over tickets already procured to the official. They receive from the company a utility estimated by a price, which nevertheless they do not pay, and therefore they violate the contract and are held to restitution. We judge the same concerning persons of a determined class, to whom individually under certain conditions the privilege of traveling at a much diminished price is granted by the railway company, but who, contrary to the very condition of the contract, lend their special and privileged tickets to any other persons whatever, so that these may also use the privilege. The railway company granted me a personal privilege, but did not grant me the faculty of communicating that privilege to another. This case of a special privilege granted must altogether be distinguished from the case of a ticket which is valid for a double journey. This second ticket is truly not a special privilege, but, bought by me, passes into my absolute dominion, so that I may use it or give it to another that he may use it, or so that I myself may use one journey, and a returning friend may use it.

The obligation of contracts ceases: 1st, by payment, or by performance of any owed thing, or also by the execution of the promised or otherwise owed object; 2nd, by novation, or substitution of a new debt for the old debt, which is thus extinguished; 3rd, by condonation, or an act by which the creditor remits the debt to his debtor from full liberty. For whoever can yield concerning his own right in all those things which do not pertain to the public good, provided he was not incapable of contracting; 4th, by compensation, or fictive and reciprocal payment, which has place when persons are debtors toward one another in turn; 5th, by confusion, which has place when the obligation of the debtor and the right of the creditor are joined together in the same person, for example, if the creditor becomes heir of his debtor, or the debtor of his creditor, or the same person becomes heir of creditor and debtor at the same time; 6th, by destruction or loss of the thing owed, which sometimes frees the debtor from obligation, as in merely gratuitous contracts, and sometimes in others, where fault of the debtor does not occur. . . . But sometimes it does not free him, for example, if it happened by fault of the debtor, or he was in culpable delay, etc.; 7th, by rescission or rescindability, which has place when a contract consisting of essential conditions is dissoluble because of some defects. That contract is valid until it is rescinded.

Chapter IV. On the Modifications of Contracts

By the name of modifications are designated certain clauses added beyond the nature and essence of contracts, so that they now strengthen the obligation of the same contracts, now also increase or determine it, now suspend or destroy it. Moreover, the principal modifications of contracts are: 1st, oath; 2nd, modes; 3rd, conditions. These three must be treated briefly.

Article I. On an Oath Added to a Contract

I say. Contracts void by whatever law are not made firm by oath; but valid and licit contracts are made firm. - The reason for the first is that an oath follows the nature of the act; and the reason for

the second, because then there comes to it a bond from the virtue of religion.

You Will Resolve. - 1st. The obligation from a contract indeed passes to the heirs, but not that which proceeds from an oath, which is personal.

2nd. Contracts which are only rescindable are not made firm by oath when rescindability is induced in view of the public good, but not if it is induced for the private utility of the contracting parties. Wherefore by force of an oath a contract entered into by a minor is not made firm, but a promise made to someone not to revoke a testament is made firm. - Cf. Can. 1318.

Article II. On Modes Prefixed to a Contract

A mode is an added quality, for the most part not suspending the contract, but adding something to the burden or favor of one of the contracting parties. Modal contracts are made chiefly: 1st, to a day; 2nd, under a cause; 3rd, under a penalty; 4th, under demonstration; 5th, under disjunction.

Concerning modes the following things are to be noted:

1st. A mode must be observed from justice, unless it is repugnant to the substance of the contract.

2nd. Its violation ordinarily, and unless it has been agreed otherwise, does not invalidate the contract, because it is held as something merely accidental.

3rd. If the mode is base or impossible, it is held as not added; nor is the contract invalid, unless the mode is repugnant to its nature, or unless the will of the contracting party was altogether restricted to it.

4th. In a contract to a day, obligation arises immediately, but the effect is suspended until the determined day.

5th. In a contract under a cause (because) or under demonstration (I sell this or so much), error does not invalidate unless it pertains to the essence of the thing.

6th. If the error is in quantity, the whole thing is owed if the quantity was designated demonstratively; but if taxatively, as they say, the excess of quantity is not owed. Moreover, a thing is judged designated demonstratively if the thing is expressed in the first place and afterwards its quantity, for example, I leave to Titius my estate of thirty acres; but taxatively, if the quantity is expressed in the first place, and then the thing; for example, I leave three gold coins in such a casket. But the adjuncts of things must be weighed.

7th. In a contract under a penalty, that is, as often as a penalty is imposed on the one withdrawing, this penalty is owed from justice, if it is sought, at least if the contract has culpably not been fulfilled. Nevertheless the penalty must be moderate; otherwise it would not oblige.

8th. In a contract under disjunction, for example, I promise an ox or a horse, no determined thing is owed, and the payment of one takes away the whole obligation. Choice of the thing in itself pertains to the debtor.

Article III. On Conditions Placed upon a Contract

A condition is a quality added to a contract, which for the most part suspends it until it is fulfilled. It is accustomed to be expressed by the particles if, unless, provided that, etc. The condition which can

be placed upon contracts is manifold, namely: 1st, express or tacit; 2nd, of the present or of the future; 3rd, possible or impossible; 4th, necessary or merely contingent; 5th, honorable or dishonorable; 6th, potestative or casual, according as it is in the power of the contracting party or is not; 7th, positive or negative; 8th, contrary to the substance of the contract or not.

Concerning conditions the following things are to be noted:

1st. All conditions must be fulfilled in that sense in which the contracting parties are prudently judged to have wished to oblige themselves.

2nd. A condition concerning an impossible thing renders the contract null from the law of nature itself. The reason is that no one can oblige himself to something impossible.

3rd. A condition concerning the present and the past does not suspend the obligation, but immediately either brings it in or does not induce it; because it either exists or does not; therefore here and now either the contract is valid or null.

4th. A condition must be fulfilled not only equivalently, but in its own form. Some except the condition, if you shall marry, which they say is fulfilled by entrance into Religion; otherwise the condition would be base. Except if the condition were determined to some person, for example, if you shall marry Paul, because then a just and honorable reason can be present. Cf. St. Alphonsus, n. 930.

5th. Potestative conditions, or those which depend on the will of one of the contracting parties, are judged fulfilled not only when that is furnished which was enjoined in the manner of a condition, concerning which there can be no controversy, but even if that is not furnished in reality, when he who obliged himself either 1st, impeded the condition from being fulfilled; or 2nd, was impeded by another from satisfying the condition. Cf. Kenrick, tract. 11, nn. 15 and following.

Part II. On Contracts in Particular

Many particular contracts exist, and new ones are discovered day by day by merchants. Only the chief ones will be spoken of in the following twofold section.

Section I. On Gratuitous Contracts

Chapter I. On Promise

I say. Given the conditions of a true promise, there arises an obligation of fulfilling it. The reason is that a promise is a true contract, and it is impossible for there to be a contract without some obligation. Moreover, the conditions of a true promise are: 1st, that there be the intention of binding one's faith, and not merely of stating a purpose; 2nd, that the consent of the one promising be fully free and spontaneous; 3rd, that the promise itself be outwardly manifested and accepted, because every contract requires mutual consent of two or more persons upon the same object.

You Will Resolve. - 1st. It is certain that a true promise imports some obligation, but theologians dispute much concerning its quantity. But the more common and more probable opinion teaches that it depends upon the intention of the one promising. Wherefore if he intends to oblige himself from justice, he is obliged under mortal sin in grave matter; but if he intends only to oblige himself from

fidelity, he is obliged only under light sin. Moreover, for grave matter in a promise, the Doctors require a quantity four times greater than in grave theft. - Cf. St. Alphonsus, n. 720.

2nd. In doubt, whether there was a true promise or a simple purpose, or whether someone wished to oblige himself under grave sin or rather under light sin, one must stand by the least part according to the rules of probabilism. - Indeed Kenrick says: "English law, which also obtains in these regions, attributes no force to a promise made by word only or altogether gratuitous, that is, one which rests on no equitable cause, either work furnished, or nearness of family, or another grave reason." - Cf. St. Alphonsus, n. 720. - Kenrick, n. 22.

Questions

Question 1. When does the force of an accepted promise cease?

Resp. It ceases: 1st, if the promisee spontaneously condones or yields from his right; 2nd, if the thing promised becomes illicit or useless; 3rd, if the promisee does not stand by his promises; 4th, if the state of things or persons is so changed that the promise does not seem to comprehend that event; 5th, if the end which moved to promising in no way subsists, and can no longer be obtained. - Cf. St. Alphonsus, ibid.

Question 2. Whether, or to what extent, a promise obliges if before execution the promisee or the promisor dies?

Resp. In the case of the death of the promisee, the promise in no way obliges if it was made principally for the favor of the promisee, because with him dead, the end intended in the promise ceases; but otherwise if it was made chiefly in view of the family of the promisee or of his heirs. But in the case of the death of the promisor, the promise clothed with due conditions must be fulfilled by his heirs; because every real obligation must pass to the heirs in the same way and under the same title by which the promisor was obliged. Therefore under grave or under light sin, from justice or fidelity, the heirs will be held just as the promisor was held while he was living. Nevertheless they will be able to be freed from every obligation if from the adjuncts it is manifest that the promisor wished only to oblige himself personally.

Chapter II. On Donations

Article I. On Donations Properly So Called

Donation is a gratuitous handing over of some thing actually made to another and accepted by him. Moreover, it is divided:

1st. Into merely gratuitous and remuneratory. The former proceeds from a liberal spirit and excludes any debt whatever, whether from justice or from gratitude; the latter excludes only a debt from justice, and proceeds from a grateful spirit.

2nd. Into real and verbal. The first is had when the thing itself is handed over, so that the contract is properly consummated, and therefore this donation is also called perfect. The other occurs when the thing itself is not handed over, but something else as an authentic sign of the future handing over; this is also called imperfect and is often confused with a promise of donation, from which nevertheless it greatly differs.

3rd. Into a donation between the living and one on account of death. The first transfers dominion absolutely and irrevocably, excepting nevertheless cases defined by law, and it has no relation to the death of the donor. The other occurs in view of death and is revocable at will. Although it differs from a legacy both because it requires the consent of the donee and because it transfers dominion here and now, though revocably, nevertheless it shares in the nature of a testament or legacy, insofar as it is properly completed after death. - Cf. St. Alphonsus, n. 741. - Kenrick, n. 24. - Kent, Comment., vol. 2, part 5, lect. 38, nn. 438, 444, and 448.

I say. For the validity of any donation whatever, it is required that neither the donor nor the donee be incapable of giving or receiving, and indeed whether from natural law or from positive law, at least for the external forum and according to the diverse prescriptions of laws to be indicated below. The reason is that since a donation is a contract, it cannot be made by one party only, and therefore it requires the capacity of each contracting party.

Questions

Question 1. Who are those who are judged incapable of donating?

Resp. 1st. From natural law all and only those are incapable who either do not yet have the use of reason or, if they have obtained it, are deprived of sufficient liberty at the moment when they make donations.

Resp. 2nd. From Roman law the following are incapable: 1st, those deaf and mute at the same time from birth, unless they know how to write; 2nd, those condemned for a capital crime; 3rd, wards or the non-pubescent, unless it is a question of things of small moment; 4th, spouses between themselves, unless the donation is of modest moment or is made by testament; 5th, a father toward a son remaining under his power, excepting the cause of marriage, war, studies, and similar things; excepting also a testamentary donation.

Resp. 3rd. From our law the following are incapable: 1st, non-emancipated minors, wives, and interdicted persons, as was said above; 2nd, spouses between themselves, unless certain formalities are employed, or it is a question of things of small moment; 3rd, those who are not equal to paying their creditors. - Cf. Kenrick, n. 24.

Question 2. Who are those who cannot receive donations?

Resp. 1st. From natural law they are all and only those who would receive them from those who from the same law are incapable of giving, whether they themselves have or do not have the use of reason.

Resp. 2nd. From Roman law they are: 1st, all receiving from those who cannot make donations according to what has been said; 2nd, those receiving from those who are burdened by debt, and these indeed, according to the truer opinion, are held to compensation of the damage coming therefrom to the creditor; 3rd, those receiving in defraudation of the legitimate portion which is owed to necessary heirs.

Resp. 3rd. From our law, except those who would receive from those who by force of the same law cannot give, no person is judged incapable, although communities and colleges (corporations), in some States, are deprived of this capacity either totally or in part. Also excepted in Louisiana are

physicians, surgeons, and ministers of any worship who furnish service during the last sickness of the deceased. - Cf. Civ. Code of Louisiana, art. 1489.

Question 3. What form is required so that, with our law considered, any donation may be valid?

Resp. If the discussion is of a donation between the living, it must be real and perfect; but if it concerns a donation on account of death, the solemnity of a contract or some document is required for making faith concerning the truth of the handing over. - Cf. Kent, Comment. vol. 2, nn. 438, 439, and 447, with note (b).

Question 4. What is required so that a donation in favor of an absent person may be valid?

Resp. A donation, just like a promise made to an absent person through letters written to him by name, or through a messenger or procurator, must be accepted before the messenger or before him who represents the donor, or through other letters sent to the donor on the part of the donee; for otherwise mutual consent of the donor and donee in the same agreed thing cannot be established. - Cf. St. Alphonsus, Hom. Ap. n. 130.

Question 5. What if the donor, after sending a messenger, revoked the donation?

Resp. If the donor revokes the donation before it is accepted, and the revocation becomes known to the messenger whom he sent, now the messenger can effect nothing further, since every power of offering or handing over has been taken away from him. But if the revocation does not become known to the messenger before execution, then a distinction must be made: either he has himself only in the manner of a messenger reporting the donation of another, or handing over the thing; or he has a mandate of making the donation. If the former, by the revocation made the subsequent donation is invalidated, because consent is altogether lacking on the part of the donor. If the latter, his acts are valid and the donation can be validly accepted. For the one mandating is held to hold as ratified that which, by force of the mandate, has been done in good faith in his name. - Cf. St. Alphonsus, Hom. Ap. ibid.

Question 6. Whether and for what causes any donation already accepted can be revoked?

Resp. A donation on account of death, since by its nature it is revocable at the will of the donor, can always indeed be revoked validly, and, given a just cause, also licitly, no otherwise than a testament.

But a donation between the living:

1st. From natural law can be revoked only when the conditions, if any are present, have not been fulfilled.

2nd. From Roman law for three causes, namely because of the ingratitude of the donee, because of offspring afterwards received, and finally because it is inofficious, namely because it deprives children of the legitimate part of the inheritance.

3rd. From our law, only donations made in fraud of creditors are held void, except Louisiana, where it can be revoked for manifold cause, especially because of the ingratitude of the donee. - Cf. Kenrick, n. 25. - Kent, Comment. vol. 2, n. 440.

Question 7. Can he to whom a certain movable thing has been donated on account of death receive it secretly after the donor has died?

Resp. Affirmatively, provided he is certain concerning the donation and the last will of the deceased; for he has a right in the thing donated, therefore he uses his own right. Besides, the thing was not donated as something to be paid, but as something to be received by the donee himself.

Question 8. Is a manual donation made by a sick person valid under this condition, that the donated thing be restored to him if he recovers?

Resp. Affirmatively, because 1st, it is valid as a donation on account of death; 2nd, it is valid also insofar as it is a donation between the living, if it is not revocable at the will of the donor, but only from the event of health, because then it can be held as a conditioned donation between the living.

Question 9. Is the same donation valid under the condition that it be restored if it is asked for again?

Resp. Affirmatively, more probably, although it is not valid as a donation between the living, which requires that the donor strip himself of his thing irrevocably; nevertheless, it can be valid as a donation on account of death because of the real handing over, which ought to have no less force, although no mention of death is made.

You Will Resolve. - 1st. It is not a donation on account of death but between the living, a disposition by which someone now and irrevocably donates to another the dominion of a thing, the use or usufruct of which he reserves to himself until death.

2nd. Nor are those dispositions to be held as donations on account of death, but between the living, by which the sick actually and irrevocably give to persons present, for example, parents, servants, friends, movable or even immovable things without any condition regarding death.

3rd. Promises which are accustomed to be made in life concerning some thing to be given at death to parents, servants, friends . . . do not have the force of a donation on account of death; nor by force of such a promise will anyone be able to claim even the least thing, because those promises are accustomed to denote nothing other than a mere purpose or good will of making a donation. Therefore one must beware lest servants and friends, etc. . . . more readily interpret the will of the deceased in their own favor, and thus secretly steal any things whatever under pretext of promise or donation. - Cf. Gury, Cases, n. 811 and following.

§1. He who by natural and ecclesiastical law is freely able to dispose of his goods can leave goods to pious causes, whether by an act between the living or by an act on account of death (Can. 1513).

Article II. On Testaments

§ I. On the Nature, Division, and Form of Testaments

A testament, from Roman law, is the just sentence of our will concerning that which someone wishes to be done after his death. This definition seems to be preferred to that which Busenbaum hands down and St. Alphonsus implicitly approves, n. 919, both because our Kent embraces it, and because it does not require the direct institution of an heir, which is consonant with our laws. - Cf. Kent, Comment. vol. 4, part 6, lect. 68, n. 502.

A testament is distinguished variously. For:

1st. From Roman law it is solemn and privileged. A solemn testament is subdivided into closed and open. The first, which is also called written, is that which, sealed with a seal, is handed over to be

subscribed by seven suitable witnesses, males, pubescent, etc., with whom the testator subscribes, if he can; but if he cannot, an eighth witness must accede. The other, namely open, is made before seven witnesses, whether by an open writing or by the living voice, and therefore it is also called nuncupative. But a privileged testament is that which is valid without solemnities. Such is a testament established by a soldier, or by others in time of plague or in other circumstances of this sort.

2nd. From our law a testament is written, nuncupative, and holographic. A testament which is called written is generally that which is made concerning immovable goods; it must bear on its face the name of the testator, or at least be acknowledged by him as his own before two witnesses, who also must subscribe. The number of witnesses is diverse in diverse States, but nowhere are seven required. - I said concerning immovable goods, because a testament concerning movables is recognized as valid provided it has been made according to the laws of the place where the testator has domicile. A nuncupative or verbal testament is also admitted in the States of New York and New Jersey for sailors and soldiers; indeed in some other States it is valid for all, but with certain conditions observed. Nevertheless it must be noted that a testament of this sort often gives origin to lawsuits and discords, and therefore is not safe. A holographic testament also exists among us, but only for the State of Louisiana. - Cf. Kenrick, nn. 29 and 31. - Kent, Comment. vol. 4, nn. 513 and following. - Wells, Every Man, etc., pp. 92 and 93.

A nuncupative, or verbal, or oral testament is made before witnesses by a testator placed in extremis or placed in equivalent circumstances; afterwards it is reduced to writing. This testament is reserved to soldiers under arms and to sailors navigating; it is valid for certain goods only (personal estate) in Massachusetts, Minnesota, New York, Rhode Island, Virginia, West Virginia, Montana; in Georgia for personal and real goods, as they are called. In various States the conditions vary. - Bouvier, Law Dictionary, Ed. 8, "Nuncupative Will."

A holographic testament is written wholly by the hand of the testator, is signed by him, and a date is affixed by him. Generally it does not need witnessing.

A mystic testament is written and must be signed by the testator before seven witnesses. It is recognized in the Civil Code of the State of Louisiana.

I say. That a testament may be firm and valid, at least in the external forum, it is required: 1st, that it have the conditions required for gratuitous contracts, and first of all free and spontaneous consent; 2nd, that it not be made by one incapable of testating, nor in favor of one incapable of receiving, or of succeeding into the rights of the deceased; 3rd, that the formalities prescribed by law be observed. - I said at least for the external forum, because it is disputed among theologians whether execution of legal formalities is required for the forum of conscience, as will be said immediately. But who are incapable of testating and of succeeding into the rights of the deceased will be said immediately in § II.

Question. Are testaments valid, whether for profane causes or for pious causes, if they lack legal forms?

Resp. If it is a question of profane causes, it is sharply disputed, and a threefold probable opinion is had: the first holds that testaments of this sort are valid from natural law and in the forum of conscience; another teaches that by force of positive law they are to be held utterly void; finally the

third establishes that favor must be shown to the possessor until the matter is settled by the judge. But if the discussion is of testaments in favor of pious causes, the certain, most common, and altogether to be held opinion teaches that testaments of this sort are valid, and that no one can with a safe conscience, under pretext of lacking these formalities, retain an inheritance which has been assigned to some pious cause. - The reason is that causes of this sort pertain to the Church and are subject to her jurisdiction; but the Church is free and immune from civil power in all those things which are directly subject to her jurisdiction.

§2. In last wills for the good of the Church, the solemnities of civil law are to be observed if it can be done; if these have been omitted, the heirs are to be admonished to fulfill the will of the testator (Can. 1513).

§1. The reduction, moderation, and commutation of last wills, which must be made only from a just and necessary cause, are reserved to the Apostolic See, unless the founder has expressly conceded this power also to the Ordinary of the place.

§2. If nevertheless the execution of imposed burdens, because of diminished revenues or another cause, with no fault of the administrators, has become impossible, then the Ordinary also, after hearing those whose interest is involved, and with the will of the founder preserved in the better way by which it can be done, will be able equitably to diminish the same burdens, except the reduction of Masses, which always belongs uniquely to the Apostolic See (Can. 1517).

§ II. On Testators and Heirs

I say, 1st. All who have the use of reason can be testators, except those who are invalidated by positive law. Moreover, the following are invalidated:

1st. From Roman law: deaf-mutes from birth, the non-pubescent, prodigals, those condemned to civil or natural death, and also professed religious.

2nd. From our law: only minors and wives. Nevertheless, as regards minors, it must be noted that they can make a testament concerning movables if they are pubescent, although in some States a restriction has been placed in this matter by the addition of four years, so that males can make a testament concerning movables only in the eighteenth year and females in the sixteenth year. Besides, the restriction by which wives are held has been greatly diminished in some States, provided nevertheless that certain formalities be observed. - Cf. Kenrick, n. 36. - Kent, Comment. vol. 4, nn. 505 and 506. - Devereux, lect. 68, nn. 6 and 8. - Wells, Every Man, etc., p. 93.

In several States the age for making a testament is the twenty-first year. Males and females of eighteen years can make a testament in the States: California, Connecticut, Idaho, Montana, Nevada, Oklahoma, North Dakota, South Dakota, Utah, Hawaiian Islands. Females only at the same age, that is, eighteen years, in Colorado, Illinois, Maryland, Missouri, Washington, Wisconsin, District of Columbia. Concerning property, as it is commonly called, personal, and concerning this only, persons of eighteen years can dispose in West Virginia, Virginia, Rhode Island, Oregon, Missouri, Arkansas, Alabama; in Georgia a person who is in the fourteenth year; in Louisiana a person who has completed the sixteenth year is competent to make a testament. In Colorado persons of seventeen years, and in New York males of eighteen and females of sixteen years, can dispose concerning personal property.

Most States require two witnesses, but Connecticut three, Massachusetts three, Maine three, New Hampshire three, South Carolina three, Vermont three. The World Almanac, 1914.

I say, 2nd. All human beings who are endowed with life can be instituted heirs, provided they are not excepted by positive law. Moreover, the following are excepted:

1st. From Roman law, those condemned to death, both natural and civil, traitors, and their spurious children under certain restrictions.

2nd. From our law, witnesses of the testament itself, unless they are creditors; aliens as regards immovable goods; and colleges (corporations), unless they have a special faculty as regards this matter. Cf. Kent, Comment. vol. 4, nn. 506 and 508. Devereux, loc. cit. nn. 12 and 14.

Questions

Question 1. Of how many kinds are heirs distinguished according to the diverse laws?

Resp. There are three kinds of heirs: 1st, necessary, who cannot be excluded by the testator; 2nd, legitimate, who by law succeed from intestacy; 3rd, voluntary, who namely are called to the inheritance from the free will of the testator. - Heirs by testament are also distinguished, who namely have been designated by testament, and heirs from intestacy, if by law they succeed to the deceased who made no testament or an imperfect one.

Question 2. Who are necessary heirs, and who are legitimate?

Resp. 1st. Necessary heirs, from natural law, are the nearer blood-relatives and especially children, not however so that a father is bound to leave all his goods to children or to other nearer blood-relatives, even those not needy or disorderly, but insofar as by force of the piety with which he ought to regard them he is held to turn away their need and other evils. But from Roman law necessary heirs are all relatives in the direct line, namely: 1st, descendants in the nearer degree; 2nd, in their default, ascendants both on the part of the father and on the part of the mother in a likewise nearer degree. Finally, from our law, except the wife, to whom the legitimate portion or third part of immovable goods is owed, none are recognized as necessary heirs. Cf. Kent, Comment. vol. 4, n. 537, note (a). - Devereux, lect. 68, n. 36.

Resp. 2nd. Legitimate heirs are all blood-relatives of the nearer degree, even in the collateral line up to the 10th degree from Roman law, that is, the 5th as regards canonical computation. But from our law there is great variety in this matter, and each State has its own laws; these nevertheless agree as regards substance. Several rules are handed down by Kent, of which the sum is this: that the inheritance first descends to the children and their descendants even to the more remote degree, then comes to the parents, then to brothers and sisters and those who represent them, afterwards to grandparents, finally to the brothers and sisters of the parents of him who has died from intestacy. - But you may see those rules, if you please, in Kent, Comment. vol. 4, throughout the whole lect. 65, or a compendium of this at Devereux.

Question 3. What are the rights and obligations of heirs?

Resp. Any heirs whatever can renounce an inheritance according to the axiom: No one is heir unless he wishes, and as Kenrick says: "No act is required by which someone renounces an inheritance." - But with the inheritance now accepted, heirs succeed into all the rights and burdens of the deceased,

because they represent his person, except only those things which, by their nature or by pact, were affixed to the person of the deceased. Hence they acquire by full right the dominion of the goods of the deceased, take upon themselves his obligations and debts, and ought to fulfill his will in legacies. - As regards the manner of paying debts left by the deceased, let each pay according to the proportion of his hereditary portion. Moreover, an heir can accept an inheritance under benefit of inventory, namely so that, once an inventory of goods has been made according to legal form, he is not obliged beyond the resources of the inheritance. - Cf. Kenrick, tract. 10, nn. 89 and following. - Kent, Comment. vol. 2, part 6, lect. 65, n. 422.

Question 4. Can necessary heirs be disinherited?

Resp. From Roman law, according to which children are admitted as necessary heirs, they can be disinherited by the authority of the father alone in the following cases: 1st, if a son lays hands upon his father or treats him contemptuously; 2nd, if he is his accuser or witness in criminal causes; 3rd, if he has relations with his father's wife; 4th, if he is unwilling to furnish surety for liberating his father from prison; 5th, if he has prohibited his father from making a testament; 6th, if a daughter, after refusing honorable marriage, lives wantonly. But among us, where children are necessary heirs only from natural law, the aforesaid causes and several others of the same kind seem a fortiori to suffice for disinheriting them.

§ III. On Testamentary Dispositions

Testamentary dispositions are codicil, legacy, and substitution, concerning which it will suffice to note the following.

I. A codicil, or little codex, is called a disposition of last will by which something concerning a testament is explained, or is changed by adding or taking away. For the validity of a codicil, whether written or nuncupative, from Roman law five witnesses are required and suffice, even if not asked, and even if they are women. But among us a codicil must enjoy the same solemnities and the same number of witnesses as a testament. Cf. Kenrick, n. 27. - Kent, Comment. vol. 4, n. 531. - Devereux, lect. 68, n. 45.

II. A legacy is a disposition of last will by which the deceased directly leaves to someone some gift taken from the inheritance and to be furnished by the heir. A legacy can be: 1st, pure or absolute, or conditioned; 2nd, universal or particular, namely by universal title, for example, I leave all movables, or by particular title, for example, I leave such a sum. - Cf. Kenrick, loc. cit. n. 27. - Bouvier, Law Dictionary, under the word Legacy.

III. Although substitution sometimes obtains the name of fideicommissum, nevertheless it extends more broadly, since taken generally it is defined as: a disposition by which someone is called to an inheritance or legacy in the default of another. - There is a twofold substitution: one direct, by which someone directly and in his own name, in place of another, is called to the inheritance, if indeed that person cannot or does not wish to receive the thing; and another fideicommissary, or simply fideicommissum, by which an heir instituted by testament or coming from intestacy is burdened and obliged by the deceased to restore or hand over the whole inheritance or part of it to another. - Cf. Schmalzgrueber, lib. 3, tit. 26, n. 126. - Kenrick, n. 28. - Kent, Comment. vol. 4, part 6, lect. 54, n. 15, (c) 20 and 290.

§ IV. On the Revocation of Testaments

I. A testament, under whatever form it has been made, can always be revoked at the will of the testator, because a testament by its nature is an essentially revocable act; therefore the testator retains dominion of his goods until death. Thus all laws establish; wherefore in Roman law, L. 4 ff. de adimendis, it is said: "The will of one testating is ambulatory until the last breath of life."

II. Revocation of a testament can occur in many ways: 1st, if it is deliberately destroyed by burning, tearing, or obliteration; 2nd, if a new one is made, which contains either clauses openly revoking the first or dispositions not only diverse, but opposite and incompossible with the first testament; 3rd, if after making the testament the testator takes a wife and is given offspring, yet in such a way that provision had not previously been made for the wife and offspring; 4th, if the goods concerning which there is discussion in the testament are sold or a pact is made that they be sold. - Cf. Kenrick, n. 33. - Kent, Comment. vol. 4, nn. 520 and 532. - Wells, Every Man, etc., p. 93.

§ V. On the Executor of a Testament

I. The executor of a testament is called he to whom the office belongs of causing all the conditions and clauses of the testament to be put into execution according to the intention of the testator and the right interpretation of the words contained in it.

II. The executor of a testament is designated by the testator himself; or if the testator has not done this, or the one who has already been designated does not accept or cannot accept the office, then from Roman law the heir is held as executor; but according to our laws he is designated by the Court.

III. According to our laws, generally speaking, all can be executors of testaments, except those who cannot make testaments.

IV. There are many offices of the executor of a testament, but the principal ones are: that he obtain in the Court the authentication or proof of the validity of the testament; that he institute an inventory of the goods; that he satisfy creditors according to the order prescribed by law; and finally that he distribute justly and faithfully the goods which remain to the heirs and legatees. - Cf. Kenrick, nn. 34 and 35. - Wells, Every Man, etc., pp. 94 and 95. - Bouvier, Law Dictionary, under the word Executor.

The wills of the faithful donating or leaving their property for pious causes, whether by an act between the living or by an act on account of death, are to be fulfilled most diligently, even concerning the manner of administration and disbursement of goods, with the prescription of can. 1515, §3, preserved (Can. 1514).

§1. Ordinaries are the executors of all pious wills, both on account of death and between the living.

§2. By this right Ordinaries can and ought to watch, even through visitation, that pious wills are fulfilled; and other delegated executors, having discharged the office, must render an account to them.

§3. Clauses contrary to this right of Ordinaries, added to last wills, are to be held as not added (Can. 1515).

§1. A cleric or religious who has received fiduciary goods for pious causes, whether by an act between the living or from a testament, must inform the Ordinary concerning his trust, and indicate to him all

goods of this sort, whether movable or immovable, with the burdens attached; but if the donor expressly and altogether forbids this, let him not accept the trust.

§2. The Ordinary must require that fiduciary goods be placed in safety, and watch for the execution of the pious will according to the norm of can. 1515 (Can. 1516).

Chapter III. On Commodatum and Precarium

Commodatum is a contract by which a thing is granted gratuitously for use alone for a certain time, with the burden of restoring the same individual thing. But precarium is a contract by which the use of some thing is granted to someone asking, yet revocable at the will of the one granting. - Wherefore the object of commodatum or precarium can be any things whatever, whether movable or immovable, placed in civil commerce, provided they are not consumable by the first use to which they are destined.

Commodatum differs: 1st, from hiring, by which the use of a thing is indeed granted but not gratuitously; 2nd, from deposit, by which a thing is handed over not for use but for custody; 3rd, from mutuum, by which the thing must be restored only in the same species. But precarium differs from commodatum only in this, that it is revocable at the discretion of the one granting.

As regards the obligations of the borrower for use and of the lender for use, these few things are to be held:

I. The borrower for use generally ought to use the thing lent to him as a good father of a family; but specifically: 1st, he cannot use the thing lent except for the use either granted to him, or to which he prudently judges the lender for use to consent, or to which the thing by its nature is destined; otherwise he abuses another's thing and will be held to repair all damages proceeding therefrom; 2nd, he must undergo the expenses necessary for the preservation of the thing, for example, to feed a horse lent for use; but he is not held to extraordinary expenses, for example, for curing a horse laboring under grave disease without his fault; 3rd, he must return the thing lent for use at the prefixed time and at his own expense, even if it is not asked for, because the appointed day makes demand on behalf of the owner. If the time of restitution has not been prefixed, the thing lent for use must be restored as soon as it has furnished the requested use.

II. The lender for use is held: 1st, not to ask back the thing lent before the prefixed time, or at least, if this was not prefixed, before the borrower for use is able to use it; otherwise he will be held for the damage which the other has experienced from his untimely revocation, since he has thus violated another's right acquired by pact, unless the thing was lent for the favor of the borrower for use alone, who dies before the prefixed time; or unless the lender for use himself immediately needs his thing because of an unforeseen case; 2nd, he is held to restore extraordinary expenses which the borrower for use underwent as urgent and necessary for preserving the thing, while otherwise he could not easily warn the lender for use; 3rd, if he knows any harmful defects of the thing lent, he is held to disclose them to the borrower for use; otherwise he will have to compensate the damage proceeding therefrom; 4th, finally, he is held to sustain the perils and detriments of the thing arising from a fortuitous case, excluding delay, fault, pact, and particular law, because according to the axiom: A thing perishes to its owner.

Chapter IV. On Deposit and Sequestration

Deposit is a contract by which a thing to be guarded is gratuitously committed and accepted, to be restored entire when it pleases the depositor.

But sequestration is a species of deposit, by which a disputed thing is deposited with a third party, so that after the sentence of a judge or arbitrator it may be handed over to the victor. A twofold sequestration is distinguished: conventional, which occurs by mutual agreement of the contenders; judicial, which is decreed by sentence of the judge.

Concerning the obligations of the depositary and of the depositor, hold these things:

I. The depositary is held: 1st, to preserve and guard the deposited thing with that care and diligence which diligent men are accustomed to employ in preserving a similar thing of their own; for he has undertaken this custody of the thing handed over; 2nd, he cannot use the deposited thing without the express or tacit consent of the owner, or at least consent prudently presumed; for it is not licit to use another's thing without consulting the owner; 3rd, he is held immediately to return the deposited thing to the one asking, for otherwise he would have another's thing while the owner is reasonably unwilling.

II. The depositor is held to pay the expenses which the depositary underwent in preserving the thing deposited, and to indemnify him for all things which he suffered on occasion of the deposit. Thus, for example, if you deposited a horse in another's stable, you ought to pay the expenses of feeding; and if that horse labors under a contagious disease from which the horses of the depositary are infected, you ought to indemnify him according to the saying: His office ought to be harmful to no one.

Concerning sequestration it will be enough to indicate the following:

I. The object of both conventional and judicial sequestration can be a movable or immovable thing.

II. Conventional sequestration can be not gratuitous, and then it becomes a hiring of work and is subject to the laws of that contract. But if it is gratuitous, it is subject to the same rules as deposit. Nevertheless it is not dissolved unless the mutual consent of the parties or a legal cause supervenes.

III. In judicial sequestration, the custodian ought to exercise the care of a good father of a family; but the one committing to custody is held to pay the depositary the wage established by law.

Chapter V. On Mandate and Management of Affairs

Mandate is a contract by which some business, for example, of buying something, selling, etc., is committed by one person to another, and is undertaken by that same other person to be carried out gratuitously. - I said gratuitously; for if it is undertaken because of an established price, it is rather called hiring of work.

But management of affairs is a certain quasi-contract by which someone undertakes usefully to manage the business of an absent and ignorant person, without express mandate, but with his commission reasonably presumed.

Concerning the obligations of the mandator and of the mandatary, these things are to be held:

I. The mandator: 1st, ought to fulfill all obligations contracted by the mandatary and consonant with the mandate; but not that which has been contracted beyond the mandate, unless he has expressly or

tacitly ratified it; 2nd, ought to furnish to the mandatary those things which are necessary for the execution of the mandate, and to refund to him the legitimate expenses which he made on occasion of the mandate, even if he did not bring the matter to a happy outcome; 3rd, he is held to indemnify the mandatary by reason of damages which, apart from culpable imprudence, he suffered on occasion of the mandate; for no one is held, nor is he judged to wish, to confer a benefit upon another with his own loss.

II. But the mandatary is held: 1st, to manage the business of the mandator diligently and as his own, and therefore it is necessary that he answer for deceit and theologically culpable carelessness; 2nd, he must keep himself within the limits of the mandate, whence he can buy nothing for more or sell for less than has been prescribed to him; for otherwise he would not act by force of the mandate; 3rd, he cannot exact a wage, nor is it licit for him secretly to compensate his own work.

Concerning obligations connected with management of affairs, observe the following:

I. The manager of an affair, just like a mandatary, is held to administer another's matter as a good father of a family, and to make good damages inflicted on the absent person from his deceit, negligence, or fault. Nevertheless, in several circumstances the obligation of compensating damages can be tempered, even in the external forum, especially when those damages proceed from the inexperience or negligence of the manager, who undertook managing another's matter in default of one more skilled.

II. The absent person whose business is managed is held to observe agreements duly made by the manager, and to make good to him expenses and damages proceeding from such management, even if the matter has succeeded badly.

Chapter VI. On Mutuum

Mutuum is sometimes taken for the very thing handed over by loan; but sometimes, and more often, for the contract by which that thing is handed over to another to be used. In this latter sense it is taken here, and is customarily defined: a contract by which a thing consumable by first use is handed over to another, with the obligation of returning a similar thing at the appointed time and in the same species and quality. Hence mutuum differs from commodatum, hiring, and deposit: 1st, because in mutuum the thing must be consumable by first use, otherwise in the others; 2nd, because the thing is to be restored not in the individual but only in the same species; 3rd, because in mutuum the dominion of the thing is transferred and not in the others, and therefore in mutuum the thing perishes to the one receiving, in the others to the one handing over. But the reason why in strict and properly so-called mutuum dominion is transferred is that, since the thing loaned is consumable by first use, a use of this sort would not be licit without dominion itself.

I say, 1st. There is given a strict precept of making a mutuum not only with respect to the poor who will have the means to restore, but also with respect to the rich who, because of a particular circumstance, greatly need it. The reason for each is deduced from the law of charity, which obliges one to come to the aid of a neighbor placed in necessity, and demands that we willingly furnish to him that which in a like case we would wish to be furnished to ourselves. - I said, 1st, who will have, etc.; because otherwise another precept urges, namely that of giving alms, according to the rules set forth above, where charity was treated. - I said, 2nd, also with respect to the rich who because of a

particular, etc.; because charity obliges us to nothing toward those rich persons who seek a mutuum for increasing their wealth, since they suffer no necessity.

I say, 2nd. Although the borrower is not freed from restitution, however the thing loaned may perhaps perish, nevertheless he is held to nothing else except to returning a similar thing; nor can the lender exact anything else by force of the mutuum without injuring commutative justice and being held to restitution. - The reason for the first is that, once the contract of mutuum has been completed, dominion of the thing loaned passes to the borrower, and therefore if it perishes, it perishes to him. But the reason for the second is that, as St. Thomas teaches, the use of a consumable thing, since it is the consumption of the thing itself, cannot be distinct from its dominion; and therefore if besides the thing itself something were exacted for the use, by force of the mutuum, a price would be exacted for a thing which does not exist; or in other words, the same thing would as it were be sold twice, which certainly injures justice. There is added the reason taken from the special and repeated prohibitions and declarations made by the Roman See, and especially by Benedict XIV in the Encyclical Letter issued in the year 1745, which begins Vix pervenit. The new code accords:

If a fungible thing is given to someone in such a way that it becomes his and afterwards as much in the same kind is restored, no profit can be received by reason of the contract itself; but in the furnishing of a fungible thing it is not illicit in itself to agree concerning legal profit, unless it is established to be immoderate, or even concerning greater profit, if a just and proportionate title suffices (Can. 1543).

You Will Resolve. - 1st. If sometimes the poor seek a mutuum, and nevertheless they are not presumed to be going to have the means from which they may be able to return the equivalent, then, as has been said, the precept of making a mutuum ceases, but that precept urges of giving some alms. - I said some, because you are not held to furnish so much alms as the poor man was demanding by mutuum, because there are others who can and ought to give help.

2nd. Some grave inconvenience sufficient for excusing from the obligation of giving alms also excuses from the obligation of making a mutuum, but not conversely, since to give a mutuum is much less than to confer alms. Nevertheless the obligation of making a mutuum must be carefully distinguished from that of not exacting something above the principal by force of the mutuum; the first proceeds from charity, the other from justice. The sin of injury to justice committed in such a way is properly called usury, which can be explicit and open if an express agreement occurs; or implicit and disguised if the agreement occurs through consent only virtually manifested or under the species of a contract diverse from mutuum.

3rd. Nevertheless, the crime of usury is not committed if someone expects something for a mutuum, not as owed, but from mere benevolence. - I said expects, for if someone were to exact something from benevolence, he would have to be called a usurer; since Innocent XI condemned prop. 42, which has itself thus: "It is not usury when beyond the principal something is exacted as owed from benevolence and gratitude, but only if it is exacted as owed from justice." Cf. St. Alphonsus, nn. 774 and 777.

4th. A fortiori, however, he ought to be excused from every crime of usury who either expects or even exacts something above the principal, not indeed by force of the mutuum, but by force of some

extrinsic title. The reason is taken from the practice of God-fearing faithful, from the implicit approbation of the Church, and from the fact that such a manner of acting is altogether consonant with the rules of justice.

Questions

Question 1. What are those extrinsic titles by force of which it is licit to exact something beyond the principal?

Resp. Five principal ones are enumerated, namely: emergent damage, ceasing profit, danger of the principal, conventional penalty, and civil law. Concerning each one it will be said briefly what it is and why it is licit to use it.

1st. Emergent damage is the detriment which the lender suffers on occasion of a mutuum furnished to a neighbor. But that this title is legitimate is established from the fact that it is not equitable that someone should bear damage from a mutuum, since no one is held to furnish a benefit with his own damage, except in the necessity of a neighbor. But for the legitimacy of this title, besides the existence of the damage itself, the following conditions are required, namely: that the mutuum be the cause of the damage; that nothing besides compensation be exacted; and that the increase be brought into the pact from the beginning. - Cf. St. Alphonsus, nn. 768 and 769.

2nd. Ceasing profit is that which the lender, preserving his own thing, would have gained if he had applied it in another licit contract. That this is a legitimate title is proved, because the hope of profit on the one hand is extrinsic to the mutuum, and on the other is truly estimable by price. Cf. St. Alphonsus, n. 771; and Hom. Ap. nn. 149 and following.

3rd. Danger of the principal is a prudent fear lest the principal cannot be recovered. - This title also, according to the more common and more probable opinion, is legitimate. The reason is both because things placed in safety are valued more highly than things placed in danger, and also because it is established from the decision of the Sacred Congregation de Propaganda for the Chinese Missionaries, approved by Innocent X, in the year 1645. Nevertheless except if the borrower secures the principal by pledge, because thus the danger ceases. - Cf. St. Alphonsus, n. 765. - Kenrick, n. 89.

4th. A conventional penalty is as it were a certain fine, which the borrower obliges himself to pay if he does not restore the principal at the prefixed time. But it is proved to be a legitimate title because thus provision is made for the firmness of the contract and at the same time the negligence of the borrower is prevented; but it is required that the delay of the debtor be notable and culpable, and that the penalty be moderate and proportionate to the fault. - Cf. St. Alphonsus, n. 766.

5th. The title of civil law consists in a positive permission made by the supreme legislator of civil society of receiving a certain determined profit, which therefore is diverse according to the diversity of places and laws. Much indeed was previously disputed concerning the legitimacy of this title in the forum of conscience; but today it can scarcely be doubted, although the same explanation is not given by all. For some invoke the force of the high dominion which the supreme authority has over the goods of private persons; but others, far better, have recourse to the right and office which the supreme authority has of decreeing a reward for those who, by supplying money, favor commerce. But natural equity itself dictates that this reward be paid by those same persons who take utility therefrom. Besides, there exist many responses of the Roman Congregations by which it is decreed

that those who, relying only upon this title, have obtained some profit are not to be disturbed; nor are priests to be disturbed who contend that this title is legitimate. - Cf. Taparelli, Saggio Teoretico, dissert. 4, cap. 4.

Question 2. Is it licit to exceed the legal rate by reason of special emergent damage, or ceasing profit, or danger of the principal?

Resp. Negatively, with respect to the poor or others who seek a mutuum in necessity and who would be oppressed by a greater increase. But if money is handed over by mutuum not indeed for another's necessity, but only for utility and even for gathering new riches, there is no little dispute among theologians. Very many more recent authors, among whom is our Kenrick, rightly affirm, both by reason of indemnity or just compensation, and by reason of the free consent of the borrower, who, as is supposed, suffers no necessity. - Cf. Kenrick, n. 96. Nouvelle Revue Théol. vol. 21, p. 496.

Question 3. What is to be said concerning those who, when the discussion is only of money to be given by mutuum, after rejecting all the aforesaid titles, rely solely upon its fecundity to legitimize the profit which is taken above the principal?

Resp. Their doctrine does not seem improbable, and it can be reduced to the following heads:

1st. A mutuum, according to all, cannot occur except concerning a thing to be consumed by use, which is evinced from the nature of mutuum itself. But money is not consumed by first use unless it is furnished to a poor man who is going to spend it for his sustenance. For in the handing over of money, only value is transferred and is the object of the contract; but value does not perish when it is spent for increasing the fortune of the borrower. Therefore . . .

2nd. Hence the contract by which money is handed over to a rich man is not mutuum properly so called, but rather commodatum or hiring, according as it is given gratuitously or for a price, and therefore the dominion of the money is not transferred.

3rd. That contract of hiring money is licit in itself, for a price is justly exacted for a thing which has intrinsic value; but the use of money, which is not consumed by first use, has intrinsic value, which can be estimated by price and in human commerce becomes the cause of many emoluments. Therefore the increase of the principal is the just price of that use.

4th. Money, as is established by the experience of merchants, produces fruit and is multiplied of itself, independently of human industry; therefore it is not to be reputed altogether sterile. For the same merchant, in the same circumstances and with the same degree of industry, makes much greater profit if he can spend a much greater sum in commerce; therefore the faculty of spending money in commerce is truly estimable by price.

Section II. On Onerous Contracts

Chapter I. On Sale and Purchase

Many things indeed can be said concerning the nature of this contract, concerning the justice of price, and concerning the diverse species of sales and purchases, but we briefly indicate only those things which can be necessary for the confessor. For the office of hearing confessions is not to be confused with the office of conducting trade.

Article I. On the Nature of Sale and Purchase

The contract of sale and purchase can be defined as an onerous contract by which any thing whatever estimable by price is exchanged for a determinate sum of money, dominion being mutually transferred. - Cf. St. Alphonsus, n. 795. - Kenrick, n. 45. - Kent, *Comment.*, vol. 2, part 5, lect. 39, n. 468, (4).

I say. For transferring the dominion of the thing sold, by natural law the delivery of the thing itself is not required, if the freely given consent is otherwise established. - But by positive law a distinction must be made. According to Roman law the dominion of the thing does not pass to the buyer unless delivery has already been made; indeed it is also required that the price be paid or offered by the buyer, or at least that either suretyship or credit be furnished concerning it; and if this is not done, the buyer indeed has a right to the thing, but not a right in the thing. But according to our law, if the thing sold has been designated and separated from the rest, dominion is transferred without delivery, although at least an inchoate and authentic payment of the price is required. For if a thing, even designated and separated, is sold without any payment of the price, it can be recovered by the seller while it is *in transitu*, as they say, to a buyer who is not solvent. Yet notwithstanding these things, among us, says Kenrick: "The risk of the thing does not ever seem to pass to the buyer unless it has in some manner been delivered. All things depend on the custom of merchants." - Cf. St. Alphonsus, nn. 795 and 796. - Kenrick, tract. 10, n. 50; and tract. 11, nn. 45 and 47. - Kent, *Comment.*, vol. 2, part 5, lect. 39, nn. 492 and 496.

Question. Whether the seller is bound to disclose the defects of the thing?

Resp. He is certainly bound to disclose all substantial defects, both in themselves and relatively to the buyer's known end, or all those which make the thing another thing, or render it harmful or notably useless; but of itself he is not bound to show accidental and manifest defects, provided that he diminishes the price according to the proportion of the defect. The reason is that then no injury is done to the buyer, neither by reason of the price, which is diminished, nor by reason of the defect, which, if the buyer has not seen it, he ought to impute to himself. I said *of itself*, because there must be excepted, 1st. the case of a very rude buyer, because in respect to him the defect is considered hidden, and 2nd. the case in which the seller is specially questioned concerning such a defect. But if the defect is indeed accidental but hidden, again a distinction must be made; for if the seller is questioned, he is bound to disclose it; otherwise he commits fraud and the contract will be rescindable. But if no questioning is done, the contract will be wholly firm, but the price must be diminished according to the proportion of the defect. - Cf. St. Alphonsus, n. 823.

Article II. On the Just Price

Price is twofold: one legal, which is determined by law, and the other natural or common, which corresponds to the value of the thing according to the common estimation of men. But natural price is: 1st. highest, above which the thing is not customarily estimated; 2nd. lowest, below which the thing is generally not estimated; 3rd. middle, which is interposed between the two.

I say. The legal price, if it exists, generally speaking, must be observed under the burden of restitution; for it belongs to civil authority to establish whatever regards public commerce. - I said *generally*, because sometimes it is licit to depart from the legal price, for example, if it is not observed by the greater part of men; if, circumstances having changed, the tax becomes unjust; or if the goods

are notably more precious or worse than usual. - But if the legal price is lacking, that alone is to be held as just which is determined as such by common estimation, if there is question of merchandise which has appreciation among the multitude; because the adequate price of such things is deduced from their utility for common uses. Moreover the appreciation of such utility cannot be had better than by common estimation. - Thus all. Cf. St. Alphonsus, n. 806. - Slater, *Questions on Moral Theology*, pp. 15 et seq.

Questions

Question 1. Can things which do not have a common estimation be sold for as much as possible, provided that the buyer agrees concerning that price, as are gems, precious paintings, and other things of this sort?

Resp. Affirmatively, because in that case it seems possible to have recourse to no other measure of just price except the free consent of the contracting parties. Nor may you say that the judgment of expert men is present; for it is answered that this is often variable, often also unjust, and more often can be obtained only with great difficulty. - Cf. St. Alphonsus, nn. 802 and 807.

Question 2. Can a thing be sold more dearly on account of a special affection or utility of the buyer?

Resp. Negatively, according to the common doctrine of theologians. The reason is that special utility and affection is indeed something estimable by price; but since in the stated case it does not belong to the seller, he would be selling something not his own, and therefore would act unjustly. Wherefore St. Thomas says: "If someone is helped much by a thing of another which he has accepted, while the one who sold is not damaged by lacking that thing, he ought not to over-sell it; because the utility which accrues to the other is not from the seller, but from the condition of the buyer; and no one ought to sell what is not his own." St. Alphonsus and the greater part of theologians agree with the Angelic Doctor. Nevertheless it seems possible in this matter to distinguish thus: - If that private advantage of the buyer arises from a great necessity by which the buyer is oppressed, and his affection toward the thing is an insane and blind disturbance of mind, the opinion of St. Thomas must be held, to which the practice of God-fearing men is plainly conformable. But if there is question of a greater utility, of a certain founded delight and reasonable affection, which indeed the buyer alone has, but which others, if they were in the same circumstances, perhaps would equally have, the seller who sold the thing more dearly would not have to be condemned; both because that greater advantage of the buyer is not altogether private and singular, which the reason of St. Thomas supposes, and because this seems to be the practice of the faithful. - Cf. St. Thomas, 2-2, q. 77, art. 1. - St. Alphonsus, n. 806. - Kenrick, n. 51. - Carrière, n. 692.

Question 3. Is it licit to buy more cheaply in favor of a seller seeking a buyer?

Resp. Affirmatively, and the reason is that voluntary things become cheap and the price of a thing decreases when the thing is of little use to the buyer and he buys in favor of the seller. The same must be said concerning the case in which things are sold more cheaply on account of the poverty of the seller, because on the one hand a voluntary thing decreases in price according to common estimation, and on the other the seller's want does not bring it about that the common estimation is changed. - Cf. St. Alphonsus, n. 802.

Question 4. Whether or in what way do merchants sin who, when questioned about the price of goods, notably exaggerate it?

Resp. If in reality they intend to sell at this price, they sin against justice by unjustly desiring what belongs to another; and they are bound to restitution if in reality that price is paid to them. But if they intend only that an opportunity be given to the buyer of offering his own price, so that thus they may arrive at a just price, they are wholly excused both from the sin of injustice and from the sin of lying, because it is known and customary that merchants speak in such a way that they may lead buyers to the just price.

You Will Resolve. - 1st. Someone can buy credits whose payment is very difficult for much less, if by reason of a circumstance special to himself they become easy to be paid. The reason is that the facility of obtaining payment does not depend on the thing which is sold, but on the buyer himself; but the value of a thing is determined by common estimation, not by a particular circumstance of the buyer. Cf. St. Alphonsus, n. 829.

2nd. Someone can sell at the current price a thing which he knows will soon be worth less; provided, however, that this knowledge is private and not obtained by fraud; for if it is common or public, the price would already be changed according to it, and if it were by fraud, equality would already not be preserved. - Cf. St. Alphonsus, n. 824; and *Hom. Ap.*, n. 188.

With regard to very many cases these words of Lugo furnish an easy solution:

"Although the law ought to be common and equal, nevertheless knowledge of it before it is promulgated ought not to be common to all, but can previously belong to some by reason of their office. Yet I said (in the preceding number 140) that it is not licit purposely to defer the promulgation of the law until they themselves or their friends sell off their goods . . ., because this would be to abuse their power to the prejudice of subjects, which is illicit. For power has been given to them for the common good, not for their own good; wherefore they cannot exercise power except for the good of the subjects and the common good, to which end alone such power is ordered. But the use of knowledge is not the use or exercise of power, but is an act of household prudence which is ordered to private advantages; wherefore there is no abuse in that which is ordered to those advantages." Disp. 26, n. 143.

3rd. Merchants sin who, after they have sold a thing at the lowest price, adulterate it before delivery, although by this they do not exceed the limits of the highest price. For even if from the beginning they could have sold it more dearly, they cannot afterward destroy the pact which they entered into with the buyer.

4th. Merchants who sell by retail can sometimes sell more dearly than those who sell in great quantity; because they must spend greater labors and expenses, and greater time, in preserving those things and distributing them to buyers. - Cf. St. Alphonsus, n. 809.

5th. A thing cannot be sold beyond the just price for the reason that the seller, from his ignorance or imprudence, or even by a fortuitous case, bought it at a greater price, or underwent greater expenses than others commonly pay or undergo. The reason is that the prices of things do not increase or decrease from that which happens to one or another person, but from that which commonly happens. Nor, because some private merchant has suffered theft or shipwreck, is the price of things

customarily increased in the estimation of the people; just as the price of grain is not customarily increased because one or another man has lost the fruits of his fields by a fatal hailstorm. - Cf. Elbel, n. 587.

6th. The practice of merchants or craftsmen is not to be approved who are accustomed to give gifts to maids, servants, or children of the family, so as to draw them to their workshop; but afterward strive tacitly to compensate such expenses by increasing the price of things beyond justice. For thus they secretly compel the masters themselves to refund those donations unjustly. Cf. Elbel, nn. 523 and 583. - Lugo, disp. 26, sect. 8.

7th. Generally, in making restitution because of injury to the just price, these things must be held: 1st. if there is question of the seller, the unjust excess must be computed from the highest price, because he could have sold at this price; whence the buyer was not injured except in that which exceeds the highest price; 2nd. but if there is question of the buyer, the defect of price must be computed from the lowest price, because he could have bought at such a price; whence the seller was injured only in that which is below this price. - I said *generally*; because if profit has been obtained by fraud, it would have to be restored, even if the highest price was not exceeded or the lowest was reached.

Article III. On the Principal Species of Sales

I. - On Retrovendition and Mohatra

Retrovendition is a contract by which the seller reserves for himself the right of redeeming his own thing, under the condition that he compensate the expenses, improvements, or similar things. But mohatra is a certain species of retrovendition, or a contract by which someone sells a thing at a greater price on credit, with an agreement that the buyer sell it back to him at a lower price for cash. Let there be an example: Titius, needing cash here and now, approaches Peter, who, unwilling to give money as a mutuum, offers goods to be bought with money on credit and at the highest price, say $100, with an agreement that at once he sell them back to him for cash and at the lowest price, say $90. For thus Peter, not from the contract of mutuum, but from the contract of sale and purchase, gains that increase, and Titius provides for his present necessity by having $90, although after a year he must return $100.

I say 1st. The contract of retrovendition is wholly licit, provided the required conditions are present. The reason is both because in Lev. xxv, 24 such a pact is said to have been imposed upon the Jews, and because it contains nothing which contradicts natural law. But the conditions are 1st. that the price be diminished according to the estimation of the burden which is imposed upon the buyer; 2nd. that there be no pact concerning a retrovendition to be made at a greater or lower price; 3rd. that by the pact it not be required that the risk of the thing sold fall to the harm of the seller, since this of itself pertains to the buyer, unless however the price is increased according to the estimation of the risk; 4th. that the thing be sold back as it is handed over, vacant or with fruits. - Cf. St. Alphonsus, n. 812. - Kenrick, n. 61.

I say 2nd. The contract of mohatra is of itself illicit and nothing but disguised usury, as is established from proposition 40 condemned by Innocent XI, which reads thus: "The contract of mohatra is licit,

even with respect to the same person and with a contract of retrovendition previously entered into with the intention of profit." - Cf. Viva on this proposition.

II. - On Sale Under the Spear or by Auction

I say. Sale under the spear (*auction, public sale*), namely that which is made through a crier and in which the thing is assigned to the final bid, is licit, whether it is done with the owner's consent or against his will or by public authority, whether it is bought below the lowest price or sold above the highest; because public power approves that the just price be publicly constituted from the concurrence of buyers. Hence if buyers concur, the thing becomes more estimable; if they do not concur, it is held cheaper. - Cf. St. Alphonsus, n. 808.

"A Catholic official whose office is to preside when goods are sold under the spear," among which "sometimes there are found books of heretics or books containing other obscene things," is not bound "to investigate whether among the goods which are sold under the spear there are found books of heretics or others containing obscene things. But if by chance he has learned this, and can prevent bad books from coming to bidders who will abuse them, let him indeed do this, since each one ought to impede the sin of his neighbor when he can do this conveniently, or without his own grave harm." - S. C. de P. F. 27 June, 1820.

Questions

Question 1. Can a seller send fictitious bidders, so that the price of the thing may rise?

Resp. Negatively, according to St. Alphonsus, because this appears too fraudulent to be excused, since it tends to deceive sincere buyers, and therefore inflicts injury upon them, since they are the cause that the price rises from fraud, and not from the natural concurrence of things, that is, from the free consent of buyers. Nevertheless others say that, by force of custom, if any exists, indulgence is to be granted to those who act thus. - Cf. St. Alphonsus, n. 808; and *Hom. Ap.*, n. 175. - Kenrick, n. 50.

Question 2. Can a buyer make an agreement with others, that they not bid, or not offer more?

Resp. Negatively, according to St. Alphonsus and several other theologians, at least in the case of a forced auction. The reason is that the seller has a right that the buyers be perfectly free and that the increase of the price not be impeded. Yet Cardinal de Lugo with Diana and others seems to hold the contrary, at least with regard to the guilt of injustice, and he admits that it is the common opinion of the Doctors that then a sin is committed only against charity. Cf. St. Alphonsus, n. 808. - Lugo, disp. 26, n. 175. - Baller., note (b), p. 739.

III. - On Monopoly

Monopoly is distinguished in two ways. One is legal, which consists in the power of selling certain goods granted by public authority, for a reasonable cause, to one or to several; and the other private, which consists in a manner of acting by which one or several bring it about that they alone sell or buy something.

I say 1st. Legal monopoly is licit, provided it is done with a just price. The reason is that, on account of a just cause of the public good, the Prince can grant it as a privilege or for exacting a tax from merchants.

I say 2nd. Private monopoly is illicit in the following cases: 1st. if a merchant impedes by fraud or lie, lest other goods be brought in, so that he may sell his own goods more dearly with common detriment; 2nd. if one or a few buy all the goods so as afterward to sell them more dearly; 3rd. if workmen or craftsmen agree that they will not teach their art except at an unjust price, or that no one will complete work begun by others; 4th. if laws enacted by the State for preserving the just price and not restricting commerce are violated. For these laws oblige in conscience and indeed, as it seems to us, to restitution when others suffer harm from the violation. Such laws protect rights, secure subjects against fraudulent actions of sellers and companies of merchants. These laws among us are "The Sherman Law"; two or three or more of the last sections of the most recent law, "The Clayton Trust Bill," amend that prior one, while other sections of the same and one section of the law, "Federal Trade Commission," complete it.

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-Trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-Trust laws." - *Clayton Trust Bill*, Section 6. Cf. *The World Almanac* an. 1915, p. 300. See below n. 994, Q. 5.

Questions

Question 1. Whether and in what way do merchants sin who conspire not to sell their goods except at the highest, although just, price?

Resp. They certainly seem to sin against charity, because although they are not bound to sell below their own price, nevertheless they are bound not to dissuade others from selling at a lower price. Thus, although by charity you are not bound to give alms to such a poor man, nevertheless you are prohibited from dissuading others if some wish to give it. - But more probably they do not sin against justice, because if others are compelled to buy at the highest price, they are not compelled by the sellers, but by their own necessity, which cannot be called true coercion on the part of the sellers. Yet the highest price here must be understood as that which would exist without the monopoly, not that which arises from the monopoly. - Cf. St. Alphonsus, n. 817. - Lugo, disp. 26, n. 173.

Question 2. Do merchants sin against justice or against charity who, at the time of harvest or vintage, buy all the wheat or wine of the region at the cheap price then current, so that afterward they may sell more dearly?

Resp. Negatively, more probably, as it seems, with regard to justice, provided they do not sell above the highest price which would be current with the monopoly excluded. The reason is that they violate the right of no one. Indeed a negative answer must also be given, at least probably, with regard to charity, provided they do not induce others to sell more dearly, nor themselves sell above the highest price which would have place with the monopoly set aside, because they use their own right; for no one is bound to neglect his own advantage so as to avoid another's harm, when he is not obliged to avert it. - Cf. St. Alphonsus, n. 816. - Kenrick, nn. 64 et seq.

Question 3. Can the justice of the price be taken from the very state introduced by force of monopoly?

Resp. Negatively. The justice of price must not be taken from the state which monopoly has introduced, but from the state which the goods would have with the monopoly excluded. For if the justice of price depended on the will of the seller or buyer unwilling to sell or buy except at such a price, in fact no price would be unjust. Therefore the justice of price "ought," as Lugo says, "to depend on other antecedent circumstances, namely on the abundance or scarcity of goods and of money, on the many or few who sell or buy, and on the necessity of selling or buying which they have." In the case of monopoly the abundance "of goods is the same" as if no monopoly had existed; "also the will of selling," for they wish to sell their own things and at the same time "to extort a greater price; but if they cannot obtain this, they will sell at a lower price; therefore there is nothing from which, antecedently to the will of the sellers, the price is to be increased, but the same price must be estimated just which would be just if monopoly had not preceded." Hence "monopoly occurs when someone at the time of harvest or vintage, for example, buys all the wheat or wine, or the greatest part of it, at the cheap price then current, so that afterward all may be compelled to buy from him at the highest price; and this very thing will be if some few agree and conspire for this. Therefore this will be against justice if afterward they sell above the highest just price. But the highest just price must be understood, not that which results from their agreement, who are unwilling to sell except at such a price, but that which, with that agreement excluded, would be the just price, considering the quantity of wheat or wine for sale and the greater or lesser frequency of buyers." (Lugo, disp. 26, n. 176.) And thus also when monopolists by force or fraud deprive small sellers of their commerce by establishing shops in the same neighborhood and selling the same goods at a price below the lowest, and then, having obtained the whole commerce of these goods, sell them at a price above the highest just price, they certainly violate commutative justice and are bound to restitution.

In like manner they are bound to restitution when they compel other sellers of the same goods to sell at a price above the highest just price, if, for example, monopolists greatly increased the price of coffins, which they would not sell to small undertakers unless they pledged that they would sell at too high a price.

But are these second sellers, selling at that price now current, which otherwise would be unjust, also bound to restitution? Very many indeed affirm this, whose reason is urgent: these are obliged because the price is unjust. Therefore not only the imposers, which all hold, but these also must restore. But the Salmanticenses: "the truer opinion is the one denying that such sellers sin, even if they are not ignorant that the increase of price had its origin from an unjust agreement, because now that price is common and vulgar. But that it has been increased from the injustice of others is accidental to me, because by selling a thing at the current price, I sell at the just price." (Salmanticenses.) Because the just price of the market is judged among all to be that which now commonly runs, from whatever source this comes. - Sal., tr. 14, cp. 2, p. vi, n. 57.

They also commit injustice who too greatly increase the price of things which are called of first necessity, for example, bread, flour, coffee, milk, etc., because the liberty of the contracting buyers is lacking, and hence equality; the same quantity is always consumed; for whether they wish or do not wish, men must obtain those things for themselves; hence there is the same will on their part. - Cf. Bulot, n. 804, 111, 3rd. - Lugo, l. c. - Bouvier, *Law Dictionary, Restraint of Trade*.

IV. - On Sale Through Brokers

Sale through brokers is that which is not made immediately by him to whom the things belong, but through others by commission, and these are called brokers. But brokers can be either merely friends, or hired for this by a special wage, or employed for diverse works at an annual price.

Questions

Question 1. Can a broker who sells above or buys below the price designated to him retain the excess of price for himself?

Resp. Negatively, generally speaking, because he has no title for retaining anything. For he does not have it by reason of the thing, because it is not his own but the owner's; nor by reason of labor and industry, at least by a strict title of justice owed to him, because if he has been hired by a stipend, he has a right to nothing else; but if he renders the industry gratuitously, he has already renounced a wage. Except: 1st. if by extraordinary and undue labor, or by wholly special industry or diligence, he made the thing better; 2nd. if the owner expressly or equivalently declared that he requires nothing beyond the determined price; 3rd. if the owner knew the broker's manner of acting and held it ratified. Cf. St. Alphonsus, n. 825.

Question 2. Can the broker buy for himself a thing to be sold at a price determined for him, and afterward sell the same thing as his own at a greater price?

Resp. Affirmatively, with two conditions posited, namely: 1st. that, having employed moral diligence, he does not find a buyer who offers more; otherwise he would act against his own office and the certainly known will of the mandator; 2nd. that he buy the thing for himself not fictitiously, but truly, so that he undergoes its risk; and if perchance he does not sell it for so much, nevertheless he renders the determined price; otherwise equity is not preserved.

Question 3. Can a broker retain for himself those things which the seller gives gratuitously solely out of regard for him?

Resp. Affirmatively, if the true donation is established; because a merchant, absolutely speaking, can yield something from his own profit to some broker, that he may bring him to his shop; but for this it is required that he be truly disposed to sell to any other at the higher price, and in fact ordinarily sell thus. But the confessor ought not easily to give credence to brokers asserting that such donations were made to them, unless there is question of places where merchants are accustomed to act thus. - Cf. St. Alphonsus, n. 825; and *Hom. Ap.*, n. 189.

Chapter II. On Partnership and the Triple Contract

The contract which is called partnership is an agreement concerning some thing to be possessed in common for a common good, or for profit to be received according to a proportional part. But the contract which is called triple by theologians is the same contract of partnership, to which two other contracts are joined, namely the insurance of the principal and the insurance of profit, or the sale of the hope of receiving greater profit for a lesser profit that is certain and insured. And it is instituted thus: I contract, for example, with Peter by handing over to him a sum of money for conducting business. But since the hope of gaining 15 per 100 shines upon me, and on the other hand I fear lest I lose the principal, I enter upon a second contract with Peter, paying him 5 per 100 if he is willing to

take upon himself the insurance of the principal. This second contract having been entered into, now only 10 per 100 remain for me to be gained. But I would prefer a profit still smaller but certain, rather than greater and uncertain. Therefore I propose to my partner that he hand over to me only 5 per 100, but certainly refund it, whatever may supervene. Hence a threefold contract is given, namely of partnership, of insurance of the principal, and of insurance of profit.

I say 1st. The contract of partnership concerning a licit and honorable thing, and entered into for the common good of the contracting parties, is licit, provided the required conditions have place. It is established from the civil laws of all nations, from the universal use of all peoples, and from natural law; for it is not less licit for several jointly than for individuals to make profit from their own things. But the required conditions are: 1st. that there be equality, that is, the division of profit according to the proportion of the thing contributed; 2nd. that the risk of the principal pertain to the owner, unless a pact has been entered otherwise; 3rd. that each undergo the burden of damages and expenses which arise in view of the partnership; 4th. that each employ the same diligence in the partnership as in private business. - Cf. St. Alphonsus, n. 905.

I say 2nd. The triple contract likewise is licit according to the common opinion of theologians, provided the money is spent in business. The reason is: 1st. because those three contracts, separately and with diverse persons, are of themselves licit and just; therefore also if they are made together and with the same person; 2nd. because there is nothing against equality, for compensation is given, and the risk is equivalently sustained by the one handing over the money; 3rd. because Benedict XIV declares, in the work *On the Diocesan Synod*, lib. 10, cap. 5, that the opinion can be defended which asserts that the triple contract was not condemned by Sixtus V, and in the Encyclical *Vix pervenit* he says that he does not wish to condemn contracts about which there is dispute among theologians. - Cf. St. Alphonsus, n. 908. - Kenrick, n. 136.

Chapter III. On Hiring and Leasing

Hiring or leasing is a contract by which the use or fruits of a thing, or the works of a person, are received by one and conceded by another for a certain wage and for a time. He who hands over a thing for the use or utility of another is called the lessor; the other is called the lessee or hirer. Moreover various species of hiring or leasing are numbered, namely, the leasing of buildings, fields, animals, labor and service, etc.

Concerning the contract of hiring or leasing, let it suffice to note these things:

I. The general rules of hiring or leasing are the following: 1st. the lessee can sublease, unless something else has been stipulated or detriment is done to the lessor from it; 2nd. the lease is not dissolved by the death of the contracting parties, but passes to the heirs; 3rd. if the time of the lease was not determined, it can cease at the judgment of either contracting party, provided he warn the other at a suitable time according to the custom of places and the nature of the thing leased; 4th. if the lessor has sold the thing leased, the lessee cannot be expelled, but the term of the lease must be awaited.

II. The obligations of the lessor are these: 1st. he is bound to disclose harmful defects of the thing to be leased; 2nd. he must furnish that the lessee enjoy it peacefully; 3rd. it belongs to him to sustain the necessary expenses for repairing the leased thing; 4th. he cannot change the form of the leased thing without the consent of the lessee.

III. The obligations of the lessee are the following: 1st. he ought to use the leased thing as a good father of a family for the sole end of the lease; 2nd. he is bound to restore or repair those things which have perished or become worse by his fault; 3rd. but concerning damages which the leased thing undergoes only from his juridical fault, he is not bound except after the sentence of a judge. - Cf. Kenrick, nn. 43 and 44.

Questions

Question 1. Is the lessee of fields bound to pay the entire rent in the case of sterility on account of hail, or another extraordinary misfortune?

Resp. Negatively, because although to some he seems, in the rigor of justice by natural law, to be bound to this, nevertheless by general custom it has been introduced that, if there is an enormous loss, something is remitted and the damage is borne equally by both. Except, unless from the fruits received during other years an equitable compensation is given. - Thus St. Alphonsus, n. 860. - But by common law, says Kenrick: "If there is a special pact about a certain sum of money to be paid each year as rent, the hirer will be bound to pay it, even if lightning, storm, or hostile attack has prevented him from peacefully possessing the leased thing." - Cf. Kenrick, n. 43.

To some extent emphyteusis and fief approach the contract of lease. Emphyteusis is a contract by which an immovable thing is conceded to another with respect to useful dominion, either in perpetuity or at least for ten years, with the burden of paying an annual rent to the direct owner. But fief is a contract similar to emphyteusis, or the handing over of an immovable thing for useful dominion, with the burden of showing service or fidelity to the direct lord. Yet emphyteusis and fief differ from lease, because they cannot be constituted except in an immovable thing, nor for a shorter time than ten years. - Cf. Kenrick, nn. 43, 44, 145, and 146.

Question 2. What is to be said especially concerning the hiring of works?

Resp. 1st. That the contract may be just, equality must be preserved between the wage and the work. The wage will be just which is customarily given to workers. The master is bound to agree with the worker concerning a just wage. And if this is left to the master's judgment, he must hand over a just wage, although the lowest.

Resp. 2nd. One wage is individual and another familial: the individual is that which suffices for nourishing a frugal and well-mannered worker; the familial is that by which a thrifty worker, having employed prudent aids, can support himself and his family, consisting of three or four children. Now let Cardinal Zigliara be heard, responding by order of the Supreme Pontiff, Leo XIII, to various doubts which arose concerning the Encyclical *Rerum Novarum*: "But if there is asked the criterion by which the equality of the thing between the manual work of the worker and the wage to be given by the master ought to be established, we answer: That criterion must be sought in the Encyclical from the immediate end of the worker, which imposes on him the natural office or necessity of laboring, namely from food and clothing for suitably sustaining life, and to which manual labor is first and principally ordered: 2. 2. q. 187, a. 3. Therefore as often as the work is such that through it the worker satisfies his aforesaid natural office of attaining the immediate end of his labor, and the wage is unequal for attaining this end, namely suitable food and clothing, speaking of itself and with the nature of things considered, there is an objective inequality between the work and the wage, and therefore an injury of commutative justice."

Question 3. Is a familial wage owed to workers by justice?

Resp. 1st. Affirmatively, by legal justice, so that the master sins gravely against it who does not assign this wage to workers.

Resp. 2nd. Authors disagree concerning whether it is owed by commutative justice. Yet the negative opinion seems to us to be preferred. For the equality which commutative justice regards appears between the labor of the worker and those things which are necessary for sustaining him, but in no way between the labor of one man and those things which are necessary for nourishing a whole family: this is the doctrine of Cardinal Zigliara in his response to the question: "Will the master sin who indeed pays a wage sufficient for the support of the workman, but unequal for nourishing his family, whether this consists of a wife and numerous offspring, or whether it is not so numerous? If affirmatively, against what virtue?"

Resp. "He will not sin against justice; yet sometimes he will be able to sin either against charity or against natural honesty. Explanation. From this very fact, that according to the things declared the equality of wage and work is observed, the demands of commutative justice are fully satisfied. But the work is the personal work of the worker and not of his family, nor is it referred to the family itself first and of itself, but secondarily and by accident, inasmuch as the worker distributes the received wage with his own. Therefore just as the family, in the case, does not increase the work, so by justice it does not require that the wage owed to the work itself be increased."

Question 4. Is it licit for workers to enter contracts among themselves concerning cessation from works so that they may obtain a greater wage?

Resp. 1st. Affirmatively, if the pacts are made concerning ceasing from works so that they may obtain a just wage, at least the lowest. Wherefore if workers do not receive a just stipend for labor, they can without injustice cease from labors before the end of the contract begun with the hirers. 2nd. Affirmatively, if there is question of pacts by which they agree among themselves not to hire out their works except for the highest just wage. Therefore although they receive a just stipend, they do not commit injustice if, when the time of hire has elapsed, they cease from labors until they obtain a stipend, within the limits of the just, highest for the work to be furnished. 3rd. Negatively, if they make a pact among themselves not to hire out work except for a price exceeding the highest just price. And it must be noted that in executing just pacts injustice is committed if other workers who wish to labor for a lower price are unjustly impeded from hiring out their works, for example, by force, threats, or lies. - Noldin, n. 318.

Let it not fall from the memory of workmen that duties are not to be omitted: "But the duties are very great: not to touch the things of others; to allow individuals to be free concerning their own things; to prohibit no one from being able to place his work where he pleases and when he pleases." Leo XIII, *Longinqua*.

Chapter IV. On Subsidiary Contracts

Subsidiary contracts are said to be those which are employed for the security of another contract, of which they are as it were the confirmation or seal. - Three are chiefly numbered, namely, suretyship, pledge, and mortgage. Something will be said briefly concerning each one.

Suretyship (*bond, bail-bond, security*) is a contract by which someone takes upon himself another's obligation, if the principal debtor does not pay. It is in the manner of suretyship when someone writes his own name on bills of exchange or on another's promissory note, so that he may receive money, legitimate interest having been deducted, as is done among our public banks. - Cf. Kenrick, tract. 11, n. 141, and the authors cited there.

Concerning suretyship these few things must be noted:

I. No one can be surety unless he has free administration of his goods.

II. The surety is bound toward the creditors concerning all obligations of the debtor, but only in his default or inability, and indeed when juridically proved.

III. The surety who pays for the debtor is subrogated to all the rights of the creditor, and therefore has recourse against the same debtor, so that from him he may reclaim whatever he was compelled to pay in his place.

IV. The obligation of the surety is transmitted to his heirs, because it is a real obligation, not a personal one.

Pledge (*pawn, pledge*) is a contract by which the debtor gives a movable thing to the creditor for the insurance of the credit. But sometimes by the name of pledge comes the very thing pledged.

Concerning pledge these things must be noted:

I. The debtor handing over a pledge ought 1st. to hand over to the creditor a suitable pledge; 2nd. to refund to the creditor the necessary expenses which were made for the preservation of the thing; 3rd. not to reclaim the pledge before he has paid the entire debt, unless the creditor abuses it.

II. The creditor receiving a pledge ought 1st. not to use the thing entrusted to him, unless by the consent of the debtor; 2nd. diligently to guard the pledge; otherwise he is bound for damage; 3rd. to compute the fruits received from the pledge toward the diminution of the debt, namely for preserving equality; 4th. not to sell the pledge by his own authority for obtaining payment, unless the debtor is in culpable delay and has first been warned. - Cf. St. Alphonsus, nn. 913 et seq. - Kent, *Comment.*, vol. 2, part 5, lect. 40, nn. 577 et seq.

To pledge is joined the contract which is called antichresis. But antichresis is a species of pledge by which the debtor hands over an immovable thing for the use of the creditor until the debt is paid. - Cf. St. Alphonsus, n. 916.

To pledge is also joined that which among us is called a lien, which consists in this, that the legal possessor of some goods can detain them until satisfaction is made for the right which he has against their true owner. Cf. Kent, *Comment.*, vol. 2, lect. 41, nn. 634 et seq.

Mortgage is a contract by which the debtor obliges some immovable thing to the creditor for the security of the debt: houses and estates are everywhere handed over thus. Wherefore mortgage differs from pledge and from antichresis; from pledge indeed, because the thing which is handed over in mortgage is immovable; but from antichresis, because the use is not handed over. Cf. St. Alphonsus, n. 913. - Kenrick, n. 140.

Concerning mortgage only these things must be said:

I. The contract of mortgage, the dispositions of positive law being observed, is wholly licit, as is established both because there is nothing in it which is repugnant to natural law, and because the practice and positive laws of almost all peoples admit it.

II. So great is the force of mortgage that, if the debtor has neglected to pay each year the legitimate increase and the principal at the appointed time, the creditor will be able in the forum of conscience to claim for himself possession of the mortgaged thing or to offer it for sale, yet with the order of judgment observed. - Cf. Kenrick, ibid.

Very akin to mortgage is the contract which among us is called bottomry, and which consists in this, that a ship is obligated for the money received: but it is called by such a name because a part of the ship, namely the bottom, is taken for the whole ship. - Cf. Kenrick, tract. 11, n. 140, with notes (1) and (2).

Chapter V. On Aleatory Contracts

Those contracts are called aleatory which are subject to the vicissitudes of fortune, either wholly or only in part. Several are numbered, but the principal are insurance, wagering, lottery, and gaming. A few things will be said concerning each one.

Insurance is a contract by which one of the contracting parties takes upon himself the danger of some thing, and the other obliges himself to a certain determinate price for this kind of danger taken up. Thus, for example, life is insured against death, a house against fire, a ship against shipwreck, etc.

On life insurance. There is certainly need of great prudence in entering upon and interpreting this contract. For some things concern the validity, and some only the liceity, of the contract. Here we regard the obligations and rights of the insured. 1st. The person examined ought to be the person insured. 2nd. There are certain diseases, certain degrees of diseases, whose existence precludes every contract. 3rd. There is a determined age below and above which the company does not make a pact. If all or one of these conditions are not observed, the contract is null. But there are 4th. other things which leave the contract valid, yet, if known, would have caused the companies to bring forward another pact; for example, if the true age is not given, but some age is given within the years generally required. There are 5th. other things of lesser moment which leave the pact as it lies. Finally 6th. companies often set down other annulling clauses which nevertheless we can regard as obliging in the forum of conscience to restitution only when the sentence of a judge has then been given. In entering upon these contracts the only method to be used is the sincere method. Therefore if some damage has been unjustly inflicted on the company, this certainly must be repaired. If someone substitutes another to be examined for himself, he does not have a right to the money concerning which agreement was made. If someone has a very advanced disease, with which existing the company would not have entered, but did enter because deceived, the contract is null. If someone, say, makes a pact above the age, the money is not his or his heirs'. This money must be returned, with the sum deducted which is equivalent to the annual premiums paid, unless the sentence of a judge has declared otherwise. If someone has given a false but insurable age, let the heirs compose the matter so that they retain for themselves that quantity of the handed-over money which would have been given if the true age had been designated. Yet we judge that in these adjuncts of lesser moment one must act more mildly if the ministers of the company themselves were in the cause and the insured acted as if deceived. Besides, several other circumstances here and there are

taken up by the company to be investigated, and this must be said to pertain to it: thus the disease of grandparents, and other things; we do not judge that these things, concealed in good faith or exercising no influence on the death of the insured, are to be held as destructive of the pact. Let this be said in general. There are certain companies which set down a healing clause, by force of which, if after a time determined from the pact entered the company has not discovered and decided the matter, the contract is unassailable, for example, *The New York Life Insurance Co.*: according to this company, incontestability means: if the insured person is the examined person (i.e., if no substitution was made), if that person has truly died and the contract or policy, as it is commonly called, is in force at the time of death according to its terms, this contract will not be contested. "This policy shall be incontestable after one year from its date of issue except for non-payment of premium." (*Studies in Practical Life Insurance*, p. 154.) We judge also, as we have already indicated, that the company ought to answer for errors of the contract which are owed to its agents and not to the private persons themselves, who are easily deceived by them in good faith; otherwise the whole difficulty will fall upon innocent heirs. As to restitution itself, when its obligation is truly present, it is of itself to be made to the injured company. Yet, as in other matters, so in this cause great difficulties can arise. But if it is established that the company insured itself against these events, perhaps it can more easily be permitted that restitution be made either to pious causes or to the poor. - Cf. Lehmkuhl, nn. 1036 et seq. - Bulot, n. 830. - Huppert, *Der Lebensversicherungsvertrag*. - Genicot, n. 658, VIII. - Hudnut, *Studies in Practical Life Insurance*.

I say. The contract of insurance is licit; for when due conditions concur, equality of justice certainly is preserved in it, as theologians commonly admit and daily practice confirms. - But the required conditions are the following: 1st. that the price be proportioned to the danger; 2nd. that the danger be true and equally known to both parties; 3rd. that the insurer have that from which he can pay; 4th. that the insured observe the particular conditions of the contract. - Cf. St. Alphonsus, n. 911. - Kenrick, nn. 137 and 139.

Wagering is a contract by which several persons contending about the truth or event of some thing pledge something to one another, or deposit it with a third party, so that it may belong to him who has spoken the truth.

I say. The contract of wagering is licit, with those things posited which must be posited; for it presents nothing dishonorable in itself and is approved by the common practice of all peoples. - But the conditions are: 1st. that the thing be understood in the same sense by each party; 2nd. that there be the intention of obliging oneself and paying what is pledged; 3rd. that the event be uncertain to both. Cf. Kenrick, n. 154.

Lottery is a contract by which several persons deposit something in common so that they may have the right of drawing by lot the thing exhibited in the midst. Some have the whole, some a part, and finally some nothing.

I say. The contract of lottery is licit provided the required conditions are present. The reason is that lottery can be regarded as the purchase of an uncertain thing, or as a contract by which with money is bought the right of drawing by lot and acquiring that which has fallen by lot; but it is licit to buy an uncertain thing, just as to make a pact for the danger of some thing. Therefore . . . - But the required conditions are the following: 1st. that there be no fraud in drawing out the tickets, nor in paying the prize which has fallen; 2nd. that the owner of the lottery not exceed in profit, nor morally gain more

than if by another licit contract he spent his money or distributed his goods; although nevertheless, if the lottery has been instituted for a good work or public utility, it is commonly admitted that the profit can be greater.

Gaming is a contract by which those playing make a pact among themselves that the stake which they have put up should fall to the victor. Game is distinguished threefold: 1st. industrial, which is governed especially by the skill of those playing; 2nd. aleatory, which depends chiefly on chance; 3rd. mixed, which depends partly on skill and partly also on chance, as, at least for the most part, is the game of cards.

I say. None of the three aforesaid games is of itself illicit, if the due conditions are observed. The reason is that gaming is repugnant neither to good morals, since it is of itself an act of honorable recreation, nor to commutative justice, since anyone can transfer the dominion of his goods to whom and in what way he wishes. I said *of itself*, because often from adjuncts gaming becomes a thing full of dangers, and unless due moderation, which very often is most difficult, is employed in its use, in a short time it turns aside into detestable abuse. But the required conditions are the following: 1st. that the player have free administration of the things which he exposes; 2nd. that fraud and deceit be absent from the game; 3rd. that on both sides the danger of losing be morally equal; 4th. that the game be honorable in itself and not prohibited by law; 5th. that an enormous sum not be exposed, so that the family and creditors could suffer damage from it.

Question. Whether the victor in a prohibited game is bound to restore or the one conquered is bound to pay in the same game?

Resp. The victor certainly is not bound to restore, because the contract is not always and everywhere declared void by law, but only prohibited; and if somewhere it were declared void, yet because by natural law it is valid, as is supposed, positive law cannot, at least according to the probable opinion, invalidate it in the internal forum. For this same reason the one conquered in a prohibited game is not to be obligated to pay in the forum of conscience; for the opinion which holds that the contract becomes void by force of positive law is probable. - Cf. St. Alphonsus, nn. 887 et seq. - Lugo, disp. 22, n. 300; and disp. 31, n. 60. - Lacroix, lib. 3, part. 2, n. 1086.

The Exchange is a place constituted by public authority for the exchange of values, to which negotiators and their Agents come together for dispatching business. Among us it is called the Stock Exchange, or exchange of values. The negotiations which are made there turn about securities, stocks, obligations, commodities. The rules of the diverse Exchanges form a certain system according to which negotiation concerning stocks or commodities is made either for investing capital or for the sake of speculation. Negotiations are exercised either with cash or with credited money. In the New York Exchange fictitious sales do not exist. In the hall itself stocks or obligations are not actually exchanged, but there are only made promises of delivering or receiving a determinate number of securities at a determinate price. The actual delivery itself, if the whole transaction is regular, must be made before a quarter past two in the afternoon of the day following the sale. But negotiation can be made so that delivery is placed on the same day or after three days, or there are even options of sellers and buyers for a space which is within sixty days. All sales in that Exchange are perfected for actual delivery and for full payment at the time of delivery.

Investment, insofar as it is distinguished from speculation, simply signifies the purchase of securities for the full price paid: then the securities are kept for the annual income. One example of speculation, for there are also others: The buyer gives an order to an Agent to buy a determinate number of stocks at a determinate price, or at the prevailing price, and at the same time deposits with the Agent a sum of money which is equivalent to ten percent of the whole value of the stocks. The Agent executes the order in the Exchange itself. Afterward, if the purchased titles are active, the business is sent to a special office, and if it is not eliminated by it, the Agent who sells must deliver the stocks before a quarter past two in the afternoon of the following day; the buying Agent must give a certified check for full payment. Then he takes the stock and obtains credit from the Bank on account of it. The client of the buying Agent can now give an order that he sell the stock when the price has increased, and his profit is the difference between the price of sale and of purchase after subtracting the price of the commission given to the Agent and the interest of the credit obtained from the Agent. In these and similar operations no special difficulty seems present. Yet there are such negotiations which are very dangerous: for the price is artificially diminished or increased by false rumors being spread; or by monopoly it grows beyond value, and they are entered into by those who here and there cannot pay the differences: in these cases justice is also violated. - Cf. Ball.-Palm., v. 3, p. 796. - Bulot, n. 838. - Genicot, n. 665. - *The Work of Wall Street*, Sereno S. Pratt. - *The A. B. C. of Wall Street*, S. A. Nelson. - Gury, *Cas. Conscien. de Emptione*, n. 17.

Treatise X. On Particular Obligations

Part I. On the Particular Obligations of Laymen

Not concerning absolutely all obligations, nor even concerning certain obligations of all laymen of whatever state, will it be said here; but only concerning the principal ones by which men devoted to the public good, and especially those connected with the courts, are held. For practical difficulties are accustomed to occur especially with regard to these; while, on the contrary, cases which touch other laymen, for example, workers, servants, merchants, teachers, etc., can have an easy solution from those things which have been said everywhere elsewhere.

Chapter I. On the Obligations of Judges

I say 1st. A judge is bound from a quasi-contract with society and with private persons rightly to fulfill his office, namely to vindicate justice according to the laws and to decree due penalties against delinquents; and unless he furnishes this, he will be guilty of violated justice, both legal and also commutative. - But because he cannot discharge that office rightly unless he has the gifts of sufficient intelligence and rectitude, he sins mortally if, being destitute of these, he seeks or even accepts the office of judge; but if he is ignorant of his own want, indeed he will not sin formally, but he ought not to be absolved unless renunciation of the office has been made, or unless he has a firm purpose of renouncing it. The reason is that otherwise he would daily freely expose himself to the danger of damaging his neighbor. - Cf. St. Alphonsus, n. 195.

I say 2nd. If the case is certain, the judge is bound to render sentence according to the laws and the order determined by the laws; for he is not constituted to change or reform laws, but to commit them to execution, with always excluded the special case in which the end of the law is to be attended to rather than the shell of the words. But if the case is doubtful, it must be distinguished thus:

1st. In criminal matters, favor must be shown to the accused, unless the crime is established, according to the 11th rule of law in the Sixth, which reads thus: Since the rights of the parties are obscure, favor is to be shown rather to the accused than to the plaintiff.

2nd. In civil matters, and in the case in which the doubt regards ownership and possession together, judgment must be made according to the more probable reasons if they are present, because proposition 2 was condemned by Innocent XI, which thus sounds: "I probably judge that a judge can judge according to an opinion even less probable." - But if the reasons are equally probable on each side, the thing seems to have to be divided. - Cf. Baller., note (e), p. 2.

3rd. Likewise in civil matters, but in the case in which the doubt regards only ownership, one must stand for the certain possessor if equal reasons contend on each side, according to rule 65 of law in the Sixth, which reads thus: In equal fault or case, the condition of the possessor is better. - But if the more probable reasons stand for the plaintiff, then according to some judgment would still have to be made for the possessor; but others say that the judge is free, and that the aforesaid rule of law cannot

be invoked, for then the case is not equal. - Cf. St. Alphonsus, n. 210. - Sanchez, *Decal.*, lib. 1, cap. 9, nn. 43 et seq. - Salmant., tract. 29, cap. 1, n. 41. - Baller., note (a), p. 3.

Questions

Question 1. Can a judge condemn an accused whom by private knowledge alone he knows to be guilty, or an innocent man who is juridically convicted as guilty?

Resp. To the 1st, negatively, absolutely, because the judge, since he is a public person, is bound to judge according to the things alleged and proved and according to the forms prescribed by law, unless perhaps by some necessity of a higher order he is compelled to pass them over. - But to the 2nd there is much controversy. St. Thomas indeed affirms, on account of the same reason, namely because the judge is a public person, and because neither the public good nor another good of a higher order otherwise demands recourse to private knowledge in this case. But St. Bonaventure denies, because to kill an innocent man is something intrinsically evil. Finally St. Alphonsus admits each opinion as probable, if there is question of civil cases or even criminal cases of lesser moment; but if the case occurs concerning greater criminal matters and especially capital ones, he thinks the opinion of St. Bonaventure more correct; because in the former case, he says, it can be said that private inconvenience ought to yield to the common good, since it is not so great, but not in the latter. But among us, where it pertains to jurors to decree concerning the existence of the crime, although the judge ought wholly to strive that the truth appear, nevertheless he sins in no way by condemning an innocent man, because he acts as if mechanically, only applying the penalty. - Cf. St. Thomas, 2-2, q. 64, art. 6, ad 3; and q. 67, art. 2. - St. Alphonsus, n. 208. Lugo, disp. 37, n. 41. - Kenrick, tract. 8, n. 113.

Question 2. Whether at least a juror can by his vote condemn an accused who indeed is juridically convicted of the crime, but whose innocence he certainly knows by private knowledge?

Resp. Negatively, and the reason is that this seems contrary to the mind of the law; for jurors ought to pronounce only about the fact, and according to the intimate conviction which they have concerning its existence, nor are they in any way bound to render a legal reason for the opinion which they bring forward. Cf. Kenrick, loc. cit.

Question 3. Can judges, as such, receive gifts?

Resp. Absolutely negatively, both because gifts blind the mind and impel more than is just toward favoring the giver, and because in canon law, lib. 1, tit. 3, cap. 11, in the Sixth, Boniface VIII expressly prohibited judges from accepting any gift, except perhaps food and drink offered by mere liberality. Yet if judges accept gifts spontaneously offered and without any pact concerning the sentence to be rendered, they indeed sin, but are not bound to restitution because they do not violate justice. I said *without any pact*, etc., because if gifts are accepted for rendering some just sentence, most certainly they must be restored, since whatever already was owed by office and therefore by justice cannot be matter of a contract. But if they are accepted with a pact of rendering an unjust sentence, again they certainly must be restored before this kind of sentence is rendered; but after the sentence has been given, there is controversy, and the opinion which holds that they can be retained is probable. Cf. St. Alphonsus, nn. 212 et seq. - Laymann, lib. 3, tract. 4, cap. 4, n. 9. - Baller., note (b), p. 5.

Question 4. Is it licit among us for a Catholic judge to render a sentence of divorce, when it is sought according to the civil laws?

Resp. 1st. The question posited generally is much controverted. Those who say that it is not licit argue thus: This law of full divorce is intrinsically evil, because it is repugnant to divine and natural law. But the judge by his sentence of divorce applies an intrinsically evil law; and therefore his sentence is intrinsically evil; his action is the efficient and principal cause of a thing intrinsically evil; he attempts to dissolve an indissoluble bond against divine law, practically and with authority obliging the parties, he applies the law in singular cases. Besides, there is more than one response of the Sacred Congregations favoring the stricter opinion.

But others not improbably affirm that the thing can be licit where, in the course of time, that sentence of the judge is held as an authoritative declaration of immunity from civil penalties, not regarding the conscience of the subjects and their religious obligations. In these places, on account of a grave cause, for example, lest Catholics be compelled never to undertake this office, it is licit for a Catholic judge to render the sentence, because it is not an evil action. The responses of the Sacred Congregations do not contain a General Decree; indeed one or another seems rather to suggest that such a sentence can sometimes be given. Now then, in our region such a law easily admits this interpretation; indeed here and there it has been said by a judge that by his sentence the religious bonds are in no way touched, but a legal formality is placed. Wherefore among us such an action of a judge seems wholly licit when grave causes are present. - Cf. Wernz, *Jus Decretalium*, v. 4, n. 750, and Bucceroni, v. 2, n. 983. - Lehmkuhl, n. 921, note, 11th ed. - Kenrick, tr. 8, n. 114. - *The Pastor*, v. 4, pp. 368 et seq. - *Nouv. Rev. Théol.*, v. 18, pp. 376 and 461; v. 19, p. 73; v. 20, p. 6.

2nd. A fortiori civil judges can licitly render a sentence of separation from bed and board when the reason for it, for example adultery, is known to ecclesiastical authority; indeed also a civil sentence of full divorce when the invalidity of the prior contract has already been declared by the Church on account of some diriment impediment, or when the bond of a ratified marriage has been dissolved by the Pontiff, or the Pauline privilege has rightly been employed. In all these cases the spouses themselves also can rightly betake themselves to the civil court so that they may obtain liberty and protection from the officials of the state; indeed in some circumstances this would be wholly necessary for them, lest they be compelled to live with those who are not their spouses. Cf. Wernz, v. 4, n. 750, notes 110 and 111. - Bouvier, *Law Dictionary*, under the word Divorce.

Question 5. What is to be said concerning laymen, judges, and others of this sort, before whom according to the civil laws marriages can be entered?

Resp. The question is very involved. Therefore we say, first, that ordinarily there does not fall upon these officials the obligation of investigating whether the betrothed are held by ecclesiastical impediments, but only whether civil capacity is present; secondly, that very many of these marriages are valid, for example those contracted between two heretics or two infidels; but to assist at an illicit celebration is not of itself illicit, since it is licit also for a priest sometimes to assist at the marriages of the unworthy; thirdly, that cases arise where such marriages are wholly invalid, for example, of two Catholics, of a Catholic with a heretic or with an infidel, indeed also of those separated by divorce; concerning these we judge that it must be said that officials ought to refuse their office, or leave it to another, for charity urges that we avoid the evil of our neighbor when this can conveniently be done. But we cannot say that such assistance of lay officials is evil of itself; the responses of the Sacred

Congregation do not prove this, for they were given for France shortly after civil divorce was introduced, and for Italy. The cooperation which is had in the case seems able to be permitted. Charity does not oblige with grave prejudice to the one cooperating; and certainly grave reasons can be present for the official for permitting assistance, the debt of office, the danger of losing it. Indeed a most grave damage in certain places can arise, not only to the official, but to the city itself, because otherwise any Catholic whatever would be turned away from these public offices. To a question similar to this the S. Inq. responded, 22 March 1892: "In the case of which there is question, the circumstances having been inspected, that it can be tolerated that the official assist at the merely civil ceremony of those who have obtained divorce from a civil tribunal, provided that he openly and plainly profess Catholic doctrine concerning marriage, and therefore by his assistance neither wishes nor is able to attribute the value of marriage to this contract, and that he assists or has assisted only compelled by law." Besides, among us any scandal easily ceases to exist. Cf. Gennari, *Consultazioni*, v. 1, p. 200; v. 2, p. 802. - Wernz, v. 4, n. 208. - Gasparri, "De Matrimonio," n. 1231.

Question 6. How are judges, Senators, or others of this sort obligated from whom an oath is exacted of preserving those secrets which are treated in the tribunal?

Resp. These oaths oblige in conscience; nevertheless they do not oblige under grave sin in every matter, but according to the nature of the matter of which there is question. Hence if it is gravely important that this matter be kept secret, they sin gravely by revealing it; otherwise, in a light matter, lightly. - Cf. Lugo, disp. 37, n. 193.

Question 7. Are laws obliging a judge to restore any gifts whatever accepted to be understood concerning restitution before condemnation?

Resp. There is controversy, and the negative opinion is probable; for such a law obliging before sentence would be most harsh, and not accommodated to the frailty of men, and would serve for nothing except to ensnare consciences.

Question 8. Is a judge bound to restore those things which he accepts for redeeming vexation?

Resp. Affirmatively, because the acceptance is unjust and the owners are unwilling; as is said concerning a price for a just sentence.

Nor does it seem that a judge can accept anything for dispatching this business before another, or for this judgment before that, where each is equally probable. For as often as he himself is bound by justice to do some one thing from a disjunctive obligation, he can accept nothing. - Ibid. Lugo.

Chapter II. On the Obligations of Advocates

I say 1st. Advocates are bound not only by legal justice toward society, but also by commutative justice toward litigants, to have competent knowledge, to undertake and pursue the case with due diligence and study, to guard against damaging delays, to examine the client's case seriously, to preserve fidelity to him, to reveal the justice or injustice, and scrupulously to indicate the degree of probability of gaining or losing it, and finally in pleading the case to guard against frauds, false proofs, and other unjust means against the adverse party.

I say 2nd. In civil matter, advocates of the accused cannot licitly sustain a certainly unjust case; wherefore if by defending it they obtain an unjust sentence, they are bound to repair all damages

following from it, if these are not repaired by those in whose favor the unjust sentence falls. But a fortiori in criminal matter advocates cannot undertake the parts of an evidently unjust accuser. - Cf. St. Alphonsus, n. 223.

Questions

Question 1. Can advocates defend cases even less probable, both of defendants and of plaintiffs?

Resp. Affirmatively, in civil cases, according to the common opinion, because they can have hope that the truth will shine forth. But in criminal cases, the accused can always be defended, even if his culpability were openly established to all, provided this is done by honorable and licit means, with lies, frauds, etc., excluded. The reason is that an advocate defending the accused inflicts injury on no one; indeed also by his office he protects the right which the accused has, that he not be condemned before he has been convicted in judgment. - Cf. St. Alphonsus, nn. 220 and 222. - Sanchez, *Decal.*, lib. 1, cap. 9, n. 51.

Question 2. To what is an advocate bound by reason of honorarium or stipend?

Resp. Nothing, generally speaking, can be accepted beyond what is just, which either perhaps has been taxed by law or is to be determined by the judgment of prudent men, with consideration had of the business, the skill of the advocate, the labor which he spends, and the received custom. But with regard to the poor in particular, 1st. he is bound to succor gratuitously, even with his own grave inconvenience, those who are in extreme necessity; 2nd. likewise those who are in grave necessity, he is bound to patronize gratuitously, and indeed under mortal sin, yet not with his own notable inconvenience; 3rd. finally, even in common necessity he is bound from charity to protect the cases of the poor, yet not with grave inconvenience; namely it suffices that he bestow upon them some of his work when he is free from others. - Cf. St. Alphonsus, *Hom. Ap.*, n. 69.

Question 3. What can an advocate exact if, after agreement has been made about the stipend, the client abandons the case begun?

Resp. He can exact the whole if it does not stand through him that he does not pursue the suit, no differently than one hiring out his work for some wage can exact this wage, if it stands through the hirer that the work is not completed. Except, however, if a just cause intervenes for abandoning the suit, since this condition is always understood implicitly in the agreement. - Cf. St. Alphonsus, ibid.

Question 4. To what is an advocate bound who, when the case has already begun, notices that it is unjust?

Resp. He ought at once to warn the client concerning the injustice of the case and abandon it, lest he cooperate in unjust harm; nor can he persuade composition, since this ought to have place only in a doubtful thing. But if he knowingly pursued the unjust case, he will be bound to compensate all damages coming to each party. For he must restore to the adverse party from a sin of commission, since he himself was the positive cause of the damage; but to his own client, if he was in good faith, from a sin of omission, since by office he was bound to warn him concerning the injustice of the case. Nevertheless, by abandoning the case which he discovers to be unjust, the advocate ought not to help the other party, or to reveal the secrets of his own case to the other party, as is clear from natural law, and as St. Thomas expressly teaches, 2-2, q. 71, art. 3.

Question 5. Whether and how an advocate sins who defends a just case by unjust means, for example, if he substitutes a new promissory note in place of a prior lost one, etc.?

Resp. He sins against fidelity and truthfulness, more gravely indeed or less gravely according to the measure of the unjust means employed and the gravity of the thing of which there is question. Nor can he be excused from the good end which he intends; for evils are not to be done that goods may come. But of itself he does not sin against justice, since the case is supposed just, although by accident he can injure justice and be obligated to restitution, namely if damage comes from it to his own party or to the adverse party: for if, for example, the fraud is detected, it can easily happen that a case in some way good is led into suspicion and collapses. - And the same solution, as it seems, must be given if the advocate not only substitutes a new promissory note for the prior one, but supposes one which never existed; for although he then sins more gravely, nevertheless properly and of itself he does not violate commutative justice.

Question 6. Is it licit for an advocate to seek and vindicate dissolution of marriage according to the laws of each State?

Resp. Since, as St. Alphonsus says, "an advocate does not stand on the part of the judge but of the client," almost only that seems able to be conceded to him in this matter which is conceded to the client. Now in the cases enumerated at n. 559, Q. 4, recourse is permitted to the client; it is also permitted to the accused to defend his rights when the plaintiff wishes to obtain civil divorce. The client, the plaintiff, certainly cannot seek dissolution when his marriage is valid, so that he may enter new nuptials or obtain some temporal gain; but he seems able to have recourse for obtaining only civil effects, with the bond remaining, where civil law does not admit separation of bodies, or where this would not suffice and such circumstances are present which cry out that the thing is morally necessary: for example, the danger of the intrusion of adulterine offspring, or of the death of the wife, or of another most grave cause; but not even such recourse can be permitted without episcopal permission.

In all these cases where it is licit for the spouses to have recourse, the same is licit for advocates; where it is not licit for those, neither is it licit for these voluntarily to undertake a case for obtaining divorce. Indeed in the case of a spouse retained by a true bond but as if compelled to seek absolute civil divorce, the case ought, as it seems to me, to be proposed by the advocate in such a way that it is manifest to all that the client in no way wishes anything other than civil protection of himself and his family. - Wernz, v. 4, n. 750. - *Collat. Brugen.*, v. 15, p. 649 et seq. - Haine, t. 4, q. 83. - Feije, n. 583. - Kenrick, tr. 8, n. 114. - St. Alphonsus, n. 223.

Chapter III. On the Obligations of Accused Persons

Those are called accused persons who are accused in judgment, whether criminal or civil, whether they are guilty or innocent. Various doubts occur concerning them, especially concerning confession of a crime and flight. Hence:

Questions

Question 1. Are accused persons questioned by a judge bound to confess the truth?

Resp. Negatively, if they are not legitimately questioned; namely when the judge is not legitimate, or when he does not observe the judicial form, as if he were to question without prior accusation, etc.; they also add, when there is not at least half-full proof of the crime. Whence it follows that accused persons among us ordinarily are not bound to manifest their crime, because the interrogations are made before juridical proof. Besides, according to the Constitution itself by which we are governed, no one can be compelled to give testimony against himself in a criminal case. Yet note that this is not the same as lying, for those words, "I am not guilty," signify by the consent of all that the accused does not wish to confess the crime. Cf. St. Alphonsus, n. 272 et seq. - Kenrick, tract. 8, n. 133. - *Constit. of U. S. Amend.*, Art. V.

Question 2. Is it licit for an innocent accused person to flee or resist?

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

Question 3. Is it licit even for an accused person who has truly committed a crime to flee?

Resp. Affirmatively, if he has not yet been condemned to punishment by juridical sentence, because no one before sentence is bound to pay the penalty. Likewise if he has already been condemned to a most grave penalty and prison has been assigned to him for custody until the established penalty is inflicted. But the Doctors more commonly deny, if prison has already been assigned for punishment by the sentence of the judge; because the accused is bound to obey in the execution of a just sentence. Nevertheless several except the case in which necessary things are not given to him, or if the prison is most harsh; because the obligation of not freeing oneself from a most grave penalty seems to exceed human powers when someone can accomplish this without force and resistance. - Cf. St. Alphonsus, nn. 280 et seq.

After setting forth this common doctrine, thus, so far as pertains to us, Kenrick continues: "I judge that all penalties are established by law and decreed by the judge in such a way that they are to be inflicted by the ministers of justice; and therefore I do not dare to condemn him who, without injury to another's right, withdraws himself, provided nevertheless that he does not employ force and does not disturb the public order." - Cf. Kenrick, n. 138.

Chapter IV. On the Obligations of Witnesses

I say 1st. No one is bound by justice spontaneously to offer himself for testifying; but sometimes there is given such an obligation from charity, for example, if someone can by his testimony easily free an innocent man, impede a grave injustice, etc. - Cf. St. Alphonsus, n. 264.

I say 2nd. A witness legitimately cited is bound to present himself before the judges, to pronounce the oath prescribed by law, to say the whole truth and nothing except the truth, and then to respond simply according to conscience to the things asked. The reason is that, a citation legitimately applied being supposed, an obligation arises by force of legal justice.

I say 3rd. A witness who maliciously has testified falsely is perjured and a violator of justice, if by his lie he positively influenced the harm of others; and therefore he is bound to reparation of all damages, and also to revocation of the false oath, even with equal damage to himself, even with

danger of life, if by force of the false testimony an innocent man has been condemned to death. - Cf. St. Alphonsus, n. 269.

Questions

Question 1. To what is a witness bound who said what was false from invincible ignorance, or from inculpable inadvertence or forgetfulness?

Resp. He is bound to disclose the false testimony and to impede the damage in that manner in which he can; nevertheless he is not bound to reparation of damage already following, since he is free from theological fault. Cf. St. Alphonsus, n. 269.

Question 2. When is a witness excused from giving testimony?

Resp. He is excused in the following cases: 1st. if he accepted the matter only under the secret of confession; 2nd. if he knew the matter under committed secrecy, even if it was not explicitly promised; 3rd. if he accepted the matter from men not worthy of faith; 4th. if he foresees that grave damage will come to himself or to his own. Except, however, with regard to the 2nd and 4th case if common damage threatens from it. - Cf. St. Alphonsus, n. 268. - Lugo, *de just. et jur.*, disp. 39, n. 12.

Question 3. Is a witness bound to reveal an altogether hidden crime, for example, one which he alone knows?

Resp. Affirmatively, according to the laws which establish that even one witness alone can suffice for condemning the accused. Cf. Kenrick, n. 123.

Question 4. Whether and how a witness sins who hides himself, lest he be cited by the judge, or who flees after citation?

Resp. A witness who hides himself lest he be cited sins neither against obedience, because no one is bound to obey the precept of a superior before it is imposed upon him, nor against commutative justice, because he conducts himself merely negatively. Yet he can sin against charity toward the neighbor, as was said above. But a witness who flees after citation sins gravely against legal justice and against obedience owed to the judge in a grave matter and one necessary to society; but more probably he does not sin against commutative justice, because that citation does not impose an obligation of justice, but only of obedience. - Cf. St. Alphonsus, n. 270. - Vogler, n. 337.

Question 5. Is a witness bound to restitution who, legitimately questioned, conceals the truth, yet does not say what is false?

Resp. Negatively, probably, and the reason is that the witness then conducts himself merely negatively, nor is he bound to depose the truth except from the precept of the judge; and therefore, by concealing it then, he sins against only the obedience owed to the judge, or also against religion on account of the oath given about saying the truth. - Cf. St. Alphonsus, ibid.

Chapter V. On the Obligations of Physicians

I say 1st. Physicians are bound before all things under grave sin to have sufficient knowledge and skill, and to employ diligence proportioned to the gravity of the matter which is committed to their care. But if they fail in these things, they are bound for all damages which follow from it. Besides,

they ought to furnish their work gratuitously to the poor who are in necessity, as was said above concerning advocates.

I say 2nd. But in curing the sick they ought to observe the following rules: 1st. they are bound to follow the secure and safe opinions of physicians, at least ordinarily, because danger to the sick person cannot be removed by probability; 2nd. when it is certain that some medicine will benefit the sick, they are bound to apply it, with the doubtful one omitted; but if the certain is lacking, they ought to prefer the more probable one. Hence:

A physician sins gravely: 1st. if without sufficient capacity he undertakes to cure a grave disease; 2nd. if, when a grave and unusual disease occurs, he does not spend special work; 3rd. if he applies untested medicines for the sake of testing; 4th. if, without the nature of the disease well examined, he rashly prescribes dangerous remedies, especially with risk of life or grave injury; 5th. if, when danger has been recognized, he is not present opportunely, visiting the sick person day and night if there is need, and does not apply all means suitable for driving away the disease; 6th. if he does not permit other physicians to be called, where this would be proper, or if, calling others for the sake of consultation, he attends to friendship rather than to skill; 7th. if, on the contrary, without necessity he calls other physicians with useless expenses to the sick person, or if against his own conscience he adheres to their counsels; 8th. if he prolongs treatment for the sake of profit, uselessly multiplies visits where a salary is exacted for each one, or if he exacts too great a price; 9th. if, in order to favor apothecary friends, he prescribes superfluous medicines; 10th. if he counsels abortion, or means of procuring it, or himself carries it out; 11th. if he counsels vasectomy to a man unwilling to have offspring; 12th. or rashly employs a means which can render a woman sterile. - Cf. St. Alphonsus, n. 291; on the second precept of the Decalogue, n. 182; and on the Sacrament of Penance, n. 664.

Where the sick person is despaired of, a remedy probably going to benefit must be applied if he has no other certain one; if the remedy is certainly not going to harm and doubtfully going to benefit, it must wholly be applied; in a positive doubt whether the remedy is going to benefit or to harm, outside the case of a sick person despaired of, it is not to be furnished, but the sick person is to be left to nature.

A physician is bound to the secret of office, which can never be violated except when a dominant reason exists. Hence it is not licit for a physician to manifest the diseases of a family or individual to an agent of an insurance company without their consent; nor is it licit for him to tell a man, without the woman's consent, of an operation, suppose ovariotomy, performed by him on the woman before marriage; nor to make known to a bride before marriage the ordinary diseases of the man which induce no danger of contagion. But if the man previously labored under syphilis, yet now is wholly cured, the physician cannot reveal that previous condition to the woman. But if his condition from that disease is such that he truly ought not now enter the conjugal covenant, let him gravely warn the man concerning his obligation of deferring the celebration, and let him threaten the grave difficulties that will arise from the nuptials. Finally, if the man refuses, the physician has of itself a right to reveal the matter. Yet he will easily be excused if the circumstances are such that he himself would lose the trust of the people from it. Nevertheless, often there can be circumstances which prove that an obligation is present, for example, the law of the place or the custom of physicians; for then there will scarcely be an excusing cause from the burden of protecting the woman, when this can be done without grave inconvenience. - Cf. Bulot, n. 460, 3. - Lehmkuhl, n. 1444. - Genicot, n. 432.

Just as a physician, so also a surgeon is bound under grave sin to have sufficient knowledge, skill, and dexterity. Regularly he cannot perform any operation without the prior consent of the sick or of those under whose care they are. Since the matter being treated is one which is under the absolute dominion of God and not of man, there is not permitted to him an operation whose expressly intended end is to render men sterile. - Cf. above, n. 264, Q. 5.

Question. To what is a physician specially bound with regard to the soul of the sick person whose care he has undertaken?

Resp. He is bound of himself under grave sin to warn him, prudently however, concerning the grave danger in which he is placed, and concerning the necessity of receiving the sacraments. This is established 1st. from natural law or from the precept of charity; 2nd. from the very well known Decretal issued by Innocent III in the general Lateran Council, year 1245, cap. *Cum infirmitas*, 13 *de Paenit. et remiss.*, and confirmed and renewed by other subsequent Pontiffs, especially by St. Pius V in the Motu Proprio *Super gregem*, year 1566.

Part II. On the Particular Obligations of Clerics

§ 1. Those who have been devoted to the divine ministries by at least the first tonsure are called clerics.

§ 2. Not all are in the same grade, but among them there is a sacred hierarchy in which some are subordinated to others.

§ 3. By divine institution the sacred hierarchy, by reason of order, consists of Bishops, priests, and ministers; by reason of jurisdiction, of the supreme pontificate and the subordinate episcopate; but by the institution of the Church other grades also have been added (Can. 108).

§ 1. Every cleric must be ascribed either to some diocese or to some religion, so that wandering clerics are in no way admitted (Can. 111). Clerics alone can obtain the power either of order or of ecclesiastical jurisdiction, and ecclesiastical benefices and pensions (Can. 118).

Chapter I. On Obligations Common to All Clerics

Among the obligations common to all clerics, some are positive and some negative; namely, some things are prescribed to all clerics and some things are forbidden. Something will be said briefly concerning each kind of obligation, and first concerning the positive.

Article I. On the Positive Obligations of Clerics

I. - On Holiness of Life

I say. Clerics ought to lead an interior and exterior life holier than laymen, and to excel them in virtue and right deeds as an example (Can. 124). Although the necessity of this holiness does not properly need proof, nevertheless it is useful here to set forth whence it is gathered.

1st. From the nature of the clerical state. Most holy is the ministry of clerics, since they are always applied, proximately or at least remotely, to sacred things, to conferring the sacraments upon the faithful, to solemnly rendering the divine praises in the name of the Church, to teaching the

Christian people concerning the way of eternal salvation, and also to celebrating the most holy sacrifice of the Mass. For why have clerics and priests been constituted in the Church? That they may be, as the Gospel bears witness, the salt of the earth and the light of the world. Moreover they cannot be such unless they shine forth with distinguished and splendid holiness of morals. Not only the sublimity and excellence of the offices to be fulfilled, but also the garments with which the cleric is clothed cry out that he ought to profess holiness. Hence St. Jerome says, Epistle 58: "The garment cries out, the state cries out, the profession of the mind cries out holiness."

2nd. From Scripture. Thus concerning the priests of the old law the Lord said, Lev. xxi, 6: "They shall be holy to their God, and shall not pollute his name; for they offer the incense of the Lord and the bread of their God, and therefore they shall be holy." Likewise in Isaiah, lii, 11, it is said: "Be cleansed, you who bear the vessels of the Lord." Moreover, if such holiness of life was required in priests who offered oxen and sheep and other animals to God, what will be required in those who sacrifice the divine Lamb himself? And if such cleanness was required in those who bore the vessels of the Lord, how much purer must it be in those in whose hands the Lord himself is borne?

3rd. From the Fathers and Doctors of the Church. Thus St. Chrysostom, *Hom.* 10, on I Epistle to Timothy: "The priest ought to have an immaculate life, so that all may look upon him as upon some excellent exemplar; for therefore God has chosen us, that we may be as lights and teachers of the rest, and live on earth as Angels." St. Thomas, Suppl. q. 35, art. 1, ad 3: "The suitable execution of Orders requires, not goodness of just any sort, but excellent goodness, so that just as those who receive Order are constituted above the people by the grade of Order, so also they may be superior by the merit of holiness."

4th. From Councils. They are innumerable both in canon law and concerning the holiness of clerics, which also are confirmed by very many Councils. Let the few words of the Council of Trent suffice. The solemn decree, sess. 22, cap. 1, *de Reformat.*, reads thus: "Thus it is altogether fitting that clerics called into the lot of the Lord should so compose their life and all their morals, that in habit, gesture, gait, speech, and all other things they present before themselves nothing except grave, moderate, and religion-full things."

And from the Plenary Council of Baltimore II, n. 152: "Wherever they may be, priests should bear before themselves, both in gait and gesture, and in their very countenance and voice, the modesty and gravity which befit them. Excessive elevation of voice, immoderate laughter, scurrilous jokes, and finally whatever is an indication of a mind not well composed, let them avoid with the greatest zeal." These same things are confirmed, and many other things added, by the Baltimore Fathers, Plen. Council III, nn. 74 et seq.

Let the oath against Modernism, "the profession of Faith having been premised according to the formula prescribed by Our predecessor Pius IV of holy memory, with the definitions of the Vatican Council added, they shall give to their own prelate," thus Pius X: "1st. Clerics to be initiated into major orders, to each one of whom beforehand let there be handed a copy both of the profession of faith and of the formula for making the oath, so that they may accurately know them beforehand, with the sanction for violation of the oath added. 2nd. Priests destined for receiving confessions and sacred preachers, before they are endowed with the faculty of exercising those duties. 3rd. Pastors, Canons, Beneficiaries, before entering upon possession of the benefice. 4th. Officials in episcopal curias and ecclesiastical tribunals, not excepting the Vicar General and judges. 5th. Those chosen to

hold sermons during the time of Quadragesima. 6th. All officials in Roman Congregations or tribunals, before the Cardinal Prefect or the secretary of the same, whether of the congregation or of the tribunal. 7th. Moderators and Doctors of religious families and Congregations before they enter upon Office"; Professors in seminaries and scholasticates must repeat the oath year by year.

Those who refuse or violate the oath are to be reported to the S. Office. - Motu Proprio, *Sacrorum Antistitum*, 1 Sept. 1910.

Confessors approved by their Ordinary, outside their own diocese, can be admitted to hear confessions even for some more or less long space of time, without being compelled again to take the anti-modernist oath. S. C. Cons. 20 June 1913. The prescriptions concerning the Vigilance Councils and the anti-modernist oath, after the feast day of Pentecost 1918, will continue to remain in force until the Apostolic See shall have established otherwise concerning this matter. S. C. S. Off. 22 March 1918.

Question. Can a Bishop oblige a priest of his diocese to administer sacraments in a place in which such a function would induce danger?

Resp. Affirmatively, for priests are ordained in a diocese for its utility and necessity; and therefore he can by his command compel priests free from incompatible offices to relieve souls constituted in necessity. They promise obedience to their Bishop in ordination so that they may dedicate themselves to the spiritual good of the diocese. Besides, among us a priest can scarcely be found who would even think about the danger. - Cf. *Nouv. Rev. Théol.*, v. 46, p. 244. ^1

^1 Cf. Addenda, p. 1087, n. 6.

II. - On Celibacy

I say. All clerics receiving sacred Orders, by that very fact contract the obligation of ecclesiastical celibacy. It is established from canon law: Clerics constituted in major orders are barred from nuptials and are held by the obligation of preserving chastity in such a way that those sinning against it are also guilty of sacrilege, with the prescription of can. 214, §1 (Can. 132, §1) being safe. Indeed a major cleric reduced to the lay state is held by the obligation of celibacy, with the prescription of can. 214 being safe, concerning a cleric who, coerced by grave fear, received sacred order and then was legitimately reduced to the lay state. Cf. Can. 212, §2. Likewise from the Council of Trent, sess. 24, can. 9, where it is defined thus: "If anyone says that clerics constituted in sacred Orders, or regulars who have solemnly professed chastity, can contract marriage, and that the contract is valid, notwithstanding ecclesiastical law or vow, let him be anathema."

Questions

Question 1. Is the obligation of celibacy of divine law?

Resp. Negatively, according to the common opinion; but it is from mere ecclesiastical institution, namely from the force of the precept of the Church or also from the vow annexed to sacred Orders. The reason is that the existence of such a divine law is proved by no testimony, whether written or handed down, while on the contrary not a few places of the Sacred Canons prove the existence of ecclesiastical law, and especially that place from the Council of Trent related above, where it is said: "Notwithstanding ecclesiastical law." Therefore . . . § 2. Clerics constituted in minor orders can,

indeed, contract marriage, but unless they have been coerced by force or grave fear, by that very right they fall from the clerical state (Can. 132). - Cf. St. Alphonsus, *de Sacram. Ordin.*, n. 807.

Question 2. Does the obligation of celibacy proceed immediately from the precept of the Church or mediately, namely from the vow which really, although tacitly, is emitted in the ordination itself?

Resp. Some probably thought that the obligation of celibacy is from ecclesiastical law alone, and that no vow properly so called is emitted in ordination. This opinion, which also today has patrons, as it seems, arises from the doctrine of certain ancients wrongly understood; but the more common and true opinion holds that this obligation arises from vow, inasmuch as the Church commands clerics both chastity and, at the same time, the mode of professing chastity, namely from vow. - Cf. Baller., note (b), p. 30.

Question 3. Is the obligation of celibacy universal in the Church?

Resp. Some exception is given from the tolerance of the Church among the Orientals. For in the oriental Church, priests indeed can never enter marriage after priestly ordination or even after the diaconate; but those married before the diaconate can be advanced to further Orders, and nevertheless have intercourse with their wives. Bishops, however, are excepted, who all ought constantly to preserve perfect chastity. But among the Greeks subdiaconate is not numbered among sacred Orders. Hence the precept of chastity is imposed on unmarried clerics in the ordination of the diaconate.

Question 4. Is he who expressly does not wish to vow chastity held to chastity?

Resp. Affirmatively; if not from vow, since no one is compelled to be bound by vow unwillingly, certainly from the precept of the Church, which by motive of religion binds him to chastity when the vow is lacking. Others hold that he is bound to emit the vow of chastity; but no one doubts that the Church can oblige him to this. - Cf. St. Alphonsus, n. 809.

Question 5. Whether or when can a married man, his wife living, receive sacred Orders?

Resp. Affirmatively, provided the permission of the Apostolic See is added. For such a one is simply impeded; indeed a married man who without Apostolic dispensation has received major orders, even in good faith, is prohibited from the exercise of the same orders. Cf. Can. 987, §2; 132, §3.

III. - On Wearing the Habit and Tonsure

I say. §1. Let all clerics wear a becoming ecclesiastical habit according to the legitimate customs of places and the prescriptions of the Ordinary of the place; let them wear the tonsure or clerical crown, unless the received customs of peoples bear otherwise, and let them employ a simple care of the hair.

§2. Let them not use a ring, unless this has been conceded to them by law or by apostolic privilege.

§3. Minor clerics who by their own authority, without legitimate cause, have put aside the ecclesiastical habit and tonsure, and, having been warned by the Ordinary, have not amended themselves within a month, fall by the law itself from the clerical state (Can. 136).

Question. What is specially prescribed in this matter for our priests?

Resp. These things were established by the Plenary Council of Baltimore II, n. 148: "We wish that they [priests] observe the law of the Church, and that while acting at home or in church, they always

use the cassock, which is proper to a cleric. When they go out for the sake of office or recreation of mind or on a journey, it is licit to be clothed in a somewhat shorter garment, which nevertheless is to be black in color and extend below the knees. Let them despise and reject certain more becoming and more elegant forms of garments, which are newly invented day by day, since even the more serious among secular men shrink from these. Yet let them be mindful of their dignity, and not present themselves by clothing and habit as rough and uncultivated. St. Charles, that outstanding restorer and vindicator of sacred discipline, warns that in clerical habit there should appear neither too carefully sought elegance of adornment, nor too abject negligence and affected filth."

But the Fathers of the Plenary Council of Baltimore III, n. 77, after they had again confirmed and inculcated those things, add the following: "By strict precept we enjoin upon our priests that, both at home and outside, whether they live in their own diocese or outside it, they wear the collar which is called Roman. And because the reason of the ecclesiastical law concerning the dress of clerics is no less valid concerning regulars than seculars, regular priests also are held by the law of using either the Roman collar or clothing suitable for distinguishing clerics from laymen, whenever, having set aside the habit proper to their own order, they go out."

IV. - On Recitation of the Canonical Hours

Clerics constituted in major orders, excepting those of whom in can. 213, 214, are held by the obligation of reciting the canonical hours daily according to their own and approved liturgical books (Can. 135). In the two canons mentioned there is question of those legitimately reduced or to be reduced to the lay state. The canonical hours are called a collection of prayers and lessons to be recited at certain hours, on individual days, by persons deputed to this. Hence they are also called: 1st. the divine office, because they are recited in honor of God; 2nd. the ecclesiastical office, because they are discharged in the name of the Church; 3rd. the canonical office, because they must be recited according to the rules of the Canons; 4th. Breviary, because that Office is a compendium of the Old and New Testament, and also of the sentences of the Fathers and the life of the Saints.

In the course of times the form and quantity of the Breviary was varied. The Council of Trent, sess. 25 at the end, commanded that a new reform of the Roman Breviary be made. St. Pius V corrected it, increased it with some additions, and by the Constitution *Quod a nobis*, on 7 July 1568, prohibited all other Breviaries which by institution or legitimate custom did not exceed 200 years.

This Roman Breviary, corrected at repeated times, was finally reformed by Pius X in his Constitution *Divino Afflatu*, issued 1 Nov. 1911.

"Therefore by the authority of these letters, before all things we abolish the order of the Psalter, such as it is in the Roman Breviary today, and we altogether forbid its use from the Kalends of January of the year one thousand nine hundred and thirteen. But from that day, in all churches of the secular and regular Clergy, in monasteries, orders, congregations, and institutes of religious, by all and each who, from office or from custom, discharge the canonical Hours according to the Roman Breviary edited by St. Pius V and revised by Clement VIII, Urban VIII, and Leo XIII, we command the new order of the Psalter, such as We have approved with its Rules and Rubrics and have decreed to be published by the Vatican types, to be religiously observed. At the same time we denounce the penalties established in law against those who have failed in their office of discharging the canonical

Hours daily; and indeed let them know that they will not satisfy so grave an office unless they employ this order of Our Psalter."

Therefore all who are obligated to recite the divine office according to the Roman Breviary edited by St. Pius are bound to observe "the norms for discharging the canonical Hours prescribed in the Constitution *Divino Afflatu* and in other dispositions of the Apostolic See." S. C. R., 11 June 1913; 23 Jan. 1912; Motu Proprio, *Abhinc duos annos*, 23 Oct. 1913; S. C. R., 28 Oct. 1913, 14 Jan. 1914. Therefore the ancient order of the Psalter has been abolished and its use forbidden; the Psalter according to the new order is obligatory, and indeed for this reason, that if someone observes the other order, he does not satisfy his office. Indeed if someone has obtained a pontifical indult of retaining the old order of the Psalter for private recitation of the Hours, it is not licit for him "at pleasure to follow either order of the Psalter, employing now the old, now the new, according to his own convenience"; but he ought "to recite for each Hour," as Pius X himself decreed, "all the psalms and the remaining things according as they are distributed in the Roman Breviary edited by St. Pius V and revised by Clement VIII, likewise Urban VIII, and Leo XIII, yet with the new order or Calendar observed daily according to the aforesaid Apostolic Constitution (*Divino Afflatu*) and the rules or rubrics annexed to the same, prescribed for the diocese, chapter, or clergy to which each is ascribed, and with firm abolition of the general indult given on 5 July 1883 for Votive Offices." - S. C. of the Council, 10 March 1913.

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

Point I. On the Obligation of Reciting the Hours

I say 1st. Those obligated to recite the canonical Hours daily are: 1st. all clerics constituted in sacred orders, even suspended and excommunicated; 2nd. all beneficed persons who have a right in the thing and full dominion of the benefice; 3rd. §1. In religions whether of men or of women, in which there is an obligation of choir, in individual houses where there are at least four religious bound to choir and actually not legitimately impeded, and even fewer if the constitutions so provide, according to the norm of the constitutions the divine office must daily be discharged in common (Can. 610).

I say 2nd. This obligation, which indeed is grave, is affixed to the day, so that in no way can satisfaction be made to it on another day; therefore, from the mind of the Church, it ceases with the day assigned to it, and therefore is usually called the burden of the day. - Cf. St. Alphonsus, n. 146.

Questions

Question 1. What is grave matter in the omission of the Office?

Resp. Theologians most commonly agree that the omission of one little Hour, or of Compline, or of a part of the Nocturns equivalent at least to the quantity of one little Hour, is a notable part and therefore a mortal sin; but the omission of a smaller part does not exceed venial sin. Yet this does not import that several mortal sins are committed if, with the case of retracting an evil will excluded, several notable parts are omitted, because the whole Office falls under one precept. - Cf. St. Alphonsus, nn. 147 et seq. - Lacroix, lib. 4, n. 1201.

It is light to omit Vespers of Holy Saturday.

Question 2. Are Religious destined to choir, if for a just cause they do not come to choir, bound under grave sin to recite the Office privately?

Resp. Affirmatively. In religions whether of men or of women in which there is an obligation of choir, solemnly professed who were absent from choir must, excepting conversi, recite the canonical hours privately. Cf. Can. 610, §3. Professed of temporary vows of whom in can. 574: where the obligation of choir is in force, they are not bound by the law of privately reciting the divine office, unless they are constituted in sacred orders or the constitutions expressly prescribe otherwise. Cf. Can. 578.

Question 3. Does a Religious sin gravely who recites the Office privately, when he can easily be present at choir?

Resp. Negatively, because the obligation of choir, although it is grave for the community, is nevertheless held light for private individuals, provided that the choir is not wholly taken away. But four free persons, or persons capable of sustaining choir, suffice for choir. - Cf. St. Alphonsus, n. 143.

Question 4. Are those obligated to the Office bound to supply those things which they omit in choir because of functions of choir, for example, by ringing bells or playing organs, or by seeking Psalms, and other similar things?

Resp. Negatively, and the reason is that omission in choir, provided it is not too great, is supplied by the companions. Thus he satisfies who, while others recite, coughs, etc., and probably also if an entire Psalm is said meanwhile. But a fortiori he is not bound to repeat who has not heard some things of the opposite side. - Cf. St. Alphonsus, n. 143.

Question 5. Is there still given an obligation of reciting the Gradual Psalms, the little office of the Blessed Virgin Mary, and the office of the dead?

Resp. Negatively, because they do not oblige those reciting privately, nor do they now oblige even for choir. "The obligation likewise ceases of reciting in choir, on the days prescribed by the Rubrics hitherto in force, the little office of the Blessed Virgin Mary, the office of the dead, and also the Gradual and Penitential Psalms. But chapters which from a peculiar constitution or legacy are held to those added Offices will obtain their commutation from the Holy See." - Const. *Divino Afflatu,* tit. VIII, 2.

Question 6. Are those obligated to the Office bound under grave sin to recite the Litanies on the feast of St. Mark and the triduum of Rogations?

Resp. Affirmatively. "On the Feast of St. Mark and in the Triduum of Rogations, the burden of reciting the Litanies of the Saints remains entire, even outside choir." Const. *Divino Afflatu,* tit. VIII, 3. But neither in choir nor outside choir can they be anticipated in the evening. Rubr. Brev.

Question 7. Are Nuns who are obligated to recite the office of the Blessed Virgin Mary bound under grave sin to recite it?

Resp. Negatively, if there is question of those Nuns who are neither destined to choir nor are Nuns strictly so called, as, for example, Sisters of Mercy. Indeed, not only are they not bound under grave sin, but neither under light sin, of themselves, because the obligation of reciting the office of the B. V. M. among Nuns of this sort comes from a rule which does not oblige under sin. - But if there is question of Nuns of the Visitation, who are certainly destined to choir and generally also emit solemn

vows, a distinction must be made between those who in fact, among us, have emitted solemn vows and those who have pronounced only simple vows; and it must be said that the former are held under grave sin, but not the latter. For to the Bishop of Le Mans asking: "Are Nuns in general strictly obligated under grave sin by force of their profession to recitation of the divine Office proper to their Institute?" the Sacred Congregation of Bishops and Regulars responded on 19 Apr. 1844: "Affirmatively with regard to Nuns professed of solemn vows according to a rule approved by the Apostolic See in which this kind of burden is imposed. But if such a burden is not imposed in the rules, let him consult approved authors in relation to the obligation which can arise from custom. But where the vows are simple, they are not held." But which Nuns among us emit solemn vows will be said below.

Many others judge that the obligation is not grave, or at least that this is not established. For under the name of divine office come the canonical Hours strictly so called. Cf. Vives, 484, 2. - Bucceroni, n. 116. - Bizzari, p. 72, 495. - Vermeersch, *De Relig. Inst.*, v. 1, n. 316. - Ferreres, v. 2, n. 50. - Bulot, v. 2, n. 69.

Question 8. If someone doubts whether he has omitted something in the Office, is he bound to recite it?

Resp. Negatively, if the doubt is positive, that is, if he probably judges that he has satisfied, as is established from the things said concerning probabilism. St. Alphonsus said that this opinion is most common, although afterward in the Reformed Questions he retracted it. - Cf. St. Alphonsus, n. 150; and *QQ. reform.*, elen. 2, n. 1. - Baller., note (c), p. 38.

Hence you are well excused from repeating the Office if you do not remember that you said something, and you have a just conjecture for believing that you said it; suppose, if you remember that you began a Psalm or some Lesson or Hour, and afterward, distracted, came to the end of the Psalm, Lesson, or Hour without remembering whether you recited it whole; for the presumption favors you, because you are accustomed to recite integrally those things whose recitation you have begun. Likewise, if you have come to some Hour, for example Sext, and you doubt whether you recited the preceding one, you can hold the same decision, because you are not accustomed to recite the later Hour unless you first premised the earlier one, and therefore you can prudently believe that you omitted nothing.

Point II. On the Time Due for Reciting the Hours

I say 1st. The time predetermined for fulfilling the entire recitation of the Office begins from midnight and ends at the following midnight, so that anyone who recites the whole Office within this time, at whatever hour he satisfies such a duty, must always be exempted from grave sin. Indeed Matins and Lauds, by a privilege conceded by the Church, can be recited the day before toward evening; nevertheless no one is bound to use this privilege, even if he foresees an impediment to reciting the Office on the very day of obligation. - Cf. St. Alphonsus, n. 172.

I say 2nd. Formerly the Hours were recited thus: Matins after midnight, Lauds at dawn, Prime after sunrise, Terce at the ninth hour of the morning, Sext at midday, None at the third hour of the afternoon, Vespers at sunset, Compline at the twilight of night. Hence a cleric ordained subdeacon is bound only to reciting the Hours corresponding to the time of ordination. Therefore if ordination is

made before the ninth hour of the morning, he will be bound to recite Terce, but not the preceding Hours. - Cf. St. Alphonsus, n. 140.

I say 3rd. But today, by custom and the consensus of theologians, the little Hours can be recited at whatever morning time; indeed the two prior ones, namely Prime and Terce, not only can but also ought to be recited before midday. Vespers and Compline are recited from midday until midnight. In Lent, however, Vespers can be recited before midday, on account of the ancient discipline according to which the fast was not broken before recitation of Vespers; but afterward in the course of times, when the hour of dinner was anticipated to midday, the hour of Vespers also began to be anticipated. From this it is also clear why Sundays are excepted, namely because on those days the fast is not observed. - Cf. St. Alphonsus, *Hom. Ap.*, Append. 3, n. 74.

Questions

Question 1. Whether and what sort of obligation is present of reciting Matins and Lauds before Mass?

Resp. It seems certain that some obligation is present, as is drawn both from the Constitution of Innocent IV, year 1254, and from the Rubric of the Missal, Tit. I, *de Praepar. Sacerd. celebraturi*, and especially Tit. X, *de defect*. - But it is commonly taught that such obligation is light, and that any moderate reasonable cause excuses from it; no otherwise than, with any useful or honorable cause intervening, someone will be able wholly licitly to recite either Vespers and Compline at morning time, or Matins and Lauds, Prime and Terce at evening time. - Cf. St. Alphonsus, n. 173; and *de Euchar.*, n. 347. - Benedict XIV, *de Sacr. Missae*, lib. 3, cap. 13.

Question 2. At what hour is it licit to begin the recitation of Matins on the evening of the preceding day, according to the privilege related above?

Resp. In private recitation of the Office, Matins for the following day can be begun at the second hour of the afternoon, nor is it required that the order of the diocesan Directory table be observed; but it cannot be begun at the same hour in public or choral recitation. The hour of reciting Matins can be counted indiscriminately from the local meridian circle, or from the official meridian circle called "Greenwich." - Decr. Authen. R. S. C. R., n. 4158. Cf. Can. 33.

Question 3. At what hour can the recitation of Vespers be begun in the morning during Lent?

Resp. The Salmanticenses say that Vespers in Lent can be recited from the eleventh hour, or one hour before midday. But the general rule is that Vespers can be recited privately at the same hour at which they are customarily recited in choir. Moreover, in choir they must be recited after the conventual Mass and None. But the hour of conventual Mass depends on the custom of places. Besides, there is no obligation present of reciting Vespers before midday, but it is a mere privilege which no one is bound to use. But Compline does not enjoy the aforesaid privilege; whence even through Lent it must be recited after midday. - Cf. Salmant., tract. 16, cap. 3, n. 15.

Point III. On the Order of Reciting the Hours

I say. There is a twofold order to be observed in the recitation of the Breviary, namely the order of Offices and the order of Hours. The order of Offices is described in the calendar of feasts and in the rubrics for their translation where several occur together. But the order of Hours is that which is set

forth in the Breviary, namely that first Matins with Lauds be recited, then the little Hours be joined, that is Prime, Terce, Sext, None, and finally Vespers with Compline follow.

Questions

Question 1. Does he satisfy the precept of reciting the Hours who, from error or inadvertence, recites another Office for the Office of the day?

Resp. Affirmatively, and the reason is that the Church is not presumed to wish to oblige someone twice in one day to this burden, and because the substance of recitation has been sufficiently preserved. Hence the common axiom, which is held as a kind of rule in these circumstances: Office is valid for Office. Therefore there is no obligation, once recitation has been completed, of reciting another Office. Yet it is counsel, not obligation, to join the proper parts of the omitted Office. But now it must be observed that that general principle, Office for Office, must be understood according to the dispositions of the Constitution *Divino Afflatu*; and therefore it does not hold if someone follows the suppressed order of the Psalter, but it does hold if he observes the new one.

Question 2. If someone from error has recited only some part of an undue Office, and notices the error, can he continue the Office begun, or rather is he bound to recite the remaining things from the Office of the day?

Resp. According to the common opinion of theologians, liberty is given. Therefore he can either continue or recite the remaining things from the due Office, yet with the Psalm or prayer finished. Nevertheless it is better to change the Office, according to many, who establish this rule: Error is corrected where it is detected. Cf. St. Alphonsus, n. 161. - Lacroix, lib. 4, n. 1255.

Question 3. When you have already said one Office for another, can you recite the omitted Office on the day on which the Office already recited by you will occur?

Resp. Negatively, but the Office recited must be recited again, because there is present an obligation, although light, of conforming oneself with the common rite of the Church. St. Alphonsus says this more probably, but it must be held as morally certain from the decree of the S. R. Congregation on 17 June 1673, Authentic Decrees, n. 1474.

Question 4. Whether or how one sins who knowingly recites another Office for the Office of the day?

Resp. He commits no sin if he does this from a reasonable cause, for example, if he cannot easily have the proper Office, or if for the sake of charity he recites with a companion saying a different Office, provided that Office is approved by the Holy See and is equal or nearly equal; indeed St. Alphonsus says that the reason of companionship alone appears sufficiently reasonable. But when the case of a reasonable cause is excluded, it will indeed be a sin, but only venial, if the Office is changed into an equal or nearly equal one, because satisfaction is made to the obligation as to substance. If finally a notably shorter Office is recited, it is grave sin, because then satisfaction is not made to the substance of the obligation. This is clear both from the nature of the thing and from proposition 34, condemned by Alexander VII, which thus sounds: "On Palm Sunday, one reciting the Easter Office satisfies the precept." - Cf. St. Alphonsus, n. 161.

Question 5. What kind of sin is it to invert the order in the recitation of the Hours?

Resp. In private recitation it never exceeds venial sin, because such inversion of order does not contain a grave deformity; for the order to be observed is only under a secondary precept and as a circumstance of lesser moment. But if from some just cause you change the order, for example, to recite with a companion who has already advanced further in recitation, or because you do not have the Breviary at hand but only the Diurnal while you are carried by vehicle, you will be entirely free from all fault. But a fortiori these reasons and others of this sort excuse you from all fault if you recite Matins of the following day before completing the Office of the present day, even according to those who wish to find some deformity in this inversion, concerning which, however, it is not established. But in public recitation there is controversy whether it is a grave sin or not to invert the order or change the time of the Hours; but the negative opinion is more probable, because this kind of inversion or change does not pertain to the substance of the precept and is merely accidental. - Cf. St. Alphonsus, nn. 170 et seq. - Lacroix, lib. 4, nn. 1309 et seq.

Indeed from a reasonable cause it will be licit to invert the parts of the Hours, for example, to say the psalms and then afterward the lessons, indeed also these after other Hours have been recited, as if someone on a journey did not have the lessons of Matins.

Question 6. Is it licit to recite the Breviary in the vernacular language?

Resp. Negatively, and one acting thus is bound to say it again in Latin. "Those who are obligated to the recitation of the divine office and of any part of the Roman Breviary must recite these only in the Latin language; otherwise they do not satisfy the obligation." On account of this explicit reason, the S. R. C. responds Affirmatively to the question: "Whether a priest, carrying out the Divine Office of the Roman Breviary in the vernacular language, e.g., of the Nativity of the Lord, of the dead, etc., with the people, or discharging the Litanies of the Saints in the processions of Rogations in the same language, is bound to recite these parts of the Roman Breviary again in the Latin language?" 3 July 1904.

Point IV. On Pronunciation in Reciting the Hours

I say. Pronunciation ought to be vocal, entire, and continuous. And 1st. indeed it ought to be vocal, for the Office ought to be recited by voice, and indeed by a distinct voice; but it does not suffice that it be read by mind alone, or merely run through with the eyes; nor is it enough if it is recited in the throat or between the teeth, or by syncopating, or by abbreviating with a stumbling tongue; for that which is prescribed is properly vocal prayer. But prayer is not considered properly vocal unless it is made with a distinct voice. 2nd. It ought to be entire; and to integrity belong the *Pater*, *Ave*, and *Credo* at the beginning and end of the Hours, according as is noted in the Rubrics, but not the prayers *Aperi Domine* and *Sacrosanctae*, which are recited only by counsel. 3rd. It ought to be continuous; and therefore any notable interruption within one Hour, if it is made without any cause, is not free from fault; but it does not exceed venial sin. - Cf. St. Alphonsus, n. 166.

Questions

Question 1. Must one reciting the Office hear himself, so that he can be said to pray vocally?

Resp. Negatively, because vocal prayer is said by opposition to mental prayer, and is truly had as often as the words are truly pronounced, even though they are heard by no one; and therefore it suffices if the one reciting is conscious to himself that he pronounces the words. - Cf. St. Alphonsus, n. 163.

Question 2. What are just causes for interrupting the Office?

Resp. Any reasonable cause suffices for interrupting any Hour whatever; but the following causes are especially enumerated: 1st. any utility, one's own or another's, which cannot be deferred without some inconvenience; 2nd. a reason of urbanity or charity, or a reason of executing the commands of superiors; 3rd. if the confession of someone is to be received who does not gladly wait; 4th. if you wish to do or note something so that you may remove distraction or solicitude, for example, lest you forget, etc., provided however that this is not done frequently, because frequent interruption for this cause is not free from some irreverence; 5th. some brief prayer or some pious affection of the heart can also licitly be inserted into the recitation. Nevertheless it would be less becoming, for the sake of meditating, to linger in these things longer and frequently, because the nature of recitation or vocal prayer would not be sufficiently preserved; and if, by inserting longer vocal prayers and those least pertaining to the Office, a notable part were added to the Hours, this, according to some, would be venial, as contrary to the prescribed form. - Cf. St. Alphonsus, n. 168. - Lacroix, lib. 4, n. 1307.

Question 3. Can Matins be separated from Lauds?

Resp. Affirmatively, in private recitation; Negatively, in public recitation in choir, except on the night of the Nativity of the Lord. Thus the Rubrics of the Breviary, which see for the prayers to be said at the conclusion of Matins and the beginning of Lauds, both on ordinary days, and in the Triduum of the death of the Lord, and in offices of the Dead.

Question 4. Can the Nocturns be separated without cause?

Resp. Affirmatively, as is established from universal custom, to which no law can be opposed. Indeed formerly, from the practice of the Church, they were separated, since they were customarily recited at various hours of the night. Besides, not a few say that this separation, thus made without special cause, can extend to three hours. But if there is a just cause for the sake of which the Nocturns ought to be separated, the interval of three hours can also be prolonged longer according to the measure of that cause. - Cf. St. Alphonsus, nn. 167 and 168. - Reuter, n. 262.

Question 5. To what is one bound, by reason of pronunciation, when reciting the Hours with a companion or with choir?

Resp. To satisfy the obligation it is required: 1st. that the recitation be made by alternate verses, and if more than two recite, after a double choir has been made, it ought to be recited alternately, because this mode is admitted by the custom of the Church; 2nd. that the verses be said successively and not at the same time; nor may one resume before the other has completed his part; 3rd. that the things which are said by one be heard by the others, so that they may communicate and one moral prayer be made. Yet it is not necessary that the hearers pronounce in a low voice the part of the others. - Cf. St. Alphonsus, n. 162.

Question 6. Do you satisfy if you recite the Hours with a layman, or with another not obligated, or with one distracted or not attentive?

Resp. Affirmatively, in all these cases, and the reason is that these things do not impede you from reciting the Hours according to the custom of the Church. The defect of obligation or attention on the part of the other does not change nor vitiate your recitation. Therefore, if the companion is obligated and does not attend, he himself does not satisfy, since he does not communicate with you;

but he does not prevent you from communicating with him, if he pronounces rightly and you hear rightly. - Cf. Lacroix, n. 1295.

Point V. On Attention and Devotion in Reciting the Hours

I say. The Office must be recited attentively and devoutly, since it is prayer, and indeed public prayer, or prayer to be recited by a public minister deputed by the Church. Hence one voluntarily distracted in reciting the Hours sins at least venially.

Questions

Question 1. How many kinds of attention are distinguished in the recitation of the Hours?

Resp. Twofold, namely internal and external. The former consists in an interior advertence of the mind to that which is being done; but the latter is that which excludes every external action physically incompatible with recitation, such as chatting, writing, etc. Again, internal attention is threefold, namely 1st. spiritual, which is to God Himself as the terminus of prayer; 2nd. literal, or to the sense of the words and the signification of the things; 3rd. material, which is directed to the words only, namely to pronouncing them rightly. - Any one of these is best and certainly suffices according to the opinion of all. - Cf. St. Alphonsus, n. 176.

Question 2. Is some internal attention required under grave sin?

Resp. It is much controverted among theologians, but the opinion of those who say that external attention, absolutely speaking, suffices for satisfying the substance of recitation and for removing mortal sin is probable. The reason is that, if internal attention were required, one who recited the Hours involuntarily distracted would not satisfy his obligation; for when the essence of a thing is destroyed, although inculpably, the thing itself remains destroyed. Yet not even the theologians who hold the contrary opinion wish to admit this. Wherefore St. Alphonsus thus concludes: "The first opinion [namely the affirmative] seems more probable at least on account of extrinsic authority and is wholly to be counseled as safer; but the second, denying, both on account of the authority of the Doctors, which is not to be contemned, and on account of reasons supported by foundations that are not light, appears sufficiently probable." - Cf. St. Alphonsus, nn. 176 et seq. - Lacroix, lib. 4, n. 1344.

Point VI. On Causes Excusing from Recitation of the Hours

The causes excusing from recitation of the divine Office are: 1st. impossibility; 2nd. charity; 3rd. dispensation.

I say 1st. Impossibility, whether physical or moral, which consists in grave difficulty, excuses from the obligation of reciting the Office, and the reason is that no one is held to the impossible. - Hence he is excused: 1st. who does not have a Breviary, for example, he forgot it when undertaking a journey, or lost it on the journey, with inability to procure another; 2nd. who labors under grave illness, or who justly fears lest a grave illness follow from recitation; 3rd. who in a time of persecution fears lest he be betrayed by recitation of the Breviary; 4th. who labors gravely in his eyes, etc. - Cf. St. Alphonsus, nn. 154 et seq.

I say 2nd. Charity toward the neighbor, that is, a grave occupation which cannot be omitted without scandal or notable detriment of the neighbor, excuses from recitation of the Breviary; and the reason is that the natural precept of charity prevails over ecclesiastical law. - Hence you are excused from

recitation of the Hours, either totally or partially: 1st. if, by night, when you are about to recite the Office, for example Vespers, you are called at once to a dying person, and neither time nor convenience is available to you for discharging the obligation of the Office; 2nd. if you are occupied the whole day in receiving confessions which, on account of peculiar circumstances, cannot be deferred, for example, in sacred missions, and especially toward their end when you are going to depart, etc.; 3rd. if you could not omit a sermon without scandal or detriment to reputation, and yet time for preparing it would not be available if the Office had to be recited; 4th. if you are occupied the whole day in settling quarrels or assisting the sick, for example, in a time of contagious disease, etc. - Cf. St. Alphonsus, n. 156.

I say 3rd. Legitimate dispensation, or one conceded by a legitimate superior, disobliges from saying the Breviary. The reason is that, with legitimate relaxation of the law supposed, the force of binding cannot remain. But this dispensation can be conceded: 1st. by the Pope validly in every case, even without cause; but licitly from a reasonable cause; 2nd. by the Bishop, but not validly without sufficient cause, and only with someone in particular for a time. Cf. St. Alphonsus, n. 159.

Yet note that in this region some Bishops, by force of an Apostolic Indult, are accustomed to dispense priests from Matins and Lauds of the following day as often as they receive sacramental confessions for five hours in one day, with a shorter other prayer enjoined, to be recited in place of the stated Office.

Questions

Question 1. Is one impeded from reciting the whole Breviary bound to the part which he can recite?

Resp. Affirmatively, and the reason is that the obligation of the Breviary falls upon its individual parts, since the thing prescribed is divisible. This is also established from proposition 54 condemned by Innocent XI, which lies thus: "He who cannot recite Matins and Lauds, but can recite the remaining Hours, is held to nothing, because the greater part draws the lesser to itself." - But if there is question of a sick man who indeed cannot discharge the whole Office, but doubts whether he can recite some part of it, probably he is held to nothing, because otherwise he would be too greatly distressed by scruples and anxiety. - Cf. St. Alphonsus, n. 154, note 4.

Question 2. Are you bound to recite the Psalms if you have only these at hand or know them by memory, the Lessons with the Responsories being left aside?

Resp. Many affirm, because since you can recite a notable part of the Office, there is no cause why you should be excused from it. Yet several deny, who say that you are held to nothing, because then the form prescribed by St. Pius V is lacking. Their opinion seems sufficiently probable; nor does the proposition brought forward, condemned by Innocent XI, stand in the way, because in it there is question of him who can complete entire Hours. - Cf. St. Alphonsus, n. 158. - Lacroix, n. 1220.

Question 3. Are you bound to employ a companion if you are not strong enough to recite the Hours alone?

Resp. Affirmatively, if you easily find someone whom you can conveniently employ. The reason is both because in that case there is not properly true inability, and because the precepts of the Church require ordinary diligence for their fulfillment; but no means is more ordinary than employing a companion in recitation. Therefore . . . But you are not bound to pay a stipend so that you may obtain

a companion, nor to seek him with anxiety and solicitude, because this would be an extraordinary means. - Cf. St. Alphonsus, n. 158. - Suarez, *de Relig.*, tract. 4, lib. 4, cap. 27, n. 13.

Question 4. What is to be said concerning clerics serving as soldiers in order to this obligation?

Resp. "Clerics who, although constituted in Sacred Orders, nevertheless were compelled to take part in war, are excused from the obligation of reciting the Divine Office only when they are actually in the battle line or in the line and place of combat; but otherwise they are bound to recite the Divine Office in free hours in the best manner in which they can; but in a case of grave inconvenience to themselves or others they can and ought to conduct themselves (having heard their own confessor if they could) according to the general norms handed down by Theologians." Thus the Sacred Penitentiary, on 17 March 1916, authentically declaring the obligation in the case and rejecting false interpretations of the response of the Sacred Penitentiary given on 15 March 1912.

Article II. On the Negative Obligations of Clerics

Generally clerics are prohibited lest they give themselves to those things which disgrace the ecclesiastical state; but especially the following things are forbidden to them: 1st. habitation with women; 2nd. game of chance; 3rd. carrying of weapons and hunting; 4th. business; 5th. entrance into taverns; 6th. exercise of medicine and surgery. Something will be said briefly concerning each.

On Habitation with Women

Habitation under the same roof with women, already from the earlier times of the Church, was generally prohibited to clerics through the sacred canons. For thus it is had in the First Council of Nicaea, can. 3: "The great Synod altogether forbade that it be licit for a Bishop or Priest, nor Deacon, nor any one at all of those who are in the clergy, to have an introduced woman, except indeed mother or sister or aunt, or only persons who flee every suspicion."

Thus also the new Code:

§1. Let clerics take care not to retain with themselves or in any way frequent women concerning whom suspicion could exist.

§2. It is licit for them to cohabit only with those women in whom the natural bond permits nothing evil to be suspected, such as mother, sister, aunt, and the like, or from whom proven honesty of morals, joined with more advanced age, removes every suspicion.

§3. Judgment whether retaining or frequenting women, even those upon whom suspicion commonly does not fall, in some particular case can be a scandal or bring danger of incontinence, pertains to the Ordinary of the place, whose office it is to prohibit clerics from this retention or frequentation.

§4. The contumacious are presumed concubinarians (Can. 133).

But as regards this region, the Plenary Council of Baltimore III, n. 81, has these things: "Because it is not enough to admit no crime in the clergy, but it is altogether necessary to keep far away even the lightest suspicion of crime, we admonish the Bishops in the Lord that they diligently and firmly watch over the execution of the decree of Our Predecessors concerning the association of clerics with women. 'Therefore we wish, first of all, that [a priest] not use excessive association and familiarity with secular women, not even excepting his own; and that he not allow them, although joined by

near relationship, to dwell with him in the same house, unless they have been most proven in life and morals, and in no way, whether directly or indirectly, involve themselves in carrying out sacred offices or in administering the things of the church. Let him have no housekeeper, maid, or other female servant, unless she is of more mature age and enjoys a wholly unimpaired reputation. Never in their presence or that of relatives, if he has any with himself, let him speak words concerning the governance of the flock, concerning the business of the church, concerning the vices or defects of parishioners.' Besides, to avoid inconveniences of manifold kind, We make Our own the words of the Fathers of the Plenary Council of Ireland at Maynooth, namely, 'let no pastor . . . retain in his house families of in-laws or blood-relatives. But if his assistants live in the same house with the pastor, we wish that pastors in the aforesaid house in no way retain younger blood-relatives or in-laws, unless the Ordinary permits it.'"

I

Let clerics abstain entirely from all those things which disgrace their state: let them not exercise unbecoming arts; let them not occupy themselves with aleatory games, with money exposed; let them not carry weapons, unless a just cause of fearing is present; let them not indulge in hunting, and let them never exercise noisy hunting; let them not enter taverns and other similar places without necessity or another just cause approved by the Ordinary of the place (Can. 138).

On Dice-Playing

Dice-playing, namely that which is placed wholly in pure fortune and whose outcome depends on mere chance, is severely prohibited to clerics. Cf. Plen. Council of Baltimore II, nn. 154, 155, 162, in append. p. 287, and Plen. Council of Baltimore III, nn. 80, 82.

Concerning this matter the Baltimore Fathers, Plen. Council II, n. 154, speak thus: "There are some games which, although they are done privately and at home, nevertheless disgrace a cleric. There are others in which dice indeed and painted cards, as they call them, are employed; but insofar as they can honorably recreate and delight the mind, they are not forbidden by the sacred canons. Therefore let a cleric flee illicit games; let him use licit ones so that by excess or scandal they do not become illicit."

On Carrying Weapons and Hunting

Carrying weapons also is prohibited unless a just cause of fearing is present. Carrying is prohibited because it disgraces the character of clerics, who ought to be meek according to the example of Christ. Cf. Plen. Council of Baltimore II, n. 153.

Let them not indulge in hunting; therefore the very custom seems rather to be prohibited. But let them never exercise noisy hunting, which is done, as formerly it was done, with dogs and the clatter of weapons or falcons.^1 Hunting with one dog here and there and briefly done for honorable recreation, a fortiori for health, does not seem illicit, scandal being removed. Cf. S. C. de Prop. Fide, Aug. 1827.

^1 Cf. Addenda, p. 1112, n. 56.

On Business

Clerics are prohibited from exercising business or trade by themselves or through others, whether for their own utility or that of others (Can. 142). Cf. St. Alphonsus, *de Contract.*, nn. 832 and 833.

Yet note that by ecclesiastical law only business properly so called is forbidden, for which these things are required: that a thing be bought and sold; that it be sold more dearly and unchanged; that it was bought with the intention that, unchanged, it be sold more dearly. Therefore it is a certain species of purchase and sale. The profit to be sought is its very end. Another kind is purchase and sale by which necessities are bought for sustenance, and superfluous things are sold, and it is called economic. Finally, another kind is purchase and sale by which something is bought and, changed by industry, is sold, and it is called artificial. Business strictly so called in some way denotes a habit, and therefore one who negotiates once or again does not of itself gravely violate the law. The second species is licit to all. Finally, the third is illicit to clerics if it disgraces their state. Business properly so called of itself disgraces the clerical state, because it is ordered to profit, and on account of the frequent vices of those engaged in business. - St. Thomas, 2-2, q. 77, a. 4, ad 3. Business exercised through others in their name is likewise prohibited to clerics. Benedict XIV, by the Apostolic Constitution, forbade that business be exercised by clerics through others; and therefore he ordered business begun by others but falling to clerics by inheritance or by another title to be immediately dismissed. But if this cannot be done, he permitted business to be conducted by a lay person for a time, with faculty of the Apostolic See in Italy and of the Ordinary outside Italy. For a similar reason, to guard against abuses, Clement XIII, by the Constitution *Cum primum*, prohibited that, even when necessity for the sustenance of themselves and their own compels, business be begun without the permission of the same, of the Supreme Pontiff for Italy and of the Ordinary outside Italy. - Cf. St. Thomas, 2-2, q. 77, art. 4. Scavini, lib. 1, tract. 3, n. 477.

What a share is and what a bond is. A share is a part of the whole capital of some company. Namely the whole capital (*stock*) of a company devoted to business ordinarily is divided into parts of determinate value, *shares, actions, Aktien*; and one who possesses them has a right to a part of the fruits and benefits coming from the action of the company, and is called a shareholder or partner or member of the company (*stockholder*). Such a company, suppose, needs a new sum of money; it seeks money by mutuum by issuing new titles to those who hand over a certain sum as mutuum. These titles are called bonds, because by these the company obliges itself toward creditors for interest and principal. One who possesses bonds (*bonds, obligations, Obligationen*) (*bondholder*) is a simple creditor of the company.

Therefore it is asked whether it is licit for clerics to accept bonds of such companies. Certainly this is licit for them, because it is permitted to them to lend or give their money as mutuum for interest. But what concerning buying shares of these companies? It is certain, at least we judge that this must be held altogether, that habitually to buy those shares at a cheaper price so that they may be sold at a greater price, or to speculate, is altogether prohibited; this truly disgraces the priestly state and gives scandal to the people. But to obtain more or less legitimate profit by holding shares of either commercial or industrial companies certainly is not illicit. For authors vary; nor has the Holy See decided the matter by its responses. Indeed one who retains these shares and does not intervene in the very administration of the company certainly does not effectively influence the direction, and thus, strictly speaking, he does not engage in business. Often shareholders have no part at all in

administering the business, or are not bound to have a part, or perhaps their influence is so small that it can be considered nothing. Finally, the response of the S. C. of the Inquisition seems to favor the more benign opinion. "According to the things set forth and with attention to the peculiar circumstances of the times, ecclesiastical persons are not to be disturbed if they have bought or buy shares or titles of a banking house, provided they are prepared to stand by the commands of the Holy See, and abstain from any business of the said shares or titles, and especially from every contract which has the appearance, as it is commonly said, 'of the games of the exchange,'" 15 April 1885. Cf. Ball.-Palm., v. 4, nn. 299 et seq. - Bulot, nn. 94 et seq. - Ojetti, *Synopsis, Actiones*. - Sebastiani, n. 390. - Genicot, n. 49. - *Diction. de Theol. Cathol.*, Commerce, Antoine.

"Stock in law represents the capital of corporations and is usually divided into shares of a definite value denoting the rights in the assets, profits and management of the company. A certificate of stock is a mere evidence that the person therein designated is entitled to an interest in the company which is stated. Stock may be common and preferred; holders of the common stock have an equal right in the company and its profits: holders of the preferred stock are entitled to a preference over the other shareholders, but they are not creditors of the corporation. Dividends on stock represent a division of the surplus or net profits arising from the business of the company. Stock is considered as personal property and may be transferred at the will of the owner by proper assignment of the certificate." - *The Americana*, v. 14.

"Preferred stock has a fixed rate of dividends attached to it, which must be paid before the common stockholders can receive anything. Preferred stock differs from a bond in that it is not secured by a mortgage on the property while the holder, in the United States generally, has a voice and a vote in the management. The preferred stockholder is thus not a creditor, but a preferred partner in the concern. The common stock is entitled to all the earnings after the interest on the bonds and the dividends on the preferred stocks have been paid. Its rate of dividend thus depends on the profits of the company. . . ."

"Bonds represent the funded debt of a company and are usually secured by some mortgage on its property. They are of various kinds. The first mortgage bond usually stands highest, in that it has a first lien on the property covered by the mortgage. In some cases however prior-lien bonds are issued and these, as their name indicates, take precedence."

"Second and third mortgage bonds take rank after the first. . . . Registered bonds are bonds recorded on the books of the corporation in the names of their holders to whom the interest is sent; coupon bonds are bonds to which are attached dated certificates representing the interest due on the bond at the regular periods of payment. These may be cut off from the bond and the interest collected through the bank the same as checks." - Pratt, *The Work of Wall Street*, pp. 77-78.

As regards us, the Baltimore Fathers establish these things: "Renewing the precepts of the Canons, we decree that [clerics] not conduct trade of any things or goods whatsoever, or of money; not exercise gainful businesses in their own name, or under the covering of another's name; not hire others' estates for the sake of profit; not become surety for others; not, without the Bishop having been consulted, become procurators in the affairs of others; not assume the care and guardianship of anyone, except their own, unless the Bishop consents." - Cf. Plen. Council of Baltimore II, n. 157; and Plen. Council of Baltimore III, n. 82.

On Entrance into Taverns and Inns

Entrance into taverns and similar places outside a case of necessity, or another just cause approved by the Ordinary, is prohibited. Cf. Lateran Council IV. "Let [clerics] entirely avoid taverns unless perhaps they are placed on a journey by cause of necessity." Plen. Council of Baltimore II, n. 62, and Plen. Council of Baltimore III, n. 80.

On Spectacles

Let clerics not be present at spectacles, dances, and pageants which disgrace them, or in which it is unfitting for clerics to take part, especially in public theaters (Can. 140).

On Military Service

§1. Let them not volunteer for secular military service unless with the permission of their Ordinary, so that they may be free more quickly; nor let them render aid in any way to civil wars and disturbances of public order.

§2. A minor cleric who, against the prescription of §1, has voluntarily given his name to military service, by the law itself falls from the clerical state (Can. 141).

II

§1. Let them avoid also those things which, although not unbecoming, nevertheless are foreign to the clerical state.

§2. Without apostolic indult let them not practice medicine or surgery; let them not act as recorders or public notaries, except in an ecclesiastical Curia; let them not assume public offices which carry with them the exercise of lay jurisdiction or administration.

§3. Without the permission of their Ordinary let them not enter upon managements of goods belonging to laymen, or secular offices which carry with them the burden of rendering accounts; let them not exercise the function of procurator or advocate, except in an ecclesiastical tribunal, or in a civil one when there is question of their own cause or that of their church; in a lay criminal trial pursuing a grave personal penalty, let them have no part, not even bearing testimony without necessity.

§4. Let them not seek nor accept the office of senators or of legislators, whom they call deputies, without the permission of the Holy See in places where a pontifical prohibition has intervened; likewise let them not attempt this in other places without the permission both of their own Ordinary and of the Ordinary of the place in which the election is to be made (Can. 139).

Pius X, by a decree of the Sacred Consistorial Congregation, altogether prohibits men of sacred order, whether secular or regular, from taking up for exercise, or retaining once taken up, those offices which carry with them the cares, obligations, and risks assumed in the administration of money-chests, banking houses, etc.; such are the offices of president, manager, secretary, treasurer, and similar offices. 18 Nov. 1910. As regards the permissions to be had concerning the exercise of these various offices, recourse is to be made to one's own Ordinary. - Pontifical Commission for the authentic interpretation of the canons of the Code, 2-3 Jun. 1918.

A cleric is prohibited from giving surety, even concerning his own goods, unless the local Ordinary has been consulted (Can. 137).

Chapter II. On Certain Obligations Proper to Clerics

Article I. On the Obligations of Bishops

The obligations of Bishops, besides those by which on the day of consecration they bind themselves by oath, are reduced to residence, prayer, preaching, and visitation of the diocese. Of each one something will be said briefly.

I. As Regards Residence. §1. Even if Bishops have a Coadjutor, they are held by a personal law of residence in the diocese.

§2. Apart from the cause of the visitation of the Sacred Thresholds, of Councils at which they must be present, or of a civil office legitimately joined to their churches, they can be absent for a fair cause not beyond two, or at most three, months within the year, whether continuous or interrupted, provided that care is taken lest from their absence the diocese suffer any detriment; which time, however, cannot be joined either with the time granted to them on the occasion of their promotion, or of the visitation of the Sacred Thresholds, or of attendance at a Council, or with the vacation time of the following year.

§3. Let them not be absent from the cathedral church during the time of Advent and Lent, on the days of the Nativity, the Resurrection of the Lord, Pentecost, and Corpus Christi, unless from a grave and urgent cause.

§4. If they have been unlawfully absent from the diocese beyond six months, let the Metropolitan denounce the Bishop to the Apostolic See according to the norm of can. 274, n. 4; and if it is the Metropolitan, let the older resident Suffragan denounce him (Can. 338).

Bishops, even though they be Cardinals, are held to reside in their episcopal see or diocese; but because to be absent for some little time is not properly to be absent, they can each year remain outside the diocese for a space of two or at most three months, either continuously or at intervals, provided however that this be done from a fair cause and without any detriment to the flock; whether it is so is left to their conscience. - This is established from the Council of Trent, sess. 6, cap. 1, *de Reform.*; and sess. 23, cap. 1, *de Reform.*

Yet other causes can easily be given which require a longer absence. The Holy Synod mentions these in the cited chapter, and they are: 1st, Christian charity, if one's neighbor is to be helped, if disputes are to be settled; 2nd, urgent necessity, for example, because of bodily infirmity, because of the persecution of a tyrant; 3rd, due obedience, namely to be rendered to the Pope; 4th, evident utility of the Church or of the Republic. - Nevertheless, because there would still be danger lest someone more readily think that causes of this sort are present, the Council no longer leaves the judgment of this matter to the conscience of Bishops, but remits it to the Roman Pontiff, or to the Metropolitan, or, he being absent, to the older suffragan, without whose permission, to be given in writing, it is not lawful to be absent. From the new decree of Urban VIII, *Sancta Synodus*, 12 Dec. 1634, the competent superior in this matter is the Roman Pontiff alone.

II. As Regards Preaching. §1. The office of preaching the Catholic faith has been committed principally to the Roman Pontiff for the universal Church, and to Bishops for their dioceses.

§2. Bishops are held by the duty of preaching the Gospel themselves in person, unless they are prevented by a legitimate impediment; and moreover, besides parish priests, they must also take other suitable men to assist in executing salutarily an office of preaching of this sort (Can. 1327).

It is lawful for no one to exercise the ministry of preaching unless he has received a mission from a legitimate Superior, by a faculty peculiarly given, or by an office conferred to which, from the sacred canons, the office of preaching adheres (Can. 1328).

III. As Regards Prayer. Bishops, after the likeness of the Apostles, must often give themselves to prayer, and exercise themselves in the contemplation of divine things, and continually beg divine light for themselves, for the clergy, and for the whole people. Wherefore frequently, and at least on Sundays and feast days, they must offer the Sacrifice for the whole diocese. - Cf. St. Alphonsus, *Hom. Ap.*, tract. 7, nn. 65 and 66.

IV. As Regards Episcopal Visitation. §1. For preserving sound and orthodox doctrine, protecting good morals, correcting evil ones, promoting peace, innocence, piety, and discipline among the people and clergy, and establishing other things, according to the nature of the circumstances, for the good of religion, Bishops are held by the obligation of visiting the diocese each year, either in whole or in part, in such a way that at least every five years they go through the whole of it, either themselves in person or, if they have been legitimately impeded, through the Vicar General or another.

§2. It is lawful for the Bishop to associate with himself two clerics, even from the cathedral or collegiate Chapter, as companions and assistants of visitation; and to choose those whom he prefers, any contrary privilege or custom being reprobated.

§3. If the Bishop has gravely failed in the obligation of which in §1, let the prescription of can. 274, nn. 4, 5, be observed (Can. 343).

On the other obligations of Bishops consult the Second Plenary Council of Baltimore, tit. 2, cap. 3, 4 and 5; and tit. 3, cap. 1, 2 and 3. Consult also the Third Plenary Council of Baltimore, tit. 2, cap. 1.

On the Office of Preaching

§1. The office of preaching the Catholic faith has been committed principally to the Roman Pontiff for the universal Church, and to Bishops for their dioceses (Can. 1327).

Questions

Question 1. Is it lawful for anyone of either clergy to preach at pleasure?

Resp. It is lawful for no one to exercise the ministry of preaching unless he has received a mission from a legitimate Superior, by a faculty peculiarly given, or by an office conferred to which, from the sacred canons, the office of preaching adheres (Can. 1328).

Question 2. Who grants the faculty of preaching?

Resp. For clerics of the secular clergy as well as for non-exempt religious, the local Ordinary alone grants the faculty of preaching for his territory. If a sermon is to be held for exempt religious or others dwelling day and night in a religious house, the Superior grants the faculty in a clerical

religion; and he can give it to persons from the secular clergy or from another religion who have been judged suitable by their own Ordinary or Superior. But if there is to be preaching to others, or even to nuns subject to regulars, the Ordinary of the place imparts the faculty; in the case of a sermon to be given to nuns, the preacher needs the permission of the regular Superior. The Ordinary of the place gives the faculty also when a sermon is to be held for members of a lay religion, even an exempt one. - Cf. Can. 1337, 1338.

Question 3. Is it lawful for Ordinaries of places to deny the faculty of preaching to religious presented by their Superior?

Resp. §1. Let Ordinaries of places not deny the faculty of preaching, without grave cause, to religious who are presented by their own Superior, and let them not revoke one granted, especially at one and the same time for all the priests of a religious house, while the prescription of can. 1340 remains firm.

§2. For religious preachers, in order that it may be lawful to use the faculty received, there is need moreover of the permission of their Superior (Can. 1339).

Question 4. What things are to be set forth in sermons?

Resp. §1. In sacred sermons those things are first of all to be set forth which the faithful must believe and do for salvation.

§2. Let preachers of the divine word abstain from profane or abstruse arguments exceeding the common grasp of the hearers; and let them exercise the evangelical ministry not in persuasive words of human wisdom, not in the profane display and enticement of empty and ambitious eloquence, but in the showing of spirit and power, preaching not themselves, but Christ crucified.

§3. If, which may God avert, a preacher disseminates errors or scandals, let the prescription of can. 2317 be observed; if heresies, let action moreover be taken against him according to the norm of law (Can. 1347).

Article II. On the Obligations of Parish Priests

§1. According to the norm of can. 156 a parish priest is to have only one parish by title, unless there is question of parishes united equally as principal.

§2. In the same parish there must be only one parish priest who bears the actual care of souls, contrary custom being reprobated and any contrary privilege revoked (Can. 460).[1]

A parish priest obtains the care of souls from the moment of possession taken according to the norm of can. 1443-1445; and before possession, or in the very act of taking possession, he must make the profession of faith of which in can. 1406, §1, n. 7 (Can. 461).

The functions reserved to the parish priest are, unless the law provides otherwise:

1st. To confer baptism solemnly;

2nd. To carry the Most Holy Eucharist publicly to the sick in his own parish;

3rd. To carry the Most Holy Eucharist publicly or privately as Viaticum to the sick, and to strengthen those placed in danger of death with extreme unction, with the prescription of can. 397, n. 3, 514,

848, §2, 938, §2 being safe;

4th. To announce sacred ordinations and marriages to be entered; to assist at marriages; to impart the nuptial blessing;

5th. To perform lawful funerals according to the norm of can. 1216;

6th. To bless houses according to the norm of the liturgical books on Holy Saturday, or on another day according to the custom of places;

7th. To bless the baptismal font on Holy Saturday, to lead a public procession outside the church, to impart blessings outside the church with pomp and solemnity, unless there is question of a capitular church and the Chapter performs these functions (Can. 462).

§1. The parish priest has a right to the offerings which either approved custom or legitimate taxation assigns to him according to the norm of can. 1507, §1.

§2. If he demands greater ones, he is held to restitution.

§3. Although some parochial office has been fulfilled by another, nevertheless the offerings fall to the parish priest, unless the contrary will of those offering is certainly established concerning the sum which exceeds the tax.

§4. Let the parish priest not deny gratuitous ministry to those who are not able to pay (Can. 463).

§1. The parish priest is held by office to exercise the care of souls toward all his parishioners who are not legitimately exempt.

§2. The Bishop can, for a just and grave cause, withdraw from the care of the parish priest religious families and pious houses which are in the territory of the parish and are not exempt by law (Can. 464).

[1] Cf. Addenda, p. 1106, n. 48.

As Regards Residence. §1. The parish priest is held by the obligation of residing in the parish house near his church; nevertheless the local Ordinary can for a just cause permit him to dwell elsewhere, provided that the house is not so distant from the parish church that the discharge of parochial duties suffers any detriment from this.

§2. He is permitted to be absent for two months at most within the year, whether continuous or interrupted, unless a grave cause, in the judgment of the Ordinary himself, either requires a longer absence or permits only a shorter one.

§3. The days on which the parish priest attends to pious exercises according to the norm of can. 126 are not counted, once in the year, among the two months of vacation of which in §2.

§4. Whether the time of vacation is continuous or interrupted, when the absence is going to last beyond a week, the parish priest, besides a legitimate cause, must have the written permission of the Ordinary and must leave in his place a substitute vicar to be approved by the same Ordinary; but if the parish priest is a religious, he needs moreover the consent of the Superior, and the substitute must be approved both by the Ordinary and by the Superior.

§5. If the parish priest is compelled to depart from a sudden and grave cause and to be absent beyond a week, let him as soon as possible inform the Ordinary by letter, indicating to him the cause of the departure and the priest supplying, and let him stand by his commands.

§6. Even for the time of a shorter absence the parish priest must provide for the necessities of the faithful, especially if particular circumstances of things demand this (Can. 465).

As Regards Preaching. On Sundays and the other feasts of precept through the year, it is the proper office of each parish priest to announce the word of God to the people in the customary homily, especially within the Mass at which the greater attendance of the people is accustomed to be. The parish priest cannot satisfy this obligation habitually through another, unless the Ordinary approves; he can also permit that on more solemn feasts, or from a just cause, the sermon be omitted on Sundays. Cf. Can. 1344.

Note. Moreover, it is to be desired that in Masses, on feast days of precept, when the people are present, in all churches and public oratories a brief explanation of the Gospel or catechesis be given. But if the local Ordinary has prescribed this, with suitable instructions having been given, all of both clergy, even exempt, are held by this law. Cf. Can. 1345.

On Catechesis

It is the proper and most grave office, especially of pastors of souls, to care for the catechetical instruction of the Christian people (Can. 1329).

The parish priest must:

1st. At stated times, by instruction continued through several days, prepare children each year for rightly receiving the sacraments of penance and confirmation;

2nd. With altogether special zeal, especially, if nothing prevents, during the time of Lent, so instruct children that they may first taste the Holy Things from the altar in a holy manner (Can. 1330).

Besides the instruction of children of which in can. 1330, the parish priest should not omit cultivating more richly and more perfectly in the catechism children who have recently received first communion (Can. 1331).

On Sundays and other feasts of precept, at that hour which in his judgment is more suitable for the attendance of the people, the parish priest must moreover explain the catechism to the adult faithful, in language accommodated to their grasp (Can. 1332).

In the religious instruction of children he can, and if he is legitimately impeded he must, employ the labor of clerics dwelling in his territory, or, if there is need, of pious laypeople, especially those enrolled in the confraternity of Christian doctrine or another erected in the parish. Cf. Can. 1333, §1. Priests and clerics dwelling in the territory of the parish priest should themselves be helpers in this work. Ibid., §2. But if there is need, in the judgment of the local Ordinary, of the help of religious, their Superiors, even exempt ones, when required by the Ordinary, are held, either through themselves or through subjects, yet without detriment to discipline, to hand on catechesis especially in their own churches. Cf. Can. 1334.

As Regards the Administration of the Sacraments. §1. The parish priest must celebrate the divine offices, administer the Sacraments to the faithful as often as they legitimately ask, know his sheep

and prudently correct those wandering, embrace the poor and the wretched with paternal charity, and apply the greatest care in the Catholic instruction of children.

§2. The faithful are to be admonished that frequently, where this can conveniently be done, they approach their parish churches and there be present at the divine offices and hear the word of God (Can. 467).

§1. With diligent care and poured-out charity the parish priest must assist the sick in his parish, but especially those near death, by diligently refreshing them with the Sacraments and commending their souls to God.[1]

§2. To the parish priest, or to another priest who assists the sick, there belongs the faculty of granting them the apostolic blessing with plenary indulgence at the article of death, according to the form handed down by approved liturgical books; let him not omit to impart this blessing (Can. 468).

[1] Cf. Addenda, p. 1141, n. 106.

As Regards Parochial Books. §1. Let the parish priest have parochial books, that is, the book of those baptized, of those confirmed, of marriages, of the dead; let him also care according to his powers accurately to compose the book concerning the state of souls; and let him write all these books according to the usage approved by the Church or prescribed by his own Ordinary, and diligently preserve them.

§2. In the book of those baptized let it also be noted if the baptized person has received confirmation, has contracted marriage, with the prescription of can. 1107 being safe, or has received the sacred order of subdiaconate, or has emitted solemn profession; and those notations are always to be referred into documents of received baptism.

§3. At the end of each year let the parish priest transmit to the episcopal Curia an authentic copy of the parochial books, except the book concerning the state of souls.

§4. Let him use a parochial seal and have a record office, or archive, in which the aforesaid books are kept together with the letters of Bishops and other documents to be preserved because of necessity or utility; all of which, to be inspected by the Ordinary or his delegate at the time of visitation or another suitable time, he is religiously to take care lest they come into the hands of outsiders (Can. 470).

Cooperating Vicar. §1. If the parish priest, because of the multitude of the people or other causes, cannot, in the judgment of the Ordinary, manage the fitting care of the parish alone, there is to be given to him one or more cooperating vicars, to whom suitable remuneration is assigned.

§2. Cooperating vicars can be constituted either for the whole parish or for a determinate part of the parish.

§3. Not to the parish priest, but to the local Ordinary, after the parish priest has been heard, belongs the right of naming cooperating vicars from the secular clergy.

§4. Religious cooperating vicars are presented to the Ordinary by the Superior to whom this belongs from the constitutions, after the parish priest has been heard; it belongs to the Ordinary to approve them.

§5. The cooperating vicar is held by the obligation of residing in the parish according to diocesan statutes or laudable customs or the prescription of the Bishop; indeed the Ordinary should prudently take care, according to the norm of can. 134, that he dwell in the same parish house.

§6. His rights and obligations are to be taken from the diocesan statutes, from the letters of the Ordinary, and from the commission of the parish priest himself; but unless something else is expressly provided, he himself by reason of office must supply the place of the parish priest and assist him in the whole parochial ministry, except the application of the Mass for the people.

§7. He is subject to the parish priest, who is to instruct him paternally and direct him in the care of souls, watch over him, and at least yearly report concerning him to the Ordinary (Can. 476).

Let the parish priest diligently watch lest anything contrary to faith and morals be handed on in his parish, especially in public and private schools, and let him foster or institute works of charity, faith, and piety (Can. 469).

Appendix: On the Privileges of Clerics

§ I. On the Privileges of Clerics in Common

Clerics enjoy certain privileges from canon law, indeed according to many from divine law.

All the faithful owe reverence to clerics, according to their different grades and functions, and they stain themselves with the crime of sacrilege if at any time they have inflicted real injury upon clerics (Can. 119).

§1. Clerics in all causes, whether contentious or criminal, must be summoned before an ecclesiastical judge, unless provision has been legitimately made otherwise for particular places.

§2. Cardinals, Legates of the Apostolic See, Bishops even titular, Abbots or Prelates *nullius*, supreme Superiors of religions of pontifical right, major Officials of the Roman Curia, on account of business pertaining to their function, cannot be summoned before a lay judge without the permission of the Apostolic See; others enjoying the privilege of forum, without the permission of the Ordinary of the place in which the cause is carried on; which permission, nevertheless, the Ordinary, especially when the plaintiff is a layman, should not deny without a just and grave cause, especially when he has given effort in vain to settling the controversies between the parties.

§3. If nevertheless they are summoned by one who has had no previous permission, they can, by reason of necessity, appear in order to avoid greater evils, yet after the Superior from whom permission was not obtained has been informed (Can. 120).

All clerics are immune from military service, and from civil public functions and offices foreign to the clerical state (Can. 121).

For clerics who are compelled to satisfy creditors, let those things be safe which, according to the prudent judgment of the ecclesiastical judge, are necessary for honorable support of themselves, yet with the obligation of the same clerics to satisfy creditors as soon as possible remaining firm (Can. 122).

A cleric cannot renounce the aforesaid privileges; but he loses them if he is reduced to the lay state or is punished with perpetual privation of the right of wearing ecclesiastical garb, according to the norm

of can. 213, §1, 2304; but he recovers them if this penalty is remitted or he himself is again admitted among clerics (Can. 123).

Religious of either sex, even lay religious, enjoy the privilege of the canon. Cf. Can. 2343, §4.

§ II. On the Privileges of Bishops

The privileges of Bishops regard: 1st, censures; 2nd, irregularities; 3rd, impediments of matrimony; 4th, vows and oaths; 5th, other diverse cases. - Cf. St. Alphonsus, Appendix on privileges; and *Hom. Ap.*, tract. 20, cap. 3.

Concerning Censures. §1. In public cases the Ordinary can remit penalties *latae sententiae* established by common law, except:

1st. Cases brought to the contentious forum;

2nd. Censures reserved to the Apostolic See;

3rd. Penalties of inability for benefices, offices, dignities, functions in the Church, the active and passive voice, or privation of these, perpetual suspension, infamy of law, privation of the right of patronage and of a privilege or grace granted by the Apostolic See.

§2. But in occult cases, with the prescription of can. 2254 and 2290 remaining firm, the Ordinary can remit, by himself or through another, penalties *latae sententiae* established by common law, except censures reserved in a most special or special manner to the Apostolic See (Can. 2237).

Concerning Irregularities. §1. It is lawful for Ordinaries by themselves or through another to dispense their subjects from all irregularities arising from an occult delict, except that of which in can. 985, n. 4, or another brought to the judicial forum (Can. 990).

Concerning Impediments of Matrimony. When danger of death is urgent, Ordinaries of places can dispense their subjects, wherever they are staying, and all actually dwelling in their own territory, both over the form to be observed and over each and every impediment of ecclesiastical law, except the impediment arising from sacred presbyterate and from affinity in the direct line, once the marriage has been consummated. Cf. Can. 1043.

The same Ordinaries can do the same over the same impediments whenever the impediment is detected when all things are already prepared, and the marriage cannot be deferred until a dispensation is obtained from the Holy See; indeed, in the same danger of delay this faculty is valid for the convalidation of marriage. Cf. Can. 1045, §§1, 2.

Concerning Vows and Oaths. With regard to subjects and travelers, they can dispense from non-reserved vows, for a just cause, provided that the dispensation does not injure the right of others. Cf. Can. 1313, §1. And in a similar way they can irritate, dispense from, etc., a promissory oath. Cf. Can. 1320.

Concerning Other Particular Cases. 1st. They can dispense in all matters of lesser moment, both from custom and because recourse to the Pope would be too inconvenient.

2nd. In all things which commonly occur, for example, in fasting, in abstinence, for particular cases and persons.

3rd. In all statutes or laws, even universal ones, which have a clause permitting dispensation generally and without restriction, for example, until it is dispensed.

4th. Of choosing for themselves and their household members a priest for hearing confessions, who, if he lacks jurisdiction, obtains it by the law itself, even as regards sins and censures, reserved ones also, except censures reserved to the Holy See in a most special manner and those which are annexed to the revelation of the secret of the Holy Office. Cf. Can. 349. Cases reserved to the Ordinary of the place are included.

5th. The privileges of Bishops are found in can. 349, §1; 239, §1, nn. 7-12, n. 2, nn. 3, 4, nn. 5, 6; 811, §2; 459, §3, n. 3; 1028; 1043; 1045, §1, 2; 1245; 469; 914; 534; 1532; 806; 822; 1006; 1043; 1245; 1304.[1]

[1] Cf. Addenda, p. 1092, n. 25.

Part III. On the Particular Obligations of Religious

The obligations by which religious, as such, are held are reduced especially to the observance of the vows and of the other rules of each Order. But before something is said concerning the force of these obligations, it is useful to intimate something concerning the nature of the religious state, and concerning vocation to it.

Chapter I. On the Nature of the Religious State

The religious state, or a stable manner of living in common, by which the faithful, besides the common precepts, also undertake the evangelical counsels to be observed through vows of obedience, chastity, and poverty, is to be held in honor by all (Can. 487).

In the canons which follow, there come under the name:

1st. Of religion, a society approved by legitimate ecclesiastical authority, in which the members, according to the proper laws of the society itself, pronounce public vows, perpetual or temporary, yet to be renewed when the time has elapsed, and in this way tend toward evangelical perfection;

2nd. Of Order, a religion in which solemn vows are pronounced; of monastic Congregation, the union of several monasteries of their own right among themselves under the same Superior; of exempt religion, a religion, whether of solemn or simple vows, withdrawn from the jurisdiction of the local Ordinary; of religious Congregation, or simply Congregation, a religion in which vows only simple, whether perpetual or temporary, are emitted;

3rd. Of religion of pontifical right, a religion which has obtained either approval or at least a decree of praise from the Apostolic See; of diocesan right, a religion which, erected by Ordinaries, has not yet obtained this decree of praise;

4th. Of clerical religion, a religion of which most members are advanced to the priesthood; otherwise it is lay;

5th. Of religious house, a house of some religion in general; of regular house, a house of an Order; of formed house, a religious house in which at least six professed religious dwell, of whom, if there is question of a clerical religion, at least four are priests;

6th. Of province, the union of several religious houses among themselves under the same Superior, constituting a part of the same religion;

7th. Of religious, those who have pronounced vows in some religion; of religious of simple vows, those who have pronounced vows in a religious Congregation; of regulars, those who have pronounced vows in an Order; of sisters, religious women of simple vows; of nuns, religious women of solemn vows or, unless something else is established from the nature of the matter or from the context of speech, religious women whose vows from their institute are solemn, but for some places by prescription of the Apostolic See are simple;

8th. Of major Superiors, the Abbot Primate, Abbot Superior of a monastic Congregation, Abbot of a monastery of its own right, even if belonging to a monastic Congregation, the supreme Moderator of a religion, provincial Superior, the vicars of these, and others having power after the manner of provincials (Can. 488).

Canon 489 is of the highest moment:

The rules and particular constitutions of individual religions, not contrary to the canons of this Code, keep their force; but those which are opposed to them are abrogated (Can. 489).

§1. Bishops, but not the Capitular Vicar or Vicar General, can found religious Congregations; but let them not found them, nor permit them to be founded, without consulting the Apostolic See; but if there is question of tertiaries living in common, it is moreover required that they be aggregated to their religion by the supreme Moderator of the first Order.

§2. A Congregation of diocesan right, although in course of time spread through several dioceses, nevertheless, so long as it lacks the testimony of pontifical approval or praise, remains diocesan, wholly subject to the jurisdiction of the Ordinaries according to the norm of law.

§3. Neither the name nor the habit of a religion already constituted can be assumed by those who do not legitimately belong to it, or by a new religion (Can. 492).[1]

[1] Cf. Addenda, p. 1088, n. 7.

Questions

Question 1. Who can be admitted into religion?

Resp. Any Catholic can be admitted into religion who is detained by no legitimate impediment, is moved by a right intention, and is suitable for bearing the burdens of religion (Can. 538).

Therefore immunity from obstacles, right intention, and suitability for carrying burdens are required for admission. The necessity of these three is established from the very nature of the matter of which there is question.

Question 2. What is the law concerning postulancy according to the new Code?

Resp. §1. In religions of perpetual vows all women and, if there is question of a religion of men, lay brothers, before they are admitted to the novitiate, must complete a postulancy for at least six full months; but in religions of temporary vows, as regards the necessity and time of postulancy, one must stand by the constitutions.

§2. The major Superior can extend the prescribed time of postulancy, yet not beyond another six months (Can. 539).

§1. The postulancy must be completed either in the house of novitiate or in another house of the religion in which discipline is accurately observed according to the constitutions, under the special care of an approved religious.

§2. Let postulants wear modest clothing and clothing different from the clothing of novices.

§3. In monasteries of nuns, aspirants, while they are completing the postulancy, are held by the law of enclosure (Can. 540).

Before they begin the novitiate, postulants should attend to spiritual exercises for at least eight full days; and, according to the prudent judgment of the confessor, they should make beforehand a general confession of their past life (Can. 541).

Thus a distinction is made between religions of perpetual vows and religions of temporary vows: in these latter one must stand by the constitutions, both as regards the necessity and as regards the duration of postulancy; in the former, women and lay brothers are held to make a postulancy of six months. The major Superior can extend this time, but not beyond another six months.

The postulancy must be made either in the novitiate or in another house where discipline flourishes under the care of an approved religious. The garments are to be modest, different from the clothing of the novitiate. In monasteries of nuns, aspirants are held by the law of enclosure. Before the novitiate, postulants should complete spiritual exercises through eight solid days and, at the judgment of the confessor, make a general confession.

Question 3. Who are admitted to the novitiate invalidly, and who illicitly?

Resp. With the prescription of can. 539-541 remaining firm, and other prescriptions in the proper constitutions of each religion:

1st. They are admitted to the novitiate invalidly:

Those who have adhered to a non-Catholic sect;

Those who do not have the age required for novitiate;

Those who enter religion induced by force, grave fear, or fraud, or whom the Superior, induced in the same way, receives;

A spouse, while the marriage lasts;

Those who are bound, or have been bound, by the bond of religious profession;

Those upon whom a penalty is impending because of a grave delict committed, concerning which they have been accused or can be accused;

A Bishop, whether residential or titular, even if he has only been designated by the Roman Pontiff;

Clerics who, from an institute of the Holy See, are bound by oath to devote their work to the good of their diocese or of the missions, for that time for which the obligation of the oath endures.

2nd. They are admitted illicitly, but validly:

Clerics constituted in sacred orders, without consulting the local Ordinary, or with the same Ordinary contradicting because their departure would turn to grave detriment of souls, which cannot be avoided otherwise;

Those burdened with debt who are not able to pay;

Those liable to render an account, or entangled in other secular business, from which the religion could fear lawsuits and troubles;

Children who must assist parents, that is, father or mother, grandfather or grandmother, placed in grave necessity, and parents whose work is necessary for feeding or educating children;

Those destined for the priesthood in religion, but from which they are removed by irregularity or another canonical impediment;

Orientals in Latin religions without permission given in writing by the Sacred Congregation for the Oriental Church (Can. 542).

Invalidity arises first from the fact that someone previously adhered to some non-Catholic sect. In the new Code, non-Catholics are called either baptized or not baptized: baptized outside the Catholic Church and adhering to some sect; baptized in the Catholic Church and afterwards defecting from it and adhering to some sect; baptized nowhere but adhering to some sect, for example of Quakers, Unitarians.

The words of canon 542, those who have adhered to a non-Catholic sect, are not to be understood concerning those who, moved by the grace of God, have come to the Church from heresy or schism in which they were born, but concerning those who have defected from the faith and adhered to a non-Catholic sect. Thus C. A. C. C. A. I., 16 Oct. 1919.

Question 4. With whom is the right of admitting to the novitiate and to profession?

Resp. The right of admitting to the novitiate and to subsequent religious profession, both temporary and perpetual, belongs to the major Superiors with the vote of the Council or Chapter, according to the peculiar constitutions of each religion (Can. 543).

Question 5. What testimony must aspirants present?

Resp. §1. In any religion, all aspirants, before they are admitted, must present testimony of received baptism and confirmation.

§2. Male aspirants must moreover present testimonial letters from the Ordinary of origin and of each place in which, after completing the fourteenth year of age, they have stayed beyond a morally continuous year, any contrary privilege being removed.

§3. If there is question of admitting those who have been in a Seminary, college, or the postulancy or novitiate of another religion, testimonial letters are moreover required, given for the different cases by the rector of the Seminary or college, after the local Ordinary has been heard, or by the major Superior of the religion.

§4. For clerics to be admitted, besides the testimony of ordination, testimonial letters of the Ordinaries in whose dioceses after ordination they have dwelt beyond a morally continuous year suffice, with the prescription of §3 being safe.

§5. For a professed religious transferring to another religion by apostolic indult, the testimony of the major Superior of the prior religion is sufficient.

§6. Besides these testimonies required by law, Superiors to whom the right belongs of enrolling aspirants into religion can also require other things which seem necessary or suitable to them for this end.

§7. Finally, let women not be received unless accurate investigations concerning their character and morals have been made beforehand, with the prescription of §3 remaining firm (Can. 544).

§1. Those who must give testimonial letters from the prescription of law should give them not to the aspirants themselves, but to the religious Superiors gratuitously within the space of three months from their requisition, closed with a seal and, if there is question of those who have been in a Seminary, college, or the postulancy or novitiate of another religion, confirmed by the oath of the Superior.

§2. If for grave reasons they have judged that they cannot answer these, let them explain the causes to the Apostolic See within the same time.

§3. If they have replied that the aspirant is not sufficiently known to them, the religious Superior should supply by another accurate investigation and a trustworthy report; but if they have replied nothing, the requesting Superior should inform the Holy See of the response not received.

§4. In their testimonial letters, after they have instituted diligent investigation, even through secret information, they must report, their conscience being gravely burdened concerning the truth of the things set forth, concerning the aspirant's birth, morals, talent, life, reputation, condition, knowledge; whether he has been investigated, whether he is entangled by some censure, irregularity, or other canonical impediment, whether his own family needs his help, and finally, if there is question of those who have been in a Seminary, college, or the postulancy or novitiate of another religion, for what cause they were dismissed or departed of their own accord (Can. 545).

Question 6. When does the novitiate begin, and what is required for its validity?

Resp. The novitiate begins with the reception of the habit, or in another manner prescribed in the constitutions (Can. 553).

§1. Besides the other things enumerated in can. 542 for the validity of the novitiate, in order to be valid the novitiate must be completed:

1st. After completion of at least the fifteenth year of age;

2nd. Through an entire and continuous year;[1]

3rd. In the house of novitiate.

§2. If a longer time is prescribed for the novitiate in the constitutions, it is not required for the validity of profession, unless something else is expressly said in the same constitutions (Can. 555).

The novitiate begins in the manner prescribed in the religion; for validity it must be completed after the fifteenth year is completed, in the house of novitiate, through an entire and continuous year. Without these three, or without any one of them, the novitiate is not validly completed; the

minimum age is the completed fifteenth year; the house of residence is the house of novitiate; the minimum and necessary time is one complete and continuous year.

[1] Cf. Addenda, p. 1111, n. 53.

Question 7. What is to be said concerning interruption of the novitiate?

Resp. §1. The novitiate is interrupted, so that it must be begun anew and completed, if the novice, dismissed by the Superior, has left the house, or has deserted the house without his permission, not intending to return, or has remained outside the house, even intending to return, beyond thirty days, whether continuous or not continuous, for any cause whatsoever, even with the permission of Superiors.

§2. If the novice has remained beyond fifteen, but not beyond thirty, days, even not continuous, outside the enclosure of the house under obedience to the Superior, with the permission of Superiors or compelled by force, for the validity of the novitiate it is necessary and sufficient to make up the days spent in this way; if not beyond fifteen days, the supplement can be prescribed by Superiors, but is not necessary for validity.

§3. Let Superiors not impart permission to remain outside the enclosure of the novitiate except from a just and grave cause.

§4. If a novice is transferred by Superiors into another house of novitiate of the same religion, the novitiate is not interrupted (Can. 556).[1]

[1] Cf. Addenda, p. 1088, n. 8.

Question 8. What is required for the validity of profession?

Resp. §1. For the validity of any religious profession it is required that:

1st. The one about to emit it have the legitimate age according to the norm of can. 573;

2nd. A legitimate Superior admit him to profession according to the constitutions;

3rd. A valid novitiate according to the norm of can. 555 have preceded;

4th. The profession be emitted without force or grave fear or fraud;

5th. It be expressed;

6th. It be received by a legitimate Superior according to the constitutions, by himself or through another.

§2. But for the validity of perpetual profession, whether solemn or simple, it is moreover required that temporary simple profession according to the norm of can. 574 have preceded (Can. 572).

Question 9. What age is required for profession?

Resp. Anyone about to emit religious profession must have completed the sixteenth year of age, if there is question of temporary profession; the twenty-first, if of perpetual, whether solemn or simple (Can. 573).

When the sixteenth year of age has not been completed, no profession is valid for which that completed year is required, if namely there is question of temporary profession; but if of perpetual,

whether simple or solemn, the twenty-first year, and indeed completed, is required.

Question 10. When the novitiate has been completed, must the novice immediately be admitted to profession?

Resp. §2. When the novitiate has been completed, if he is judged suitable, the novice is to be admitted to profession; otherwise he is to be dismissed. If doubt remains whether he is suitable, the time of probation can be prolonged by the major Superiors, yet not beyond six months (Can. 571).

Question 11. Must temporary simple profession always be placed before solemn and perpetual profession?

Resp. §1. In any Order both of men and of women, and in any Congregation which has perpetual vows, after the novitiate has been completed, the novice, in the house of novitiate itself, must place before perpetual vows, whether solemn or simple, with the prescription of can. 634 being safe, a profession of simple vows to last for three years, or for a longer time if the age required for perpetual profession is farther distant, unless the constitutions require annual professions.

§2. The legitimate Superior can prolong this time, after temporary profession has been renewed by the religious, yet not beyond another three years (Can. 574).

Question 12. When the time of temporary profession has been completed, what must be done?

Resp. §1. When the time of temporary profession has been completed, the religious, according to the norm of can. 637, either emits perpetual profession, solemn or simple according to the constitutions, or returns to the world; but also, during the time of temporary profession, if he is not held worthy to pronounce perpetual vows, he can be dismissed by the legitimate Superior according to the norm of can. 647 (Can. 575).

The highest care of the Church is in saving the liberty of the subject vowing, lest they unwillingly lead the religious life.

Question 13. When the time for which the vows were pronounced has elapsed, must renewal be made immediately?

Resp. No delay is to be interposed to the renewal of vows, when the time for which they were pronounced has elapsed. Indeed, Superiors have the faculty of permitting that the renewal be anticipated for some time, yet not beyond a month. Cf. Can. 577.

Question 14. Do those professed by temporary simple vows enjoy the privileges, etc., and are they held to the obligations of others professed by perpetual and solemn vows?

Resp. Those professed by temporary vows, of whom in can. 574:

1st. Enjoy the same indulgences, privileges, and spiritual graces by which those professed by solemn vows or those professed by perpetual simple vows rejoice; and if they are overtaken by death, they have a right to the same suffrages;

2nd. They are held by the same obligation of observing the rules and constitutions; but where the obligation of choir flourishes, they are not bound by the law of reciting the divine office privately, unless they are constituted in sacred orders or the constitutions expressly prescribe something else;

3rd. They lack active and passive voice, unless something else is expressly provided in the constitutions; but the time prescribed for enjoying active and passive voice, the constitutions being silent, is computed from first profession (Can. 578).

Question 15. To what is the Bishop held with regard to girls about to enter religion?

Resp. The Superioress must inform the local Ordinary, at least two months before, concerning the approaching admission to the novitiate and to profession, both temporary and perpetual, whether solemn or simple. The local Ordinary, or if he is absent or impeded, a deputed priest, at least thirty days before the novitiate and before profession as above, should examine the will of the aspirant, whether she has been coerced or seduced, whether she knows what she is doing; if it is established concerning her pious and free will, then the aspirant can be admitted to the novitiate or the novice to profession. Cf. Can. 552; S. C. de Religiosis, 19 Jan., 1909. The Church wills that it be authentically established that the aspirant was not coerced, and that she understands what she is doing; only then is it lawful to admit her to the novitiate or to profession, when both the liberty and the knowledge of the aspirant are plainly evident.

Question 16. How does profession affect acts contrary to the vows?

Resp. Simple profession, whether temporary or perpetual, renders acts contrary to the vows illicit, but not invalid, unless something else has been expressly provided; but solemn profession, if they are irritative, renders them also invalid (Can. 579).

We have an example of the former in relation to those who, for example, in some religious congregation with simple vows only, although perpetual, enter marriage without dispensation: the marriage is valid, although surely a most grave sin; but if a Scholastic of the Society of Jesus with his simple perpetual vows did the same thing, the marriage would be invalid. Cf. Const. *Ascendente Domino*, Greg. XIII.

Question 17. By what means and under what obligation is a Religious held to tend toward perfection?

Resp. He is held to tend primarily through the essential means of the religious state, namely through the observance of the three vows of poverty, chastity, and obedience. And since the obligation of tending to perfection is grave by force of the state in which he is found, he will sin gravely if in a grave matter he infringes those vows. But secondarily he is held to tend toward perfection also through accidental means, namely through the proper rules of the Order; and he will sin gravely if he infringes them from formal contempt, namely by spurning their authority as such and their known wisdom. It is otherwise, however, if he violates them, led by concupiscence, or because he thinks they are not necessary for him unto salvation, or if he thinks that they are not commanded under grave obligation. - Cf. St. Alphonsus, n. 10.

Question 18. Does a Religious sin gravely who intends to observe only commands obliging under grave obligation, and to care nothing for the rest?

Resp. Negatively, more probably; and the reason is that by this very fact, that the Religious wills to fulfill those several things which oblige under grave obligation, he already tends toward perfection, since he wills to fulfill several things which, with respect to others, do not oblige but are merely of counsel. St. Alphonsus calls this opinion the more common and more probable; nevertheless he

warns that a Religious disposed in this way can be in grave danger of sinning mortally from other heads, for example, by reason of the danger of transgressing the vows or of bringing grave damage upon the Religion as regards discipline, etc. Cf. St. Alphonsus, nn. 10 and seq. - Bouix, *de Regul.*, vol. 2, pp. 550 and 551.

Question 19. Whether, or how far, does a rule oblige under sin, taken distributively, or considering individual rules in particular?

Resp. In very many Orders the rule, generally speaking and of itself, does not oblige under sin, not even venial sin. This is established from the constitutions themselves of various Orders and from the common interpretation of theologians. Those Orders are to be excepted in which the constitutions expressly establish the opposite. I said 1st, generally speaking, because whatever things fall under vows or express precepts of Superiors are not without fault, and indeed grave fault according to the gravity of the matter, as we shall say below concerning vows. - I said 2nd, of itself, because theologians teach that transgression of the rule very rarely is free from all fault because of extrinsic reasons, since almost always there will be some fault by reason of negligence, concupiscence, scandal, laziness, or any other disordered movement. - Cf. St. Alphonsus, ibid.

Question 20. To what is a novice held in relation to the cession of administration of goods and to a testament?

Resp. §1. Before profession of simple vows, whether temporary or perpetual, the novice must, for the whole time for which he will be bound by simple vows, cede the administration of his goods to whom he prefers and, unless the constitutions provide otherwise, freely dispose concerning their use and usufruct.

§2. That cession and disposition, if it was omitted because of lack of goods and these afterwards came, or if it was made and afterwards other goods by any title came, is to be made or repeated according to the norms established in §1, notwithstanding simple profession emitted.

§3. A novice in a religious Congregation, before profession of temporary vows, should freely make a testament concerning goods present or perhaps to come (Can. 569).

The whole novitiate is to be completed in the habit which the constitutions prescribe for novices, unless special circumstances of places require something else (Can. 557).

Chapter II. On Religious Vocation

I say. Certainly Christ willed that in His kingdom there be a state of voluntary poverty, celibacy, and obedience. For the Lord Himself shows the way by which someone may enter into life and by which he may attain perfection. "If thou wilt enter into life, keep the commandments." Matt. xix, 17. He set before these words others: "One is good, God": the observance of the commandments is indicated as necessary in order that someone may become a sharer of the highest good, God. And to the young man asking, "Which?" namely, commandments, the Lord explains them. To the young man answering that he had kept all these from his youth, and asking, "What is yet wanting to me?" Jesus said: "if thou wilt be perfect, sell what thou hast, and give to the poor, and thou shalt have treasure in heaven, and come follow me." Therefore here the Lord sets forth two states in His kingdom, namely one enjoined on all, the other voluntary for them: the observance of the commandments; the voluntary

taking up of poverty, celibacy - for he who sells all his things and gives the price to the poor cannot enter marriage - and obedience, "come follow me." Therefore He says to the young man: if thou wilt supply what is lacking to thee and come to perfection, I now show thee the way: "sell, give to the poor," and, lest thou fear, I set before thee the reward, "treasure in heaven, and come follow me." And so He excites the will of the young man by this treasure and by the attainment of perfection arising for him from voluntary poverty, celibacy, and a certain excellent obedience under the yoke of Christ. - Cf. v. 12.

Therefore Christ wills that such a state be in the Church. Now come, all these things strike the hearts of men with wondrous efficacy. - Cf. Commentary on the Gospel according to St. Matthew; Knabenbauer, pp. 154 and seq. Let it be noted that between this doctrine of Christ concerning the more perfect way in His kingdom and the doctrine concerning matrimony and virginity (xix, 1-12), there is commemorated by the Evangelist the most tender love of Our Lord toward little ones: for of such is the kingdom of heaven. These easily lay up the things of God in the heart. Suffer the little ones to come unto me. The time will come when many of them will have to answer for themselves whether they ought to follow Christ by the common way rather than by the more perfect way. At the age of twelve and living the Apostolic life, He gave them a most efficacious example; He will also give grace. For them also a choice must be made between these ways: "Lord, what wilt thou have me do?" The will of God, not our own, is the norm of any Christian. Right intention of divine service is necessary, especially in choosing a state of life. And therefore it is necessary that the one about to choose, according to his powers, free himself from every disordered affection, and will nothing except what is from above. These things being posited, how will the young man know what is the good-pleasing will of God? Our Lord shows His will in this matter to men in various ways. First, indeed, He does this in such a way that no doubt can be present concerning it - which happens in the case of Saint Paul, Saint Matthew, and others in the Church of God. This way is extraordinary and not to be expected by all. Secondly, when the soul is moved by inspirations and motions in such a way that with almost no discourse of the mind the will is borne into the service of God; but in this method too great difficulties can arise. Finally, a third way remains, the ordinary one, safer and more secure from illusions, namely when someone with tranquil mind seriously considers the question, What shall I do? shall I follow the religious state? (a) by weighing the advantages and disadvantages arising to him from it; by taking from the desire of divine service reasons for the state and against it; and by not admitting merely human considerations; by placing himself in indifference of heart; let him ask light from God; then let him see to which side reason inclines him more, and finally let him choose that side. Or, with the same tranquil mind, (b) let him propose to himself a man hitherto unknown, who asks counsel in this matter; by desiring the perfection of this man, he chooses this state for him, and let him judge that the same will be best for himself. Or again, with the same tranquility of soul, (c) let him place himself at the article of death or on the day of judgment, and ask what way he would then wish to have held, and let him now take for himself the one desired; for he will be able sincerely to hold that his vocation is that which that weighing and prayer under (a), or that counsel under (b), or the longed-for way under (c), indicates. Therefore divine vocation seems able to be called the divine good-pleasure morally securely manifested to a man by the light of reason aided by faith; in the man himself it is a complex of right intention, of natural and supernatural gifts, by which he may seem suitable for duly carrying out the duties of the religious state. But the judgment of all these

things in this or that case belongs to the Superiors, so that their assent and admission of the candidate is, as it were, the authoritative complement and perfection of religious vocation.

Questions

Question 1. Whether, or how, does one sin who, sensing that he is called to Religion, does not obey the divine vocation?

Resp. Of itself and rigorously speaking, he sins in no way; because divine counsels impose no obligation, since precisely in this they differ from precepts. Yet he can scarcely be excused from some fault because of the danger of eternal salvation to which he commits himself. Indeed, he would not be excused from grave sin who was persuaded that this one means of attaining eternal salvation remained for him, that he flee from the dangers of the world. - But truly, are they in a bad state who, morally certain concerning a divine vocation to Religion, strive to persuade themselves that they can attain their salvation just as easily by remaining in the world or by returning to it? It does not seem to be doubted that they expose themselves to great hazard of salvation; because, by remaining in the world against the vocation of God, they deprive themselves of those special helps which the providence of God had prepared for them in Religion, and therefore they will resist the temptations of the world with difficulty. - Cf. St. Alphonsus, n. 78. Others, however, judge more mildly.

Question 2. Do parents or superiors sin gravely who turn away children or subjects from the religious state?

Resp. Affirmatively, and indeed against justice, if they turn them away by threats, force, frauds, etc.; but against charity, if they only employ prayers and persuasions. The reason is that they deprive them of a great good and heap up many damages. Nevertheless parents do not sin who oppose, for a time, the pious desires of younger children in order to test their constancy or because of another just cause. Yet in this matter, to avoid delusions, they must stand by the counsels of a confessor or of an upright and learned man. - Cf. St. Alphonsus, n. 77.

Question 3. What are the signs of a religious vocation?

Resp. Generally speaking, or according to ordinary providence, two things are required and suffice for proving a divine vocation, namely due aptitude and inclination of will.

1st. Aptitude is understood as suitability for the religious state in general, and in particular for the observance proper to such an Order. It consists especially in right judgment, in a good disposition, in a soul submitted to the yoke of obedience, in relatively sufficient knowledge, and in the lack of defects of body and soul which are repugnant to the reason of this life.

2nd. A constant and right inclination, which therefore is not subject to frequent changes, notwithstanding, otherwise, some past shifting about arising from temptations of the devil or from a certain repugnance of nature. Yet it is not required that the inclination proceed from spontaneity or propensity rather than from an intimate persuasion of the soul. Furthermore, that inclination must be right, that is, proceed from a pure intention, from the mere desire of attaining salvation more easily, of procuring the greater glory of God, or also the salvation of souls, etc.

I said generally speaking or in ordinary providence, because more evident signs of vocation are present, namely: 1st, divine revelation, as St. Aloysius Gonzaga and St. Stanislaus Kostka, etc., were

called; 2nd, singular inspiration, which consists in an interior motion by which someone is vehemently driven and as it were drawn to a more perfect life.

Chapter III. On the Obligations of Vows

Article I. On the Vow of Poverty

I say. 1st. A Religious bound by the solemn vow of poverty, at least by force of ecclesiastical law, and therefore, with dispensation of the Roman Pontiff excluded, is altogether incapable in particular, or personally, of any dominion over a temporal thing estimable by price, even with the permission of the superior. - I said personally, because the community can acquire and possess goods either through itself or through subjects, unless its constitutions stand in the way. Hence the common axiom of canon law: "Whatever a Monk acquires, he acquires not for himself, but for the monastery." - This is established from the Council of Trent, sess. 25, cap. 2.

I say. 2nd. A Religious bound by the simple vow of poverty can indeed have direct dominion of goods; but he cannot licitly dispose of anything concerning them without the particular or general permission of the superior, although he can validly. - Cf. St. Alphonsus, nn. 18 and seq.

Questions

Question 1. What is the difference between the vow and the virtue of poverty?

Resp. The vow regards only external acts of ownership; but the virtue extends also to the internal affections of the heart. For the object of the vow is to despoil the Religious outwardly of temporal goods. But the virtue has as its end to cut away entirely every disordered affection of the heart toward earthly things. Therefore the vow of poverty is, as it were, a means to the virtue, which is the end to be obtained; and consequently the virtue of poverty extends much more widely than the vow: for as often as someone infringes the vow, at the same time he also wounds the virtue; but not vice versa. - I said that the vow affects only external acts of ownership; nevertheless the vow could be violated by an internal act which would regard and touch an external act, namely by the desire of acting externally against the vow; since desire takes on all the malice and species of the external act, as was said in the tract on sins, n. 136.

Question 2. To what things does the direct dominion of a Religious not solemnly professed extend?

Resp. §1. Any professed of simple vows, whether perpetual or temporary, unless something else has been provided in the constitutions, preserves the ownership of his goods and the capacity of acquiring other goods, with those things safe which are prescribed in can. 569.

§2. But whatever he acquires by his industry or in view of religion, he acquires for the religion.

§3. The professed can change the cession or disposition of which in can. 569, §2, not indeed by his own judgment, unless the constitutions allow this, but by permission of the supreme Moderator, or, if there is question of nuns, by permission of the local Ordinary and, if the monastery is subject to regulars, of the regular Superior, provided that the change, at least concerning a notable part of the goods, is not made in favor of the religion; but through departure from the religion a cession and disposition of this sort ceases to have force (Can. 580). - Cf. Above, n. 611, Q. 20.

Question 3. Can a Religious, without permission of the superior, keep his own manuscripts and transfer them to another?

Resp. Affirmatively, according to the common opinion; for manuscripts, as offspring of the mind, are held as something spiritual. Moreover they pertain to knowledge, which does not fall under the vow of poverty; but the more powerful reason is that the common and received custom among Regulars so bears. And the same is to be said, according to many, concerning Relics of the Saints. - Cf. St. Alphonsus, n. 14.

Question 4. Does a Religious sin against the vow of poverty if he expends something from things granted for a determinate use into another use?

Resp. Affirmatively; and the reason is that in these things a Religious has only use of fact, and that precariously, as long as it shall seem good to the superior. But to dispose of some thing according to one's own judgment is an act of ownership or dominion; and otherwise the will or permission of the superior, unless something else is manifest, is restricted to the use assigned. Wherefore a Religious cannot, without permission, give to others or in any way alienate those things which by living more sparingly he has taken away for himself from the things granted for use. Cf. St. Alphonsus, nn. 19 and 23.

Question 5. Does a Religious sin against the vow of poverty who receives money from an outsider to be spent at pleasure upon pious works?

Resp. Affirmatively, if he receives it as given absolutely to himself, in order that he may distribute it in his own name. The reason is that by acting thus the Religious would make an act of ownership. But otherwise it must be said if he received it as to be distributed in the name of the donor, even if there is left to him the faculty of choosing the poor or some pious work, or how much is to be distributed; and a fortiori if a faculty of this sort is not left to him. The reason is that then the Religious would indeed make an act of prudence, but not of ownership; for he would be as it were the channel and mandatary of the donor. Hence a Religious does not sin against the vow of poverty who receives from an outsider money to be expended upon such a poor person, such a monastery, church, such a pious cause, etc. Indeed he does not sin if he himself, without the permission of the superior, asks money from an outsider to be handed over to another determinate person, although, if there is question of a matter of great moment, prudence counsels and the right order of religious discipline requires that the subject do nothing unless first he has obtained the assent of the superior, even if he incurs no danger of violating poverty. Cf. Sanchez, *Decal.*, lib. 7, cap. 30. - Lugo, *de just. et jure*, disp. 3, n. 155. - Salmant., *de Restit.*, cap. 6, n. 15. - Baller., note (a), p. 97; note (a), p. 99; and note (b), p. 104.

Question 6. Does a Religious sin against the vow of poverty who refuses those things which are offered to him by outsiders?

Resp. Negatively, if there is question of mere donations, alms, or gifts to which he does not have a strict right. The reason is that the vow of poverty does not oblige him to receive those things which he has not yet acquired, or to which neither he himself nor the monastery has a strict right. Nevertheless, if the Religious has no reason for refusing, he sins against charity by impeding the good of his Religion. - But otherwise one must answer if there is question of things owed by title of

justice, or indeed donated but already accepted; for once acceptance has been placed, the monastery immediately acquires a right. - Cf. St. Alphonsus, n. 20.

Question 7. Does a Religious sin not only against the vow of poverty, but also against justice, who unduly expends or consumes things of the monastery?

Resp. If he expends or consumes without any, not even tacit or presumed, permission of the superior, he is guilty of violated justice, because he commits true theft by converting another's thing to his own use against the reasonable will of the owner. But if he expends or consumes, the superior permitting or conniving, but for illicit or notably superfluous uses, he certainly sins against the vow; but whether he sins against justice is controverted. St. Alphonsus with others affirms it, because such permission is invalid and void; for the superior is not the owner, but a simple administrator of the goods of the monastery. De Lugo, Elbel, and many others deny it, because, although the Prelate is only administrator of the goods, it is not established by any law, at least universal law, that the owner himself, namely the community or religious Order, wished to invalidate permission of this sort, although it altogether disapproves it. Either opinion seems probable. - Cf. St. Alphonsus, n. 30.

Question 8. What matter is to be judged grave in violation of the vow of poverty?

Resp. 1st. In sins which are at once against religion and justice, generally speaking, that is to be held as grave matter which constitutes mortal sin in theft; and although a few theologians say that that matter alone is grave matter which is judged grave in thefts of sons of a family, namely matter about twice greater than in thefts against outsiders, nevertheless this in no way seems to be admitted. The reason is that sons are in hope of the goods of the father of the family, but Religious are not. Moreover Superiors are more, and indeed reasonably, unwilling as regards thefts of subjects than parents are concerning thefts of sons. Besides, graver detriments follow as regards the soul in the former than in the latter. - Cf. St. Alphonsus, n. 24. - Lugo, *de just. et jure*, disp. 3, n. 172. - Sanchez, *Decal.*, lib. 7, cap. 20, n. 3.

But in order that judgment be made concerning the gravity of matter in thefts of Religious, it is to be noted that monasteries moderately wealthy are commonly equated with private masters sufficiently wealthy. Hence the same measure as for them generally constitutes grave matter. But if they are very wealthy, a greater quantity is required. A greater quantity is also to be required if a Religious usurps things of the monastery for his own use or gives them to others of the same community, than if he expended them upon outsiders, because in this way they remain at home. Greater also in petty thefts, which moreover, with a notable interval interposed, do not coalesce into grave matter. Greater again in foodstuffs, as we said concerning servants.

Resp. 2nd. In sins against religion alone, or committed against the vow alone, the difficulty increases and there is greater disagreement of theologians. Nevertheless more commonly they generally require the same matter for mortal sin as in the preceding case, where justice is violated, because an act of ownership seems to be of the same gravity. Nevertheless not improbably some grave Doctors require a greater quantity for grave sin. Cf. Elbel, n. 646. Salmant., tract. 15, cap. 6, n. 12.

But they commonly agree that a much greater value is required for sinning gravely when gifts are received from outsiders to be expended upon others, because then the act of ownership is much less than if these were retained for one's own use. - Cf. St. Alphonsus, n. 24.

Question 9. When can one professed by simple vows not validly renounce, when can he validly renounce, and when must he renounce the goods which he actually has?

Resp. §1. One professed by simple vows cannot validly do so before, but within sixty days before solemn profession, with peculiar indults granted by the Holy See being safe, he must renounce all the goods which he actually has, to whom he prefers, under the condition of profession to follow.

§2. After profession has followed, all those things are to be done at once which are necessary in order that the renunciation obtain effect also in civil law (Can. 581).

Therefore he must, within sixty days before solemn profession, with indults being safe, renounce conditionally all goods which he actually has; before that time he cannot validly make that renunciation.

Question 10. To whom do goods fall which come in any way to a regular after solemn profession?

After solemn profession, peculiar indults of the Apostolic See likewise being safe, all goods which in any way come to a regular:

1st. In an Order capable of possessing, fall to the Order, or province, or house according to the constitutions;

2nd. In an incapable Order, are acquired as property for the Holy See (Can. 582).

Question 11. What is not lawful for those professed by simple vows in religious Congregations in relation to the abdication of dominion and the change of a testament already made according to the norm of can. 569, §3?

Resp. 1st. By an act among the living it is not lawful to abdicate the dominion of one's goods by a gratuitous title;

2nd. It is not lawful to change a testament made according to the norm of canon 569, §3, without the permission of the Holy See; or if the matter is urgent and time does not suffice for recurring to it, without the permission of the major Superior, or, if even he cannot be approached, of the local Superior. Cf. Can. 583.

Question 12. How is an invalid religious profession validated?

Resp. §1. A religious profession invalid because of an external impediment is not validated by subsequent acts, but it is necessary either that it be sanated by the Apostolic See, or that, the nullity having been known and the impediment removed, it be emitted legitimately anew.

§2. But if it was invalid because of a merely internal defect of consent, once this has been furnished, it is validated, provided that on the part of the religion consent has not been revoked.

§3. If there are grave arguments against the validity of the religious profession and the religious refuses, for safety, either to renew the profession or to seek its sanation, the matter is to be referred to the Apostolic See (Can. 586).

Wherefore a subsequent renewal would not validate the profession, but this must be emitted legitimately when at last the nullity has been known and the impediment removed.

You Will Resolve. 1st. A Religious sins against the vow of poverty if without any consent of the superior he accepts, retains, consumes, exchanges, or gives to another, at home or outside, anything, even from those things which pertain to food or clothing. Likewise if without the permission of the superior he accepts money or other things on loan or for use from outsiders. But as regards things received or handed over on loan or for use without the permission of the Prelate, generally speaking, he will not sin gravely against the vow of poverty if he gives things for his use to outsiders on loan or for use, provided he is certain about recovering them and does not therefore bring grave damage upon the community, which on this account, for example, lacks the use of a thing gravely necessary here and now. Much less gravely will he sin if he lends or gives for use to other Religious of the same monastery things granted to himself for use. The reason is that, although he makes some act of ownership in these things, nevertheless this is not here estimable at so great a price that it reaches grave matter, according to the common interpretation of theologians. - Cf. St. Alphonsus, n. 27.

2nd. He sins against the vow of poverty who retains a thing accepted with permission for use beyond the limits of time fixed beforehand by the superior; who employs it for another use with detriment to it; who keeps a thing with the intention of withdrawing it from the free disposition of the superior, for example, if he hides it so that it may not be seen; and indeed this one cannot be excused from the fact that he had previously obtained permission. But, generally speaking, grave fault is not present if a thing is taken secretly from the community, for example, a book for one's own use even for a long time, but not perpetually, unless it is so hidden that it cannot be found by Superiors; because then the Prelate is not judged unwilling as regards the substance, but only as regards the manner. Cf. St. Alphonsus, n. 24.

3rd. He sins against the vow of poverty who, without the faculty of the superior, buys something even for the community, because he acts as an owner. Sometimes, however, he can presume permission, namely when he knows that it will be pleasing to the superior and easy recourse to him is not open, for example, on a journey. But permission of this sort can more easily be presumed in matters of lesser moment, and much more easily still if there is question of a thing to be accepted from outsiders and handed over to the superior. - Cf. Lacroix, lib. 4, nn. 118 and seq.

4th. A Religious cannot accept any deposit properly so called without permission. The reason is both because according to the opinion of many he would make an act of ownership, and because a deposit is a contract; but a Religious without the faculty of the superior cannot enter into any contract concerning temporal things. - Many, however, think that this is not against the vow, although it is against the perfection of poverty and for the most part against the rule. - Cf. Suarez, *de Relig.*, tract. 7, lib. 8, cap. 11, n. 45.

5th. If a former superior gave you permission to have some thing, it still has force, even if he has departed from office. - Cf. Lacroix, n. 115.

6th. If you have permission to give something to Paul, and you give it to Peter, you do not sin, unless the superior gave permission for Paul because of a peculiar reason and would have denied it if you had asked this for Peter. - Cf. Lacroix, n. 119.

7th. If Titius the Religious has permission to give something to anyone whatsoever, Caius of the same community by this very fact has the faculty of accepting, because to give and to accept are correlatives, and therefore permission for one is judged also to be for the other.

8th. Concerning manuscripts, certain recent replies are to be kept before the eyes:

"Religious belonging to Institutes of simple vows are held by the same laws as Regulars of solemn vows as regards the *Imprimatur*, or good-pleasure, to be requested from their Superiors, whenever they desire to publish some manuscript of their own." And as often as "publication of some manuscript has been interdicted" by their Superiors, they cannot "hand the same manuscript to some printer who publishes it with the *Imprimatur* of the local Ordinary, the author's name being suppressed." - S. Cong. de Relig., 11 June, 1911.

It was asked of the same Congregation: "Whether Religious, both of solemn vows and of simple vows, who during vows have written out some manuscript, have dominion of the same in such a way that they can give it or alienate it by any title whatsoever?" and the answer was: Negative, 13 July, 1913. These replies are connected with one another. Cf. the preface to the last one in the context itself. The most recent reply simply excludes the case of a Religious who, permission to print a manuscript having been denied, gives it to a friend, and this friend, having been made owner of it, sees to the printing. Therefore from that reply a Religious cannot give to another, or alienate by any title whatsoever, a manuscript written out by himself during vows. Indeed the Sacred Congregation is not speaking of a manuscript work by a Religious who has been assigned to writing by mandate of the superior, nor of a work of no value. For as regards the first, no one affirms that he can alienate it, just as no one denies it of the second. A manuscript written out seems altogether to be taken as signifying either some complete work composed by industry with labor, or something similar, which by law can be the object of a contract. Moreover the reply is expressed entirely cautiously: "written out during vows"; nothing is said concerning others, concerning which certainly he is obliged now as before, neither more nor less, at least when this reply is considered; it is said, "Whether . . . they so have dominion of the same that they may give it, etc." To which the Congregation responded: "Negative." Therefore the decree is not opposed to the doctrine contained in Question 3. - Cf. *De Religiosis, Periodica*, v. 7, p. 165. - *Nouvelle Rev. Theol.*, v. 45, p. 709. - Ferreres, n. 156.

Note. - Let these things be said concerning religious poverty in general; but in particular attention must be given to the constitutions of individual Orders or to the custom tolerated by Superiors; for in many monasteries it is generally permitted to Religious to ask, accept, or procure for themselves many things necessary for food, clothing, books, and other things of this kind.

Article II. On the Vow of Chastity

I say. The object of the vow of chastity, which is certainly more excellent than the vow of poverty, embraces two things, namely those things which are already prohibited by natural and divine law, and also those things which could be done licitly in legitimate matrimony. Therefore this is the efficacy of the vow of chastity: that what otherwise could be licit becomes illicit for a Religious; but those things which are prohibited to all, he must avoid from a double obligation, namely of chastity and of religion.

Questions

Question 1. Are sins of luxury, even merely internal ones, opposed to the vow of chastity?

Resp. Affirmatively, according to the true and most common doctrine; because a Religious, by force of this vow, as this is commonly understood by Religious themselves, is held to abstain from every

voluntary venereal delectation, which can be both internal and external. Therefore in whatever way he wounds chastity, he incurs a double guilt, namely of luxury and sacrilege. - Cf. St. Alphonsus, n. 33.

Question 2. What is the gravity of sins committed against the vow of chastity?

Resp. This general rule must be established: the gravity of sin against the vow is exactly the same as against the sixth and ninth precept of the Decalogue; namely, a sin against religion is mortal or venial according as it is mortal or venial against chastity. But smallness of matter is not to be admitted in sins of sought or admitted luxury, nor can the fault be light except from imperfect consent, according to those things which have been said elsewhere.

Question 3. Whether, or what, is the difference between the virtue and the vow of chastity?

Resp. There is no distinction by reason of object, since the vow extends as widely as the virtue itself. Nevertheless they differ in this, that in those things which are prohibited by virtue there are two sins if the vow is violated, while one sin is committed in that which is interdicted by the vow alone. For if someone bound by a simple vow of chastity contracted marriage, he would commit one sin, namely against religion, in the use of marriage. Therefore sometimes the vow can be violated without the virtue itself being wounded.

Article III. On the Vow of Obedience

I say. The object of the vow of obedience, which is the most excellent of all the vows of Religion, because through it the Religious offers to God goods most intrinsic to himself, extends itself to all and only those things which the superior truly and properly commands, and which are contained either implicitly or explicitly in the rules and constitutions of the Order. - Cf. St. Alphonsus, n. 38.

Questions

Question 1. What distinction intervenes between the virtue and the vow of obedience?

Resp. The same which was indicated above concerning poverty; namely, the object of the vow is the external execution of the mandate of the superior, while the virtue reaches even to internal submission and makes obedience itself perfect. But by a Religious there are diligently to be avoided not only sins against the vow, but also against the virtue, which indeed is usually wounded more frequently. For sometimes it happens that a subject obeys the command of the Prelate wholly in external action, but with a reluctant, sad, and sick will; and then, although he satisfies the vow, nevertheless he recedes far from virtue. Moreover one must inspect of what sort that reluctance is; for if it is natural and consonant even with well-ordered nature, and yet does not delay or diminish the affection for obeying, it detracts nothing from the perfection of obedience, as the example of Christ the Lord counsels. Cf. Suarez, *de Relig.*, tract. 10, lib. 4, cap. 15, n. 19. - Baller., note (a), p. 109.

Question 2. Are one or rather two sins committed in violation of the vow of obedience, no otherwise than in violation of chastity?

Resp. Only one, at least probably; for there would be two sins for this reason: one against the natural precept which prescribes submission to a legitimate superior, and the other against the vow, insofar as independently of the vow the superior has the right of commanding. But the whole right of the

superior comes from the vow alone. Therefore . . . - Cf. St. Alphonsus, n. 46. - Varceno, vol. 1, p. 205, edit. VIII.

Question 3. When does a Religious sin gravely against the vow of obedience?

Resp. He sins gravely in the following cases, which rarely occur; namely, 1st, when he refuses to obey in grave matter a superior commanding in virtue of holy obedience, or in the name of Jesus Christ, or through other similar formulas, which are to be employed very rarely by Superiors; 2nd, when to a superior commanding he responds, "I do not wish to obey, I do not wish to do it, I will not do it," or something similar which smells of formal contempt of the authority commanding, even if the matter of the precept in this case is not grave; 3rd, when from disobedience there follows grave scandal of others, whether of subjects or of seculars, or grave inconvenience either for the community or for others, for example, for the salvation of souls, etc. But since the aforesaid cases rarely happen, commonly sins of Religious against obedience are to be reckoned as venial. Much more rarely still do sins committed against the virtue alone become mortal.

Question 4. Whom must one obey?

Resp. By force of the vow, one must obey only Superiors properly so called, that is, those who, either in the house, or in the province, or in the whole Religious family which they govern, have no one above themselves, unless the special constitutions of some Order dispose otherwise. The reason is that only with Superiors properly so called does authority reside. - I said by force of the vow, because right order and the prescription of the rule, and therefore the virtue of obedience, altogether demand that simple officials be faithfully obeyed in all things which pertain to their office.

Question 5. How must one obey?

Resp. That obedience may be altogether perfect, one must obey: 1st, from a supernatural motive, as the Apostle prescribes, Coloss. iii, 22: "Not serving to the eye, as pleasing men . . . serve the Lord Christ"; otherwise obedience, even if it were immune from sin, nevertheless would lack all merit and would be merely material; 2nd, cheerfully, or with joy and a willing soul, for in II Cor. ix, 9 it is said: "God loveth a cheerful giver"; 3rd, promptly, that is, either at once, or at the prescribed time and with due care, without sluggishness; 4th, completely, or by completing the whole work prescribed.

Question 6. Can religious Superiors command their subjects, even in virtue of holy obedience, that they themselves celebrate according to the intention prescribed by the constitutions or established by the Superiors themselves, with exceptions sanctioned by the constitutions or by legitimate custom being safe?

Resp. Affirmatively, the Sacred Congregation de Religiosis, on the day 23 March 1914.

On the Privileges of Religious

Concerning the privileges of religious the new Code establishes a general principle:

§1. Any religion enjoys only those privileges which either are contained in this Code or have been granted directly to the same by the Apostolic See, any communication being excluded in the future.

§2. The privileges by which a regular Order rejoices belong also to nuns of the same Order, insofar as they are capable of them (Can. 613).

Therefore in the future communication ceases to be the source of the privileges of religious in the way in which it was before. Every religion must recognize its privileges well.[1]

[1] Cf. Addenda, p. 1113, n. 59.

Concerning Exemption. 1st. Regulars, novices not excluded, whether men or women, with their houses and churches, except those nuns who are not subject to regular Superiors, are exempt from the jurisdiction of the local Ordinary, except in cases expressed by law (Can. 615). - Cf. Can. 615; 618; 631, §1; 1261, §2.

2nd. Therefore they are exempt from the visitation of the Bishop both as regards persons and as regards monasteries and churches. Except: 1st, monasteries of Nuns not subject to Regulars, and also of those subject to them as regards the custody of enclosure, for the care of which Bishops, as delegates of the Apostolic See, watch over them; 2nd, churches of seculars whose Parish Priest is a Religious; 3rd, churches of Regulars, if they are parishes, but only as regards those things which pertain to the parish and to the Parish Priest, insofar as he carries out that office, as is established by Benedict XIV, Const. *Firmandis*, 6 Nov. 1744. - Cf. Can. 512, §1, 2.

§1. Religions of simple vows do not enjoy the privilege of exemption unless it has been specially granted to them (Can. 618). Cf. St. Alphonsus, loc. cit. n. 75.

Concerning the Sacrament of Penance. In an exempt clerical religion, for hearing the confessions of the professed, of novices, and of others dwelling day and night in a religious house because of service, or education, or hospitality, or infirm health, delegated jurisdiction is conferred not only by the local Ordinary but also by their own Superior, who can grant it to priests from the secular clergy or from another religion. Cf. Can. 875 and 514, §1. The Superior grants, as also the local Ordinary does, this delegated jurisdiction for his professed, novices, and others above mentioned. He can grant this faculty not only to his own priests, but also to priests from the secular clergy and another religion.

As Regards Begging. §1. Regulars who from their institute are called and are mendicants can seek alms in the diocese where their religious house is established by the permission alone of their Superiors; but outside the diocese they need, moreover, permission given in writing by the Ordinary of the place in which they desire to collect alms.

§2. Let Ordinaries of places, especially of neighboring dioceses, not deny nor revoke this permission except for grave and urgent causes, if the religious house can in no way live from begging in the diocese alone in which it is established (Can. 621).

Concerning Irregularities and Vows. Major Superiors of an exempt clerical religion can dispense their subjects from all irregularities arising from an occult delict, except that which arises from voluntary homicide or abortion, or another brought to the judicial forum. Cf. Can. 990. Cf. St. Alphonsus, n. 109.

Superiors of an exempt clerical religion can dispense and irritate non-reserved vows with their subjects. - Cf. Can. 1313; 514, §1. They can commute the same. Cf. Can. 1314. The same also, as regards a promissory oath, can both dispense and commute. - Cf. Can. 1320.

Concerning Mass, Communion, and the Last Sacraments. §1. In every clerical religion, Superiors have the right and duty, by themselves or through another, of ministering Eucharistic Viaticum and

extreme unction to the sick professed, novices, or others dwelling day and night in a religious house because of service, or education, or hospitality, or infirm health (Can. 514). - Cf. St. Alphonsus, nn. 121 and 122.

If there is question of a house of an exempt religion, the major Superior can grant permission of celebrating outside a church and oratory upon a sacred stone and in a decent place, but never in a bedroom, only for a just and reasonable cause, in some extraordinary case, and by way of an act. Cf. Can. 822, §4.

Concerning Particular Cases. 1st. They can dispense their subjects, with cause, in ecclesiastical laws, as Bishops can, for example, concerning fasting, abstinence, etc.; because they have quasi-episcopal jurisdiction.

2nd. Through an indult legitimately granted by the local Ordinary, the obligation of the common law ceases also for all religious dwelling in the diocese, with the vows and proper constitutions of any religion being safe (Can. 620).

This must be much attended to, lest someone think Canon 613 is opposed to this canon. Canon 620 contains the rule applied before and everywhere. S. C. de Rel., 1 Sept., 1912.